

MEMORANDUM

TO: Members of the Chartered SAB and SAB Liaisons

FROM: Alison Cullen, Chair
EPA Science Advisory Board

DATE: July 5, 2022

SUBJECT: Recommendations of the SAB Work Group for Review of Science Supporting EPA Decisions Regarding Planned EPA Regulatory Actions

The Science Advisory Board (SAB) Work Group for Review of Science Supporting EPA Decisions met on May 27, 2022, and on June 24, 2022, to discuss the adequacy of the scientific and technical bases supporting eight planned EPA regulatory actions and to recommend whether the Chartered SAB should consider further review of these actions which include:

- (1) National Emission Standards for Hazardous Air Pollutants (NESHAP): Gasoline Distribution Technology Review and Standards of Performance for Bulk Gasoline Terminals Review (RIN 2060-AU97)
- (2) Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York (RIN 2040-AG08)
- (3) Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights (RIN 2040-AG17)
- (4) New Source Performance Standards Review for Industrial Surface Coating of Plastic Parts for Business Machines (RIN 2060-AV23)
- (5) Renewable Fuel Standard (RFS) Program: Alternative Renewable Identification Number (RIN) Retirement Schedule for Small Refineries (RIN 2060-AV72)
- (6) Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act – Safer Communities by Chemical Accident Prevention (RIN 2050-AH22)
- (7) Designating PFOA and PFOS as CERCLA Hazardous Substances (RIN 2050-AH09)
- (8) Federal Implementation Plan for Prong 1 and Prong 2 Infrastructure Requirements (“Interstate Transport”) for the 2015 8-Hour Primary Ozone NAAQS (RIN 2060-AV51)

This memorandum documents the Work Group's recommendations to the Chartered SAB and provides background information.

Background

The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with relevant scientific and technical information on which the proposed action is based. The SAB may then make available to the Administrator, within the time specified by the Administrator, its advice and any comments on the adequacy of the scientific and technical basis of the proposed action.

Summary of the Process for SAB Review of Science Supporting EPA Decisions

To fulfill ERDDAA requirements, the EPA and SAB follow the process for review of science supporting EPA decisions outlined in the memo of February 28, 2022, signed by the Associate Administrator in the Office of Policy, the Deputy Assistant Administrator for Science Policy in the Office of Research and Development, and the Director of the Science Advisory Board Staff Office¹. This process includes the following elements: (1) The EPA submits to the SAB Staff Office information regarding planned actions in the agency's Semiannual Regulatory Agenda expected to undergo interagency review; (2) The EPA transmits to the SAB Staff Office all proposed actions sent to the Office of Management and Budget for interagency review, as well as the relevant supporting scientific and technical information; (3) The SAB Work Group for the Review of Science Supporting EPA Decisions holds monthly meetings to examine planned actions sent to the SAB Office, receive information about planned actions from the agency, identify aspects, if any, of planned actions that may warrant review by the full SAB, and prepare a report to the full SAB with recommendations for or against peer review for each planned action; (4) The Chartered SAB holds public meetings to decide whether to undertake SAB peer reviews recommended by the SAB Work Group.

The SAB Work Group for the Review of Science Supporting EPA Decisions includes SAB members with broad expertise in scientific and technological issues related to the proposed actions. The Work Group consists of Drs. Alison Cullen (Chair), David Allen, Jayajit Chakraborty, Steven Hamburg, Marccus Hendricks, Sheila Olmstead, Kristi Pullen-Fedinick, Amanda Rodewald, Jonathan Samet, Richard Smith, Peter Thorne, and June Weintraub.

The Work Group takes into consideration the following questions when it provides recommendations concerning SAB review of the science supporting the rules.

