

CRS Insights

Scientific Basis of Environmental Protection Agency Actions: H.R. 1029 and H.R. 1030
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The scientific basis of regulation is a long-standing issue. In the 114th Congress, two bills have been referred for House floor consideration ([H.R. 1029](#) and [H.R. 1030](#)) 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). A bill addressing similar purposes has been introduced in the Senate ([S. 543](#)).

Both [H.R. 1029](#) and [H.R. 1030](#) would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA), as amended, to require public disclosure of scientific and technical information that EPA uses as a basis for agency action. Some critics have argued that the bills may implicate confidentiality and privacy of personal information if scientific and technical documents or other materials contain such information (e.g., personal health conditions or effects and personal identifying information about individuals who voluntarily participate in human testing). However, 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 is required or permitted to disclose. Both bills would be implemented in the context of these statutes. More information on FOIA is available in [CRS Report R41406, *The Freedom of Information Act and Nondisclosure Provisions in Other Federal Laws*](#).

In addition to provisions that address public disclosure, [H.R. 1029](#), the EPA Science Advisory Board Reform Act of 2015, would revise the process for selecting members of [EPA's Science Advisory Board](#) (SAB), address potential conflicts of interest between board member affiliations and matters subject to board review, and revise the board's role in advising EPA on consideration of scientific information in carrying out the agency's mission. As reported by [H.Rept. 114-33](#) on March 2, 2015, [H.R. 1029](#) would amend Section 8 of ERDDAA to "provide for Science Advisory Board member qualifications, public participation, and for other purposes." Various provisions of the bill would codify in statute certain existing procedures that are similar in practical terms, whereas other provisions would establish new requirements. The bill would establish a nomination and selection process for members of the SAB. 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 in federal advisory committee activities. [H.R. 1029](#) would expand public involvement requirements for SAB only.

The nomination and selection process for the SAB proposed in [H.R. 1029](#) would include opportunities for public involvement and 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 would explicitly exclude "registered lobbyists."

In addition to membership, [H.R. 1029](#) 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 would also expand the documents subject to SAB review to include draft or proposed risk or hazard assessments, criteria documents, standards, limitations, or regulations.

The bill would also amend Sections 8(h) and 8(i) of ERDDAA in their entirety. The new Section 8(h) 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 would also 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.

The new Section 8(i) 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 would also require the SAB to periodically assess whether its reviews are "addressing the most important scientific issues affecting" EPA.

Although [H.R. 1029](#) would establish specific requirements for the membership and operations of the SAB, the bill would also clarify that none of its provisions would supplant requirements of two other laws—FOIA and the Ethics in Government Act of 1978 ([5 U.S.C. Appendix](#)).

As reported on March 2, 2015, [H.R. 1030](#), the Secret Science Reform Act of 2015 ([H.Rept. 114-34](#)) would broadly address the public availability of scientific and technical information used to support specific categories of EPA actions. [H.R. 1029](#), discussed above, would address the public availability of EPA scientific and technical information more specifically in the context of SAB reviews.

[H.R. 1030](#) would amend Section 6(b) of ERDDAA to authorize 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 are "the best available science," specifically identified, and made publicly available online. 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.

Although [H.R. 1030](#) would generally require public disclosure of scientific and technical information, the bill would limit this requirement to such information only to the extent that the information would be necessary "for independent analysis and substantial reproduction of research results." Information not necessary for these purposes would not require disclosure under the bill but would be subject to EPA's discretion and other applicable statutes such as FOIA and the Privacy Act.

Whereas [H.R. 1030](#) would establish these responsibilities of EPA, the bill would limit the agency to obligating no more than \$1 million in annual appropriations for these specific disclosure purposes.