

Advice and Context: The Role of CASAC in Contextualizing Background Pollution and Adverse NAAQS Effects

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INTRODUCTION

The U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC) plays a critical role in providing review and recommendations to the EPA Administrator regarding published criteria as well as primary and secondary standards promulgated under the National Ambient Air Quality Standards (NAAQS) program. Section 109(d) of the Clean Air Act lays out the membership requirements and duties of CASAC, provisions echoed in the Agency's charter for the advisory panel.

Many Clean Air Act (CAA) practitioners are familiar with CASAC's role in advising on the EPA staff's Integrated Science Assessment (ISA), Risk/Exposure Assessment (REA), and Policy Assessment (PA), and, in turn, recommending a range for such NAAQS from which the EPA Administrator often selects primary and secondary standards. However, in the most recent review cycle for the ground-level ozone NAAQS, states and other stakeholders highlighted concerns that CASAC was not adequately carrying out other responsibilities contained in the Act. In particular, these comments discussed the final two CASAC duties contained in Section 109(d)(C), to: "(iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards" (herein "background pollution" and "adverse NAAQS effects").

Multi-state comments filed on EPA's proposed 2015 ozone NAAQS revision by Alabama, Indiana, Mississippi, North Dakota, West Virginia, and Wyoming argued that "EPA should not pursue any potential revision to the Ozone NAAQS until it receives the full suite of critical advice required from" CASAC (Glatt et al. 2015, 4). Similar comments from the North Carolina Department of Environment and Natural Resources (since renamed the Department of Environmental Quality) urged EPA to "require CASAC to fulfill its obligation to provide economic impacts of a revised NAAQS" (van der Vaart 2015, 1). State challengers to the 2015

ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit included EPA failure to “solicit and consider mandatory input from” CASAC pursuant to Section 109(d)(2)(c)(iii-iv) in their “statement of issues” to the Court in November 2015 (Brnovich et al. 2015, 2).

Congress has also expressed an interest in the role of CASAC as it relates to background pollution and adverse NAAQS effects. In May 2015 testimony before the Subcommittee on Superfund, Waste Management, and Regulatory Oversight of the U.S. Senate Committee on Environment and Public Works (Gomez 2015) as well as a June 2015 report (GAO 2015), the U.S. Government Accountability Office (GAO) examined CASAC’s actions to provide adverse NAAQS effects advice under Section 109(d)(C)(iv). The *EPA Science Advisory Board Reform Act* passed the U.S. House of Representatives in the 113th (H.R. 1422) and 114th Congresses (H.R. 1029), and Public Law No: 114-113, often referred to as the “Omnibus” of December 2015, contained accompanying report language related to conflicts of interest for EPA scientific advisory panels. Key Congressional committees in the U.S. House and Senate have held hearings on CASAC, and leaders from those committees have sent several oversight letters on CASAC’s duties to U.S. EPA (Smith 2014a; Smith and Vitter 2014), CASAC (Vitter 2014a; Vitter 2014b; Smith 2014b), and state environmental agencies (Vitter et al. 2014).

Drawing upon CASAC-EPA communications, comments, reports, and testimony from state environmental agencies and others, this abstract will assess the degree to which CASAC, as part of the five year NAAQS review cycle, has provided advice on background pollution and adverse NAAQS effects. While discussed in the 2015 ozone NAAQS review process, this examination represents a more complete historical record regarding the role of CASAC in these areas. After discussing the potential value of CASAC advice and context on background pollution and adverse NAAQS effects, the abstract assesses the capacity for CASAC and EPA to conduct such advisory activity in the future as well as whether these duties could be part of the NAAQS standard-setting or implementation process. This information could prove helpful to EPA, CASAC, and state/local agencies as they attempt to navigate legal boundaries for cost-benefit analysis in the NAAQS program as well as implementation of standards that are increasingly close to background concentrations.

PROJECT APPROACH

In order to examine the degree to which EPA and CASAC have provided advice on background pollution and adverse NAAQS effects and analyze potential avenues to accommodate such advice, this project reviewed four public sources of information.