¹The memorandum is available at:

https://sab.epa.gov/ords/sab/sab_apex/r/files/static/v403/Science%20Supporting%20EPA%20Decisions.pdf

Questions indicating whether the action warrants review:

- Is the action under review by the SAB or is SAB review planned? If not, has EPA identified other high-level external peer review (e.g., by the National Academy of Sciences, Clean Air Scientific Advisory Committee, or Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel)?
- Is the action primarily administrative (i.e., involves reporting or record keeping)?
- Has EPA characterized the action as one that has “an influential scientific or technical work product” that “has a major impact, involves precedential, novel, and/or controversial issues, or does the agency have a legal and/or statutory obligation to conduct a peer review?”
- Is the action an extension of an existing initiative?

Questions indicating whether the action merits a high, medium or low level of interest regarding the following historical SAB science- and problem-driven criteria:

- Does the action involve approaches that are new to the agency?
- Does the action address areas of substantial uncertainty?
- Does the action involve major environmental risks?
- Does the action relate to emerging environmental issues?
- Does the action exhibit a long-term outlook?

Work Group Recommendations Regarding Planned Actions of Interest to the SAB

On May 27 and June 24, 2022, the SAB Work Group met to examine several EPA planned actions, including several regulatory actions that the EPA sent to the Office of Management and Budget for review, to decide whether to recommend any of these actions as warranting review of the supporting science by the full SAB. At the monthly May meeting, the SAB Work Group also received a briefing from the SAB Staff Office on the status of significant rules identified within EPA’s Fall 2021 Regulatory Agenda. The SAB Work Group decided that, given the updated schedule and status provided at the briefing with respect to several of the previously identified planned actions, immediate consideration would be given to significant rules with expedited deadlines to determine where possible SAB review might be warranted. The EPA provided additional information on some of these rules. The SAB Work Group’s recommendations are provided below.

1) NESHAP: Gasoline Distribution Technology Review and Standards of Performance for Bulk Gasoline Terminals Review (RIN 2060-AU97)

The SAB Work Group finds that this planned action does not warrant further review by the Chartered SAB because it has been classified by the EPA as a “substantive, non-significant” action, it is largely procedural, including establishing new requirements since the development of the original rules, and the science is well-established for these sources. On April 25, 2022, the EPA Office of Policy sent the proposed rule, NESHAP: Gasoline Distribution Technology

Review and Standards of Performance for Bulk Gasoline Terminals Review, to the SAB Staff Office for consideration and indicated that it had been transmitted to the Office of Management and Budget. The [proposed rule](#) was published on June 10, 2022. Supporting documentation and materials related to this action are available at Docket No. [EPA-HQ-OAR-2020-0371](#).

In this action ([87 FR 35608](#)), the EPA has proposed to revise NESHAP requirements for storage tanks, loading operations, and equipment leaks to reflect cost-effective developments in practices, process, or controls. The SAB Work Group reviewed information provided by the EPA about this planned action. The planned action is also proposing New Source Performance Standards to reflect the best system of emissions reduction for loading operations and equipment leaks. In addition, the EPA is proposing revisions related to emissions during periods of startup, shutdown, and malfunction; to add requirements for electronic reporting of performance test results, performance evaluation reports, and compliance reports; to revise monitoring and operating requirements for control devices; and to make other minor technical improvements.

2) Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York (RIN 2040-AG08)

The SAB Work Group finds that this planned action does not warrant further review by the Chartered SAB because it is considered localized in scope (i.e., for certain waters within the state). On April 27, 2022, the EPA Office of Policy sent the proposed rule, Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York, to the SAB Staff Office for consideration and indicated that it had been transmitted to the Office of Management and Budget.

The EPA is proposing recreational criteria for Class I and Class SD saline surface waters in New York based on EPA's 2012 national CWA Section 304(a) recommended Recreational Water Quality Criteria (RWQC). On March 7, 2018, the Environmental Protection Agency (EPA) disapproved New York's revised water quality criteria for fecal coliform and total coliform (i.e., recreational criteria) as not protective of certain waters around New York City for primary contact recreation designated use classification and not based on sound science. Since the state did not remedy this disapproval, the EPA is now intended to fulfil its statutory obligation to promulgate scientifically defensible and protective water quality criteria for these primary contact waters. In the event that the state submits, and the EPA approves, recreational criteria for New York prior to promulgation of a final federal rule, the EPA would no longer be obligated to finalize criteria for such waters.

3) Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights (RIN 2040-AG17)

The SAB Work Group finds that this planned action does not warrant further review by the Chartered SAB because it is considered mainly procedural, mostly focused on codification of amendments to ensure tribal reserved rights and does not include any new science or analysis.

On May 3, 2022, the EPA Office of Policy sent the proposed rule, Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights, to the SAB Staff Office for consideration and indicated that it had been transmitted to the Office of Management and Budget.

Many tribes hold reserved rights to resources on lands and waters under state and federal jurisdiction, through treaties and equivalent agreements with the U.S. government. The U.S. Constitution defines treaties as the supreme law of the land. The EPA is pursuing a change to its water quality standards (WQS) regulations to ensure that the WQS do not impair tribal reserved rights by giving clear direction to states when developing WQS where tribes hold reserved rights. This action will help the EPA ensure protection of resources reserved to tribes in treaties and equivalent agreements when establishing, revising, and reviewing water quality standards.

4) New Source Performance Standards Review for Industrial Surface Coating of Plastic Parts for Business Machines (RIN 2060-AV23)

The SAB Work Group finds that this planned action does not warrant further review by the Chartered SAB because it is mainly procedural and implementing a Clean Air Act (CAA) requirement. On May 17, 2022, the EPA Office of Policy sent the proposed rule, New Source Performance Standards Review for Industrial Surface Coating of Plastic Parts for Business Machines, to the SAB Staff Office for consideration and indicated that it had been transmitted to the Office of Management and Budget. The [proposed rule](#) was published on June 21, 2022. Supporting documentation and materials related to this action are available at Docket No. [EPA-HQ-OAR-2021-0200](#).

In this action ([87 FR 36796](#)), the EPA is proposing amendments to the Standards of Performance for Industrial Surface Coating of Plastic Parts for Business Machines as the preliminary results of the review of the new source performance standards required by the Clean Air Act. Specific to affected facilities that commence construction, modification, or reconstruction after June 21, 2022, the EPA is, in new subpart TTTa, proposing volatile organic compound (VOC) emission limitations for prime, color, texture, and touch-up coating operations. The EPA is also proposing in subparts TTTa and TTT to include a requirement for electronic submission of periodic compliance reports.

The New Source Performance Standards (NSPS) for Industrial Surface Coating of Plastic Parts for Business Machines (40 CFR part 60 subpart TTT) were promulgated pursuant to section 111(b) of the Clean Air Act (CAA) on January 29, 1988. The NSPS established standards of performance in the form of emission limitations based on the best system of emission reduction (BSER) (taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements). The pollutants emitted from the affected sources include volatile organic compounds. This action would implement a requirement of CAA section 111(b)(1)(B) that the EPA review, and if appropriate revise, the standards of

performance no less often than every 8 years. In accordance with terms of a [case](#) consent decree, the EPA intends to finalize this action by June 1, 2023.

5) *Renewable Fuel Standard (RFS) Program: Alternative Renewable Identification Number (RIN) Retirement Schedule for Small Refineries (RIN 2060-AV72)*

The SAB Work Group finds that this planned action does not warrant further review by the Chartered SAB because it is procedural, considered routine, and related to compliance deadlines. On May 14, 2022, the EPA Office of Policy sent the proposed rule, Renewable Fuel Standard (RFS) Program: Alternative Renewable Identification Number (RIN) Retirement Schedule for Small Refineries, to the SAB Staff Office for consideration and indicated that it had been transmitted to the Office of Management and Budget. The [proposed rule](#) was published on June 13, 2022. Supporting documentation and materials related to this action are available at Docket No. [EPA-HQ-OAR-2022-0434](#).

