

ACTION: Notice of proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Consent Decree. On November 13, 2002, the American Lung Association and eight other public interest groups filed a complaint pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), alleging that the United States Environmental Protection Agency ("EPA") failed to meet its mandatory duty to designate areas for the 8-hour ozone national ambient air quality standard ("NAAQS"). *American Lung Association, et al. v. EPA*, No. 02-2239 (D.D.C.). On November 13, 2002, EPA lodged the Consent Decree with the United States District Court for the District of Columbia Circuit. The Consent Decree establishes a time frame for EPA to promulgate designations for the 8-hour ozone NAAQS.

DATES: Written comments on the proposed consent decree must be received by December 20, 2002.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Consent Decree are available from Phyllis J. Cochran, (202) 564-5566. On November 13, 2002, a copy of the proposed consent decree was lodged with the Clerk of the United States District Court for the District of Columbia.

SUPPLEMENTARY INFORMATION: The American Lung Association and eight other public interest groups¹ (collectively referred to as "American Lung Association") allege that EPA failed to promulgate designations for the 8-hour ozone NAAQS by the Congressionally-enacted deadline.

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS. 62 FR 38856. The revised ozone NAAQS was challenged and on May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") determined that EPA's interpretation of its authority to establish the NAAQS resulted in an unconstitutional delegation of authority. The Court also determined that EPA's implementation scheme was flawed

because the CAA mandated that a revised ozone standard be implemented in accordance with specific provisions ("subpart 2") of the Act, which EPA had indicated would not apply. The Court remanded the rule to EPA. *American Trucking Assoc. v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999) reh'g denied *American Trucking Assoc. v. EPA*, 195 F.3d 4 (D.C. Cir. 1999). Both EPA and the petitioners sought review in the Supreme Court of several aspects of the D.C. Circuit's decision.²

On February 27, 2001, the Supreme Court issued a decision, holding that EPA's interpretation of its authority to promulgate the 8-hour ozone NAAQS did not constitute an unconstitutional delegation of power. *Whitman v. American Trucking Assoc.*, 121 S.Ct. 903 (2001). The Court also remanded the implementation issue to the Agency to develop a reasonable interpretation that provides a role for subpart 2 in implementing the 8-hour ozone NAAQS.

Section 107(d)(1) of the CAA provides that EPA must designate areas for a revised NAAQS no later than two years following promulgation of the standard. It also provides for the Agency to take an additional year for designating areas if "insufficient information" is available. In June 1998, as part of the Transportation Equity Act for the 21st Century, Public Law 105-178, Congress enacted legislation that expressly provided EPA with three years to promulgate designations for the 8-hour ozone NAAQS. In the fall of 2000, as part of the appropriations bill for EPA, Congress precluded EPA from spending funds to designate areas for the 8-hour ozone NAAQS until the earlier of June 15, 2001 or a ruling by the Supreme Court in the litigation concerning the NAAQS. The Supreme Court issued its decision on February 27, 2001.

The Consent Decree provides that EPA will sign a notice promulgating designations for the 8-hour ozone NAAQS no later than April 15, 2004. It further provides that EPA will submit the designation notice to the Office of **Federal Register** no later than five days following signature. Finally, it provides for EPA to publish a notice of availability of the promulgated designations no later than April 30, 2004.

² The Court also remanded the rule to EPA because EPA had not considered whether ground-level ozone had beneficial health effects. In particular, some petitioners argued that EPA had ignored whether higher levels of ground-level ozone acted as a shield from the harmful effects of ultraviolet radiation. EPA did not seek Supreme Court review of this issue.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Consent Decree will be final.

Dated: November 14, 2002.

Lisa K. Friedman,

Associate General Counsel.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL -7411-2]

EPA Science Advisory Board Executive Committee Teleconference; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Executive Committee of the U.S. EPA Science Advisory Board (SAB) will meet on Thursday, December 5, 2002, from 11 a.m.-2 p.m. eastern time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (*see* contact information below). The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included in the FR citations given below.

Purpose of the Meeting—In this meeting, the Executive Committee plans

¹ The other eight plaintiffs are: Environmental Defense, Natural Resources Defense Council, Sierra Club, Alabama Environmental Council, Clean Air Council, Michigan Environmental Council, Ohio Environmental Council and Southern Alliance for Clean Energy.

to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) *Executive Committee Subcommittee—Scientific and Technological Achievement Awards Subcommittee (STAA)*—Recommendations on the Agency's FY2001 Scientific and Technological Achievement Awards Program: An SAB Report (see 67 FR 44200 (July 1, 2002), for further details).

(b) *Environmental Economics Advisory Committee (EEAC)*—Affordability: An SAB Report (see 67 FR 46506 (July 15, 2002), for further details).

Please check with Ms. Diana Pozun (see contact information below) prior to the meeting to determine which reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of the SAB reports that will be reviewed at the meeting will be available to the public at the SAB website under the heading for the Executive Committee Public Teleconference, December 5, 2002, (<http://www.epa.gov/sab/whatsnew.htm>) approximately two weeks prior to the meeting.

Charge to the Executive Committee: The focus of the EC review of these reports will be on the following questions: (a) Has the SAB adequately responded to the questions posed in the Charge? (b) Are the statements and/or responses in the draft report clear? And (c) Are there any errors of fact in the report? (**Note:** In the case of the STAA report, the charge to the committee was to review over 100 scientific papers and make recommendations for awards. The draft report that will be available for comment at this meeting will only contain the description of the overall process and recommendations on that process. The actual award recommendations are embargoed until approved and processed by the Office of Research and Development. The final report that will be posted on the SAB website, once awards are announced, will include the complete list of recommended awards.)

In accord with the Federal Advisory Committee Act (FACA), the public and the Agency are invited to submit written comments on these three questions that are the focus of the review. Written comments should be received in the SAB Staff Office by November 27, 2002. Forward comments to Ms. Diana Pozun (see contact information below).

The SAB will have a brief period available for applicable public comment. Therefore, anyone wishing to make oral comments on the three focus

questions above, but that are not duplicative of the written comments, should contact the Designated Federal Officer for the Executive Committee, Mr. A. Robert Flaak (see contact information below).

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Mr. A. Robert Flaak, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-4546; FAX (202) 501-0582; or via e-mail at flaak.robert@epa.gov. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Mr. Flaak no later than noon eastern standard time on November 27, 2002. Written comments should be sent to: Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564-4544, FAX (202) 501-0323; or via e-mail at: pozun.diana@epa.gov. Submission by e-mail to Ms. Pozun will maximize the time available for review by the Executive Committee.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated above). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the face-to-face meetings. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration.

Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend face-to-face meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (<http://www.epa.gov/sab>) and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564-4533 or via fax at (202) 501-0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 13, 2002.

Vanessa Vu,

Director, EPA Science Advisory Board Staff Office.

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ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0306; FRL-7280-2]

The Association of American Pesticide Control Officials (AAPCO) State FIFRA Issues Research and Evaluation Group SFIREG; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 9, 2002 and ending December 10, 2002. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 9, 2002, from 8:30 a.m. until 4 p.m. (A CLOSED SESSION 4 p.m. until 5 p.m.) and Tuesday, December 10, 2002 from 8:30 a.m. until noon.