First, the author reviewed the final CASAC advice to EPA on the NAAQS-setting process for individual criteria pollutants prior to the rulemaking process (herein “final CASAC advice”), with a particular focus on cover letters distilling the panel’s advice. This included documents on CASAC’s website, and available documents from reviews going back to the 1980s. Since changes to this process in the period from 2006 – 2009, this advice has usually come in the form of chartered CASAC letters responding to a draft or final Policy Assessment (PA). In previous iterations, this final advice came in the form of a “Closure” letter in response to the EPA “Staff

Paper.” While the format and title of this advice has varied, cover letters have often included general CASAC comments and suggestions and subsequent enclosures document consensus comments and individual panelist comments (usually in response to EPA “charge” questions). The flow chart that accompanied EPA new NAAQS review process in April 2009 makes clear that the PA represents a final, critical opportunity for CASAC advice, at the intersection of policy and scientific issues, just prior to Agency decision-making (Jackson 2009).

Second, this review examined charge questions provided to CASAC by EPA during review of the policy assessment (or equivalent) for the most recent completed NAAQS review for ozone (2014), lead (2013), carbon monoxide (2010), PM (2010), and reconsideration of the 2008 ozone NAAQS (2011). These charge questions play a critical role in dictating topics under consideration by CASAC. GAO indicated in June 2015: “CASAC... has never provided advice on adverse social, economic, or energy effects related to NAAQS because to date EPA has not asked CASAC to do so” (GAO 2015, 13).

Third, the project reviewed state perspectives on the role of CASAC in providing background pollution and adverse NAAQS effects advice, including state environmental agency comments on EPA’s proposed 2015 ozone NAAQS revision, state environmental agency responses to Congressional inquiries regarding CASAC, testimony before Congress, and the results of a forthcoming survey of state air agencies (Yannelli).

Fourth, examination of relevant reports, testimony, and comments from GAO as well as former EPA and CASAC officials provides additional context.

ADVICE ON ADVERSE NAAQS EFFECTS

CASAC has not advised the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of NAAQS. Based on interviews with senior EPA officials, GAO states, “CASAC has carried out its role in reviewing the air quality criteria and the NAAQS but it has never provided advice on adverse social, economic, or energy effects of strategies to implement the NAAQS because EPA has never asked it to” (Gomez 2015, 11). Review of EPA charge questions confirms this assessment for CASAC NAAQS advice since 2010.

Final CASAC advice generally verifies that the panel has not engaged in this advice on its own. During the 2011 ozone NAAQS reconsideration, final CASAC advice referred to public comments expressing concerns about “potential deleterious economic consequences of a more stringent NAAQS, including adverse impacts on jobs and commerce, and the practical issues of implementation” as “topics outside the scope of our specific deliberations around the charge questions” (Samet 2011, iii). In final CASAC advice for the 2015 ozone NAAQS, the panel acknowledged the CAA requirement on adverse NAAQS effects and indicated that it would be receptive to “a request from EPA to review EPA analyses” on adverse NAAQS effects if it was separate from the standard-setting process and included adverse and beneficial effects (Frey 2014, v). On one recent occasion, final CASAC advice included implementation-related issues as a “separate policy issue.” In 2013 comments on the lead NAAQS, the panel noted that reductions

in lead exposures in the U.S. had been accompanied, concurrently, by “a trend of increased relocation of Pb production, recycling, and recovery to other nations” (Frey 2013, 2).

State perspectives also underscore the lack of robust advice on adverse NAAQS effects. In comments on the proposed 2015 ozone NAAQS, multi-state comments (Glatt et al. 2015) as well as from North Carolina (van der Vaart 2015) indicate that they do not believe CASAC carried out this duty. Similarly, following an inquiry from Members of the U.S. Senate Environment and Public Works Committee (Vitter et al 2014), state environmental agencies from Louisiana (Hatch 2014), Mississippi (Fisher 2014), North Carolina (Skvarla 2014), and Texas (Shaw 2014) concurred.

