



Testimony

Before the Subcommittee on Superfund,
Waste Management, and Regulatory
Oversight, Committee on Environment
and Public Works, U.S. Senate

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EPA SCIENCE ADVISORY PANELS

Preliminary Observations on the Processes for Providing Scientific Advice

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GAO Highlights

Highlights of [GAO-15-636T](#), a testimony Before the Subcommittee on Superfund, Waste Management, and Regulatory Oversight, Committee on Environment and Public Works, U.S. Senate

Why GAO Did This Study

EPA formulates rules to protect the environment and public health. To enhance the quality and credibility of such rules, EPA obtains advice and recommendations from the SAB and CASAC—two federal advisory committees that review the scientific and technical basis for EPA decision making. ERDDAA requires the SAB to provide both the EPA Administrator and designated congressional committees with scientific advice as requested. Amendments to the Clean Air Act established CASAC to, among other things, provide advice to the Administrator on NAAQS.

This testimony reflects GAO's preliminary observations from its ongoing review that examines (1) the extent to which EPA procedures for processing congressional requests to the SAB ensure compliance with ERDDAA and (2) the extent to which CASAC has provided advice related to NAAQS.

GAO reviewed relevant federal regulations and agency documents, and interviewed EPA, SAB, and other relevant officials.

GAO is not making any recommendations in this testimony, but as it finalizes its work in this area, GAO will consider making recommendations, as appropriate.

View [GAO-15-636T](#). For more information, contact J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov

May 20, 2015

EPA SCIENCE ADVISORY PANELS

Preliminary Observations on the Processes for Providing Scientific Advice

What GAO Found

The Environmental Protection Agency's (EPA) procedures for processing congressional requests for scientific advice from the Science Advisory Board (SAB) do not ensure compliance with the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) because these procedures are incomplete. For example, they do not clearly outline how the EPA Administrator, the SAB staff office, and others are to handle a congressional committee's request. While the procedures reflect EPA's responsibility to exercise general management controls over the SAB and all its federal advisory committees under the Federal Advisory Committee Act (FACA), including keeping such committees free from outside influence, they do not fully account for the specific access that designated congressional committees have to the SAB under ERDDAA. For example, EPA's policy documents do not establish how EPA will determine which questions would be taken up by the SAB. EPA officials told GAO that, in responding to congressional requests, EPA follows the same process that it would apply to internal requests for questions to the SAB, including considering whether the questions are science or policy driven or are important to science and the agency. However, EPA has not documented these criteria. Under the federal standards of internal control, agencies are to clearly document internal controls. Moreover, under ERDDAA, the SAB is required to provide requested scientific advice to select committees. By clearly documenting how to process congressional requests received under ERDDAA, including which criteria to use, EPA can provide reasonable assurance that its staff process responses consistently and in accordance with law. Furthermore, EPA's charter states that, when scientific advice is requested by one of the committees specified in ERDDAA, the Administrator will, when appropriate forward the SAB's advice to the requesting congressional committee. EPA policy does not specify when it would be "appropriate" for the EPA Administrator to take this action. Such specificity would be consistent with clearly documenting internal controls. GAO will continue to monitor these issues and plans to issue a report with its final results in June 2015.

The Clean Air Scientific Advisory Committee (CASAC) has provided certain types of advice related to the review of national ambient air quality standards (NAAQS), but has not provided advice on adverse social, economic, or energy effects related to NAAQS. Under the Clean Air Act, CASAC is to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS. An EPA official stated that CASAC has carried out its role in reviewing the air quality criteria and the NAAQS, but CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so. In a June 2014 letter to the EPA Administrator, CASAC indicated it would review such effects at the agency's request. According to a senior EPA official, the agency has no plans to ask CASAC to provide advice on such adverse effects.