In this action ([87 FR 35711](#)), the EPA is proposing a RIN retirement schedule for small refineries under the Renewable Fuel Standard program for the 2020 compliance year. To provide small refineries with more time to comply with their 2020 RFS obligations (including any RIN deficits from 2019 carried forward into the 2020 compliance year), the EPA is proposing a quarterly RIN retirement schedule by which a small refinery must comply with certain percentages of its 2020 RFS obligations. The EPA is proposing this action because small refineries need more time to plan for compliance with their RFS obligations given EPA's delay in deciding small refinery exemption (SRE) petitions and setting the associated compliance deadlines.

The compliance flexibility is necessary to address unique circumstances that render the standard compliance deadlines impracticable for the obligated small refineries and problematic for the RFS program as a whole. The proposal is not changing volume obligations but would give small refineries more time to come into compliance and more time to acquire RINs. The action is necessary to ease immediate demand on 2019 and 2020 RINs, and especially advanced RINs, which are largely unavailable. The proposed alternate compliance schedule would establish a series of interim deadlines for RIN retirement along with deficit carry forward and reporting protocols applicable to small refineries that choose to exercise this compliance flexibility. The proposal is seeking public comment and the appropriateness of the unique provisions designed to implement this approach.

6) *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act – Safer Communities by Chemical Accident Prevention (RIN 2050-AH22)*

The SAB Work Group finds that this planned action does not warrant further review by the SAB. On April 27, 2022, the EPA Office of Policy sent the proposed rule, Accidental Release Prevention Requirements: Risk Management Programs (RMP) Under the Clean Air Act – Safer Communities by Chemical Accident Prevention, to the SAB Staff Office for consideration and

indicated that it had been transmitted to the Office of Management and Budget. The EPA is considering revising the RMP regulations, which implement the requirements of section 112(r)(7) of the 1990 Clean Air Act amendments. The RMP requires facilities that use extremely hazardous substances above specified threshold quantities to develop plans to enhance safety and security in chemical facilities. The EPA is revising the RMP rule in accordance with Executive Order [13990](#), “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”, which directed federal agencies to review existing regulations and take action to address priorities established by the new administration including bolstering resilience to the impact of climate change and prioritizing environmental justice.

The SAB Work Group first reviewed this planned action on May 27, 2022. At that time, the Work Group requested a briefing on the proposed action from the EPA since the procedural aspect of the rule would pose significant implications for environmental justice (EJ) communities. The SAB Work Group received a briefing from the EPA on this proposed action on June 24, 2022, and reviewed additional information provided by the Office of Land & Emergency Management. The additional information included an overview of the methods that were attempted and/or used by the EPA in their assessment of impacts or benefits to EJ communities as part of the proposed action.

7) PFAS-Related Designations as CERCLA Hazardous Substances (RIN 2050-AH09)

The Work Group finds that this planned action does not warrant further review by the SAB because no new scientific work was initiated as part of the regulatory action/development. The SAB Work Group reviewed information provided by the EPA about this planned action. On October 18, 2021, the EPA released its Per- and Poly-fluoroalkyl substances (PFAS) Strategic Roadmap which builds on and accelerates implementation of existing plans to address PFAS, including a commitment to new policies to address PFAS in the environment. The proposal to designate perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances was one of several actions mentioned in the Strategic Roadmap. Such designations would require facilities across the country to report on PFOA and PFOS releases.

The SAB Work Group notes that this regulatory action is supported by existing scientific studies (external, peer reviewed, published) to satisfy the statutory language. The SAB PFAS Review Panel has reviewed the science described in EPA’s Analysis to Support EPA’s National Primary Drinking Water Rulemaking for PFAS.