Testimony from former EPA and CASAC officials provides more evidence. Robert Phalen, a member of the CASAC PM Panel, testified to the U.S. House Committee on Science, Space, and Technology that CASAC was “not allowed to adequately discuss the adverse consequences associated with air standards.” (Phalen 2011). Former CASAC Chair, Roger McClellan, testified to the same panel that “I am not aware that CASAC has ever advised EPA to take account of the role of socioeconomic factors, unemployment or other risk factors influencing the health endpoints under consideration” (McClellan 2011). Jeffrey Holmstead, former Assistant Administrator for the Office of Air and Radiation, stated, “As far as I know, CASAC had never fulfilled this requirement as it relates to the ozone standard or any other [NAAQS]” (Holmstead 2013).

ADVICE ON BACKGROUND POLLUTION

The record is more mixed as it relates to CASAC advising the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity. Recent charge questions from EPA suggest the Agency rarely seek this advice, although February 2014 charge questions for the ozone NAAQS asked: “With regard to information on estimating O₃ concentrations associated with non-anthropogenic sources or ‘background O₃’ (section 2.4), to what extent is this information properly characterized and clearly communicated?” (Sasser 2014). While GAO stated CASAC has provided “certain types of advice,” it did not assess advice on background pollution.

Final CASAC advice indicates that the panel has inconsistently provided advice on the relative contribution of natural and anthropogenic activity. In June 2014, final CASAC advice on the ozone NAAQS included significant discussion of background ozone on the first page of their correspondence to the Administrator. Notably, this advice noted a lack of clarity “as to how background estimates might impact the primary and secondary standards” and silence “as to how the EPA intends to navigate between” conflicting legal guidelines in considering background ozone for standard-setting and policy contexts (Frey 2014, 1). Final CASAC advice on ozone in 2007 (Henderson 2007), particulate matter in 2005 (Henderson 2005), and lead in 1990 (McClellan 1990) included discussion of natural contributions or Agency treatment of “policy-relevant background.”

State comments and correspondence suggest that, in the context of a revised ozone NAAQS, CASAC advice on background pollution in the most recent cycle was insufficient. In letters to Members of the U.S. Senate Environment and Public Work Committee, the state environmental agencies of Louisiana, Mississippi, North Carolina, and Texas argued in May 2014 that CASAC and EPA had not adequately considered the practical problems involved in reducing ambient concentrations of ozone in some areas beyond regional background levels. Multi-state comments on the proposed 2015 ozone NAAQS agree with these statements and suggest “CASAC should distinguish between (i) anthropogenic sources that are within the U.S. and therefore subject to control under the CAA and (ii) anthropogenic sources from outside the U.S., which are not” (Glatt et al. 2015, 5).

POTENTIAL VALUE OF SUCH ADVICE

While EPA is prohibited from considering the costs of implementing the standards in setting a NAAQS (*Whitman v. American Trucking Associations*, 2001) and attainability and technological feasibility have been ruled to be not relevant considerations (*American Petroleum Institute v. Costle*), there is evidence that suggests advice on background pollution and adverse NAAQS effects could play some role in the standard-setting process. Several commenters during the 2015 ozone NAAQS review process argued that advice on adverse NAAQS effects should be viewed as a voluntary or separate activity and that this provision is no different from other CASAC duties as part of the five year review cycle (Holmstead 2014a; Holmstead 2014b; Air Conditioning, Heating, and Refrigeration Institute et al. 2014). CASAC has noted court decisions allowing EPA to consider relative proximity to peak background levels when evaluating alternative standards (Frey 2014, 1). Congress indicated that there is a related role for background considerations to play in the standard-setting process as well, stating: “Some have suggested that since the standards are to protect against all known or anticipated effects and since no safe thresholds can be established, the ambient standards should [b]e set at zero or background levels. Obviously, this no-risk philosophy ignores all economic and social consequences and is impractical” (H.R. Rep. No. 294 (1977)).

Even if this advice cannot provide the justification for the Administrator’s decision, there may be value in CASAC providing critical health, economic, energy, and social context to the public, state agencies, and other stakeholders. Holmstead suggests that “Congress wanted CASAC to provide policymakers with information about the tradeoffs that we all face as our society spends resources” on attainment and maintenance of NAAQS (Holmstead 2014a, 3). Similarly, while the Administrator cannot consider costs in the NAAQS-setting process, EPA develops a Regulatory Impact Analysis (RIA) for proposed and final NAAQS under the requirements of Executive Order 13563, for which federal agencies must “quantify anticipated present and future benefits and costs as accurately as possible” for regulations.