Chairman Rounds, Ranking Member Markey, and Members of the Subcommittee:

I am pleased to be here today to provide some preliminary observations from our ongoing review of the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC). We are carrying out this work for the Senate Committee on Environment and Public Works and the House Committee on Science, Space, and Technology. As you know, the SAB and CASAC are federal advisory committees that review the scientific and technical basis for EPA's decision making.

These two federal advisory committees were established pursuant to statute. The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) mandated that EPA establish the SAB and required the SAB to provide the EPA Administrator with scientific advice as requested. In 1980, Congress amended ERDDAA by adding a provision requiring the SAB to also provide scientific advice to designated congressional committees when requested.¹ CASAC was established pursuant to amendments to the Clean Air Act in 1977 to, among other things, provide advice to the Administrator with regard to EPA's National Ambient Air Quality Standards (NAAQS). The Clean Air Act requires EPA to set and periodically review and revise NAAQS for certain air pollutants, the emission of which cause or contribute to air pollution that may endanger public health or welfare.

As federal advisory committees, the SAB and CASAC must comply with the Federal Advisory Committee Act (FACA) and its implementing regulations.² For example, the SAB is required to operate in accordance

¹These designated committees currently include the Senate Committee on Environment and Public Works; the House Committee on Science, Space, and Technology; the House Committee on Energy and Commerce; and the House Committee on Transportation and Infrastructure.

²FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the federal government. The General Services Administration (GSA) prepares regulations on federal advisory committees to be prescribed by the GSA Administrator and issues other administrative guidelines and management controls for advisory committees.

with charters.³ In addition, EPA must have procedures to ensure that the advice or recommendations of its federal advisory committees, including the SAB, are products of their independent judgment and not “inappropriately” influenced by EPA.⁴

Recent interactions between the House Committee on Science, Space, and Technology and the SAB related to specific SAB reviews on hydraulic fracturing and water body connectivity have raised questions with the Committee regarding whether the SAB is fulfilling its statutory obligations to provide scientific advice to the designated congressional committees.⁵ In addition, recent testimony received by the Committee has raised questions regarding whether CASAC advises EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS as called for in the Clean Air Act.

This testimony reflects our preliminary observations from our ongoing review that examines (1) the extent to which EPA procedures for processing congressional committees’ requests for scientific advice from the SAB ensure compliance with ERDDAA and (2) the extent to which CASAC has provided advice related to NAAQS.

To determine the extent to which EPA procedures for processing congressional committees’ requests for scientific advice from the SAB ensure compliance with ERDDAA, we reviewed ERDDAA and its legislative history, the SAB’s charters, legal cases involving the SAB, and EPA documents to determine how requests to the SAB from congressional committees were addressed. We also interviewed officials from the SAB staff office, EPA’s Office of General Counsel, and EPA’s Office of Congressional and Intergovernmental Relations (OCIR). To determine the extent to which CASAC has provided advice related to

³Charters must be filed with EPA and the congressional committees with legislative jurisdiction over the agency. The purpose of the advisory committee charter is to specify the committee’s mission or charge and general operational characteristics.

⁴41 C.F.R. § 102-3.105(g) (2014).

⁵Hydraulic fracturing is a process used in natural gas wells where millions of gallons of water, sand and chemicals are pumped underground to break apart the rock and release the gas. Water body connectivity is the biological, chemical, and hydrologic connectivity of waters and the effects that small streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans.

NAAQS, we reviewed the Clean Air Act, its legislative history, and legal cases involving the act. We also interviewed officials from the SAB staff office and EPA's Office of General Counsel.

We are conducting our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtain will provide a reasonable basis for our findings and conclusions based on our audit objectives. EPA provided technical comments, which we incorporated, as appropriate.

Background

The SAB provides a mechanism for EPA to receive peer review and other advice in the use of science at EPA. The SAB is authorized to, among other things, review the adequacy of the scientific and technical basis of EPA's proposed regulations. The SAB and its subcommittees or panels focus on a formal set of charge questions on environmental science received from the agency.⁶ Depending on the nature of the agency's request, the entire advisory process from the initial discussion on charge questions with EPA offices and regions to the delivery of the final SAB report generally takes from 4 to 12 months.

