



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

January 25, 2006

MEMORANDUM

SUBJECT: Formation of SAB's Expert Panel for the Consultation on the Water Sentinel Program and Standard Analytical Methods

FROM: Vivian A. Turner /Signed/
Designated Federal Officer, Homeland Security Advisory Committee
EPA Science Advisory Board Staff Office (1400F)

THRU: Daniel Fort /Signed/
Ethics and FACA Policy Officer
EPA Science Advisory Board (SAB) Staff Office (1400F)

TO: Vanessa T. Vu, Ph.D.
Director
EPA Science Advisory Board Staff Office (1400F)

The purpose of this memo is to document the steps taken by the EPA Science Advisory Board (SAB) Staff Office to convene an expert panel on the Agency's Water Sentinel (WS) Program and Standardized Analytical Methods (SAM). The request for this meeting was made by the Office of Water (OW) and the Office of Research and Development (ORD) for the purpose of seeking early advice from individual experts regarding the proposed approach, design, adequacy and future implementation of the WS program and the scientific soundness of SAM. The EPA WS program proposes to harness five sources of data: water quality monitoring, public health syndromic surveillance, consumer complaint tracking, enhanced security monitoring, and baseline/triggered sampling and analysis for specific contaminants. The overall charge to the SAB on the WS program is to provide early feedback on the proposed approach, design adequacy and future implementation of the WS program. Improvement of the nation's laboratory capacity and capability to respond to incidents requiring the analysis of large numbers of environmental samples in a short time was one of the key necessities identified in the effort to deter terrorism. As a result, the EPA assisted in the development of a list of standardized analytical methods to be used by all laboratories when analyzing homeland security incident samples. The overall charge to the SAB regarding standard analytical methods is to comment on the scientific soundness and adequacy of the SAM document. The specific charge questions on WS and SAM are detailed on the SAB's website (<http://www.epa.gov/sab/panels/hsacadhoc.html>).

Type of Committee and Expertise Required:

The SAB Staff Office (SABSO) has determined that the SAB Homeland Security Advisory Committee (HSAC) has the appropriate expertise to conduct this consultation. The HSAC will be

augmented with additional members having expertise in the areas of analytical methods and water security infrastructure. The additional expertise will be drawn from SAB and EPA advisory committees and individuals previously identified on the HSAC “short list.” The SABSO announced this consultation in a *Federal Register Notice* published on December 19, 2005 (see attachment A).

Identification of parties who are potentially interested in or may be affected by the activities of the SAB Homeland Security Advisory Panel:

Parties interested in the advisory activities of these particular subjects include all members of the general public, as they may all be potentially affected by acts of terrorism. Specific groups with an interest in these activities may include, but are not limited to: other Federal government agencies, state and local governments, tribal governments, drinking water and wastewater utilities and the food, transportation, building and energy industries.

Whether the overall charge involves a Particular Matter and how conflict of interest regulations apply to members of the panel:

It is likely that the work of this SAB Panel will either not qualify as a particular matter or will be a particular matter of general applicability since the committee’s work will probably not involve specific parties.

18 U.S.C. 208 provision states that:

“An employee is prohibited from participating *personally and 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 a lack of impartiality guidelines” may still apply and need to be considered.

Personal and Substantial Participation:

Participating personally means participating directly. Participating substantially refers to involvement that is of significance to the matter. [5C.F.R. 2640.103(a)(2)]. Committee members will be participating personally in matters presented to them through attendance at meetings, teleconferences and other means.

Particular Matter:

A “particular matter” refers to matters that “...will involve deliberation, decision, or action that is focused upon the interests 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 subject matter of this consultation was determined to be a particular matter of general applicability.**

Direct and Predictable Effect:

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 a speculative, possibility that the matter will affect the financial interest." [5 C.F.R. 2640.103(a) (ii)].

Appearance of a Lack of Impartiality Considerations:

The Code of Federal Regulations [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 received authorization from the agency designee."

Further, 5 C.F.R. 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. Information used in this evaluation has come from information provided by potential committee members (including, but not limited to, EPA 3110-48 confidential financial disclosure forms).

To further evaluate any potential appearance of a lack of impartiality, the following four (4) questions were posed to all prospective committee members:

- Do you know of any reason that you might be unable to provide impartial advice on the EPA's WaterSentinel program (WS) and standard analytical methods (SAM) or any reason that your impartiality in the matter might be questioned?
- Have you had any previous involvement with WS program or SAM, including authorship, collaboration with the authors, or previous review functions?
- Have you served on previous advisory panels/committees that addressed the WS program or SAM?

- Have you made any public statements (written or oral) or taken a position on the WS program or SAM?

