



U.S. DEPARTMENT OF
ENERGY

FACA and EM SSAB Membership

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EM *Environmental Management*

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www.em.doe.gov

An EM SSAB member

- serves on one of ~993 chartered federal advisory committees (FAC)
- is one of ~ 49,572 current FAC members
- is a member of one of 257 agency-authorized committees and 292 non-scientific committees



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.



Federal Advisory Committee Act was designed to fulfill two basic purposes:

➤ **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.

➤ **To Reduce Wasteful Expenditures on Advisory Committees.**

To improve the overall management of committee activities by establishing a set of management controls. These controls were designed to, among other objectives:

- 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



FACA Big Picture

- Defines an advisory committee:
 - ❑ “Any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations....” [41 CFR § 102-3.25; App. A-I, -II, & -III to Subpart A]
 - ❑ But not *subcommittees*... [41 CFR §§ 102-3.25, 3.35 & 3.145; & p. 37729]
 - ❑ Other committees and groups not covered under FACA or GSA’s Final Rule [41 CFR § 102-3.40]



FACA Big Picture

- Provides standards that govern the establishment, operation, administration and termination of Federal advisory committees
- Federal advisory committees exist to advise and recommend — not to decide.
- FACA, similar to NEPA, was not intended to be a public participation statute, *per se*



Directives

➤ **Executive Order 12838**

Effective February 10, 1993. Directs the Heads of all Departments and agencies to reduce the number of advisory committees "not required by statute" by one-third. Requires that the establishment of all new discretionary advisory committees be approved by the Director of the Office of Management and Budget (OMB), consistent with identified needs relating to national security, health or safety, or similar national interests.

➤ **Vice Presidential Memorandum, dated June 28, 1994**

Expands the President's policy of controlling the number of Federal advisory committees by requiring Departments and agencies to: (a) work with the Congress to eliminate unneeded committees mandated by statute; (b) generally not support proposals to create new committees through legislation; and (c) reduce committee costs by at least five percent.



Federal Advisory Committee Act

- with Open Government Laws (FOIA, Sunshine Act)
 - ❑ Ensures public input on gov't decisions
 - ❑ Prevents domination by special interests
 - ❑ Provides for open discussions of policy



Four sources of authority for establishing an advisory committee:

- “(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*).”



FACA Major Requirements

- Agencies must design uniform administrative guidance and management reports and controls
- Committees must be chartered (renewal 2 years) and evaluated annually
- Meetings must be open to the public (with some exceptions) and allow public comment
- Designated Federal Officers must approve all meetings and agendas and attend meetings.