CASAC provides independent advice to EPA on "air quality criteria."⁷ Under the Clean Air Act, as amended, CASAC is to review the criteria and the existing NAAQS every 5 years and make recommendations to EPA for new standards and revisions of existing standards, as appropriate. In addition, CASAC is directed to advise EPA of the areas in which additional knowledge is required to appraise the adequacy and basis of the NAAQS and describe the research efforts necessary to provide the required information. CASAC also is directed to advise EPA of the relative contribution to air pollution of concentrations of natural, as well as human activity and any adverse public health, welfare, social,

⁶The charge questions guide, but need not limit, the deliberations of the committee or panel.

⁷Under the Clean Air Act, air quality criteria must accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of certain air pollutants in the ambient air.

economic, or energy effects that may result from various strategies for attainment and maintenance of the NAAQS. CASAC's advisory process is similar to the SAB's process, including the option of establishing subcommittees and panels that send their reports and recommendations to CASAC.

As federal advisory committees, the SAB and CASAC are subject to FACA, which broadly requires balance, independence, and transparency. FACA was enacted, in part, out of concern that certain special interests had too much influence over federal agency decision makers. The head of each agency that uses federal advisory committees is responsible for exercising certain controls over those advisory committees. For example, the agency head is responsible for establishing administrative guidelines and management controls that apply to all of the agency's advisory committees, and for appointing a Designated Federal Officer (DFO) for each advisory committee. Advisory committee meetings may not occur in the absence of the DFO, who is also responsible for calling meetings, approving meeting agendas, and adjourning meetings.⁸ As required by FACA, the SAB and CASAC operate under charters that include information on their objectives, scope of activities, and the officials to whom they report. Federal advisory committee charters must be renewed every 2 years, but they can be revised before they are due for renewal in consultation with the General Services Administration (GSA).

Unlike CASAC, which was established by amendments to the Clean Air Act, the SAB was established under ERDDAA, and since 1980, has been required to provide scientific advice to designated congressional committees when requested.⁹ According to SAB staff office officials, until recently, the SAB has responded to general congressional questions and concerns. However, in 2013, representatives of a congressional committee formally requested advice from the SAB regarding two reviews the SAB was conducting. According to EPA officials, this was the first time representatives of a congressional committee formally requested advice from the SAB. Both requests were addressed and submitted

⁸A DFO is required by FACA to chair or sit in attendance of each advisory committee meeting and is authorized to adjourn any such meeting whenever he/she determines it to be in the public interest. FACA also requires that no advisory committee shall conduct any meeting in the absence of that officer or employee.

⁹There is no similar statutory provision that requires CASAC to provide scientific advice to congressional committees.

directly to the SAB Chair and the Chair of the relevant SAB panel and sent concurrently to the SAB staff office and EPA Administrator.¹⁰ While ERDDAA does not specify a role for EPA in mediating responses from the SAB to the designated congressional committees, EPA identifies such a role for itself under FACA. Specifically, EPA points to the DFO's responsibility to manage the agenda of an advisory committee. Also, under FACA, EPA is responsible for issuing and implementing controls applicable to its advisory committees. Responses to the committee's requests for scientific advice were handled by the SAB staff office and EPA's OCIR. The SAB staff office and, later, OCIR responded to the committee's first request for advice, and OCIR responded to the committee's second request for advice. See table 1 for more information on these requests.

¹⁰The first request was copied to EPA's Acting Administrator.

