

Summary of SAB Staff Office Public Session, June 1, 2011

Introduction

On June 1, 2011, the Science Advisory Board held a public session on public involvement in the Advisory Council on Clean Air Compliance Analysis (the Council), the Clean Air Scientific Advisory Committee (CASAC), and the Science Advisory Board (SAB). The session was announced in the Federal Register on May 11, 2011 (76 FR 27315-27316). The purpose of the session was to receive oral public input and feedback in four areas:

- the websites for the Council, CASAC and SAB;
- public involvement in nomination of experts for committees and panels;
- public involvement in meeting and report development; and
- other topics of interest to the public.

Written comments were to be submitted by June 30, 2011.

Attachment A provides the agenda for the meeting. Members of the public were asked to register in advance. Attachment B provides a list of participants from EPA, and members of the public. Participants were provided with a copy of the SAB publication *Advisory Committee Meetings and Report Development: Process for Public Involvement* (EPA-SABSO-04-001).

Opening Presentations

Dr. Vanessa Vu welcomed everyone and made brief remarks about the purpose of the session, as described above. Mr. Timothy Sherer, Associate Director of EPA's Office of Federal Advisory Committee Management and Outreach, provided an introduction to Federal Advisory Committee Act (FACA) requirements and Federal Advisory Committees at EPA. His slides are included in Attachment C. He provided many examples of how FACA requirements involve a "reasonableness" standard. One example is the FACA requirement for contemporaneous access to information to the public, so members of the public can be informed about the topic of advisory meetings. Contemporaneous access must be "reasonable;" there is no absolute requirement to be met. His office, EPA's Office of Federal Advisory Committee Management and Outreach (OFACMO), provides management support and policy for advisory committees at EPA. He noted that his office has determined that webcasting technology currently does not meet FACA requirements that the public be able to make public statements. The technology is more appropriate for disseminating information than for a public meeting.

Mr. Sherer's office is responsible for working with programs and regions to develop an annual plan for determining the assignment of topics to different advisory committees. EPA has discretion to make these assignments. Similarly, his office supports the Administrator as she appoints advisory members to Tier 1 and Tier 2 committees. OFACMO reviews membership packages for balance in terms of the points of view for the functions to be performed for those committees.

Mr. Sherer concluded his remarks by noting that FACA requires that all advice from Federal Advisory Committees be independent. There must be no inappropriate influence from a federal Agency or any special interest. In his view, managing EPA advisory committees is a “balancing act.” If requirements for Agency officials to seek FACA advice become highly complicated or if advisory committee processes involve more delays, EPA clients may seek other mechanisms for peer review or external input.

The SAB Staff Director, Dr. Vanessa Vu gave an overview presentation on public involvement in activities supported by the SAB Staff Office. Her slides are included as Attachment D. She spoke about the role of the SAB Staff Office supporting the SAB, CASAC, and Council. She described different kinds of science advice provided by the SAB and the typical lifecycle of an advisory activity, highlighting opportunities for public involvement and input. She noted current processes for public involvement and communication tools. She concluded her remarks by inviting written public comment to be provided to the SAB Staff Office by June 30, 2011.

Discussion

Members of the public provided comment on the importance of peer review by scientific advisory committees within the broader context of EPA peer review. Several participants noted that peer review by Federal Advisory Committees generally provides greater opportunities for public involvement than peer review by contractor. They asked about EPA’s current process for identifying highly influential science products and how they are peer reviewed and noted a need for public comment on this process and greater support for the publically accessible EPA Science Inventory as a repository of information about peer review. Dr. Vu noted that EPA does not currently solicit stakeholder input on topics for SAB advice. EPA’s *Peer Review Handbook* gives managers flexibility to choose different venues for peer review.

Participants provided several comments on the formation of advisory committees and panels. Dr. Vu informed them that the SAB Staff Office Director appoints experts to *ad hoc* advisory panels and to SAB standing committees when additional experts are needed to augment expertise. She noted that these decisions are documented in determination memoranda posted on the website. Several members of the public commented that the SAB Staff Office should include more industry representatives in committees and panels because their relevant expertise is often highly relevant to advisory activities. They asked the SAB Staff Office to consider whether it is interpreting ethics regulations relating to conflict of interest too narrowly when it excludes industry representatives from panels. A participant also asked the SAB Staff Office to examine the membership of CASAC panels to ensure that panelists do not have an appearance of lack of impartiality because of past involvement in developing Agency documents and that they have assessment expertise appropriate to the special nature of CASAC review.

