

EPA SCIENCE ADVISORY BOARD REFORM ACT OF 2017

MARCH 27, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on Science, Space, and
Technology, submitted the following

R E P O R T

[To accompany H.R. 1431]

[Including cost estimate of the Congressional Budget Office]

The Committee on Science, Space, and Technology, to whom was referred the bill (H.R. 1431) to amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The purpose of H.R. 1431 is to amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Science Advisory Board independence, member qualifications, public participation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Environmental Protection Agency's (EPA) Science Advisory Board (SAB) was established by Congress in the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA).¹ Under this authorization, the SAB provides scientific advice at the request of the EPA Administrator and interested Congressional Committees.

Since its enactment, the size and function of the SAB has evolved. ERDDAA established a minimum number of nine members, one of which is to be the designated Chair. The EPA Administrator appoints members to serve a three-year term and may be reappointed for a second three-year term. There are currently 47 members on the chartered SAB; however, this number fluctuates as members rotate off and new members are appointed. The SAB and its subcommittees and ad hoc subpanels provide scientific advice on a wide range of issues, including stream and wetland connectivity, hydraulic fracturing, environmental justice screening, and regulatory cost estimates.² The Board has also begun providing advice on the science underlying several potential, forthcoming Agency regulatory activities.³

The SAB operates in accordance with the Federal Advisory Committee Act of 1972, which requires that advisory panels have a charter and be "fairly balanced in terms of the points of view represented and the functions to be performed." According to EPA, SAB's mission includes:

- reviewing the quality and relevance of the scientific and technical information being used or proposed as the basis for Agency regulations;
- reviewing research programs and the technical basis of applied programs;
- reviewing generic approaches to regulatory science, including guidelines governing the use of scientific and technical information in regulatory decisions, and critiquing such analytic methods as mathematical modeling;
- advising the Agency on broad scientific matters in science, technology, social and economic issues; and
- advising the Agency on emergency and other short-notice programs.⁴

¹ Environmental Research, Development, and Demonstration Authorization Act of 1978, Pub. L. No. 95-155, 91 Stat. 1257 (1977).

² See EPA Science Advisory Board (SAB), Current and Complete Activities by Topic, EPA (Mar. 7, 2017), <http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicBOARD!OpenView>.

³ Dave Reynolds, "Advisors Narrow List Of Pending EPA Rules For Novel Scientific Scrutiny," Inside EPA (Mar. 11, 2013), <http://insideepa.com/201303112427282/EPA-Daily-News/Daily-News/advisors-narrow-list-of-pending-epa-rules-for-novel-scientific-scrutiny/menu-id-95.html>.

⁴ About the Science Advisory Board (SAB), EPA (Dec. 7, 2016), <https://www.epa.gov/aboutepa/about-science-advisory-board-sab-and-sab-staff-office>.

Toward those goals, the chartered SAB conducts much of its work through subcommittees or subpanels focused on specific issues. Currently, these subcommittees include: Drinking Water Committee; Ecological Processes and Effects Committee; Environmental Economics Advisory Committee; Environmental Engineering Committee; Radiation Advisory Committee; Chemical Assessment Advisory Committee; and the Agricultural Science Committee.⁵ According to the SAB's charter,⁶ these "[c]ommittees, panels, and workgroups have no authority to make decisions on behalf of the SAB and may not report directly to the Agency."

EPA also receives advice from and manages twenty-two additional Federal Advisory Committees, including entities like the EPA Board of Scientific Counselors, the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, and the Clean Air Scientific Advisory Committee (CASAC).⁷ These bodies carry out a variety of advisory functions. For example, CASAC "provides independent advice to the EPA Administrator on the technical bases for EPA's national ambient air quality standards" and "addresses research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality."⁸ The Chair of CASAC also sits on the chartered SAB.⁹

