



Department of Energy

Washington, DC 20585

September 12, 2011

MEMORANDUM FOR DISTRIBUTION

FROM:

 DAVID HUIZENGA
ACTING ASSISTANT SECRETARY FOR
ENVIRONMENTAL MANAGEMENT

SUBJECT:

Environmental Management Site-Specific Advisory Board Guidance

Attached for your implementation is the revised guidance for the Environmental Management Site-Specific Advisory Board (EM SSAB). This guidance is designed to explain and facilitate local board implementation of the requirements of the Federal Advisory Committee Act (FACA) of 1972, 5 United States Code Appendix 2; the General Services Administration (GSA) implementing regulations, 41 Code of Federal Regulations (CFR) Subpart 102-3; and the Department of Energy (DOE) Manual entitled *Advisory Committee Management Program*, DOE M 515.1-1. FACA requires a uniform management system, and this guidance provides standardized management practices for the EM SSAB to meet this requirement.

The EM SSAB structure of local boards allows DOE to establish uniform administrative guidelines and management controls across the complex. The CFR requires agencies to ensure that there are the necessary plans and procedures in place to support an advisory committee's mission and function. The EM SSAB Guidance has been revised to reflect changes in the EM SSAB Charter and the EM SSAB Standing Operating Policies and Procedures (SOPP). This guidance replaces the guidance document dated November 2008.

It is the responsibility of you, your Deputy Designated Federal Officer, and your Federal Coordinator to ensure compliance with FACA, GSA regulations, DOE Manual, EM SSAB Charter, EM SSAB SOPP, and this guidance.

If you have any questions, please contact Ms. Melissa A. Nielson, Director of the Office of Public and Intergovernmental Accountability, at (202) 586-0356 or Ms. Cate Alexander Brennan, Designated Federal Officer of the EM SSAB, at (202) 586-7711.

Attachment



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U.S. Department of Energy Environmental Management Site-Specific Advisory Board

Guidance

Prepared by

**The Office of Public and
Intergovernmental Accountability**

September 2011

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ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD GUIDANCE

The Office of Public and Intergovernmental Accountability

September 2011

The purpose of this document is to provide guidance regarding the operation of the Environmental Management Site-Specific Advisory Board (EM SSAB or Board). This updated guidance supersedes the guidance document dated November 2008. This document is intended to summarize pertinent sections of the requirements of the Federal Advisory Committee Act (FACA) of 1972, **5 United States Code (U.S.C.) Appendix 2**; the General Services Administration (GSA) implementing regulations, **41 Code of Federal Regulations (CFR) Subpart 102-3**; and the Department of Energy (DOE or Department) Manual entitled *Advisory Committee Management Program*, **DOE M 515.1-1**. It is not intended to replace these documents. In addition, it provides EM SSAB specific mandatory and suggested direction and guidance.

I. Background and Introduction

In 1993, in response to the increasing need for public participation in the DOE decisions, the Department participated in a national policy dialogue on federal facility environmental restoration decision-making and priority-setting issues. The Keystone Center, a non-profit environmental conflict management group, established a working dialogue among representatives of the federal government, tribal governments, Native American organizations, and local citizen groups. The goal was to develop consensus policy recommendations aimed at improving the process by which federal facility environmental cleanup decisions were made.

In June 1994, the Office of Management and Budget (OMB) and GSA approved the charter that established the EM SSAB under FACA. It is under the charter that local site-specific boards are organized. The charter has been renewed every two years since 1996.

In accordance with its charter, the EM SSAB exists to provide the Assistant Secretary for Environmental Management, the appropriate site manager(s), and any other DOE officials the Assistant Secretary shall designate, with information, advice, and recommendations concerning issues affecting the EM Program at various sites. Specifically, at the request of the Assistant Secretary or the site managers, the Board may provide advice and recommendations concerning the following EM site-specific issues: clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land-use and long-term stewardship; risk assessment and management; and clean-up science and technology activities. The Board may also be asked to provide advice and recommendations on any other EM projects or issues.

The local boards organized under the EM SSAB Charter draw upon diverse community viewpoints to provide advice and recommendations to DOE. Some local boards are associated with DOE field offices for which EM is the landlord program, while other local boards are supported by field offices that are managed either by the Office of Science (SC), the National Nuclear Security Administration (NNSA), or the Office of Nuclear Energy (NE). However, in accordance with the EM SSAB Charter, the mission and operation of any given local board is unaltered whether the landlord is EM, SC, NNSA, or NE.

The goal of the EM SSAB is to more directly involve stakeholders in EM planning and decision-making processes for the nuclear weapons complex cleanup. The EM SSAB is only one component of EM's public participation program and is not intended to be an exclusive means of public participation. It is the policy of DOE and EM to conduct its programs in an open and responsive manner, thereby, encouraging and providing the opportunity for public participation in its planning and decision-making processes.