Conflict of Interest and Appearance of a Lack of Impartiality Determination

Prospective panel members were required to submit a confidential financial disclosure form (EPA Form 3110-48, “Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency”). As a result of a review of these forms, the responses to the four questions above by the prospective members and information gathered by SAB staff, the Deputy Ethics Official of the Science Advisory Board, in consultation with the SAB Alternate Deputy Ethics Officer, has determined that there are no conflict of interest or appearance of a lack of impartiality issues for the members of this committee.

How individuals were selected for the final panel

The SAB Staff Office Director makes the final decision about who serves on the HSAC Panel during the “Panel Selection” phase. For the EPA SAB Staff Office, a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Specific criteria to be used in evaluating an individual committee member include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, for the committee as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, etc. A list of the Panel membership and their affiliation can be found in Attachment B.

Concurred,

/Signed/

January 25, 2006

Vanessa T. Vu, Ph.D.
Director
EPA Science Advisory Board Staff Office

Attachment A

Notification of a Partially Closed Consultation of the Science Advisory Board's Homeland Security Advisory Committee (HSAC)

[Federal Register: December 19, 2005 (Volume 70, Number 242)]
[Notices]
[Page 75173-75174]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr19de05-54]

ENVIRONMENTAL PROTECTION AGENCY
[FRL-8010-3]

Notification of a Partially Closed Consultation of the Science Advisory Board's Homeland Security Advisory Committee (HSAC)

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a partially closed consultation of the HSAC.

DATES: The consultation will take place on January 30-31, 2006.

ADDRESSES: This consultation will take place at the EPA's SAB Conference Center located at the Woodies Building, 1025 F Street, NW., Room 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Ms. Vivian Turner, Designated Federal Officer, by telephone: (202) 343-9697 or by e-mail at: turner.vivian@epa.gov. The SAB Mailing address is: U.S. EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB, as well as any updates concerning the consultation announced in this notice, may be found in the SAB Web site at: <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION: The EPA's Office of Water (OW) and Office of Research and Development (ORD) have requested a consultation with the SAB's Homeland Security Advisory Committee (HSAC) to obtain the individual advice of the HSAC members on the development of EPA's WaterSentinel (WS) program and Standard Analytical Methods (SAM). The WS program is being developed by the EPA in partnership with drinking water utilities and other key stakeholders in response to Homeland Security Presidential

[[Page 75174]]

Directive 9. The initiative involves designing, deploying, and evaluating a model contamination warning system for drinking water security. Another essential component is the need for standardized

analytical methods (SAM) to be used by all laboratories for responding to incidents that require rapid analysis. The EPA and other Federal parties, including the Centers for Disease Control and Prevention, the Food and Drug Administration, the Department of Homeland Security, the Federal Bureau of Investigation, the Department of Defense, the Department of Agriculture, and the U.S. Geological Survey, have evaluated the suitability of existing methodologies and selected a set of methods for use by EPA and contract laboratories to analyze environmental samples in times of national emergency. The methods are limited to chemical, biological, radiochemical, and biotoxin analytes in environmental media. The purpose of the consultation is to seek early advice from the individual members of the SAB HSAC regarding the proposed approach, design, adequacy and the future implementation for the WS program and the scientific soundness and adequacy of SAM.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator. The SAB formed the HSAC as a subcommittee of the Chartered SAB to provide independent scientific and technical advice on matters pertaining to the environmental and health consequences of terrorism in response to an EPA request. Background on the HSAC and its charge was provided in a Federal Register Notice published on July 30, 2003 ([68 FR 44761-44762](#)). For this consultation, the HSAC will be augmented with experts from other SAB committees or individuals previously identified on the HSAC ``Short List'' (see, <http://www.epa.gov/sab/panels/hsacadhoc.html>).

It is EPA's policy to follow the provisions of the Federal Advisory Committee Act (FACA) for subcommittees of its chartered advisory committees. Accordingly, in accordance with FACA, EPA has determined that a portion of the SAB's HSAC consultation on WS will be closed to the public pursuant to section 552b(c)(9)(B) of the Government in the Sunshine Act (5 U.S.C. 552b(c)(9)(B)), which allows closure of a meeting if the ``premature disclosure of [the information to be discussed]

would * * * be likely to significantly frustrate implementation of a proposed agency action * * *.''' This discussion will involve sensitive national security information relating to specific water sector vulnerabilities and emergency response tactics, including sensitive information relating to intentional contamination events. Also, EPA will present detailed findings about the emergency response capabilities of public health agencies and water utilities. The disclosure of this sensitive national security information would significantly frustrate the Agency's efforts to protect the nation's drinking water systems. Therefore, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, 10(d), I have determined that the topics identified above will concern matters that, if prematurely disclosed, would significantly frustrate implementation of proposed agency actions. Accordingly, pursuant to 5 U.S.C. 552b(c)(9)(B), this portion of the meeting will be closed to the public.