Table 1: Congressional Committee’s Formal Requests for Advice from the Scientific Advisory Board (SAB) and the Environmental Protection Agency’s (EPA) Acknowledgments since 1980

Congressional committee request letter	Nature of request	Agency acknowledgment
<p>May 2, 2013, by Representative Chris Stewart, Subcommittee on Environment, Committee on Science, Space, and Technology</p>	<p>The Committee requested that the SAB and its Hydraulic Fracturing Research Advisory Panel consider additional areas for inquiry as it began its examination of EPA’s study of the potential impacts of hydraulic fracturing on drinking water resources. The Committee submitted 14 questions that it wanted the SAB and the panel to answer.</p>	<p>May 31, 2013—The SAB staff office acknowledged the Committee’s letter. The SAB staff office responded to the Committee’s request for advice and provided responses to 3 of the 14 questions outlined in the Committee’s request. The SAB staff office also explained that the SAB would have an opportunity to independently consider the remaining 11 questions. The Committee’s letter was provided to the SAB panel at its meeting on May 7– 8, 2013, and posted on the SAB website.</p> <p>December 11, 2013—EPA’s Office of Congressional and Intergovernmental Relations (OCIR) acknowledged the Committee’s letter. OCIR’s Associate Administrator stated that an Aug. 4, 2011, SAB advisory report on EPA’s draft <i>Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources</i> addressed many of the themes embodied in the remaining 11 questions contained in the House Committee’s request. The Associate Administrator also stated that the Committee’s questions not addressed in the 2011 report would require new research or would be considered once EPA has completed its <i>Draft Hydraulic Fracturing Drinking Water Assessment Report</i>.</p>
<p>November 6, 2013, by Representatives Lamar Smith, Chairman, Committee on Science, Space, and Technology and Chris Stewart, Subcommittee on Environment, Committee on Science, Space, and Technology</p>	<p>The Committee requested that the SAB and the SAB panel for the review of EPA’s Water Body Connectivity Report address additional charge questions as part of their review.</p>	<p>December 16, 2013—EPA’s OCIR acknowledged the Committee’s letter. OCIR stated that EPA had begun an initial review of the questions, but that many of the questions were already being addressed under the existing charge questions being reviewed by the SAB panel or “went beyond the scientific review that is the expert technical panel’s statutory focus.”</p>

Source: GAO analysis of EPA documents. | GAO-15-636T

Our Preliminary Observations Indicate That EPA's Procedures for Processing Congressional Requests to the SAB Do Not Ensure Compliance with ERDDAA

Our preliminary observations indicate that EPA's procedures for processing congressional requests for scientific advice from the SAB do not ensure compliance with ERDDAA because the procedures are incomplete and do not fully account for the statutory access designated congressional committees have to the SAB. Specifically, EPA policy documents do not clearly outline how the EPA Administrator, the SAB staff office, and members of the SAB panel are to handle a congressional committee's request for advice from the SAB. In addition, EPA policy documents do not acknowledge that the SAB must provide scientific advice when requested by select congressional committees.

EPA's written procedures for processing congressional committee requests to the SAB are found in the SAB charter and in the following two documents that establish general policies for how EPA's federal advisory committees are to interact with outside parties:

- *EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA* (the April 2014 policy), and
- *Clarifying EPA Policy Regarding Communications Between Members of Scientific and Technical Federal Advisory Committees and Outside Parties* (the November 2014 policy clarification).

Collectively, the SAB's charter, EPA's April 2014 policy, and EPA's November 2014 policy clarification provide direction for how EPA and the SAB are to process requests from congressional committees. However, these documents do not clearly outline procedures for the EPA Administrator, the SAB staff office, and members of the SAB panel to use in processing such requests.

At the time of the House committee's two requests to the SAB in 2013, the SAB charter was the only EPA document that contained written policy relating to congressional committee requests under ERDDAA. The SAB charter briefly noted how congressional committees could access SAB advice, stating; "While the SAB reports to the EPA Administrator, congressional committees specified in ERDDAA may ask the *EPA Administrator to have SAB provide advice* on a particular issue." (GAO italics) Beyond what the charter states, however, no EPA policy specified a process the Administrator should use to have the SAB review a congressional request and provide advice.