II. Roles and Responsibilities

A. DOE Headquarters

Office of the Secretary of Energy

The Secretary of Energy, per the requirements of FACA and the CFR, will

- Comply with FACA and the CFR. **FACA § 8; CFR § 102-3.105(a)**
- Issue administrative guidelines and management controls. **FACA § 8(a); CFR § 102-3.105(b)**
- Designate a Committee Management Officer (CMO). **FACA § 8(b); CFR § 102-3.105(c)**
- Ensure that meetings of the full advisory board are open to the public unless a written determination for closing any meeting is provided. **CFR § 102-3.105(d)**
- Review, at least annually, the need to continue the advisory committee. **CFR § 102-3.105(e)**
- Develop procedures to assure that advice and recommendations of the advisory committee is the result of independent judgment. **CFR § 102-3.105(g)**
- Assure that the interests and affiliations of advisory board members conform with applicable conflict of interest statutes and regulations. **CFR § 102-3.105(h)**
- Designate a Designated Federal Officer (DFO) for the advisory committee. **CFR § 102-3.105(i)**
- Provide opportunity for reasonable public participation in advisory committee activities. **CFR § 102-3.105(j)**

Office of the Executive Secretariat (MA-70)

The Executive Secretariat, per the requirements of FACA and the CFR, will

- Ensure compliance with FACA. **FACA § 8(b)(1); CFR § 102-3.115**
- Ensure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes.
- Renew or terminate the EM SSAB Charter as appropriate. Annually, review the need to continue the EM SSAB. **CFR § 102-3.115**
- Process *Federal Register* notices for EM SSAB meetings. **FACA §§ 8(b)(1), 10(a)(2); CFR §§ 102-3.115, 102-3.150(a)**. (See section II of this guidance for further parameters.)

DOE Manual 515.1-1 requires that the Executive Secretariat

- Act as the Department's CMO. **Manual § I.6.c**
- Review and concur on all advisory committee packages and appraise the need for or the continuation of advisory committees. **Manual § I.6.c**

- In coordination with heads of departmental elements and the Office of General Counsel, ensure that advisory committees are fairly balanced in membership in terms of points of view represented and functions to be performed. **Manual § I.6.c**
- Review and concur on all requests for closing part or all of an advisory committee meeting. **Manual § I.6.c**
- Maintain hard copies of the following advisory committee records. **Manual § VII.2.a:**
 - Committee establishment and renewal proposals
 - *Federal Register* notices
 - Detailed minutes and transcripts (if available) of all meetings
 - Committee reports.

Assistant Secretary for Environmental Management (EM-1)

EM-1, per the requirements of FACA and the CFR, will

- Ensure compliance with FACA and CFR
- Issue administrative guidelines and management controls
- Appoint and remove Board members (in limited cases, this authority has been delegated to the field under section III.C.3 of this guidance).

Office of Public and Intergovernmental Accountability

The Office of Technical and Regulatory Support and Office of Public and Intergovernmental Accountability, per the requirements of FACA and the CFR, will

- Manage and maintain a library of EM SSAB documentation, including annual reports, work plans, recommendations and responses, meeting minutes, and membership information. **FACA §§ 10(b), 12(a)**
- Each Federal advisory board is required to have a DFO, in this case a DOE employee, who works closely with the Board. **FACA § 10 (e); CFR § 102-3.120**

DOE Manual 515.1-1 requires that the Office of Technical and Regulatory Support and the Office of Public and Intergovernmental Accountability

- Prepare *Federal Register* notices for local EM SSAB public meetings. **Manual § I.6.i**
- Ensure that conflict of interest regulations are followed. **Manual § I.6.i**
- Prepare, process, and obtain approval of EM SSAB new/renewal membership packages. **Manual § I.6.i**
- Prepare, process, and obtain approval of EM SSAB Charter renewal. **Manual § I.6.i**
- Maintain EM SSAB records and documentation. **Manual § I.6.i**

To enhance compliance with FACA, CFR, and DOE policy, the Office of Technical and Regulatory Support and the Office of Public and Intergovernmental Accountability, will

- Delegate to local DOE employees the responsibility to serve as Deputy Designated Federal Officers (DDFOs) for local boards. (A site may have more than one DDFO appointed at one time).
- Inform the EM SSAB members of Departmental processes, programs, projects, and activities directly affecting the Board's mission and purpose.
- Coordinate the review and approval of local board operating procedures/bylaws with the Office of General Counsel to ensure that they are in compliance with FACA and other regulations and requirements.

Office of the Assistant General Counsel for General Law

The Manual requires that the Office of the Assistant General Counsel for General Law:

- Provide legal support for EM SSAB Charter renewal, charter termination, official appointments of Board members, and policy issues. **Manual § I.6.g**

To enhance compliance with FACA, CFR, and DOE policy, the Office of the Assistant General Counsel for General Law will

- Review operating procedures/bylaws submitted by the local boards to be approved by the DFO.

EM Program Offices (as appropriate)

To enhance compliance with FACA, CFR and DOE policy, EM program offices will

- Respond in a timely fashion to EM SSAB recommendations, as appropriate.

B. DOE Field Offices

Although DOE headquarters (HQ), through the Assistant Secretary for EM, the CMO and the EM SSAB DFO, is responsible for the EM SSAB, DOE field offices are accountable to DOE-HQ for local board activities and act for EM at the local level.

