

Scientific Basis of Environmental Protection Agency Actions: H.R. 1430 and H.R. 1431

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The scientific basis of regulation is a long-standing issue. In the 115th Congress, [H.R. 1430](#) and [H.R. 1431](#) are intended to address the public disclosure and transparency of information used as the basis for environmental regulations and other actions of the U.S. Environmental Protection Agency (EPA). These bills would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA), among other purposes, to require public disclosure of scientific and technical information that EPA uses as a basis for agency action. On March 29, 2017, the House passed [H.R. 1430 \(H.Rept. 115-59\)](#). On March 30, 2017, the House passed [H.R. 1431 \(H.Rept. 115-63\)](#). Similar bills were introduced in the 113th and 114th Congresses.

[H.R. 1430](#)

[H.R. 1430](#), the Honest and Open New EPA Science Treatment Act of 2017, would broadly address the public availability of scientific and technical information used to support specific categories of EPA actions. [H.R. 1430](#) 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 is (1) considered "the best available science," (2) specifically identified, and (3) made publicly available online "in a manner that is sufficient for independent analysis and substantial reproduction of research results." However, "any personally identifiable information, trade secrets, or commercial or financial information obtained from a person and privileged or confidential" must be redacted and be made available only to those who sign a written confidentiality agreement. The bill defines *covered actions* to include risk, exposure, or hazard assessments; criteria documents; standards; limitations; regulations; regulatory impact analyses; and guidance. *Scientific and technical information* is defined as materials, data, and research protocols; computer codes and models; facts; and methodologies.

[H.R. 1430](#) would restrict EPA from taking certain actions if the agency did not publicly disclose scientific and technical information upon which the action was based and would also limit what information must be disclosed. Information that EPA relies upon to support a covered action that is not necessary for independent analysis and substantial reproduction of research results would not require public disclosure under [H.R. 1430](#). Such information would be subject to applicable statutes such as the Freedom of Information Act (FOIA; [5 U.S.C. § 552](#)) and the Privacy Act ([5 U.S.C. § 552a](#)), which address what information the federal government is required or permitted to disclose. More information on

FOIA is available in [CRS Report R41406, *The Freedom of Information Act and Nondisclosure Provisions in Other Federal Laws*](#). The bill would establish EPA responsibilities regarding disclosure of certain information and would limit the agency to obligating no more than \$1 million per fiscal year for these specific disclosure purposes.

[H.R. 1431](#)

[H.R. 1431](#), the EPA Science Advisory Board Reform Act of 2017, would amend Section 8 of ERDDAA to 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.

Various provisions of [H.R. 1431](#) would codify in statute similar existing procedures, 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](#)) governs the establishment of the SAB and other federal advisory committees and also establishes various requirements for public involvement in federal advisory committee activities. [H.R. 1431](#) would expand public involvement requirements specifically for the SAB. As proposed in the bill, the nomination and selection process for SAB members would include opportunities for public involvement and require public disclosure of qualifications, affiliations, and financial interests of nominees. Additionally, the bill would direct the composition of SAB membership to include representation from state, local, or tribal governments and exclude "registered lobbyists."

Although [H.R. 1431](#) 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—FACA and the Ethics in Government Act of 1978 ([5 U.S.C. Appendix](#)).

[H.R. 1431](#) would also address the SAB's role 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, and regulations.

[H.R. 1431](#) would similarly replace Sections 8(h) and 8(i) of ERDDAA. New Section 8(h) would require EPA to make all reports and relevant scientific information available to the public 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 the SAB's "advice and comments" and a summary of public comments received by the board be made publicly available in the *Federal Register*. The SAB has typically released its findings on EPA's website in recent years.

New Section 8(i) would require the SAB to (1) focus its reviews on rendering scientific determinations, (2) "strive to avoid making policy determinations or recommendations," (3) communicate scientific uncertainties, and (4) disclose dissenting views among board members. Further, [H.R. 1431](#) would require the SAB to periodically assess whether its reviews are "addressing the most important scientific issues affecting" EPA.