In response to a request from the SAB staff office that EPA clarify the procedures for handling congressional committee requests, EPA, through an April 4, 2014, memorandum informed the SAB that committee members themselves and the federal advisory committees as a whole should refrain from directly responding to these external requests. Attached to the memorandum was the April 2014 policy that stated: “if a FACA committee member receives a request relating to the committee’s work from members of Congress or their staff, or congressional committees, the member should notify the DFO, who will refer the request to the EPA OCIR. OCIR will determine the agency’s response to the inquiry, after consulting with the relevant program office and the DFO.” This policy, however, did not provide more specific details on processing requests from congressional committees under ERDDAA.

In November 2014, EPA issued a clarification to the April 2014 policy, specifying that SAB members who receive congressional requests pursuant to ERDDAA should acknowledge receipt of the request and indicate that EPA will provide a response. The November 2014 policy clarification does not identify the SAB as having to provide the response. The November 2014 policy clarification also stated that the request should be forwarded to the appropriate DFO and that decisions on who and how best to respond to the requests would be made by EPA on a case-by-case basis. While the November 2014 policy clarification provides greater specificity about processing requests, it is not consistent with the SAB charter because the policy indicates that congressional committee requests should be handled through the DFO, whereas the charter indicates that they should be handled through the EPA Administrator and provides no further information. A senior EPA official stated that the agency considered that the charter and the November 2014 policy clarification differed in the level of detail, but not in the broad principle that the agency is the point of contact for congressional requests to the SAB (and SAB responses to those requests). However, under the federal standards of internal control,¹¹ agencies are to clearly document internal controls and the documentation is to appear in management directives, administrative policies, or operating manuals. While EPA has documented its policies, they are not clear because the charter and the November 2014 policy clarification are not consistent about which office

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

should process congressional requests. Agency officials said that the SAB charter is up for renewal in 2015. By modifying the charter when it is renewed to reflect the language in the November 2014 policy clarification—that congressional requests should be forwarded to the appropriate DFO—EPA can better ensure that its staff process congressional committee requests consistently when the agency receives such a request.

Moreover, neither the April 2014 policy nor the November 2014 policy clarification clearly documents EPA's procedures for reviewing congressional committee requests to determine which questions would be taken up by the SAB, consistent with the federal standards of internal control. Because EPA's procedures for reviewing congressional committee requests are not documented, it will be difficult for EPA to provide reasonable assurance that its staff is appropriately applying criteria when determining which questions the SAB will address. EPA officials told us that internal deliberations in response to a congressional request follow those that the agency would apply to internal requests for charges to the SAB. Specifically, officials told us that EPA considers whether the questions are science or policy driven, whether they are important to science and the agency, and whether the SAB has already undertaken a similar review. However, these criteria are not documented. In addition, under ERDDAA, the SAB is required to provide requested scientific advice to select committees, regardless of EPA's judgment. As EPA has not fully responded to the committee's two 2013 requests to the SAB, by clearly documenting its procedures for reviewing congressional requests to determine which questions should be taken up by the SAB and criteria for evaluating requests, the agency can provide reasonable assurance that its staff process these and other congressional committee requests consistently and in accordance with both FACA and ERDDAA.

Furthermore, the charter states that, when scientific advice is requested by one of the committees specified in ERDDAA, the Administrator will, when appropriate, forward the SAB's advice to the requesting congressional committee. Neither the charter nor the April 2014 policy and November 2014 policy clarification specify when it would be "appropriate" for the EPA Administrator to forward the SAB's advice to the requesting committee. Such specificity would be consistent with federal standards of internal control that call for clearly documenting internal controls. Without such specification, the perception could be created that EPA is withholding information from Congress that the SAB is required to provide under ERDDAA. EPA officials stated that the EPA Administrator does not attempt to determine whether advice of the SAB contained in

written reports should be forwarded to the requesting committee and that all written reports are publically available on the SAB website at the same time the report is sent to the EPA Administrator. By modifying the charter or other policy documents to reflect when it is and when it is not appropriate for the EPA Administrator to forward the advice to the requesting committee, EPA can better ensure transparency in its process.