The DOE field offices, per the requirements of FACA and the CFR, will

- Ensure required records on local board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the local board. **FACA § 12(a); CFR § 102-3.175(b); Manual § VII**
- Make records available to interested members of the public. **CFR § 102-3.170; Manual § VII.4**

- Recommend to the DFO, a senior DOE official (or officials) to serve as the DDFO for the local board. **FACA § 10(e); CFR § 102-3.120**
- Ensure that DOE diversity goals are met through adequate outreach efforts for membership. Board membership should reflect a diverse cross-section of those directly affected by and interested in the community from which the local board draws its members. **CFR 102-3.60 (b)(3)**
- Provide adequate resources to enable the local board to carry out its functions as described in **FACA § 12 (b); CFR § 102-3.95(a); Charter § 7; Manual § I.6.h**

To enhance compliance with FACA, CFR, and DOE policy, the DOE field offices will

- Ensure that member appointment packages are submitted to EM Headquarters with nominations for the Assistant Secretary's appointment. Assistant Secretarial approval of new and reappointed members is required, with the exception of member appointments to fill an unexpired term. (See section III.C.3.)
- Provide timely response to local board recommendations.
- Review and, if satisfactory, submit local board operating procedures/bylaws to the DFO for review and coordination with the Office of the Assistant General Counsel for General Law to ensure that they are in compliance with FACA and other regulations and requirements.
- Review and approve local annual work plans.
- Review and approve EM SSAB budget requests and incorporate, as appropriate, into the EM budget development process.
- Coordinate with DOE-HQ on EM SSAB issues and processes.

C. Designated Federal Officer (DFO)/Deputy Designated Federal Officer (DDFO)/Federal Coordinator

Under **FACA § 10(e) and CFR § 102-3.120**, each federal advisory committee is required to have a DFO, in this case a DOE employee who works closely with the Board. The DFO for the EM SSAB is located in the Office of Public and Intergovernmental Accountability. The DFO delegates the responsibility to serve as onsite DDFOs to local DOE employees. The DDFO may appoint a Federal Coordinator to assist him/her.

The DFO/DDFO, per the requirements of FACA and the CFR, will, with Federal Coordinator assistance, as appropriate,

- Call for and attend board meetings. **FACA § 10(e)&(f), CFR § 102-3.120(a),(c)&(e)**
- Adjourn board meetings if it is in the public interest. **FACA § 10(e), CFR § 102-3.120(d)**
- Approve meeting agendas. **FACA § 10(f), CFR § 102-3.120(b)**
- Ensure required records on board costs and membership are maintained, as each agency needs to keep records that will fully disclose the disposition of any funds at the disposal of the board. **FACA § 12(a); CFR § 102-3.175(b)**

- Ensure that detailed minutes of meetings, containing items specified in **CFR § 102-3.165**, are prepared and duly certified. **FACA § 10(c)**, **CFR § 102-3.165**

DOE Manual 515.1-1 requires that the DFO/DDFO, with Federal Coordinator assistance, as appropriate,

- Ensure that conflict of interest regulations are followed. **Manual § IV.6**
- Arrange for reimbursement of travel expenses as necessary. **Manual § V.6.a.(2).(f)**
- Ensure that each board meeting is held at a reasonable time and in a manner or place reasonably accessible to the public. **Manual § V.3**

To enhance compliance with FACA, CFR, and DOE policy, the DFO/DDFO/Federal Coordinator will

- Encourage the board to listen carefully to all points of view and to work toward consensus.
- Provide timely information for *Federal Register* notices to the Office of Public and Intergovernmental Accountability and broad local notification about EM. SSAB meetings and activities to, e.g., the local media, public reading rooms, and public libraries.
- Ensure that the board has the opportunity to offer advice and recommendations on the charges issued by EM. To support this, it is recommended that the DFO/DDFO/Federal Coordinator
 - Ensure that EM's decision-making process is clearly communicated.
 - Inform the board members of EM programs, projects, and activities directly affecting the EM SSAB mission and purpose.
 - Work closely and cooperatively with the board to prioritize issues.
 - Develop and approve an annual work plan that includes goals and priorities.

D. EM SSAB Members

The success and effectiveness of the EM SSAB depends largely upon the interest, commitment, input and integrity of its members. EM SSAB members are expected to

- Attend meetings and participate in an open, constructive, and respectful manner.
- Provide advice and recommendations to DOE decision-makers at the field and DOE-HQ levels on relevant EM issues.
- Act as a conduit for the exchange of information from the community on relevant issues.
- Review, evaluate, and comment on EM documents and other materials. (See also EM SSAB SOPP § II d. 9. j.i.)

III. Operating a Local Site-Specific Advisory Board

A. Public Participation and Record-Keeping

1. Public Participation

In accordance with FACA and the CFR

- Each advisory committee meeting shall be open to the public. **FACA § 10(a)(1)**
 - Although subject matter may indicate the need to close a meeting (e.g., for security considerations), **FACA § 10(d)** requires the head of the agency to which the committee reports to approve, in writing, closed sessions of full committees. **CFR § 102-3.155**
- Timely notice of each meeting shall be published in the *Federal Register* at least 15 calendar days prior to a local board meeting. **FACA § 10(a)(2); CFR § 102-3.150(a)**
- Each meeting shall be held at a reasonable time and in a manner or place reasonably accessible to the public at facilities that are readily accessible to and usable by persons with disabilities. **CFR § 102-3.140(a)**
- Any member of the public shall be permitted to file a written statement with the committee. **CFR § 102-3.140(c)**
- Any member of the public shall be permitted to speak at designated times. **FACA § 10(a)(3); CFR § 102-3.140(d); Manual § V.3.a.(2).(b)**
- Any meeting conducted in whole or part by teleconference, videoconference, the Internet or other electronic medium must meet the requirements of 41 CFR Subpart D. **CFR § 102-3.140(e)**
- Subcommittees (also referred to locally as “committees”) of the local boards are not required to comply with the provisions of FACA so long as the full local board deliberates on any recommendations before they are approved. **CFR § 102-3.35 and 102-3.145**