EPA staff and the chartered SAB allow for some public involvement in advisory activities through the nomination of experts for committees and panels and involvement in advisory committee meetings and report developments. In response to numerous comments during an SAB Session on Public Involvement in June 2011, the SAB Staff Office announced additional steps to enhance public involvement in advisory activities beginning in FY2012.¹⁰

LEGISLATIVE AND POLICY HISTORY

In the 113th Congress, the Subcommittee on Environment held a hearing on March 20, 2013, to examine the EPA's process for receiving independent scientific advice.¹¹ The Subcommittee heard testimony on draft legislation to strengthen public participation, improve the process for selecting expert advisors, expand transparency requirements, and limit non-scientific policy advice among advisory bodies.¹²

The Subcommittee heard from three witnesses: Dr. Michael Honeycutt, Chief Toxicologist, Texas Commission on Environmental Quality; Dr. Roger McClellan, Advisor, Toxicology and

⁵ Committees and Membership, EPA Science Advisory Board (Oct. 27, 2016), <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/CommitteesandMembership?OpenDocument>.

⁶ Charter, EPA Science Advisory Board, (Nov. 9, 2015), <http://yosemite.epa.gov/sab/sabproduct.nsf/WebBOARD/currentcharter?OpenDocument>.

⁷ All Federal Advisory Committees at EPA, EPA (Feb. 24, 2017), <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.

⁸ *Id.*

⁹ EPA Clean Air Scientific Advisory Committee (CASAC), EPA (Jan. 21, 2016), <http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

¹⁰ Public Involvement in Advisory Activities, EPA Science Advisory Board Staff (Aug. 31, 2015), <http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/PublicInvolvement?OpenDocument>.

¹¹ *Hearing on Improving EPA's Scientific Advisory Processes, Before the Subcomm. on Environment of the H. Comm. on Science, Space, and Technology*, 113th Cong. 115 (2013).

¹² *See Id.*

Human Health Risk Analysis; and Dr. Francesca Grifo, Senior Scientist and Science Policy Fellow, Union of Concerned Scientists.¹³

In the 113th Congress, H.R. 1422 the Science Advisory Board Reform Act of 2013 was brought to the floor. It passed on November 18, 2014, by a vote of 229–191.¹⁴

In the 114th Congress, H.R. 1029 the Science Advisory Board Reform Act of 2015, was introduced by Rep. Frank Lucas on February 24, 2015. On February 26, 2015, the House Science Space and Technology Committee met in open session and ordered reported favorably the bill, H.R. 1029, as amended, by recorded vote.

On March 17, 2015, H.R. 1029 was brought to the floor and passed by a vote of 236–181. Three amendments passed: an amendment offered by Representative Jared Polis, requiring the Administrator of EPA to solicit nominations for Advisory Board membership from institutions of Higher Education and research institutions based in work relevant to that of the Board, was agreed to by voice vote; an amendment offered by Representative David McKinley, prohibiting individuals from sitting on the Board if they are currently receiving EPA contracts or grants and would conditionally prohibit them from being allowed to apply for any EPA contracts or grants. Was agreed to by a recorded vote of 242–175; and an amendment offered by Representative Alan Grayson, prohibiting an EPA Science Advisory Board member from participating in any advisory action for which there is evidence that the action may involve a specific party in which the member has an interest, was agreed to by voice vote.

In the 115th Congress, Rep. Frank Lucas introduced H.R. 1431 the Science Advisory Board Reform Act of 2017 on March 9, 2017. On March 9, 2017 the House Science Space and Technology Committee met in open session and ordered reported favorably the bill, H.R. 1431, as amended, by recorded vote, a quorum being present.

COMMITTEE VIEWS

H.R. 1431 will restore balance and independence to the scientific advisory process at EPA. H.R. 1431 provides needed direction to SAB and underscores President Ronald Reagan’s instruction that “[t]he purpose of the Science Advisory Board is to apply the universally accepted principles of scientific peer review to the research conclusions that will form the bases for EPA regulations, a function that must remain above interest group politics.”¹⁵ The bill seeks to codify existing practices and address concerns with the SAB by strengthening public participation, reinforcing the need for expertise, transparency, and balance in the SAB selection process. Additionally, the bill aims to establish a clearer role for the SAB in providing scientific advice to EPA and the Congress, and to be fully, timely, and independently responsive to Congress.

