



U.S. DEPARTMENT OF
ENERGY

EM SSAB Members and the Federal Advisory Committee Act

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EM *Environmental Management*

safety ❖ performance ❖ cleanup ❖ closure



EM SSAB members

- are among ~ 45,000 members of ~ 900 federal advisory committees
- serve on one of 257 agency-authorized committees and 292 non-scientific committees





Federal Advisory Board Trivia

- First federal government advisory board?
- Longest running federal advisory board?
- Agency with the greatest number of advisory committees?





Trivia (cont.)

- How many DOE advisory boards?
- How many EM advisory boards?



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Why FACA Matters

- Congress
- Executive Branch (GSA, GAO, DOE)
- The integrity of advisory committees depends, in part, on the commitment of its members to operate within the law.





Presentation Overview

1. What is FACA—and why is it a law?
2. Practical Aspects of FACA:
 - Responsibilities and authority given DOE for the EM SSAB
3. What Members Need to Know.
4. HQ Views on EM SSAB





Federal Advisory Committee Act

Public Law 92-463, effective January 5, 1973. Requires the establishment of a Committee Management Secretariat to provide Government-wide oversight of advisory committees. In addition, the Act establishes a framework covering the creation, management, operation, and termination of all advisory committees reporting to the Executive Branch.





FACA enacted for 2 basic purposes:

1. To Enhance Public Accountability of Advisory Committees.
 - To control the undue influence of special interests by balancing committee membership, and to ensure that public access to committee deliberations is maximized.





FACA enacted for 2 basic purposes:

2. To Reduce Wasteful Expenditures on Advisory Committees.

- To improve the overall management of committee activities by establishing a set of management controls.
 - Monitor Federal advisory committee costs;
 - Identify and eliminate unproductive and/or unnecessary committees; and
 - Provide for an annual report of committee activities and accomplishments to the Congress.





Federal Advisory Committee Act

- Ensures public input on government decisions
- Prevents domination by special interests
- Provides for open discussions of policy





Federal advisory committees are established...

- “(a) **Required by statute.** By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);
- (b) **Presidential authority.** By Executive order of the President or other Presidential directive (*non-discretionary*);
- (c) **Authorized by statute.** By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or
- (d) **Agency authority.** By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).”





Major FACA Requirements

- Agencies must design uniform administrative guidance and management reports and controls
- Committees must be chartered (renewal 2 years)
- Meetings must be open to the public (w/exceptions) and allow public comment
- Detailed meeting minutes must be kept
- Committees will be terminated when
 - Stated objectives accomplished
 - Their work has become obsolete
 - Cost of operations is excessive in relation to benefits





Major FACA Requirements

Advisory committee memberships are to be fairly balanced in terms of the points of view represented and the functions to be performed.





FACA/41 CFR

**DOE Manual
515.1-1**

**EM SSAB
Charter**

**EM SSAB
Guidance**

Site By-laws



GSA Code of Federal Regulations CFR 41 § 102-3

Fairly balanced membership. The agency plan to attain balanced membership ...will consider a cross-section of those directly affected, interested and qualified, as appropriate to the nature and functions of the advisory committee.





Factors to be Considered for Balanced Membership

- “A cross-section of those directly affected, interested and qualified, as appropriate to the nature and functions of the advisory committee”
- Committee’s mission—points of view for the function to be performed
- Geographic, ethnic, social, economic or scientific impact of the advisory committee’s recommendations





DOE Advisory Committee Management Manual

- Selections and appointment by Secretary and designees
- Individuals selected based on potential contributions to committee
- Members serve without compensation
- Membership must represent a balance of interests





DOE Manual and EM SSAB Guidance

- Affected people
- Statistics from the U.S. Census Bureau
- A range of interests, determined by identification with local and Tribal governments, community organizations, other organizations around specific interests





Other Membership Guidance

- Key communities [NRC, 2008, p. 194]
- GAO Report on FACA: Issues Related to the Independence and Balance of Advisory Committees (2004): Members should not be appointed as members purely on the basis of their expertise





Member Selection Process

- Site Recruitment through meetings, newspapers and other media, word-of-mouth, special events
- Nominations from the public, the advisory board or independent group
- Site chooses nominations to forwarded to DOE-EM HQ
- Reviewed by EM 3.2, Committee Management Office, Executive Secretariat, General Counsel, Assistant Secretary, Deputy Secretary and others
- Appointment letters sent





Advisory Board Member Responsibilities

- Attend regular meetings and receive training
- Review and comment on EM and other documents that come before the Board, and submit timely recommendations to EM
- Work collaboratively and respectfully with other Board members and liaisons in the best interests of both the Board and the public
- Serve on at least one Committee or Task Force during any given six month period as appointed by the Chair; and
- Abide by the terms and conditions of the EM SSAB Charter, Guidance, operating procedures and bylaws





Advisory Board Member Responsibilities

Declare any potential conflict of interest.

- DOE requires that members be recused from working on matters before the advisory committee in which they have a direct financial interest.
- Members cannot use their position on the Board for their private gain or for the private gain of others and cannot accept gifts given because of a member's position on the board.
- Employees of contractors do not have an inherent or inevitable conflict of interest that prohibits them from serving on the Board.





Advisory Board Member Responsibilities

- What to do if press calls
- Email exchange guidance
- Subcommittee, including executive committee, guidance
- What to do if a member is approached with entertainment and other offers from contractors or other special interests





DOE-EM Responsibilities

- Advisory committees must be adequately funded by the appropriate agency
- Advisory committee members may be subject to ethics and conflict-of-interest statutes, regulations and other rules
- Agencies should practice openness and inclusiveness
- Agencies should continually seek feedback from advisory committee members, regularly communicate how advice has affected Agency programs and decision-making.
- Ensure FACA compliance
- Ensure FACs operate under explicit management rules





Expert or Representative?

- “Representatives may speak for, among others, any recognizable group of persons...”
- “...chosen to present the views of a private interest, as opposed to a field of knowledge or expertise.”
- CVs best for “assessing expertise [based on] education, employment experience, professional memberships, service on boards or journals, publications and presentations.” GAO to Congress, 2004





Expert or Representative?

- Legal: Expert[s] are persons who are qualified, either by actual experience or by careful study, to form definite opinions with respect to a division of science, a branch of art, or a department of trade.”



HQ Views on the EM SSAB and Local Boards

- Advice is highly valued
- EM SSAB local boards are a hub for community input
- Evaluation of and communication on effectiveness





3 Requests from EM 1

- Budget Priorities
- Waste Disposition Preferences
- Improving Public Participation





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