In accordance with the Manual,

- Media representatives attending and reporting on open committee meetings are at liberty to use tape recorders, cameras, and electronic equipment for broadcast purposes. The use of such equipment must not interfere with the orderly conduct of the meeting. To preclude any disruption, news media personnel should be encouraged to position all equipment before the meeting and to defer removal until an ample intermission period or meeting adjournment. **Manual § V.3.b.**

2. *Public Notification*

In accordance with FACA and the CFR,

- Notice must appear in the *Federal Register* at least 15 calendar days prior to EM SSAB public meetings. **FACA § 10(a)(2) and CFR § 102-3.150(a).**
 - Notices must include
 - The name of the advisory board, date, time, and place of the meeting
 - The purpose of the meeting and a summary of the meeting agenda
 - A statement as to whether all or part of the meeting will be closed
 - The name, address, and phone numbers of the DFO/DDFO or another contact for a citizen who may wish to make a statement to the board
 - A contact for accommodations to persons with disabilities under the Americans with Disabilities Act.
- All meetings shall have the advance approval and be attended by the DFO and/or DDFO. **FACA § 10(e)&(f); CFR § 102-3.120(a)&(c)**

In accordance with the Manual,

- Local DOE operations, field, or area offices must ensure that *Federal Register* notices are sent to the Office of Public and Intergovernmental Accountability in timely manner. Whenever possible, 30 days notice will be given. **Manual § V.3.c**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- *Federal Register* notices also include the locations where meeting minutes will be made available to the public, an individual to contact to acquire copies of the minutes, and information on the public comment period.
- Local DOE operations, field, or area offices ensure that timely notification is provided to the Office of Public and Intergovernmental Accountability in the event a public meeting has been cancelled following the original submission of the *Federal Register* notice.

3. *Minutes and Records*

In accordance with FACA and the CFR,

- Detailed minutes of each advisory committee meeting shall be kept on file. **FACA §10(c), CFR § 102-3.165**
 - Minutes must include
 - The name of the board
 - The meeting time, date, and place

- A list of meeting attendees including members of the public presenting oral and/or written statements, and an estimated number of other public present
 - An accurate description of each matter discussed and the resolution, if any, made by the board
 - Copies of all reports received, issued, and approved by the board
 - Copies of each recommendation drafted or approved by the board.
- The DDFO must ensure that the meeting minutes are certified by the Chair. **CFR § 102-3.165**
- The local boards and the field offices must maintain in a single location, copies of records, reports, minutes, transcripts, memoranda, drafts, working papers, and other documents for public inspection. **FACA § 10(b); CFR § 102-3.170**
- The field offices and the DDFOs must keep records to fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. **FACA § 12(a); CFR § 102-3.175(b)**
 - The multi-site structure of the EM SSAB necessitates that fiscal records be developed and maintained at local sites.

In accordance with DOE Manual 515.1-1,

- The minutes must include names of any member who may have recused themselves from a meeting or a portion of it and their reason(s) for doing so. **Manual § V.5.a.(2)**
- Board minutes must be posted on the Internet within 45 days after the meeting, and the EM SSAB DFO and the Deputy Committee Management Officer at U.S. DOE must be advised as to the posting and its URL.

To enhance compliance with FACA, CFR and DOE policy, EM requires that the following electronic submissions be made:

- One copy of all local board reports, minutes, transcripts (where applicable), recommendations and responses, self-evaluations, and EM SSAB work plans to the local reading room and/or other appropriate information resource center(s).
- One copy of each EM SSAB recommendation and the EM response to the DFO at DOE-HQ for files.
- One copy of minutes, annual reports, self-evaluations, and work plans to the DFO at DOE-HQ for files.

4. *Annual Comprehensive Review to Headquarters*

The DFO is required each year to provide to the EM Assistant Secretary an Annual Comprehensive Review (formerly Annual Report) on the activities of the EM SSAB during the preceding fiscal year. **Manual VII. 3(b)**. Accordingly, local EM SSAB DDFOs and Federal Coordinators must submit each local board's data to the DFO within one month of the close of each fiscal year.

In accordance with FACA and the CFR,

- An informational report from DOE is provided to the GSA at the close of each fiscal year. **CFR § 102.105(e) and 102-3.175(b).**
 - The report includes
 - The activities, status, and changes in EM SSAB composition during the fiscal year
 - The dates of EM SSAB meetings and names and occupations of its members
 - The estimated annual cost to DOE to fund, service, and supply the EM SSAB
 - Any reports and recommendations submitted by the EM SSAB.

In accordance with the DOE Manual 515.1-1,

- The CMO will issue instructions to the DFO regarding reporting requirements, procedures, and submission dates. The CMO will then be responsible for coordinating the Annual Comprehensive Review. **Manual § VII.3.b.2**
- The DFO, and subsequently the DDFO, is responsible for accurately and completely filling out individual committee reports by the due date assigned by the CMO. **Manual § VII.3.b.2**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- The Annual Comprehensive Review include the following data:
 - Data from the previous fiscal year, to include
 - The total number of reports (including annual reports, recommendation reports, letter reports, etc), the titles of each report or recommendation, and month/day/year they were generated
 - The total number and dates of meetings held
 - The names of board members and the community or entity they represent (including current members and those who served on the board at any time during the year, but are no longer there)
 - The total federal support years (number of full-time employees that work on EM SSAB issues throughout the fiscal year – i.e., if persons spent half of their working time on EM SSAB issues, they would count as 0.5 full-time employees, whereas if persons spent all their time on EM SSAB issues they would count as 1.0 full-time employees).
 - Data required from both the previous fiscal year and the next year's projections, to include
 - Personnel payments to non-federal members (total dollar amount)
 - Personnel payments to federal members
 - Personnel payments to federal staff