States have argued that more robust CASAC advice on background pollution and adverse NAAQS effects would be beneficial. Multi-state comments on the proposed ozone NAAQS in 2015 argue, “There is an absolute need for a valid source of information about background concentrations (attributable to both natural and non-U.S. anthropogenic sources) and the degree to which they affect the ability of certain areas to achieve the ozone NAAQS” (Glatt et al. 2015,

4). Louisiana Department of Environmental Quality said that CASAC advice on adverse NAAQS effects “would greatly assist the state in developing implementation plans”(Hatch 2014, 3). Texas Commission on Environmental Quality pointed to several benefits of such advice, including identifying control strategies that may disproportionately affect small businesses or cause an ancillary increase in other pollutants (Shaw 2014).

Forthcoming results from an electronic survey of a geographically diverse set of 20 state air directors or their designees further corroborate this feedback. Between 80 and 90 percent of respondents thought CASAC advice on the “relative contribution to air pollution concentrations of natural as well as anthropogenic activity” and “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS, as part of the NAAQS review process, would be helpful to their agency (Yannelli).

WHO IS RESPONSIBLE?

EPA clearly plays an important role in setting the stage for CASAC advice. As GAO notes, EPA’s failure to request CASAC advice on adverse NAAQS effects through charge questions has resulted in more than three decades of non-action (GAO 2015). Despite CASAC’s indication in the 2015 ozone NAAQS process that it would be receptive to an EPA request on this matter, GAO testified in May 2015, “According to a senior EPA official, the agency has no plans to ask CASAC to provide advice on adverse effects” (Gomez 2015, 11). Insofar as CASAC needs requisite expertise to provide advice on background pollution and adverse NAAQS effects, the Administrator is ultimately responsible for appointing CASAC members.

There are, though, several arguments in favor of CASAC playing a proactive role in initiating advice in these neglected areas. First, while Congress did not provide exhaustive information as to their intent for CASAC, the House Report accompanying the panel says: “This committee is intended to assist the Administrator, but it is also intended to have complete independence” (H.R. Rep. No. 95-294 at 182-183 (1977)). Second, CASAC has regularly provided advice, including final CASAC advice, on topics not specifically requested by EPA in charge questions. Among the other duties listed in Section 109(d), final CASAC advice has included clear recommendations on “areas in which additional knowledge is required” and “research efforts necessary to provide the required information” even when EPA has not explicitly requested such advice. For example, all final CASAC advice on ozone NAAQS since 1989 included suggestions on areas for additional research. Beyond statutory requirements, CASAC has provided unsolicited advice on the relocation of lead production to other countries in 2013 (as noted above) and international ozone transport issues in 2014 (Frey 2014, iv). Finally, on several occasions in recent years, CASAC has provided EPA advice without prompting by Agency charge questions. This has included consensus and individual comments on proposed and final NAAQS as well as a role in initiating CASAC subpanels or ad hoc panels.

PATHS FORWARD

Regardless of whether this CASAC advice on background pollution or adverse NAAQS effects should take place as a critical input in the standard-setting process or whether initiated by EPA or CASAC, evidence suggests certain statutory responsibilities are being neglected or provided inconsistently. Fortunately, there are five potentially workable frameworks to facilitate this advice in the future.

First, as suggested by CASAC in the most recent ozone NAAQS review, CASAC could receive “a request from EPA to review EPA analyses of” adverse NAAQS effects. CASAC suggested that a comprehensive assessment “would include both adverse and beneficial effects” and that the Science Advisory Board (SAB) Staff Office “would form an ad hoc CASAC panel to obtain the full expertise necessary to conduct such a review” (Frey 2014, v). Difficulties with this approach include the indication by senior EPA officials to GAO that they do not intend to ever request this advice as well as the additional resources involved in developing a separate EPA analyses, beyond the ISA, REA, PA, RIA, and other documents, as well as convening a separate ad hoc panel.