A major topic of interest was public comment on draft charge questions. Dr. Vu noted that the public has an opportunity to provide comment on charge questions during the advisory process. Several participants suggested that it would be appropriate for EPA to take public comment on draft charge questions at an early stage in an advisory activity to make sure all critical science questions and all necessary expertise for a peer review are identified before a panel is formed. Participants noted that public comment on such charge questions would strengthen SAB

independence. A participant noted that the National Research Council's Board on Environmental Studies and Toxicology devotes time to reviewing charge questions before an advisory activity begins. EPA might consider this practice for highly influential science assessments.

Members of the public offered several criticisms of committee processes for taking oral comment and suggestions for improving it. Participants stated that SAB and CASAC members and chairs interact with the public and the Agency in different ways. Some chairs and panels are very formal, compared to others that interact with the public and the Agency in informal ways. Some panels appear to be deferential to EPA, allowing Agency representatives to sit at the table with panel or committee members and deferring to their views. Some panelists seem uncertain about whether it is allowed to ask a follow-up question of a public commenter. To address these problems, participants recommended more consistent procedures across panels. Participants recommended that SAB panels devote more attention to public comments and look for opportunities to provide advice beyond EPA's charge questions.

Participants also suggested that there should be a more flexible way to provide comment beyond than the current five-minute rule for public meetings and three-minute rule for public teleconferences. Participants acknowledged the reality of time constraints for advisory committee meetings. They suggested, however, that it would be useful for the SAB Staff Office to allocate several brief times for public comment during a meeting so that panels and committees can receive comment at times most relevant for their discussion. The SAB Staff Office should ensure, in general, adequate time to address controversial issues and take oral comment. Participants asked the SAB to develop a mechanism to ensure public comments are reviewed so that significant technical issues raised by those comments are addressed. The SAB Staff noted that public commenters should be more diligent in meeting deadlines to provide written comments so advisory members can review materials before meetings and teleconferences. Participants recommended that SAB reports should highlight relevant public comments.

Participants pointed out that the SAB should focus on scientific issues and refrain from commenting on policy issues in accordance with the recommendations of the 2009 Bipartisan Policy Center report, *Improving the Use of Science in Regulatory Policy*, in implementing practices that distinguish science advice from policy advice in its reports.

The SAB Staff Director concluded the session by thanking participants for their input. She reminded participants that the SAB Staff Office welcomes comments by June 30, 2011. She noted that she will communicate their oral and written comments to the SAB, CASAC, and Council members for their consideration and discuss the comments, as appropriate, with EPA's leadership.

Attachment A

**U.S. Environmental Protection Agency
Science Advisory Board (SAB) Staff Office
Listening Session on Public Involvement
June 1, 2011, 1-4 p.m.
Potomac Yard Conference Center
One Potomac Yard, 2777 S. Crystal Dr., Arlington, VA
Fourth Floor Conference Center South (S-4370-80)**

Agenda

1:00 p.m.	Welcome	Dr. Vanessa Vu, Director, SAB
	Introduction to Federal Advisory Committee Act Requirements and Federal Advisory Committees at EPA	Mr. Timothy Sherer, Associate Director, Office of the Administrator Office of Federal Advisory Committee Management and Outreach
.	Overview and background for listening session	Dr. Vanessa Vu
1:45 p.m.	Discussion	Registered members of the Public
4:00 p.m.	Adjourn	