In light of EPA’s unique position as an agency that frequently provides scientific justifications in support of its regulatory decisions, it is vital that the scientific advisory and peer review process be independent and robust. This is especially true for the EPA

¹³ *Id.*

¹⁴ H.R. 1422 EPA Science Advisory Board Reform Act of 2014, Congress, <https://www.congress.gov/bill/113th-congress/house-bill/1422>.

¹⁵ Message to the Senate Returning Without Approval an Environmental Research, Development, and Demonstration Bill, PUB. PAPERS (Oct. 22, 1982).

Science Advisory Board members. Not only are members selected by the EPA Administrator, but they often provide analysis on critical scientific matters and information on topics ranging from chemical assessments to EPA's research budget prioritization. If EPA science appears biased, pre-dispositioned toward a specific outcome, or less willing to consider differing perspectives, its credibility will suffer. This bill makes basic changes to the operations, scope, and selection process for the SAB, relying on non-controversial provisions of the Federal Advisory Committee Act, EPA's Peer Review Handbook, the National Academies' Policy on Committee Composition and Balance and Conflicts of Interest, and recommendations from Science Committee testimony.

Despite requirements in the Federal Advisory Committee Act that SAB and related panels be "fairly balanced in terms of point of view represented," the Science Committee determined that certain perspectives are overrepresented within the SAB, while other viewpoints are frequently underrepresented or excluded, due to a misinterpretation of ethics rules. Additionally, EPA often differs from the practice of other federal agencies and excludes state, local, tribal, and private sector scientists from serving as advisors. To ensure accountability, H.R. 1431 requires that all SAB members be designated as "special Government employees" and prohibits the exclusion of individuals with substantial and relevant expertise. Additionally, it requires that at least ten percent of the Board be drawn from state, local, and tribal experts. It clarifies, in a manner consistent with existing ethics requirements, that in the case of a Board advisory activity on a particular matter involving a specific party, no Board member having an interest in the specific party shall participate in that activity. The bill also expands disclosure requirements for panelists and nominees, and requires that the EPA make reports and conflict of interest waivers available publicly.

Previous testimony received by the Committee demonstrated that at times Board members had been involved in reviewing their own work. H.R. 1431 prohibits this practice, stating, "Board members may not participate in advisory activities that directly or indirectly involve review and evaluation of their own work." This language was based on EPA's Peer Review Handbook language, which states: "peer reviewer should not be associated with the generation of the specific work product, either directly by substantial contribution to its development or indirectly by significant consultation during the development of the product."¹⁶ Additionally, the legislation requires public disclosure of Board member recusals.

H.R. 1431 also amends ERDDAA to facilitate participation in a manner that will improve scientific advice without unduly burdening the panel or EPA. This bill encourages public comments and instructs the Board not to unreasonably narrow the scope of an advisory activity. Similarly, the bill provides additional detail to the operations of the Board, ensuring that their advice clearly distinguishes scientific versus policy advice, communicates uncertainties, and offers opportunities for publication of dissenting views. As such, this bill requires all public reports issued by the Board to in-

¹⁶ U.S. ENVIRONMENTAL PROTECTION AGENCY PEER REVIEW HANDBOOK, EPA (4th ed. 2015), available at https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.

clude written responses to alternative views. The Board’s responses to alternative views should be substantive in nature, especially if the views submitted before the Board contain significant scientific material and methodology underlying its claims.

Furthermore, all comments submitted to the Board shall be published in the Federal Register. Multiple versions of non-substantive comments (such as short comments generated by a third-party post-card, email, and/or write-in campaign), which contain no significant scientific material, should only be published once. These comments should be grouped by themes, and the total number of such comments shall be noted in the Federal Register.