Second, CASAC could request and/or EPA could provide a discussion of adverse NAAQS effects and a more robust discussion of background pollution in future policy assessments. Holmstead suggests an additional chapter on these matters in the PA “would certainly provide a valuable starting point for CASAC’s evaluation of these issues” (Holmstead 2014a, 3). The South Carolina Department of Health and Environmental Control “believes that the EPA should provide more information to CASAC and its state partners on background ozone; perhaps even developing a relevant policy on background levels that the EPA can use as a basis for evaluating revisions to this and future NAAQS” (Reece 2015, 2). This could include the inclusion of dedicated charge questions on these issues, but would require the willingness of EPA and/or CASAC to integrate these topics.

Third, CASAC could provide advice to EPA regarding NAAQS implementation rules. This approach, which could include a complete set of charge questions, would seem to alleviate EPA or CASAC concerns that advice on background pollution or adverse NAAQS effects should be outside the standard-setting process. For the 2015 ozone NAAQS, EPA intends to propose its implementation rule dealing with nonattainment area classifications and State Implementation Plan requirements in October 2016. Advice on adverse NAAQS effects are important to “be included in the EPA’s decisions, particularly in developing the implementation rule for a new NAAQS and for federally mandated strategies for attaining and maintaining a NAAQS” articulated the Texas Commission on Environmental Quality in May 2014 (Shaw 2014, 4).

Fourth, CASAC could provide advice on adverse NAAQS effects and background pollution through a review of EPA’s RIA accompanying proposed or final NAAQS. As noted above, the Administrator may be prohibited from considering cost in the NAAQS-setting process, but EPA’s NAAQS RIAs include a variety of quantified and non-quantified costs and benefits. RIAs often already address some adverse public health, welfare, social, economic, or energy effects of

the NAAQS. The White House Office of Management and Budget's Circular A-4, which provides guidance to federal agencies on regulatory analysis, suggests this type of early expert consultation: "As you design, execute, and write your regulatory analysis, you should seek out the opinions of those who will be affected by the regulation as well as the views of those individuals and organizations who may not be affected but have special knowledge or insight into the regulatory issues. Consultation can be useful in ensuring that your analysis addresses all of the relevant issues and that you have access to all pertinent data. Early consultation can be especially helpful" (OMB 2003, 3).

Fifth, in combination with options above, EPA could look to add experts with a background in fields relevant to advice on adverse NAAQS effects or background pollution to CASAC or look to utilize existing experts who serve on the SAB Environmental Economics Advisory Committee or the EPA Advisory Council on Clean Air Compliance Analysis. Leveraging existing expertise could minimize the resources needed to form a separate, ad hoc panel. There are several precedents for these actions. For example, for final CASAC advice on the secondary NAAQS for ozone in April 1996, "a panel member with expertise in economics reviewed the Staff Paper and provided written comments" (Wolff 1996, 2). Considering their significant interest in this advice and experience in implementing the NAAQS, state, local, and tribal environmental agencies could play a critical role in supplementing the current CASAC.

SUMMARY

An examination of CASAC-EPA communication, state perspectives, and recent comments, testimony, and reports demonstrate that CASAC has inconsistently provided advice on background pollution and never provided advice on adverse NAAQS effects. While this area has been of increasing interest for the 2015 ozone NAAQS, this manuscript represents a more comprehensive review of the historical record. State environmental agency perspectives, expressed through comments, correspondence, and surveys, show that such advice may be valuable to co-regulators in implementing NAAQS, even if the Administrator may be limited in using it in the NAAQS-setting process. Both EPA and CASAC have a role in animating the statutory obligations under Section 109(d), and there are several avenues for both to facilitate this advice through the NAAQS standard-setting or implementation processes.

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KEYWORDS

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Advice and Context

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Association of Air Pollution Control Agencies

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OVERVIEW

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DISCLAIMERS

- **This presentation and accompanying abstract represent my personal views. The opinions and conclusions do not necessarily reflect the views of AAPCA, its member agencies, or the Council of State Governments. The presentation and abstract also do not constitute legal advice.**
- **All conclusions were drawn from publicly available information regarding final CASAC advice, charge questions, state agency comments, and relevant reports and testimony.**
- **This presentation focuses on potential CASAC advice on background pollution and adverse NAAQS effects, but the Administrator may be limited from fully considering this advice in the standard-setting process due to the Clean Air Act and Court decisions (*Whitman v. American Trucking Associations*, 2001).**
- **Terminology of presentation uses updated NAAQS review process (since 2009 memorandum by Administrator Jackson).**

