



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

September 25, 2019

EPA-SAB-19-004

The Honorable Andrew R. Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Subject: SAB Review of the Science Supporting EPA Planned Regulatory and
Deregulatory Actions

Dear Administrator Wheeler:

This letter provides information on the status of ongoing SAB activities to deliver advice to EPA on the science supporting EPA planned regulatory and deregulatory actions. As part of its statutory duties, the EPA Science Advisory Board (SAB) is reviewing the science supporting three planned actions that were listed in the Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions. The SAB is also developing a commentary on the technical basis of EPA's proposed revised definition of Waters of the U.S.

During its public meeting on June 5-6, 2019, the SAB discussed whether to review EPA planned actions associated with the Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions. The SAB focused its attention on twelve major planned actions that were identified by the EPA Office of Policy and published in the *Federal Register*. The SAB convened a Work Group to review the planned actions, conduct fact-finding, and develop recommendations for further consideration by the chartered SAB.¹ At the public meeting, the SAB discussed the Work Group's findings and decided to undertake review of the science supporting three of the planned actions. The SAB also agreed to defer decisions to review three of the planned actions until additional information is available.

¹ Memorandum: Preparations for Chartered Science Advisory Board (SAB) Discussions of EPA Planned Agency Actions and their Supporting Science in the Spring 2018 Regulatory Agenda
[https://yosemite.epa.gov/sab/sabproduct.nsf/91C3DBA65025B525852583FD00530ED4/\\$File/Work+Group+Memo+Spring+2018+Reg+Review.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/91C3DBA65025B525852583FD00530ED4/$File/Work+Group+Memo+Spring+2018+Reg+Review.pdf)

EPA Planned Actions on the Spring 2018 Regulatory Agenda Currently Being Reviewed by the SAB

Pursuant to SAB decisions at the public meeting held on June 5-6, 2019, the SAB is reviewing the science supporting provisions of the following planned EPA actions.

1. *Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review (RIN 2060-AT99).*
2. *Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy (RIN 2060-AU09)*
3. *Strengthening Transparency in Regulatory Science (RIN 2080-AA14)*

The SAB is in the process of conducting reviews of the science supporting these planned actions. It is anticipated that the SAB will provide advice to EPA on these planned actions in the first quarter of fiscal year 2020.

EPA Planned Actions on the Spring 2018 Unified Regulatory Agenda Awaiting Further Information for SAB Review

The SAB has deferred decisions to review the following planned EPA actions because insufficient information is available to determine whether review is warranted.

1. *General National Ambient Air Quality Standards Implementation Update Rule (RIN 2060-AU10)*
2. *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review (RIN 2060-AT90)*
3. *Updates to Wet Weather Treatment Regulations for POTWs (RIN 2040-AF81)*

EPA Planned Actions on the Spring 2018 Unified Regulatory Agenda Not Meriting Further SAB Review

The SAB has determined that review of the following planned actions is not warranted.

1. *Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing Residual Risk and Technology Reviews (RIN 2060-AT85)*
2. *National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) RTR (RIN 2060-AT86)*
3. *Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Project Emissions Accounting (RIN 2060-AT89)*

4. *Renewable Fuel Volume Standards for 2019 and Biomass Based Diesel Volume (BBD) for 2020 (RIN 2060-AT93)*
5. *Clean Water Act Section 404 Assumption Update Regulation (RIN 2040-AF83)*
6. *Treatment of Biogenic CO₂ Emissions Under the Clean Air Act Permitting Programs (RIN 2060-AU03)²*

SAB Commentary on EPA's Proposed Revised Definition of Waters of the United States

Definition of "Waters of the U.S." (RIN 2040-AF75) was one of the planned actions included on EPA's Spring 2017 Unified Regulatory Agenda. At a public meeting held on May 31- June 1, 2018, the SAB considered whether the science supporting this planned action should be reviewed. In a June 21, 2018 letter to the EPA Administrator, the SAB stated that it was deferring a decision on reviewing this planned action until reviewable supporting documents or draft rule language was available. On February 14, 2019, the EPA and the Department of the Army, Corps of Engineers published a new proposed rule defining the scope of waters federally regulated under the Clean Water Act. The SAB convened a Work Group to review the proposed definition of Waters of the United States, conduct fact-finding, and develop recommendations for further consideration by the chartered SAB.³ At the June 5-6, 2019 public meeting, the SAB discussed the Work Group's findings and decided to develop a commentary to recognize that although the EPA's revised definition was based on the agency's interpretation of the statute and case law, there are some gaps between science and policy that warrant review and bridging. The SAB is currently developing the commentary and anticipates that it will be completed in the first quarter of fiscal year 2020.