The following entities and individuals provided Letters of Support for H.R. 1431 received by the Committee in the 115th Congress.

Farm Bureau
 Portland Cement Association
 National Stone, Sand and Gravel Association
 Small Business and Entrepreneurship Council
 National Association of Home Builders
 Dr. Pat Michaels (CATO)
 Professor Will Happer (Princeton and National Academy of Sciences)
 American Exploration and Production Council (AXPC)
 Independent Petroleum Association of America (IPAA)
 US Chamber of Commerce
 E&E Action, Independence Institute, and Western Energy Alliance

SECTION-BY-SECTION

Section 1. Short title

This section establishes the short title of the Act as the “EPA Science Advisory Board Reform Act of 2017.”

Section 2. Science Advisory Board

This section amends the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDAA) to:

- a. Protect the independence of the Advisory Board.
- b. Provide membership requirements of the Advisory Board, including:

(1) A minimum of nine members, with one designated as Chairman, and that these members meet at a times and places designated by the Chairman.

(2) Requirements to ensure that each member of the Board is qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board. The Administrator shall ensure:

- Scientific and technical points of view are fairly balanced among the Board members;
- At least ten percent of the Board are from State, local, or tribal governments;
- Persons with substantial and relevant expertise are not unduly excluded, as long as potential interests are fully disclosed;

- Board members with an interest (or where there is evidence that an action will involve a specific party in which the member has an interest) in a specific activity may not participate in that activity;
 - Board members must disclose advisory activities that involve review of their own work;
 - Board members are designated as special Government employees;
 - No federally registered lobbyist is appointed to the Board;
 - Board members may not have current grants or contracts from EPA and shall not apply for a grant or contract for 3 years following the end of that member's service on the Board.
- (3) A public nomination and selection process. The Administrator shall:
- Solicit nominations from the public and relevant Federal Agencies, as well as from institutions of higher education and scientific and research institutions based in work relevant to that of the Board;
 - Make the list of nominees public, and solicit public comments;
 - Require nominees to publicly disclose financial relationships and interests relevant to the Board's advisory activities for the three year period prior to nomination; and
 - Require nominees to publicly disclose professional activities and public statements relevant to the Board's advisory activities for the five year period prior to nomination.
- (4–6) Disclosure of activities, conflict of interest waivers, and recusal agreements shall be publicly available unless specifically prohibited by law.
- (7) The terms of the members of the Board shall be three years and staggered to ensure that no more than one-third of total membership shall expire within a single year. Members are limited to two terms over a ten-year period.
- c. Clarify that the Administrator shall make risk and hazard assessments available to the Board for review when provided to other agencies for review and comment. This subsection also provides that the Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be public.
- d. Provide that the member committees and investigative panels:
- Must also follow the provisions of this Act;
 - Do not have authority to make decisions on behalf of the Board; and
 - May not report directly to the EPA.
- e. Strengthen public participation. This subsection:
- Ensures all reports and relevant scientific information are made public at the same time they are received by the Board.
 - Requires the Board to hold a public information-gathering session to discuss the state of the science relative to the advisory activity prior to conducting major advisory activities.
 - Allows public comment on questions asked of the Board, prohibits questions that would unduly narrow the scope of an advisory activity, and encourages written responses to significant public comments.

- Public comments shall be published in the Federal Register and are to be grouped by common theme. In the case of repetitious comments, only one such comment shall be published with no reprinting of repetitious comments. The number of these repetitious comments shall also be published. The Board, in any public report it issues, will include written responses to public comments of a significant nature.

- Provides the public with 15 calendar days after Board meetings to provide additional comments for consideration.

f. Protect the integrity of scientific advice and process. The Board shall:

- Strive to avoid making policy determinations or recommendations, and explicitly distinguish between scientific determinations and policy advice.

- Clearly communicate uncertainties associated with scientific advice.

- Ensure that advice and comments reflect the views of the members and encourage dissenting members to make their views known.