LEGISLATIVE REQUIREMENTS

- **Section 109(d) of the Clean Air Act (42 U.S.C. 7409):**

- **“(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions**

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)

(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

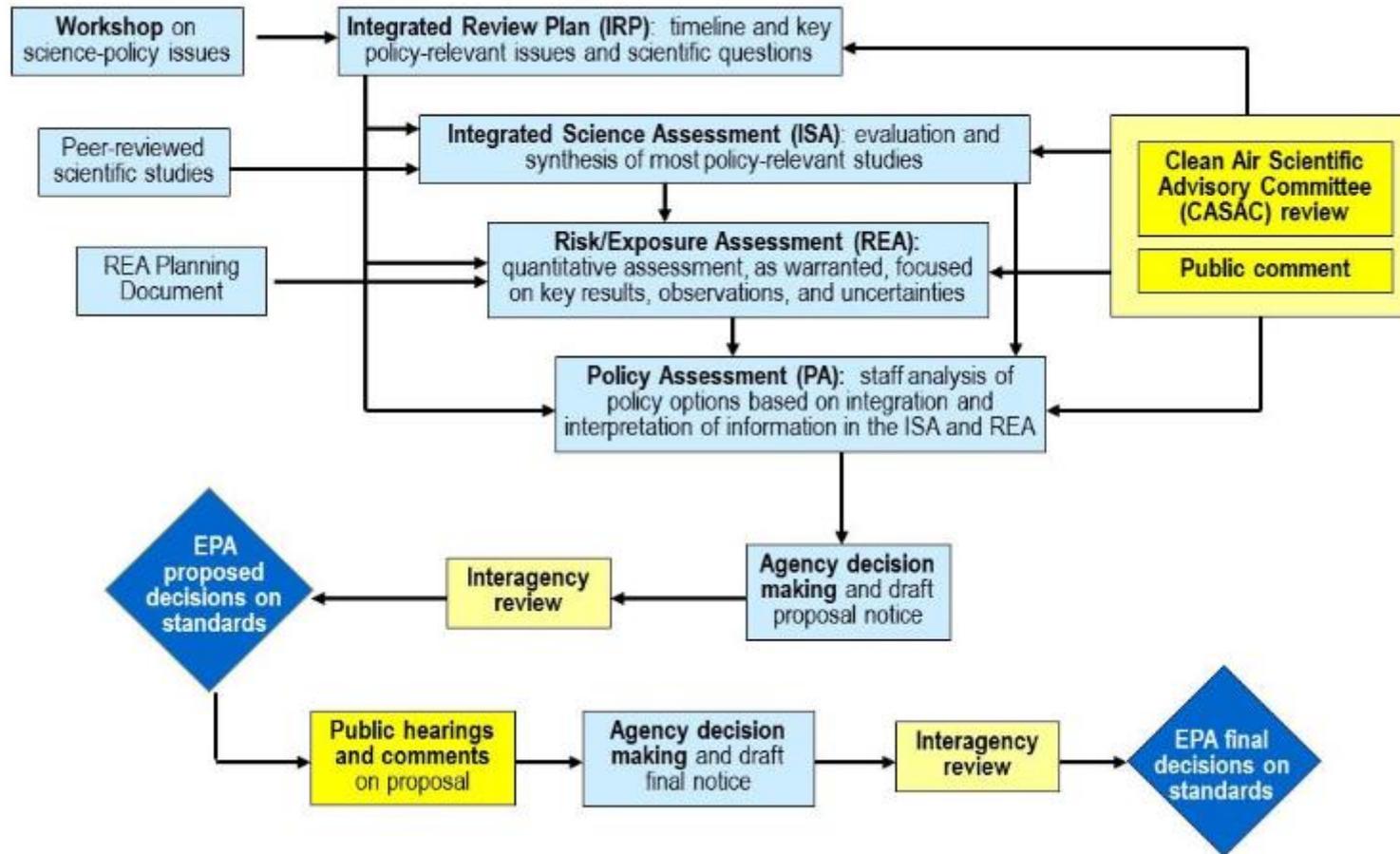
(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.”