Attachment B
Participants in the Public Session

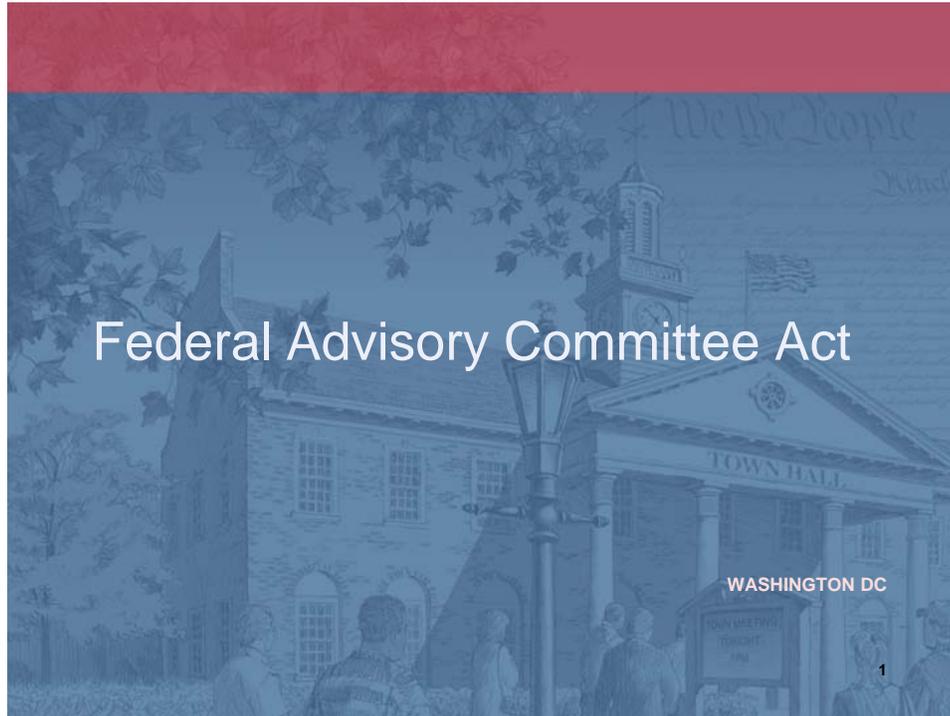
EPA Representatives

Dr. Vanessa Vu, SAB Staff Office
Mr. Timothy Sherer, EPA's Office of Federal Advisory Committee Management and Outreach
Dr. Anthony Maciorowski, SAB Staff Office
Dr. Suhair Shallal, SAB Staff Office
Dr. Angela Nugent, SAB Staff Office

Members of the Public

William J. Adams, Rio Tinto
Kevin Bromberg, U.S. Small Business Administration
Eric Dubé, Steptoe & Johnson LLP
Howard Feldman, American Petroleum Institute
Bob Fensterheim, RegNet Environmental Services
David Fisher, American Chemistry Council
Larry Gephart, ExxonMobil Biomedical Sciences, Inc.
Jenny Hopkinson, Inside EPA
Brendan Mascarenhas, American Chemistry Council
Kimberly Wise, American Petroleum Institute

Attachment C
Presentation by Mr. Timothy Sherer



FEDERAL ADVISORY COMMITTEE ACT (FACA)
FISCAL YEAR 2010 COSTS AND ACTIVITY

Committee Costs:

- \$386 Million in total expenditures
- 47% of that cost is for Federal staff support
- 18% of the total is for travel and per diem
- (EPA spent 14.2 million)

Committee Activity:

- 1,002 Committees in existence
 - 74,321 Committee and Subcommittee members
 - 51 Executive Departments and Agencies
 - 7,254 meetings held
 - 820 reports issued
 - (EPA held 81 meetings)
 - (EPA issued 81 reports)
- 2

FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS

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.

Government in the Sunshine Act

Public Law 94-409, effective March 12, 1977. Section 5 (c) amended Section 10(d) of the Federal Advisory Committee Act. Serves as the basis for closing all or part of an advisory committee meeting.

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FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS (Continued)

GSA Federal Property Management Regulation – Final Rule

41 CFR Part 101-6, Federal Advisory Committee Management. Provides guidance regarding the implementation of the Federal Advisory Committee Act. Superseded by 41 CFR Parts 101-6 and 102-3 on July 19, 2001.

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FEDERAL ADVISORY COMMITTEE ACT MAJOR REQUIREMENTS

- FACA was intended to authorize the establishment of a system governing the creation and operation of advisory committees in the Executive Branch of the Federal Government. [see 41 CFR § 102-3.10]
- Agencies must establish uniform administrative guidelines and management controls that are consistent with the Act and the GSA Rule. [41 CFR §§ 102-3.105(b) & 3.115(c)]
- Agency heads must designate Committee Management Officers (CMOs) who are responsible for exercising controls and supervision over the committee management program. [41 CFR §§ 102-3.105(c) & 3.115]

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FEDERAL ADVISORY COMMITTEE ACT MAJOR REQUIREMENTS (Continued)

- Committees must be chartered before they can meet or conduct any business. [41 CFR §§ 102-3.70 & 3.75]
- Charters must be renewed every two years or they will be terminated under the sunset provisions of Sec. 14 of the Act, unless otherwise provided by law. [41 CFR § 102-3.55]
- Advisory committee memberships are to be fairly balanced in terms of the points of view represented and the functions to be performed. [FACA Sec. 5(b)(2); 41 CFR §§ 102-3.30(c) & 3.60(b)(3)]