- Conduct periodic reviews to ensure its advisory activities are addressing the most important scientific issues facing the EPA.

- Provide advice in a timely manner and be fully responsive to Congress.

Section 3. Relation to the Federal Advisory Committee Act

This section clarifies that this Act does not supplant the requirements of the Federal Advisory Committee Act.

Section 4. Relation to the Ethics in Government Act of 1978

This section clarifies that this Act does not supplant the Ethics in Government Act of 1978.

EXPLANATION OF AMENDMENTS

No amendments were offered.

COMMITTEE CONSIDERATION

On March 9, 2017, the Committee met in open session and ordered reported favorably the bill, H.R. 1431, as amended, by recorded vote, a quorum being present.

ROLL CALL VOTES

Bill: H.R. 1431

Final Passage

MEMBER	AYE	NO	PRESENT	NOT VOTING
1 Mr. SMITH, <i>Chair</i> - TX	X			
2 Mr. LUCAS - OK **	X			
3 Mr. ROHRBACHER - CA				
4 Mr. BROOKS - AL	X			
5 Mr. HULTGREN - IL	X			
6 Mr. POSEY - FL	X			
7 Mr. MASSIE - KY	X			
8 Mr. BRIDENSTINE - OK				
9 Mr. WEBER - TX	X			
10 Mr. KNIGHT - CA	X			
11 Mr. BABIN - TX	X			
12 Mrs. COMSTOCK - VA	X			
13 Mr. PALMER - AL				
14 Mr. LOUDERMILK - GA	X			
15 Mr. ABRAHAM - LA	X			
16 Mr. LAHOOD - IL	X			
17 Mr. WEBSTER - FL	X			
18 Mr. BANKS - IN	X			
19 Mr. BIGGS - AZ	X			
20 Mr. MARSHALL - KS	X			
21 Mr. DUNN - FL	X			
22 Mr. HIGGINS - LA	X			
<hr/>				
1 Ms. JOHNSON, <i>Ranking</i> - TX		X		
2 Ms. LOFGREN - CA		X		
3 Mr. LIPINSKI - IL		X		
4 Ms. BONAMICI - OR		X		
5 Mr. BERA - CA		X		
6 Ms. ESTY - CT		X		
7 Mr. VEASEY - TX		X		
8 Mr. BEYER - VA		X		
9 Ms. ROSEN - NV		X		
10 Mr. MCNERNEY - CA				
11 Mr. PERLMUTTER - CO		X		
12 Mr. TONKO - NY				
13 Mr. FOSTER - IL		X		
14 Mr. TAKANO - CA		X		
15 Ms. HANABUSA - HI		X		
16 Mr. CRIST - FL		X		
17 VACANT				
TOTALS	19	14		

** Vice Chair

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill provides for Science Advisory Board independence, member qualifications and public participation. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 1431 will restore balance and independence to the scientific advisory process at EPA.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 1431 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

No provision of H.R. 1431 directs an agency (or other entity) to promulgate a rule or regulation.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported bill include unfunded mandates. In compliance with this requirement, the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1431 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1431. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1431 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 27, 2017.

Hon. LAMAR SMITH,
*Chairman, Committee on Science, Space, and Technology,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1431, the EPA Science Advisory Board Reform Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jon Sperl.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 143—EPA Science Advisory Board Reform Act of 2017

H.R. 1431 would require the Environmental Protection Agency (EPA) to make various changes related to the qualifications of members serving on the Science Advisory Board (SAB) and to expand disclosure requirements for members of the board. The SAB was established in 1978 by the Congress with a broad mandate to advise the EPA on technical matters related to science. About \$4 million was allocated for SAB activities in 2016. Some of the bill's proposed changes include requiring the EPA to solicit nominations from the public and from relevant federal agencies, such as the Departments of Agriculture, Defense, Energy, and Health and Human Services. Nominees would be required to file a written report disclosing certain financial relationships and interests. Additionally, the bill would require the EPA to make risk or hazard assessments available to the SAB and to publish the board's advice, comments, and views in the Federal Register.