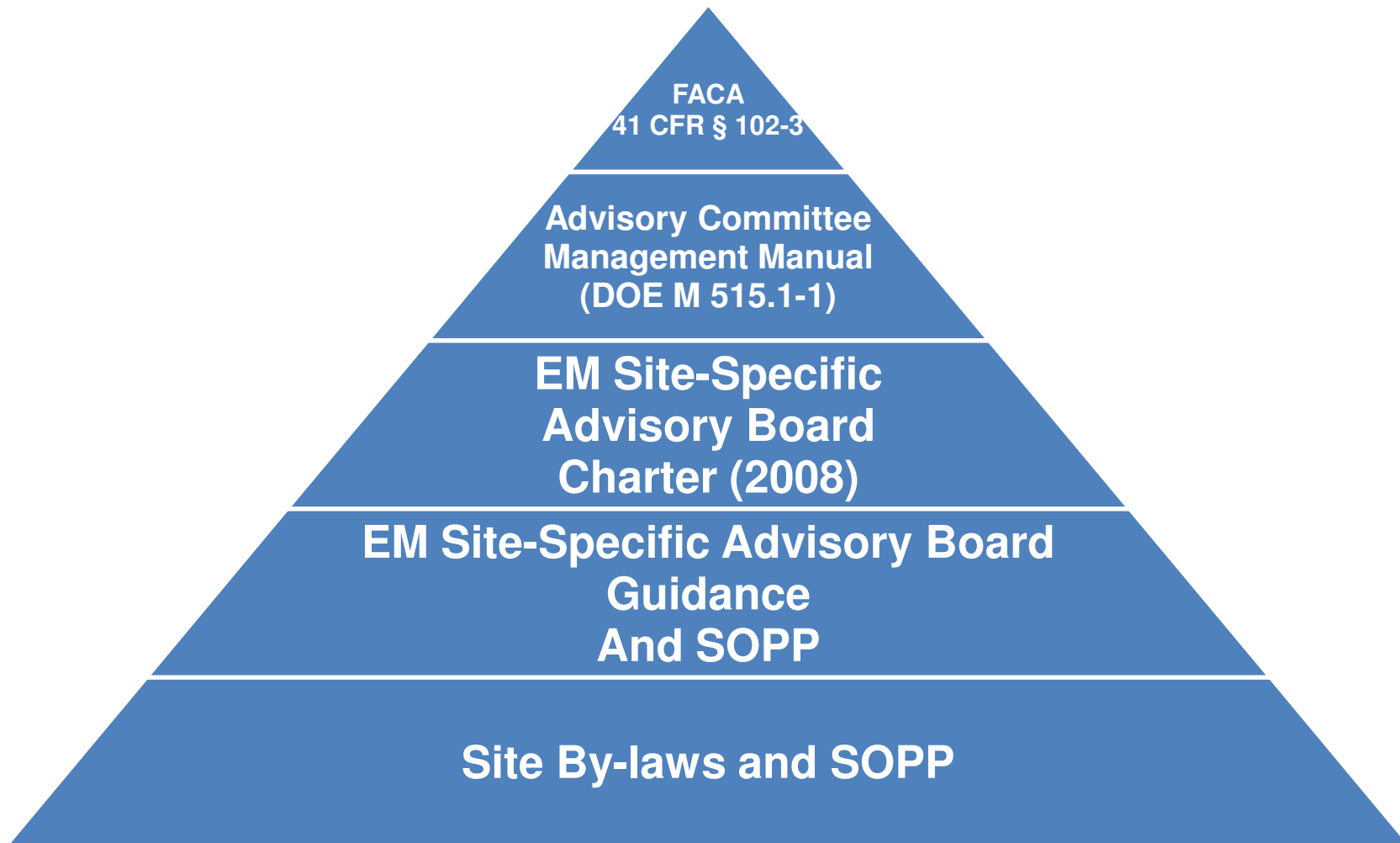


FACA Major Requirements

- Detailed meeting minutes must be kept
- Advisory committee memberships are to be **fairly balanced** in terms of the points of view represented and the functions to be performed.
- Committees will be terminated when
 - Stated objectives accomplished
 - Their work has become obsolete
 - Cost of operations is excessive in relation to benefits to Federal Government



Guidance Hierarchy



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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.



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 fair 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



Key Points for Balanced Membership

- Points of view for the function to be performed
- Numerical parity of holders of various points of view not required
- Considerations of race, gender, geographic regions, and other such data, while important, do not ensure diversity of perspectives
- No individual or group has the right to be on a committee



Selection Process

- Site recruitment through meetings, newspapers and other media, word-of-mouth, special events
- Board members, others may nominate
- Nominations forwarded to DOE-EM HQ
- Reviewed by EM-42, DOE Committee Management Office, General Counsel, Deputy Secretary, Assistant Secretary
- Appointment letters sent



Local Site Board Member Responsibilities

- Attend meetings and receive training;
- To review and comment on EM and other documents within the scope of work that come before the Board, and submit timely recommendations to EM;
- To work collaboratively and respectfully with other Board members and liaisons in the best interests of both the Board and the public;
- To serve on at least one Committee or Task Force during any given six month period as appointed by the Chair; and
- To abide by the terms and conditions of the EM SSAB Charter and operating procedures.



Local Site Board Member Responsibilities

Declare any potential conflict of interest.

- Representative members are not subject to the Federal conflict of interest statutes and regulations. BUT 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.



DOE-EM Responsibilities

- Recommendations of advisory committees should be the result of independent judgment. [FACA § 5(b)(3); 41 CFR § 102-3.105(g)]
- Advisory committees must be adequately funded by the appropriate agency. [41 CFR § 102-3.95(a)]
- Advisory committee members may be subject to ethics and conflict-of-interest statutes, regulations and other rules. [41 CFR § 102-3.105(h); Appendix A-IV. to Subpart C; and 5 CFR § 2634.903, .904 (OGE)]



DOE-EM Responsibilities

- Agencies should practice openness and seek to be as inclusive as possible. [41 CFR § 102-3.95(d)]
- Agencies should continually seek feedback from advisory committee members regarding effectiveness of advisory committee's activities; and should regularly communicate to members how their advice has affected Agency programs and decision-making. [41 CFR § 102-3.95(e)]



Conclusion

- *Committees chartered under FACA exist solely for the purpose of providing advice to the government agency or agencies specified in their charters.*



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