



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 1, 2010

MEMORANDUM

SUBJECT: Formation of the Science Advisory Board (SAB) Lead Review Panel

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The Science Advisory Board (SAB) was established pursuant to 42 U.S.C. 4265 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. EPA's Office of Pollution Prevention and Toxics (OPPT) is developing draft technical analyses that will be used to support: (a) possible revision of existing residential lead-based paint dust hazard standards, (b) the development of new lead-based paint dust hazard standards for public and commercial buildings, and (c) the development of lead-safe work practice standards for renovations of public and commercial buildings. OPPT has requested that the SAB conduct a review of these draft technical analyses.

This memorandum addresses the set of determinations that were used in forming the SAB Lead Review Panel including:

- (A) The type of review body that will be used to conduct the review, and the nature of the review;
- (B) The types of expertise needed to address the general charge;

- (C) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed;
- (D) How regulations concerning “appearance of a lack of impartiality,” pursuant to 5 C.F.R. § 2635.502 apply to members of the Panel; and
- (E) How individuals were selected for the Panel.

DETERMINATIONS:

- (A) The type of review body that will be used to conduct the review, and the nature of this review.

An ad hoc expert panel of the SAB will provide independent advice through the chartered SAB on EPA’s draft technical analyses which will be used to support the development of lead-based paint dust hazard standards and lead-safe work practice standards.

- (B) The types of expertise needed to address the general charge.

On February 5, 2010, the EPA SAB Staff Office announced in a Federal Register Notice (Volume 75, Number 24, Pages 6030 – 6031) that it was forming a panel to provide advice on EPA’s draft technical analyses which will be used to support the development of lead-based paint dust hazard standards and lead-safe work practice standards. To form the panel, the SAB Staff Office sought public nominations of nationally recognized experts with expertise in one or more of the following areas, particularly with respect to lead: dust transport, exposure assessment, epidemiology, general toxicology, neurotoxicology, pediatrics, biokinetic modeling, biostatistics, and risk assessment.

- (C) Financial conflict of interest considerations, including identification of parties who are potentially interested in or may be affected by the topic to be reviewed.

- (a) Identification of parties who are potentially interested in or may be affected by the topic to be reviewed: The principal interested and affected parties for this topic are: 1) EPA; 2) federal, state, and local government agencies, elected officials, and non-government organizations involved in the development or implementation of risk assessments or risk management decisions relating to the release of or exposure to lead; 3) research universities; 4) those involved with the interests of private or public organizations or industry sectors that may be affected by policies or regulations developed on the basis of EPA’s draft technical analyses which will be used to support the development of lead-based paint dust hazard standards and lead-safe work practice standards.

- (b) Conflict of interest considerations: For Financial Conflict of Interest (COI) issues, the basic 18 U.S.C. § 208 provision states that: “An employee is prohibited from participating

personally or substantially in an official capacity in any *particular matter* in which he, to his knowledge, or any person whose interests are imputed to him under this statute has a *financial interest*, if the particular matter will have a direct and predictable effect on that interest [emphasis added].” For a conflict of interest to be present, all elements in the above provision must be present. If an element is missing the issue does not involve a formal conflict of interest; however, the general provisions in the appearance of impartiality guidelines must still apply and need to be considered.

(i) Does the general charge to the SAB Lead Review Panel involve a particular matter? A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interest of specific people, or a discrete and identifiable class of people.” It does not refer to “...consideration or adoption of broad policy options directed to the interests of a large and diverse group of people.” [5 C.F.R. § 2640.103 (a)(1)]. A particular matter of general applicability means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties [5 C.F.R. § 2640.102(m)].

The activity of this SAB Panel will qualify as a *particular matter of general applicability* because the resulting advice will be part of a deliberation, and under certain circumstances the advice could involve the interests of a discrete and identifiable class of people but does not involve specific parties. That group of people constitutes those who are involved with private or public organizations facing regulatory decisions related to the release of or exposure to lead.

(ii) Will there be personal and substantial participation on the part of the Panel members? Participating personally means direct participation in this review. Participating substantially refers to involvement that is of significance to the matter under consideration. [5 C.F.R. § 2640.103(a)(2)]. For this review, the SAB Staff Office has determined that the *SAB Panel members will be participating personally in the matter*. Panel members will be providing the Agency with advice and recommendations on the Agency’s lead dust technical analyses, and such advice is expected to directly influence the Agency’s guidance on risk assessment and risk management decisions involving lead. *Therefore, participation in this review will also be substantial.*

(iii) Will there be a direct and predictable effect on Panel members’ financial interest? A direct effect on a participant’s financial interest exists if “...a close causal link exists between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. ...A particular matter does not have a direct effect ...if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy is not considered to have a direct effect.” [5 C.F.R. § 2640.103(a)(i)] A predictable effect exists if, “...there is an actual, as opposed to speculative, possibility that the matter will affect the financial interest.” [5 C.F.R. § 2640.103(a)(ii)]

(D) How regulations concerning “appearance of a lack of impartiality ,” pursuant to 5 C.F.R. § 2635.502, apply to members of the Panel

The Code of Federal Regulations at 5 C.F.R. § 2635.502(a) states that: “Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and has received authorization from the agency designee.” Further, § 2635.502(a)(2) states that, “An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.”

Prospective Panel members were evaluated against the 5 C.F.R. 2635(a)(2) general requirements for considering an appearance of a lack of impartiality. This evaluation included responses to EPA 3110-48 confidential financial disclosure forms and the following supplemental questions:

1. Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?
2. Have you had any current or previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.
3. Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.
4. Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

(E) How individuals were selected for the Panel

On March 25, 2010 the SAB Staff Office posted a list of 34 candidates for the Panel, identified based on their expertise and willingness to be considered for the panel. This list was accompanied by a notice inviting public comments on a list of candidates to be submitted by April 15, 2010. The SAB Staff Office received six sets of comments from the public on this list of candidates: Dr. Michael DiBartolomeis, California Department of Public Health; Mr. Richard Fatur, Colorado Department of Public Health and Environment; Mr. Gene Hook, Denver Department of Environmental Health; Dr. Erica Liebelt, American College of Medical Toxicology; Ms. Jane Malone, National Center for Healthy Housing; Dr. Jennifer Sass, Natural Resources Defense Council.