Based on the cost of similar types of activities, CBO estimates that implementing the bill would cost less than \$500,000 annually

for personnel and administrative expenses. Such spending would be subject to the availability of appropriated funds.

Enacting H.R. 1431 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1431 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Jon Sperl. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION AUTHORIZATION ACT OF 1978

* * * * *

SEC. 8. (a) The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall *independently* provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the United States Senate, or the Committee on Science, Space, and Technology, on Energy and Commerce, or on Public Works and Transportation of the House of Representatives.

[(b) Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.]

(b)(1) The Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman.

(2) Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall ensure that—

(A) the scientific and technical points of view represented on and the functions to be performed by the Board are fairly balanced among the members of the Board;

(B) at least ten percent of the membership of the Board are from State, local, or tribal governments;

(C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that may have a potential interest in the Board's ad-

visory activities, so long as that interest is fully disclosed to the Administrator and the public and appointment to the Board complies with section 208 of title 18, United States Code;

(D) in the case of a Board advisory activity on a particular matter involving, or for which the Board has evidence that it may involve, a specific party, no Board member having an interest in the specific party shall participate in that activity;

(E) Board members may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed;

(F) Board members shall be designated as special Government employees;

(G) no registered lobbyist is appointed to the Board; and

(H) a Board member shall have no current grants or contracts from the Environmental Protection Agency and shall not apply for a grant or contract for 3 years following the end of that member's service on the Board.

(3) The Administrator shall—

(A) solicit public nominations for the Board by publishing a notification in the Federal Register;

(B) solicit nominations from relevant Federal agencies, including the Departments of Agriculture, Defense, Energy, the Interior, and Health and Human Services;

(C) solicit nominations from—

(i) institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); and

(ii) scientific and research institutions based in work relevant to that of the Board;

(D) make public the list of nominees, including the identity of the entities that nominated each, and shall accept public comment on the nominees;

(E) require that, upon their provisional nomination, nominees shall file a written report disclosing financial relationships and interests, including Environmental Protection Agency grants, contracts, cooperative agreements, or other financial assistance, that are relevant to the Board's advisory activities for the three-year period prior to the date of their nomination, and relevant professional activities and public statements for the five-year period prior to the date of their nomination; and

(F) make such reports public, with the exception of specific dollar amounts, for each member of the Board upon such member's selection.

(4) Disclosure of relevant professional activities under paragraph (3)(E) shall include all representational work, expert testimony, and contract work as well as identifying the party for which the work was done.

(5) Except when specifically prohibited by law, the Agency shall make all conflict of interest waivers granted to members of the Board, member committees, or investigative panels publicly available.

(6) Any recusal agreement made by a member of the Board, a member committee, or an investigative panel, or any recusal known to the Agency that occurs during the course of a meeting or other

work of the Board, member committee, or investigative panel shall promptly be made public by the Administrator.

(7) The terms of the members of the Board shall be three years and shall be staggered so that the terms of no more than one-third of the total membership of the Board shall expire within a single fiscal year. No member shall serve more than two terms over a ten-year period.

(c)(1) The Administrator, at the time any proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation under the Clean Air Act, the Federal Water Pollution Control Act, the Resource, Conservation and Recovery Act of 1976, the Noise Control Act, the Toxic Substances Control Act, or the Safe Drinking Water Act, or under any other authority of the Administrator, is provided to any other Federal agency for [formal] review and comment, shall make available to the Board such proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed or draft risk or hazard assessment, criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession. *The Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.*

(d) In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(e) COMMITTEES.—

(1) MEMBER COMMITTEES.—

(A) IN GENERAL.—The Board is authorized to establish such member committees and investigative panels as the Administrator and the Board determine to be necessary to carry out this section. *These member committees and investigative panels—*

(i) shall be constituted and operate in accordance with the provisions set forth in paragraphs (2) and (3) of subsection (b), in subsection (h), and in subsection (i);

(ii) do not have authority to make decisions on behalf of the Board; and

(iii) may not report directly to the Environmental Protection Agency.