- Personnel payments to non-member consultants
- Travel and per diem to non-federal members
- Travel and per diem to federal members
- Travel and per diem to federal staff
- Travel and per diem to non-member consultants
- Other (rent, user charges, graphics printing, mail, etc)
- The total dollar amount of all costs.
- Information on the impact the board has had on DOE activities during the past fiscal year is required (e.g., the Hanford Advisory Board recommended that the Department reduce indirect costs, saving more than \$200 million; the Nevada Site-Specific Advisory Board supported the decision to apply for a RCRA Part B permit that will enable the site to accept mixed low-level waste from throughout the DOE complex, etc.).

B. Board Recommendations and DOE Responses

FACA, the CFR, and the DOE Manual do not provide specific parameters for Board recommendations or DOE responses. The CFR does suggest that EM continually seek feedback from the Board members and the public regarding the effectiveness of the Board's activities. At regular intervals, EM should communicate to the Board members how their advice has affected DOE programs and decision-making. **CFR § 102-3.95(e)**

To enhance compliance with FACA, CFR, and DOE policy, EM requires that

- In general, and in a timely fashion, DOE field offices should reply to site-specific recommendations. The Assistant Secretary for EM is responsible for replying to recommendations regarding cross-site or national issues. Responses should be in writing. A copy of any recommendation and response should be sent to the Office of Public and Intergovernmental Accountability.

DOE written responses should include the following:

- A clear statement of acceptance or rejection of the recommendation, in whole or in part;
- If the recommendation is accepted in whole or in part, a statement about how the changes will be implemented and in what time frame;
- If the recommendation is rejected in whole or in part, a substantive reason for the decision, as well as possible alternatives for addressing the concerns or issues raised in the recommendation; and
- If unresolved issues still remain, DOE may indicate this in written correspondence to the local EM SSAB with the goal of establishing (or continuing) a near-term dialogue.

C. Membership

1. *Membership Composition*

It is DOE policy that the Board membership provides for ethnic and gender diversity. In this regard, local boards must make vigorous outreach efforts and be able to demonstrate that they have attempted to recruit members from all segments of their communities. In order to comply with both FACA and departmental policies regarding balance and diversity requirements of advisory committees, the DOE Offices of EM, Management (MA), and GC closely scrutinize Board membership.

In accordance with FACA and the CFR,

- The Board must be “fairly balanced in terms of the points of view represented and functions to be performed.” **CFR § 102-3.60(b)(3)**

In accordance with the DOE Manual 515.1-1,

- To the extent possible, local board membership should reflect a representative diversity of viewpoints in the affected community and region and include primarily people who are directly affected by DOE site cleanup activities. **Manual § IV. 3**
- In selecting membership nominees, attention must be given to the conflict of interest considerations discussed in section IV of the guidance. Pursuant to DOE policy, employees of Management and Operating (M&O) and Management and Integration (M&I) DOE contractors may be appointed only when necessary to achieve balance or diversity on a local board. Such individuals must receive a written waiver from the DOE Committee Management Officer. **Manual § IV. 3.b**

To enhance compliance with FACA, CFR and DOE policy, EM prefers that

- Statistics from the U.S. Census Bureau serve as guidance for comparing board membership with gender and ethnic diversity in the corresponding community, but statistics will not justify failure to make adequate outreach efforts.
- Board members are typically drawn from stakeholder groups and organizations, including but not limited to
 - Residence in an area potentially affected by EM cleanup activities
 - Local governments
 - Tribal governments
 - Environmental organizations
 - Labor organizations
 - Universities and colleges (including minority institutions)
 - Tribal, Hispanic and other Minority organizations
 - Women’s groups

- Business groups
 - Civic/religious groups.
- Federal, state, tribal and local government officials are encouraged to recommend prospective members for the local EM SSAB to EM.
- Officials from DOE, the Environmental Protection Agency, and state, local and Tribal governments may serve as liaisons to the local boards. Liaisons may attend and participate in board meetings, but do not have voting privileges.
- Nomination and appointment of members shall be accomplished using procedures designed to ensure a diverse board membership and a balance of representative viewpoints.

2. Member Appointment

In accordance with FACA and the CFR,

- Membership terms are at the sole discretion of the appointing or inviting authority. **CFR § 102-3.130(a)**

In accordance with the DOE Manual 515.1-1,

- Appointments should be staggered. **Manual § IV.2.e.1**
- GC and the CMO will review nominations to the Board to ensure compliance with FACA requirements, as well as GSA and departmental requirements. **Manual § I.6.g, IV.2.b**
- EM must include the following information in member nomination packages (see **Manual § IV. 5.a**):
 - A memorandum from the field manager to the Assistant Secretary for EM recommending the nominees for membership;
 - A copy of the current charter;
 - Up-to-date biographies for all proposed and continuing members;
 - The names and companies of DOE M&O and M&I contractor employees requiring letters of exception to serve on the Board;
 - The names and companies of other DOE contractor employees or consultants proposed to serve on the Board;
 - Outreach efforts conducted to attract new members in the current membership drive;
 - Completed membership criteria matrices for proposed and current members; and
 - Letters of invitation to each member for signature by the Assistant Secretary.
- The Secretary of Energy has delegated authority for EM SSAB member appointments and reappointments to the Assistant Secretary for EM. In limited cases (specifically, for interim appointments to replace members who are not serving out their terms) and with prior coordination with the EM Office of Public and Intergovernmental Accountability and the DOE Office of General Counsel, the authority to appoint has been delegated to the Field. (See § III.c.3. below.)