- **H.R. Rep. No. 95-294 at 182 – 183 (1977):**

“This committee is intended to assist the Administrator, but it is also intended to have complete independence.”



NAAQS REVIEW PROCESS



U.S. EPA, Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter, April 2016

PROJECT APPROACH

- **In order to assess the degree to which CASAC has provided advice on background pollution and adverse NAAQS effects, this project analyzed four public sources of information:**

- Final CASAC Advice – Last response to draft or final NAAQS Policy Assessment (or, previously, closure letters in response to EPA Staff Paper) from all available NAAQS reviews
- EPA Charge Questions for most recent NAAQS reviews for ozone (2014), lead (2013), carbon monoxide (2010), particulate matter (2010)
- State Agency Perspectives - Comments on proposed 2015 ozone NAAQS revision, responses to Congressional inquiries, and recent survey results
- Recent reports, testimony and comments from the Government Accountability Office and former EPA and CASAC officials.

ADVICE ON ADVERSE NAAQS EFFECTS?

“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.”

- U.S. Government Accountability Office, May 2015

Confirmation from:

- Final CASAC Advice
- State comments on ozone NAAQS revision and responses to Congressional inquiry
- Testimony by former CASAC and EPA Officials

ADVICE ON BACKGROUND POLLUTION?

- **Mixed record; Advice inconsistently requested and provided**

- “With regard to information on estimating O₃ concentrations associated with non-anthropogenic sources of ‘background O₃’ (section 2.4), to what extent is this information properly characterized and clearly communicated?”

- EPA Charge Question for Second Draft Policy Assessment for Ozone, February 2014

- Final CASAC Advice

- Ozone (2014, 2007)
 - Particulate Matter (2005)
 - Lead (1990)

- “There is confusion among EPA staff and CASAC as to the relevance of the policy level background and how it is to be used in the independent scientific process in the setting of new standards.” – Louisiana DEQ, May 2014

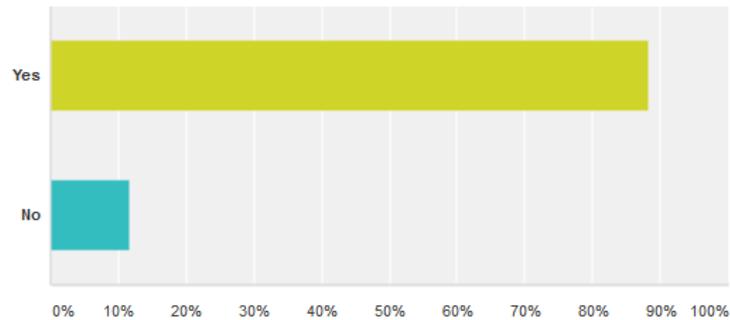
POTENTIAL VALUE OF SUCH ADVICE

- **Statutory requirement**
- **Context & Precedent – E.O. 13563; Other sections of the Act**
- **State and Former EPA comments:**
 - “Because CASAC did not fulfill its statutorily required role to advise EPA.... There is an absolute need for a valid source of information about background concentrations (attributable to both natural and non-U.S. anthropogenic sources) and the degree to which they affect the ability of certain areas to achieve the ozone NAAQS.”
 - Multi-State ozone NAAQS comments (AL, IN, MS, ND, WV, WY), March 2015
 - “Congress wanted CASAC to provide policymakers with information about the tradeoffs that we all face as our society spends resources on ‘strategies for attainment and maintenance of the NAAQS.’”
 - Jeff Holmstead, letter to CASAC, March 2014
 - “Louisiana agrees that having CASAC provide advice [on adverse NAAQS effects] to the Administrator... would greatly assist the state in developing implementation plans to continue to meet the current standard, as well as, a new, more stringent standard.”
 - Louisiana DEQ, May 2014

POTENTIAL VALUE OF SUCH ADVICE

Would CASAC advice on the "relative contribution to air pollution concentrations of natural as well as anthropogenic activity," as part of the NAAQS review process, be helpful to your agency?

