

# CRS Insights

Scientific Basis of Environmental Protection Agency (EPA) Actions: H.R. 1422 and H.R. 4012  
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The scientific basis of regulation is a long-standing issue. In the 113<sup>th</sup> Congress, two bills have been referred for House floor consideration ([H.R. 1422](#) and [H.R. 4012](#)) that would address the public disclosure and transparency of scientific and technical information used as the basis for environmental regulations and other related actions of the Environmental Protection Agency (EPA).

Although some may desire greater public disclosure and transparency, the protection of confidential and private information may be an issue if scientific and technical documents or other materials contain such information. Certain statutes, such as the Freedom of Information Act (FOIA; [5 U.S.C. 552](#)) and the Privacy Act ([5 U.S.C. 552a](#)), address what information the federal government may disclose. More information on FOIA is available in [CRS Report R41406](#). [OMB Circular A-110](#) generally addresses public access to data from federally funded research (see [CRS Report R42983](#)). However, not necessarily all of the scientific and technical information that EPA uses is developed with federal funds.

Both [H.R. 1422](#) and [H.R. 4012](#) would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA), as amended, to address public disclosure of scientific and technical information that EPA uses as a basis for agency actions. [H.R. 1422](#) would also address the membership of [EPA's Science Advisory Board](#) (SAB), potential conflicts of interest between board member affiliations and matters subject to board review, and the role of the board in advising EPA on consideration of scientific information in carrying out the agency's mission.

As reported on July 22, 2013, [H.R. 1422](#), the EPA Science Advisory Board Reform Act of 2013 ([H.Rept. 113-165](#)), would amend Section 8 of ERDDAA to "provide for Science Advisory Board member qualifications, public participation, and for other purposes." A similar bill has been introduced in the Senate ([S. 1853](#)). As reported, [H.R. 1422](#) would establish a nomination and selection process for members of the SAB tailored to its specific functions. The Federal Advisory Committee Act (FACA; [5 U.S.C. Appendix](#)) is the general statute that governs the establishment of the SAB and other federal advisory committees across departments and agencies. FACA also establishes various requirements for public involvement, but not as specific to elements of SAB functions as [H.R. 1422](#).

The nomination and selection process for the SAB proposed in [H.R. 1422](#) would include opportunities for public involvement at specific stages and would require public disclosure of qualifications and affiliations (including financial interests) of nominees to the board. Additionally, the bill would direct the composition of SAB membership to include representation from state, local, or tribal governments, and explicitly would exclude "federally registered lobbyists."

In addition to membership, [H.R. 1422](#) would address the role of the board in conducting scientific reviews, including the avoidance of potential conflicts of interest in instances in which a member may be associated with activities subject to the board's review. The bill specifically would include "risk or hazard" assessments among the materials subject to SAB review, and would require EPA to make all reports and relevant scientific information available to the public concurrently when that information is made available to the SAB. The bill would further require certain levels of public involvement in specific stages of board reviews, from the development of the scope of a review to the performance of the review. The bill also would require that SAB reviews be made publicly available in the *Federal Register*. In recent years, the board has typically released its findings on EPA's website.

In addition, the bill would require the SAB to focus its reviews on rendering scientific determinations, "strive to avoid making policy determinations or recommendations," "clearly" communicate scientific uncertainties, and disclose dissenting views among board members. The bill also would require the SAB

to periodically assess whether its reviews are "addressing the most important scientific issues affecting" EPA.

Although [H.R. 1422](#) would establish specific requirements for the membership and operations of the SAB, the bill also would clarify that none of its provisions would supplant requirements of two other laws—FACA and the Ethics in Government Act of 1978 ([5 U.S.C. Appendix](#)).

In terms of drafting, [H.R. 1422](#), as reported in 2013, would add a new subsection (h) and (i) to Section 8 of ERDDAA to specify certain public participation and operational requirements of the SAB. In February 2014, the Agricultural Act of 2014 ([P.L. 113-79](#)) added a new subsection (h) and (i) to Section 8 of ERDDAA. The enacted subsection (h) more generally addresses public participation and transparency in SAB operations subject to FOIA and the Privacy Act. The enacted subsection (i) establishes certain reporting requirements. This drafting issue potentially could be addressed in floor consideration.

As reported on November 12, 2014, [H.R. 4012](#), the Secret Science Reform Act of 2014 ([H.Rept. 113-619](#)), broadly would address the public availability of scientific and technical information used to support specific categories of EPA actions. A bill addressing similar purposes has been introduced in the Senate ([S. 2613](#)). [H.R. 1422](#), discussed above, would address the public availability of EPA scientific and technical information more specifically in the context of SAB reviews.

[H.R. 4012](#) would amend Section 6(b) of ERDDAA to permit EPA to propose, finalize, or disseminate information on specific types of "covered actions" only if the scientific and technical information relied on to support those actions is specifically identified and made publicly available. The bill defines these covered actions to include risk, exposure, or hazard assessments, criteria documents, standards, limitations, regulations, regulatory impact analyses, or guidance. Scientific and technical information is defined as materials, data, and research protocols, computer codes and models, facts, and methodologies.

[H.R. 4012](#) would direct EPA to make such scientific and technical information publicly available in a manner that explicitly would be "sufficient for independent analysis and substantial reproduction of research results." Although the bill generally would direct EPA to make such information available when taking a covered action, the bill would further clarify that the agency would not be required to disclose information that is otherwise prohibited under other law.

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