- Appointments and reappointments require concurrence from the Office of Public and Intergovernmental Accountability, GC, MA, and the CMO. **Manual § IV.5.b**
- DOE retains appointment and removal authority. **Manual § IV.2.g**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- DOE field offices provide electronically to the DFO a draft package, no less than 18 weeks in advance of the expiration dates for reappointments or desired appointment dates for new appointments.
- DOE field offices provide a formal package, no less than 16 weeks in advance of the expiration dates for reappointments or desired appointment dates for new appointments. This formal package should be submitted electronically to the DOE headquarters' designee via the EM Correspondence Center.
- The DFO shall oversee the production of all other aspects of the membership package.

3. *Delegated Authority to the Field for Member Appointments*

To enhance compliance with FACA, CFR and DOE policy, the Assistant Secretary for EM has delegated limited authority to appoint new EM SSAB members to the DOE operations, field and area offices, with prior coordination with the Office of Public and Intergovernmental Accountability and the Office of General Counsel.

- The field can replace members who have resigned with time remaining in their membership terms under the following terms and conditions:
 - The appointments can be made *only* for the remainder of the previous member's term
 - No more than 20% of members can be appointed by any one site in any given calendar year
 - When appointing new members under this delegated authority, DOE field office managers must comply with FACA, GSA and DOE regulations, including appropriate conflict-of-interest restrictions.
- The Office of Public and Intergovernmental Accountability must be advised of all such appointments, and all relevant information must be provided (i.e., name, contact information, biography, and matrix information) to it in a timely manner.

4. *Removal and Resignation of Members*

DOE operations, field, and area offices may recommend to the Assistant Secretary that local board members be removed from the EM SSAB as deemed necessary in order to carry out the mission of the EM SSAB. Members serve at the pleasure of the Assistant Secretary for EM. (See section II.D of this guidance for EM SSAB member roles and responsibilities.)

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- Members who wish to resign from the Board are requested to submit a letter to the Assistant Secretary for EM, with copies to the DDFO, the local EM SSAB Chair, and the Office of Public and Intergovernmental Accountability.

D. Community Education and Member Recruitment

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- Field office staff ensures that the community is aware of and engaged in local board activities.
- DDFOs and Federal Coordinators ensure that board activities are appropriately coordinated with other field office public involvement activities.
- The board is reflective of the gender, minority and ethnic diversity in the community from which the board draws its members. Recruitment efforts should be targeted to achieve such diversity.
- Community education and membership recruitment efforts may include, but are not limited to, targeted mailings, speaking engagements, recruiting tables at public events, notices in newsletters, press releases, advertisements in local and regional papers, advertisements on websites, and radio and television advertisements.

IV. Conflict of Interest

Representative members are not subject to the Federal conflict of interest statutes and regulations. As a matter of policy, DOE requires that representative members be recused from working on matters before the advisory committee in which they have a direct financial interest. DOE also requires that members not use their position on the Board for their private gain or for the gain of others and not to accept gifts given because of a member's position on the Board. The purpose of such policy is to maintain the integrity of the Board's work. Generally, employees of a non-M&O or a non-M&I contractor do not have an inherent or inevitable conflict of interest that prohibits them from serving on the EM SSAB. However, certain EM prime contractors may create a conflict of interest for their employee members. The DFO, DDFO, and Federal Coordinator must be mindful that if a matter concerning a contractor in which a member has a direct financial interest arises, recusal from the discussion and voting would be required as this constitutes a conflict of interest.

Appointing or reappointing local board members, such as DOE M&O and M&I contractor employees, who may reasonably be expected to have a potential conflict of interest regarding certain issues that might be considered by the board, is permissible when necessary to achieve balance or diversity on a local board. In the event of such an appointment, the CMO must sign a letter of exception allowing this individual to serve on the board. A statement that thoroughly describes the individual's potential conflict of

interest and explains why this individual's appointment is deemed essential must be included in the memorandum from the operations office manager in the board's membership package.

If such a member is appointed, the local site DDFO is required to take special care to ensure that the appointment of this member will not result in a conflict of interest or appearance of such conflict which can lead to actual bias, or perception of possible bias, in the review of DOE activities or projects. This individual will be informed of the general conflict of interest provisions and asked to disclose the potential or actual conflict of interest and recuse him/herself from voting on issues that would have a direct and predictable effect on his/her employing organization, represented group (s) or other entities with which he/she is associated or in which he/she has a financial, professional, or private interest or will receive either tangible or intangible benefits. All members should advise the local board chair and the DDFO of a potential or actual conflict in advance of any discussion of such a topic and, at the time of the discussion, make their potential or actual conflict of interest a matter of record. In the event of a potential or actual conflict of interest, a statement is required to be included in the local site board minutes detailing the conflict, and the action taken to remove it. In the case of a potential or actual conflict of interest arising during a subcommittee meeting, the individual with the conflict will report it to the subcommittee chair, who will report it to the DDFO.

The Assistant General Counsel for General Law reviews new member qualifications for conflict-of-interest issues and proposed mid-term replacements (section III.C.3 of the guidance). If a proposed mid-term appointment exhibits a potential conflict or conflict of interest, the local DDFO must provide the field general counsel with any relevant materials and consult with the Office of Public and Intergovernmental Accountability and the Office of the Assistant General Counsel for General Law if necessary.