Consultation with EPA on Mechanisms for Providing Secure Access to Personally Identifying Information and Confidential Business Information under the Proposed Science and Transparency Rule

The EPA requested a consultation with the SAB on mechanisms for secure access to confidential business information and personally identifying information as discussed in the proposed rule, *Strengthening Transparency in Regulatory Science*. The SAB held a public teleconference on August 27, 2019 to conduct this consultation and will be transmitting the individual comments of SAB members on this topic to the agency. In addition, as indicated above, the SAB is in the process of reviewing the science supporting the proposed rule and will develop a report of its findings and recommendations.

² The SAB notes that this planned action relies on the policy of treating biogenic CO₂ emissions resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral. Although this planned action does not rely on new science, the recent SAB review of EPA's Framework for Assessing Biogenic CO₂ Emissions from Stationary Sources (EPA-SAB-19-002) states that not all biogenic emissions are carbon neutral nor net additional to the atmosphere, and assuming so is inconsistent with the underlying science.

³ Memorandum: Preparation for Chartered Science Advisory Board (SAB) Discussion of EPA's Proposed Waters of the U.S. (WOTUS) Rule.
[https://yosemite.epa.gov/sab/sabproduct.nsf/5E11403D757CC559852583FD00584AEB/\\$File/WOTUS+Work+Group+Memo_5_15_19.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/5E11403D757CC559852583FD00584AEB/$File/WOTUS+Work+Group+Memo_5_15_19.pdf)

New Process for Engaging the SAB on Regulatory Science Matters

At its June 5-6, 2019 public meeting, the SAB received a briefing from the EPA Office of Policy on the agency's plans to implement a new process for engaging the SAB on regulatory science matters. Early engagement between EPA and the SAB on major proposed regulations will help ensure that regulations are based on sound science. We look forward to hearing more about the new process and continuing to provide advice on regulatory science issues.

On behalf of the SAB, I thank you for the opportunity to support EPA through consideration of the science supporting regulatory actions.

Sincerely,

/S/

Dr. Michael Honeycutt, Chair
Science Advisory Board

Enclosure

- (1) Summary of Proposed Actions Considered
- (2) Roster of SAB Members

NOTICE

This report has been written as part of the activities of the EPA Science Advisory Board (SAB), a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The SAB is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency. This report has not been reviewed for approval by the Agency and, hence, the contents of this report do not necessarily represent the views and policies of the Environmental Protection Agency, nor of other agencies in the Executive Branch of the Federal government, nor does mention of trade names of commercial products constitute a recommendation for use. Reports of the SAB are posted on the EPA Web site at <http://www.epa.gov/sab>.

Summary of Proposed Actions Considered

Proposed Actions in the Spring 2018 Semi-Annual Regulatory Agenda Considered by the Science Advisory Board for Additional Comment on the Supporting Science		
RIN	Planned Action Title	Determination
2060-AT85	Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing Residual Risk and Technology Reviews	No further SAB consideration is merited.
2060-AT86	National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) RTR	No further SAB consideration is merited.
2060-AT89	Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Project Emissions Accounting	No further SAB consideration is merited.
2060-AT90	Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review	Defer a determination until sufficient information is available
2060-AT93	Renewable Fuel Volume Standards for 2019 and Biomass Based Diesel Volume (BBD) for 2020	No further SAB consideration is merited.
2060-AT99	Mercury and Air Toxics Standards for Power Plants Residual Risk and Technology Review and Cost Review	Merits review by the SAB
2060-AU09	Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy	Merits review by the SAB
2080-AA14	Strengthening Transparency in Regulatory Science ¹	Merits review by the SAB
2040-AF81	Updates to Wet Weather Treatment Regulations for POTWs	Defer a determination until sufficient information is available
2040-AF83	Clean Water Act Section 404 Assumption Update Regulation	No further SAB consideration is merited.
2060-AU03	Treatment of Biogenic CO ₂ Emissions Under the Clean Air Act Permitting Programs	No further SAB consideration is merited.
2060-AU10	General National Ambient Air Quality Standards Implementation Update Rule	Defer a determination until sufficient information is available

¹ At its May 31, 2018 meeting the Chartered SAB discussed and identified this action (Strengthening Transparency in Regulatory Science 2080-AA14) as a planned action that should be reviewed by the SAB.

U.S. Environmental Protection Agency Science Advisory Board

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