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FEDERAL ADVISORY COMMITTEE ACT
MAJOR REQUIREMENTS (Continued)

- Advisory committee meetings are required to be open to the public, with limited exceptions. Meeting notices and agendas must be published in the *Federal Register* to accommodate public participation. [41 CFR § 102-3.150]
- The meeting room is to accommodate a reasonable number of interested members of the public. [41 CFR § 102-3.140 (b)]
- A member of the public is permitted to file a written statement with the advisory committee. [41 CFR § 102-3.140 (c)]

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FEDERAL ADVISORY COMMITTEE ACT
MAJOR REQUIREMENTS (Continued)

- Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit. [41 CFR § 102-3.140 (d)]
- Designated Federal Officers (DFOs) must approve all meetings and agendas, and attend meetings. [41 CFR § 102-3.120]
- Detailed minutes of each advisory committee meeting must be kept. [41 CFR § 102-3.165; see also §§ 102-3.170 & 3.175(e)]

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FEDERAL ADVISORY COMMITTEE ACT
MAJOR REQUIREMENTS (Continued)

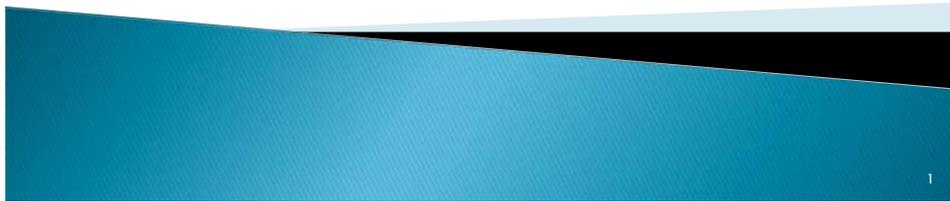
- All advisory committee documents must be available for contemporaneous public inspection and copying until the committee ceases to exist. [41 CFR §§ 102-3.170 & 3.175(e)]
- Records must be maintained which will fully-disclose costs for the purpose of GAO audits and the FACA Annual Report. [41 CFR §§ 102-3.175(b) & (e)]
- Advisory committees will be terminated as soon as:
 - a. their stated objectives have been accomplished;
 - b. the committee's work has become obsolete; or
 - c. the cost of the committee's operation is excessive in relation to the benefits accruing to the Federal Government.[41 CFR §§ 102-3.30(b) & 3.55]

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Attachment D
Presentation by Dr. Vanessa Vu,

Science Advisory Board Staff Office
Public Involvement In Advisory Process

June 1, 2011
1:00–5:00 PM
Crystal City, Virginia



SAB Staff Office

- ▶ Provides technical and administrative support to three Congressionally-mandated science advisory committees
- ▶ Enforces committees compliance with regulations under Federal Advisory Committee Act (FACA), the Ethics in Government Act, and EPA policies
- ▶ Interfaces between the advisory committees, EPA Offices, and the public.
- ▶ Conducts scientific outreach on membership appointments, advisory activities and products



Clean Air Scientific Advisory Committee (CASAC)

- ▶ Established in 1977 under the Clean Air Act Amendments (CAAA) to provide advice to the Administrator regarding:
 - Air quality standards of criteria pollutants
 - Research related to air quality
 - Source of air pollution
 - Strategies to attain air quality standards and to prevent significant deterioration of air quality
- ▶ The chartered Committee is composed of 7 members



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Science Advisory Board (SAB)

- ▶ Established in 1978 by the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA)
- ▶ Provides independent advice to the Administrator on a range of scientific and technical matters underlying key environmental policies and risk management decisions under various statutes (e.g. CAA, TSCA, SDWA, CWA, RCRA)
- ▶ The chartered SAB is composed of at least 9 members; presently there are 48 members



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Advisory Council on Clean Air Compliance Analysis (the Council)

- ▶ Established as mandated by the 1990 CAA Amendments to provide advice to the Administrator regarding EPA's analyses of the impacts of CAA on public health, economy, and the environment
- ▶ The chartered Council is composed of at least 9 members; presently there are 15 members



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SAB, CASAC and Council Membership