(B) CHAIRMANSHIP.—Each member committee or investigative panel established under this subsection shall be chaired by a member of the Board.

(2) AGRICULTURE-RELATED COMMITTEES.—

(A) IN GENERAL.—The Administrator and the Board—

(i) shall establish a standing agriculture-related committee; and

(ii) may establish such additional agriculture-related committees and investigative panels as the Administrator and the Board determines to be necessary to carry out the duties under subparagraph (C).

(B) MEMBERSHIP.—The standing committee and each agriculture-related committee or investigative panel established under subparagraph (A) shall be—

(i) composed of—

(I) such quantity of members as the Administrator and the Board determines to be necessary; and

(II) individuals who are not members of the Board on the date of appointment to the committee or investigative panel; and

(ii) appointed by the Administrator and the Board, in consultation with the Secretary of Agriculture.

(C) DUTIES.—The agriculture-related standing committee and each additional committee and investigative panel established under subparagraph (A) shall provide scientific and technical advice to the Board relating to matters referred to the Board that the Administrator and the Board determines, in consultation with the Secretary of Agriculture, 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.

(f)(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code.

(g) In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

[(h) PUBLIC PARTICIPATION AND TRANSPARENCY.—The Board shall make every effort, consistent with applicable law, including section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”) and section 552a of title 5, United States Code (commonly known as the “Privacy Act”), to maximize public participation and transparency, including making the scientific and technical advice of the Board and any committees or investigative panels of the Board publically available in electronic form on the website of the Environmental Protection Agency.

[(i) REPORT TO CONGRESS.—The Administrator shall annually report to the Committees on Environment and Public Works and Agriculture of the Senate and the Committees on Transportation and Infrastructure, Energy and Commerce, and Agriculture of the House of Representatives regarding the membership and activities

of the standing agriculture-related committee established pursuant to subsection (e)(2)(A)(i).】

(h)(1) To facilitate public participation in the advisory activities of the Board, the Administrator and the Board shall make public all reports and relevant scientific information and shall provide materials to the public at the same time as received by members of the Board.

(2) Prior to conducting major advisory activities, the Board shall hold a public information-gathering session to discuss the state of the science related to the advisory activity.

(3) Prior to convening a member committee or investigative panel under subsection (e) or requesting scientific advice from the Board, the Administrator shall accept, consider, and address public comments on questions to be asked of the Board. The Board, member committees, and investigative panels shall accept, consider, and address public comments on such questions and shall not accept a question that unduly narrows the scope of an advisory activity.

(4) The Administrator and the Board shall encourage public comments, including oral comments and discussion during the proceedings, that shall not be limited by an insufficient or arbitrary time restriction. Public comments shall be provided to the Board when received, and shall be published in the Federal Register grouped by common themes. If multiple repetitious comments are received, only one such comment shall be published along with the number of such repetitious comments received. Any report made public by the Board shall include written responses to significant comments, including those that present an alternative hypothesis-based scientific point of view, offered by members of the public to the Board.

(5) Following Board meetings, the public shall be given 15 calendar days to provide additional comments for consideration by the Board.

(i)(1) In carrying out its advisory activities, the Board shall strive to avoid making policy determinations or recommendations, and, in the event the Board feels compelled to offer policy advice, shall explicitly distinguish between scientific determinations and policy advice.

(2) The Board shall clearly communicate uncertainties associated with the scientific advice provided to the Administrator or Congress.

(3) The Board shall ensure that advice and comments reflect the views of the members and shall encourage dissenting members to make their views known to the public, the Administrator, and Congress.

(4) The Board shall conduct periodic reviews to ensure that its advisory activities are addressing the most important scientific issues affecting the Environmental Protection Agency.

(5) The Board shall be fully and timely responsive to Congress.

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