All Board members must adhere to the following general conflict-of-interest requirements:

- A member shall refrain from any use of his or her membership, which is, or gives the appearance of being, motivated by the desire for private, professional, or financial gain;
- A member shall not use either directly or indirectly for private or professional gain for him/herself or for his/her represented group any inside information obtained as a result of advisory committee service;
- A member shall not use his or her position in any way to coerce or give the appearance of coercing another individual to provide a financial benefit to the member with the conflict of interest or any person with whom that member has family, business, or financial relationships;
- A member shall recuse him or herself from decisions and discussions related to real or perceived conflicts of interest, act impartially, and avoid the appearance of impropriety;
- A member shall not create situations that may result in conflicts of interest or questions regarding the objectivity and credibility of the Board process; and

- A member should seek immediate guidance, beginning with the local DDFO, if he or she is offered anything of value such as a gift, gratuity, loan, or favor in connection with advisory committee service.

In addition, for the potential conflict of interest situation where an EM SSAB Board member is a party in a legal action against the Department, or where a Board member is a member of an organization that is a party in a legal action, the individual's continued membership on the Board will be considered by the DFO on a case by case basis, in consultation with both the Office of General Counsel at DOE HQ and the Office of Chief Counsel at the DOE operations, field, or site office.

V. Funding and Other Support

In 1997, funding of the local boards under the EM SSAB became the responsibility of the DOE field offices. Accordingly, DOE field office managers provide adequate funding to local boards to enable them to operate efficiently and effectively.

In accordance with FACA and the CFR,

- DOE will provide adequate support services as necessary. **FACA § 12(b); CFR § 102-3.95(a)**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- EM SSAB procurement mechanisms will be structured and managed to ensure proper stewardship of this stakeholder activity and to increase accountability and visibility of resources provided and subsequently used. The three options for funding administrative support for the EM SSAB are
 - Non-Profit Organization (Section 501(c) of the IRS Code)
 - Direct DOE Federal Management and Support
 - Support Services Contract with a Section 8(a) Small Business.

To enhance compliance with FACA, CFR and DOE policy, EM requires that:

- Adequate support services include, but are not limited to
 - Office space
 - Necessary supplies and equipment
 - Federal staff support
 - Coordination of meetings and agendas
 - Coaching for members and presenters
 - Support monitoring emerging issues and activities
 - Funding for an independent facilitator if necessary to ensure that Board members set and reach objectives, maintain focus, work as a team, strive for consensus, and operate at maximum efficiency and
 - Funding for independent technical reviews of key issues or ongoing technical assistance to the board. However, field offices should ensure

that technical assistance funding is used to complement, rather than duplicate, the technical programs of DOE and its regulating agencies.

- Field office managers, through the DDFO and Federal Coordinator, must work closely and cooperatively with their local EM SSAB to develop a budget that is consistent with the Board's mission, scope, and annual work plan.
- After the work plan is approved by the DDFO, the DOE operations, field or area office should provide sufficient funding to carry out the work plan.
- Field managers should report the level of funding, including technical assistance funding, to the Office of Public and Intergovernmental Accountability in the form of an Annual Report of all EM SSAB activities at the end of each fiscal year.

VI. Compensation and Travel Expenses

A. Board Service Is Not Compensable

The DOE Manual § IV.4.d provides that special Government employees (SGEs) serving on advisory committees may be compensated for government service. However, individuals serving on the EM SSAB are not SGEs and are not eligible for compensation. Individuals who serve on the EM SSAB are appointed on the basis of their ability to represent local interests and concerns, physical proximity to the site, and ability to donate adequate time to board activities. Members may also be representatives from local governmental; tribal nations; environmental, civic, and religious groups; labor organizations; and academia. EM SSAB members serve in a representational capacity and as such, are not eligible for compensation.

B. Travel Reimbursements

FACA and the CFR provide that advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, "may be allowed travel expenses, including per diem in lieu of subsistence" to the same extent that is allowed for Federal employees. FACA § 7(d)(1)(B); CFR 102-3.130(k). Moreover, the payment of additional travel expenses may be authorized to provide reasonable accommodation for a board member with a disability or special physical need, provided that the member's disability or special physical need is clearly visible and discernible or substantiated in writing by a competent medical authority, in accordance with Federal Travel Regulations. CFR § 301-13.2 and 102-3.130(l)

In accordance with the DOE Manual 515.1-1,

- (Coverage) Members will be reimbursed for travel expenses and per diem only when they are on committee business while away from their residence or regular places of business. Manual § VI.3.a
- (Tickets) Generally, DOE will provide members with a Government fare common carrier ticket. If DOE is unable to provide a member with a common carrier ticket, the member may use personal means to purchase transportation, but when costs

exceed \$100, a senior DOE official is required to review the circumstances of the purchase before reimbursement, which may not exceed the Government authorized fare. **Manual § VI. 3.b**

- (Major travel to and from meetings) Airfare is limited to the regular, round trip, coach-class fare or, when available, Government contract airlines between the member's residence or regular place of business and the meeting site. Train travel is authorized when it is advantageous to the Government. A member may also travel to and from the meeting in his/her private vehicle, and DOE will reimburse the member at the mileage allowance rate and for fees. **Manual § VI.3.c**
- DOE will reimburse members for lodging, meals, and incidental subsistence expenses associated with travel for meetings using a per diem allowance (i.e., a daily payment instead of reimbursement for actual expenses). **Manual § VI.3.e**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- Members with questions on travel requirements or reimbursements should consult with the local field office prior to commencing travel or completing the reimbursement voucher.
- In addition, DDFOs and Federal Coordinators are responsible for determining, after consultation with appropriate offices and/or individual at their field sites, whether it is appropriate to fund official travel for non-members to specific EM SSAB-related activities, and, if so, how it should be funded.
- Funding and compensation for travel is considered part of the annual budget allocation for the local board.