8) Federal Implementation Plan for Prong 1 and Prong 2 Infrastructure Requirements (“Interstate Transport”) for the 2015 8-Hour Primary Ozone NAAQS (RIN 2060-AV51)

The Work Group finds that this planned action does not warrant further review by the SAB because it does not involve scientific approaches that are new to the Agency. The scientific and technical bases used in this rulemaking have been used in previous national/regional ozone transport rulemakings and are not new to EPA. This action would apply in certain states for which EPA has either disapproved a “good neighbor” state implementation plan (SIP)

submission under CAA section 110(a)(2)(D)(i)(I) or has made a finding of failure to submit such a SIP submission for the 2015 ozone NAAQS. The SAB Work Group reviewed information provided by the EPA about this planned action and noted that the Clean Air Scientific Advisory Committee (CASAC) Ozone Panel is discussing any new scientific and/or technical developments related to the Ozone NAAQS. The [proposed rule](#) was published on April 6, 2022. Supporting documentation and materials related to this action are available at Docket No. [EPA-HQ-OAR-2021-0668](#).

In this action ([87 FR 20036](#)), the EPA has proposed Federal Implementation Plan (FIP) requirements to address twenty-six states' obligations to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 ozone National Ambient Air Quality Standard (NAAQS) in other states (see [additional information](#)). The EPA is proposing this action under the "good neighbor" or "interstate transport" provision of the Clean Air Act (CAA or Act). The Agency proposes establishing nitrogen oxides emissions budgets requiring fossil fuel-fired power plants in 25 states to participate in an allowance-based ozone season trading program beginning in 2023. The Agency is also proposing to establish nitrogen oxides emissions limitations applicable to certain other industrial stationary sources in 23 states with the earliest possible compliance date of 2026. This action would determine whether and to what extent ozone-precursor emissions reductions are required to eliminate significant contribution or interference with maintenance from upwind states that are linked to air quality problems in other states for the 2015 8-hour ozone NAAQS. For states that EPA determines to be linked to a downwind nonattainment or maintenance receptor, EPA would conduct further analysis consistent with the four-step interstate transport framework to determine what (if any) additional emissions controls are required in such states and develop an enforceable program for implementation of such controls.

Table 1 identifies the eight planned actions reviewed and summarizes the Work Group’s recommendations.

Table 1. Summary of Proposed Actions that the SAB Work Group Considered for Additional SAB Comment on the Supporting Science (May 27, 2022, and June 24, 2022).		
RIN	Proposed Action Title	Work Group Recommendations
<u>RIN 2060-AU97</u>	NESHAP: Gasoline Distribution Technology Review and Standards of Performance for Bulk Gasoline Terminals Review (<u>87 FR 35608</u>)	No further SAB consideration is warranted.
<u>RIN 2040-AG08</u>	Federal Recreational Water Quality Criteria Applicable to Certain Waters in New York	No further SAB consideration is warranted.
<u>RIN 2040-AG17</u>	Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights	No further SAB consideration is warranted.
<u>RIN 2060-AV23</u>	New Source Performance Standards Review for Industrial Surface Coating of Plastic Parts for Business Machines (<u>87 FR 36796</u>)	No further SAB consideration is warranted.
<u>RIN 2060-AV72</u>	Renewable Fuel Standard (RFS) Program: Alternative RIN Retirement Schedule for Small Refineries (<u>87 FR 35711</u>)	No further SAB consideration is warranted.
<u>RIN 2050-AH22</u>	Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act – Safer Communities by Chemical Accident Prevention	No further SAB consideration is warranted.
<u>RIN 2050-AH09</u>	Designating PFOA and PFOS as CERCLA Hazardous Substances	No further SAB consideration is warranted.
<u>RIN 2060-AV51</u>	Federal Implementation Plan for Prong 1 and Prong 2 Infrastructure Requirements (“Interstate Transport”) for the 2015 8-Hour Primary Ozone NAAQS (<u>87 FR 20036</u>)	No further SAB consideration is warranted.