- ▶ Each year in May, the SAB Staff Office invites public nomination of experts when openings arise or expertise is needed
- ▶ The Administrator appoints members of the SAB, CASAC, and Council for three year terms generally at the beginning of the fiscal year
- ▶ SAB Director appoints consultants as needed
- ▶ Appointed members and consultants serve as Special Government Employees (SGEs)
- ▶ SGEs are subjected to federal ethics requirements



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Federal Advisory Committee Act (FACA)

- ▶ SAB, CASAC and Council are subject to regulations under FACA:
 - Hold open public meetings; may close only in limited circumstances
 - Allow the public an opportunity to file written statements and to speak at public meetings
 - Develop public meeting minutes and provide all committee documents for public inspection
 - Maintain a balanced membership in terms of points of view



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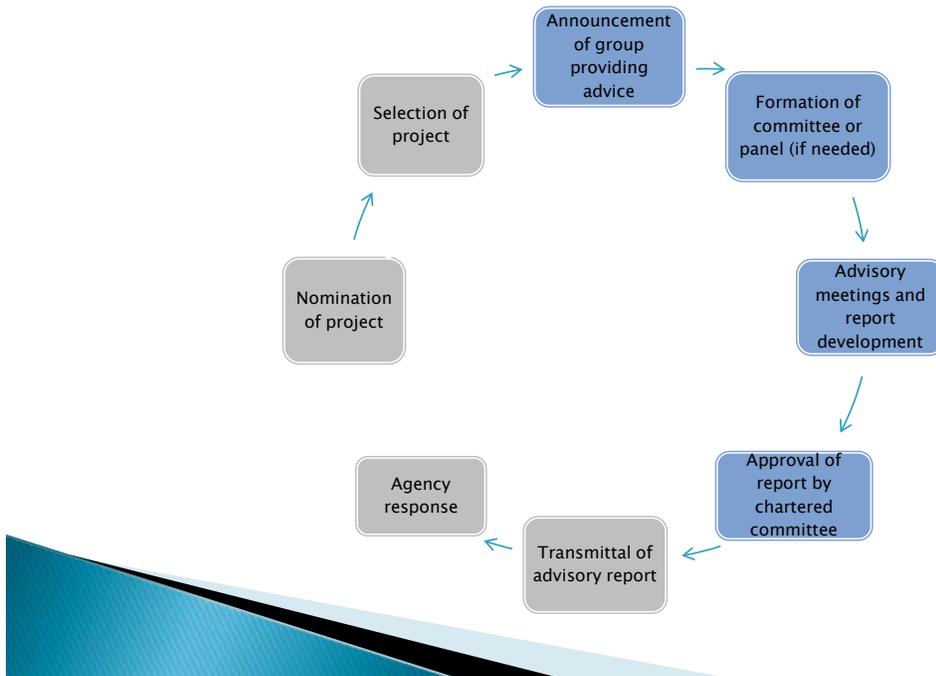
Science Advice

- ▶ Consultation – non-consensus, oral advice on a technical issue before EPA begins substantive work on that issue
- ▶ Advisory – written advice on EPA's technical works-in-progress
- ▶ Peer review – review of EPA's final draft technical reports (e.g., guidelines, assessments, research strategies) or work products (e.g., analytical methods, models, databases)
- ▶ Original study – *de novo* work on an emerging or overarching topic of importance to EPA



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Lifecycle of an Advisory Activity: Opportunities for Public Input



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Current Process for Public Involvement

- ▶ SAB Staff Office process exceeds FACA requirements:
 - Public process for nomination of experts
 - Web posting of all meeting materials related to advisory activities
 - Public comments accepted throughout the advisory process



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Communication tools

- ▶ Federal Register notices
- ▶ Committees Web sites
 - www.epa.gov/sab
 - www.epa.gov/casac
 - www.epa.gov/advisorycouncilcaa
 - Really Simple Syndication (RSS) news feeds that deliver committee news and information to users' RSS readers
- ▶ Guidance on staff office websites
 - *Overview of the Panel Formation Process*
 - *Advisory Committee Meetings and Report Development: Process for Public Involvement*
 - *Frequently Asked Questions about SAB, CASAC, and Council Membership and Establishment of Ad Hoc Panels and Committees*



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Purpose of Public Session

- ▶ Receive public input and feedback on:
 - Public involvement in nomination of experts for committees and panels
 - Public involvement in meeting and report development
 - Public access to Committees Web sites
 - Other topics of interest to the public
- ▶ Written comments requested by June 30, 2011
- ▶ Public comments will be considered by chartered committees for the development of additional guidance as appropriate



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