VII. Board Termination

In accordance with FACA and the CFR,

- All local boards operate under the EM SSAB Charter, which is renewed biennially. If that charter is not renewed, all local boards will terminate automatically. **FACA § 14, CFR § 102-3.55(a)**
- Pursuant to **CFR 102-3.30(b)**, the EM SSAB and/or local boards terminate when
 - The stated objectives of the board have been accomplished;
 - The subject matter of work of the board has become obsolete by the passing of time or the assumption of the board's functions by another entity; and/or
 - DOE determines that the cost of operation is excessive in relation to the benefits accruing to the federal Government.

In accordance with the Manual,

- Criteria for termination include the criteria in FACA and the CFR. The decision to terminate a committee may include a determination that the advice is no longer essential to EM or is no longer in the public interest; that the committee has not

been staffed for one year; or that the committee has not met for a two year period.

Manual § III.8.a

- After a decision to terminate the local board is made, the field office manager should send a memorandum to the Assistant Secretary requesting that the Assistant Secretary terminate the board. The memorandum should note the reasons for the board's suggested termination, as well as its accomplishments over the years.
- Letters of appreciation from the Assistant Secretary to the Board members for services rendered must be included in the termination package. **Manual § III.8.b.1**

To enhance compliance with FACA, CFR and DOE policy, EM requires that

- Once the EM mission is completed at a site where there is a local board under the EM SSAB Charter, the local board will be terminated upon physical and/or regulatory closure.
- If the chartered purpose for a local board cannot be fulfilled, the DDFO, in consultation with DOE headquarters and members of the local EM SSAB, will begin establishing a timetable for disestablishing the local board. The resulting termination package will be sent through the same concurrence chain as a member appointment package.

VIII. Acronyms & Definitions

CFO Chief Financial Officer

CFR Code of Federal Regulations

CMO Committee Management Officer

DDFO Deputy Designated Federal Officer

DFO Designated Federal Officer

DOE U.S. Department of Energy

EM Office of Environmental Management

EM SSAB Environmental Management Site-Specific Advisory Board

EM-1 Assistant Secretary for EM

EPA Environmental Protection Agency

FACA Federal Advisory Committee Act

FTR Federal Travel Regulations

GC General Counsel

GSA General Services Administration

MA Office of Management

NE Office of Nuclear Energy

NNSA National Nuclear Security Administration

MA Office of Management and Administration

OMB Office of Management and Budget

SC Office of Science

Advisory Committee: Any committee, board, council, etc. established by statute, or established or utilized by the President or Federal agency in order to obtain advice for the President, agencies or officers of the federal Government. **FACA § 3(2)**

EM SSAB Charter: The governing document for the EM SSAB, including all local boards, which is renewed biannually and approved by the CMO.

DOE Field Office(s): Any DOE area, field, and site offices, and/or business centers located outside the Washington, D.C. area.

Liaisons: The Assistant Secretary or DOE Field Managers may request that other federal, state, or tribal organizations name liaisons to the EM SSAB to provide information and represent their agency's interests at local meetings. Liaisons may participate in discussions, but can not vote and are not included in a quorum.

Manual: "Advisory Committee Management Program" Manual, DOE M 515.1-1, 10/22/07

IX. Applicable Law, Regulations, Orders and Policies

Statutes: Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1997) (original version at Pub. L. No. 92-463, 86 Stat. 770 (1972))
<http://www.gsa.gov/portal/content/104514>

Regulations: Federal Advisory Committee Management, 41 CFR Part 102-3. See also: 52 Fed. Reg. 45926 (1987). http://www.access.gpo.gov/nara/cfr/waisidx_99/41cfr105-54_99.html

Specific Agency Regulations: Office of Human Resources and Administration, U.S. Department of Energy (DOE), Pub. No. DOE M 515.1-1, *Advisory Committee Management Program* (2007) (Manual).
<http://www.directives.doe.gov/pdfs/doe/doetext/neword/515/m5151-1.pdf>

Charter: Office of Environmental Management, Office of Intergovernmental and Public Accountability, U.S. Department of Energy Amended Charter: Environmental Management Site-Specific Advisory Board (2008).
<http://www.em.doe.gov/pdfs/2008%20EM%20SSAB%20Charter%20Final%20041108.pdf>

Policy: Department of Energy Public Participation and Community Relations Policy (DOE P 141.2) (May 2, 2003)
<http://www.directives.doe.gov/pdfs/doe/doetext/neword/141/p1412.pdf>

Delegations:

- Department of Energy Delegation Order No. 00-002.00B to the Under Secretary for Energy, Science, and Environment (October 4, 2004).

- http://www.management.energy.gov/documents/00-002_00B.pdf
- Department of Energy Re-delegation Order No. 00-002.03B to the Assistant Secretary for Environmental Management (January 29, 2007).
- http://www.management.energy.gov/documents/00-002_03B.pdf