Availability of Meeting Materials: The agenda and other meeting materials for this consultation will be available prior to the meeting date on the SAB Web site: <http://www.epa.gov/sab> EPA's technical documents on the WS program may be found at: <http://www.cfpub.epa.gov/safewater/watersecurity/index.cfm>. EPA's technical documents on SAM may be found at: <http://www.epa.gov/ordnhsrc/pubs/reportSAM092905.pdf>.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible.

Oral Comments: Requests to provide oral comments must be in writing

(e-mail, fax or mail) and received by Ms. Turner no later than January 20, 2006 to reserve time on the January 30-31, 2006 meeting agenda. Opportunities for oral comments will be limited to five minutes per speaker.

Written Comments: Written comments should be received in the SAB Staff Office by January 20, 2006 so that the comments may be made available to the members of the HSAC for their consideration. Comments should be supplied to Ms. Turner at the contact information provided above, in the following formats: One hard copy (original signature optional), or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 98/2000/XP format)).

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Turner at the phone number or e-mail noted above, preferably at least 10 days prior to the consultation, to give EPA as much time as possible to process your request.

Dated: December 13, 2005.

Stephen L. Johnson,
Administrator.

[FR Doc. E5-7505 Filed 12-16-05; 8:45 am]
BILLING CODE 6560-50-P

Attachment B

**U.S. Environmental Protection Agency
EPA Science Advisory Board
Homeland Security Advisory Committee (HSAC)
Consultation on EPA's WaterSentinel Program
and
Standard Analytical Methods**

CHAIR

Dr. Baruch Fischhoff, Howard Heinz University Professor, Department of Social and Decision Sciences and Department of Engineering and Public Policy, Carnegie Mellon University, Pittsburgh, PA

SAB HSAC MEMBERS

Dr. Vicki Bier, Professor, Departments of Industrial Engineering and Engineering Physics; Director, Center for Human Performance and Risk Analysis, University of Wisconsin, Madison, WI

Dr. Mary Durfee, Associate Professor, Social Sciences Department; Assistant Provost for Academic Improvement, Michigan Technological University, Houghton, MI

Dr. David S. Ensor, Director for the Center of Aerosol Technology and Senior Fellow, Research Triangle Institute, Research Triangle Park, NC

Dr. Lynda Knobeloch, Research Scientist Manager in the Wisconsin Department of Health and Family Services' Bureau of Environmental and Occupational Health and Adjunct Professor of Molecular and Environmental Toxicology at the University of Wisconsin-Madison, Madison, WI

Dr. Paul Lioy, Deputy Director and Professor, Environmental and Occupational Health Sciences Institute, UMDNJ – Robert Wood Johnson Medical School, Piscataway, NJ; Vice Chair, Department of Environmental and Occupational Medicine, Professor, Graduate Faculty of Rutgers University: Department of Environmental Science, Public Health Program and Toxicology Program, New Brunswick, NJ

Dr. Lee D. McMullen, Chief Executive Officer and General Manager, Des Moines Water Works, Des Moines, IA

Dr. Royal J. Nadeau, President, The Eco-Strategies Group, Allamuchy, NJ

Dr. Robert E. Pitt, Cudworth Professor of Urban Water Systems and Director of Environmental Engineering Programs, Department of Civil and Environmental Engineering, University of Alabama, Tuscaloosa, AL

Dr. Robert Snyder, Associate Dean for Research and Professor of Pharmacology and Toxicology, Ernest Mario School of Pharmacy, Rutgers University, New Brunswick, NJ

Dr. Linda Stetzenbach, Director, Microbiology Division, Harry Reid Center for Environmental Studies, University of Nevada, Las Vegas, NV

Dr. Daniel C. Walsh, Adjunct Associate Professor & Senior Research Scientist, Institute for Economic and Social Research and Policy, Columbia University, New York, N.Y.

Dr. James E. Watson, Professor Emeritus, University of North Carolina, Chapel Hill, NC

Dr. Rae Zimmerman, Professor of Planning and Public Administration and Director of the Institute for Civil Infrastructure Systems, Robert F. Wagner Graduate School of Public Service, New York University, New York, NY

OTHER MEMBERS

Dr. Mark Borchardt, Research Scientist and Director of the Public Health Microbiology Laboratory, the Marshfield Clinic Research Foundation, Marshfield, WI; (also a member of the SAB Drinking Water Committee)

Dr. Christine Owen, Water Quality Assurance Officer, Tampa Bay Water, Clearwater, FL; (also a member of the SAB Drinking Water Committee)

Mr. Richard Sustich, Managing Director of The Center of Advanced Materials for Purification of Water with Systems, University of Illinois at Urbana-Champaign, Urbana, IL; (also a member of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT))

Dr. Michael Trehy, Analytical Chemist, Food and Drug Administration, Center for Drug Evaluation and Research, St. Louis, MO.

SCIENCE ADVISORY BOARD STAFF

Ms. Vivian Turner, Designated Federal Officer, 1200 Pennsylvania Avenue, NW 1400F, Washington, DC