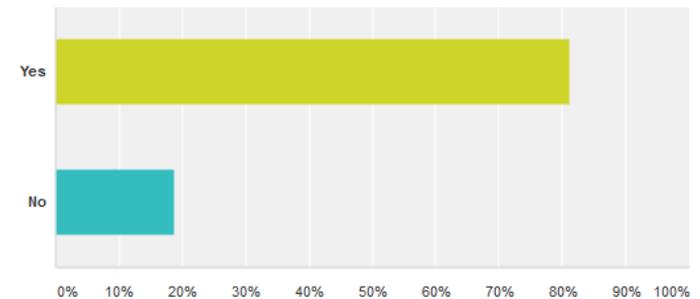
Answered: 17 Skipped: 3



Answer Choices	Responses	Count
Yes	88.24%	15
No	11.76%	2
Total		17

Would CASAC advice on "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards," as part of the NAAQS review process, be helpful to your agency?

Answered: 16 Skipped: 4



Answer Choices	Responses	Count
Yes	81.25%	13
No	18.75%	3
Total		16

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WHO IS RESPONSIBLE?

- **U.S. EPA**

- “According to a senior EPA official, the agency has no plans to ask CASAC to provide advice on adverse effects.”
 - U.S. Government Accountability Office, May 2015
- Membership selection
- Development of charge questions
- Omission of legislative requirements in CASAC and NAAQS review materials

- **CASAC**

- “...intended to have complete independence.” - H.R. Rep. No. 95-294 at 182 – 183 (1977)
- Frequent examples of final CASAC advice that goes beyond charge questions
 - Recommendations on “areas in which additional knowledge is required” and “research efforts necessary to provide the required information.”
 - “Although CASAC was not asked to comment about international transport of ozone, we would like to call your attention to this issue as a matter separate from our advice regarding the standard.”

- **Congress? Courts?**



PATHS FORWARD

- **CASAC review of EPA analyses of adverse NAAQS effects, including “an ad hoc CASAC panel to obtain the full expertise necessary to conduct such a review.”**
- **Expanded discussion of adverse NAAQS effects and background pollution in existing NAAQS review, including Policy Assessment**
 - “The Department believes that the EPA should provide more information to CASAC and its state partners on background ozone; perhaps even developing a relevant policy on background levels that the EPA can use as a basis for evaluating revisions to this and future NAAQS.” – South Carolina DHEC, March 2015
 - “[I]t might be appropriate for CASAC to request that EPA staff add an additional chapter to the Policy Assessment that specifically discusses the potential adverse health, welfare, social, economic and energy effects of actions that will be needed to attain the ozone NAAQS and potential revisions that are under consideration. “ – Jeff Holmstead, Bracewell, March 2014
- **CASAC advice to EPA on NAAQS implementation rules**

PATHS FORWARD

- **CASAC advice through a review of EPA’s Regulatory Impact Analyses (RIA) for proposed and final NAAQS**
 - “As you design, execute, and write your regulatory analysis, you should seek out the opinions of those who will be affected by the regulation as well as the views of those individuals and organizations who may not be affected but have special knowledge or insight into the regulatory issues. Consultation can be useful in ensuring that your analysis addresses all of the relevant issues and that you have access to all pertinent data. Early consultation can be especially helpful.” – OMB Circular A-4
- **Addition of experts with background in fields relevant to adverse NAAQS effects or background pollution to chartered CASAC or individual review panels**
 - Science Advisory Board Environmental Economics Advisory Committee
 - Advisory Council on Clean Air Compliance Analysis
 - State, local, and tribal leaders with on-the-ground expertise with implementation

CONCLUSIONS

- **An examination of CASAC-EPA communication, state perspectives, and recent comments, testimony, and reports demonstrate that CASAC has inconsistently provided advice on background pollution and never provided advice on adverse NAAQS effects.**
- **State environmental agency perspectives, expressed through comments, correspondence, and surveys, show that such advice may be valuable to co-regulators in implementing NAAQS, even if the Administrator may be limited in using it in the NAAQS-setting process.**
- **Both EPA and CASAC have a role in animating the statutory obligations under Section 109(d) , and there are several avenues for both to facilitate this advice through the NAAQS standard-setting or implementation processes.**

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