In general, under FACA, as a federal advisory committee, the SAB's agenda is controlled by its host agency, EPA.¹² As such, the SAB generally responds only to charge questions put to it by EPA although, under ERDDAA, the SAB is specifically charged with providing advice to its host agency as well as to designated congressional committees. In addition, it is EPA's responsibility under GSA regulations for implementing FACA to ensure that advisory committee members and staff understand agency-specific statutes and regulations that may affect them,¹³ but nothing in the SAB charter, the April 2014 policy, or the November 2014 policy clarification communicates that, ultimately, SAB must provide scientific advice when requested by congressional committees. For example, we found no mechanism in EPA policy for the SAB to respond on its own initiative to a congressional committee request for scientific advice unrelated to an existing EPA charge question. A written policy for how the SAB should respond to a congressional committee request that does not overlap with charge questions from EPA would be consistent with federal internal control standards. Moreover, such a policy would better position the SAB to provide the advice it is obligated to provide under ERDDAA and for EPA to provide direction consistent with GSA regulations for implementing FACA. We will continue to monitor these issues and, as we finalize our work in this area, we will consider making recommendations, as appropriate. We plan to issue our final results in June 2015.

¹²An advisory committee under FACA is a committee "established or utilized by" a federal agency for the purpose of obtaining advice or recommendations. 5 U.S.C. App. 2 § 3(2) (2015). The term "utilized" means "under the management and control" of the agency. See, e.g., *Town of Marshfield v. F.A.A.* 552 F.3d 1, 6 (1st Cir. 2008).

¹³41 C.F.R. § 102-3.125(c).

CASAC Has Provided Certain Types of Advice Related to Air Quality Standards

CASAC has provided certain types of advice related to the review of NAAQS. The Clean Air Act requires CASAC to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.¹⁴

According to a senior EPA official, CASAC has carried out its role in reviewing the air quality criteria and the NAAQS but has never provided advice on adverse social, economic, or energy effects of strategies to implement the NAAQS because EPA has never asked it to. This is in part because NAAQS are to be based on public health and welfare criteria, so information on the social, economic, or energy effects of NAAQS are not specifically relevant to setting NAAQS.

In a June 2014 letter to the EPA Administrator, CASAC indicated that, at the agency's request, it would review the impacts (e.g., the economic or energy impacts) of strategies for attaining or maintaining the NAAQS but stressed that such a review would be separate from reviews of the scientific bases of NAAQS.¹⁵ In response to such a request, the letter stated that an ad hoc CASAC panel would be formed to obtain the full expertise necessary to conduct such a review. According to a senior EPA official, the agency has no plans to ask CASAC to provide advice on adverse effects.

Chairman Rounds, Ranking Member Markey, and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions that you or other members of the Subcommittee may have at this time.

¹⁴42 U.S.C. §§ 7409(d)(2)(B), (d)(2)(C)(iv) (2015).

¹⁵Information from EPA-requested reviews could be useful for the states, which implement the strategies necessary to achieve the NAAQS. EPA is required to provide states, after consultation with appropriate advisory committees, with information on air pollution control techniques, including the cost to implement such techniques. 42 U.S.C. § 7408(b)(1) (2015). According to a senior-level EPA official, EPA collects this information from other federal advisory committees, the National Academy of Sciences, and state air agencies, among others, and EPA fulfills this obligation by issuing Control Techniques Guidelines and other implementation guidance.

GAO Contact and Staff Acknowledgments

If you or your staff members have any questions about this testimony, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. GAO staff who made key contributions to this testimony are Janet Frisch (Assistant Director), Antoinette Capaccio, and Greg Carroll.

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