

AGENDA

Nevada Site Specific Advisory Board Member Orientation Handouts

Sahara West Library Multi-Purpose Room
9600 West Sahara Road, Las Vegas, NV

October 2, 2013

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Environmental Management Site-Specific Advisory Board



Scott Wade

Assistant Manager for Environmental Management
Nevada Site Specific Advisory Board Orientation
October 2, 2013



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What is the Environmental Management Site-Specific Advisory Board? (SSAB)

- Group of volunteers convened by the U.S. Department of Energy's (DOE's) Environmental Management (EM) Program to provide citizen review and feedback to DOE on EM activities throughout the country
- Largest Federally-chartered advisory board in the country
- Made up of eight boards - including the Nevada Site Specific Advisory Board (NSSAB)



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Where are the Eight Local SSAB Affiliates?



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Why / How was the SSAB Formed?

- 1993 National Policy Dialogue – develop recommendations to improve the process for federal facility cleanup decision-making
 - DOE, other Federal agencies, Tribal governments, Native American organizations, and local governments participated
 - Recommended that a SSAB be established
- 1994 – EM SSAB Charter approved
 - Requires renewal every two years



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Oversight vs. Advisory

- Oversight – monitor progress toward completion according to specified milestones that are often reflected in law and/or agreements
- Advisory – independently create recommendations that address work within the EM purview of concern and interest to the board and the public

The Nevada Site Specific Advisory Board
is an *advisory* board



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Scope of the NSSAB

- Groundwater characterization
- Surface soil contamination/remediation
- Facility contamination/remediation
- Low-level waste disposal and transportation
- Environmental Management budget prioritization



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SSAB Operating Requirements

- Federal Advisory Committee Act
- EM SSAB National Charter
- DOE Guidance
- NSSAB Standard Operating Procedures

Documents available on the NSSAB website at www.nv.energy.gov/NSSAB under *Procedures*



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Nevada Site Specific Advisory Board



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U.S. Department of Energy, Nevada Office

Nevada Site Specific Advisory Board Orientation

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Who Makes Up the Nevada Site Specific Advisory Board (NSSAB)?

- Members
- Liaisons
- Staff



Did you know the NSSAB used to be known as the Community Advisory Board for Nevada Test Site Programs?



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Board Members

- Appointed by Department of Energy's (DOE) Assistant Secretary for Environmental Management (EM)
- Serve two-year term which can be renewed by DOE two times (six year limit)
- Strive for 15-20 members



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Board Members

(continued)

- Responsibilities:
 - Attend and participate in regular meetings and training
 - Review EM issues within NSSAB's purview
 - Submit timely recommendations to DOE
 - Respond to NSSAB office communication in a timely manner



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Liaisons

- Represent their parent organization
- Non-voting positions
 - Organizations are appointed by the DOE
 - Organizations are responsible for determining who will represent them on the Board
- Current representation:
 - Clark County (Phil Klevorick)
 - Consolidated Group of Tribes and Organizations (Richard Arnold)
 - Elko County Commission (Charlie Myers)



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Liaisons

(continued)

- Esmeralda County Commission (Ralph Keyes)
- Lincoln County Commission (Kevin Phillips)
- Nye County Commission (Dan Schinhofen)
- Nye County Nuclear Waste Repository Project Office (John Klenke)
- State of Nevada Division of Environmental Protection (Tim Murphy)
- U.S. National Park Service (Genne Nelson)
- White Pine County Commission (Mike Lemich)



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Liaisons

(continued)

- Responsibilities:
 - Define and communicate clearly to the NSSAB the respective decision-making processes of the entities they represent
 - Provide timely access to information pertinent to EM and associated environmental issues and related decision-making
 - Inform the NSSAB in a timely and proactive manner of entity processes, programs, projects, and activities pertinent to the Board's mission and purpose



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Liaisons

(continued)

- Provide a short, verbal report on parent organizations involvement in EM activities at each Full Board meeting
 - If liaison is unable to attend, a written report will be submitted to the NSSAB Office via email two days prior to the Full Board meeting



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Deputy Designated Federal Officer (DDFO)

Kelly Snyder

- Ensures the Board has opportunities for providing input to DOE
- Provides timely information to the Board relative to DOE and EM initiatives, decisions, and processes
- Provides suggestions to the Board regarding EM activities on which its input would be useful



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Deputy Designated Federal Officer (DDFO)

(continued)

- Reviews Board input and ensures timely response
- Ensures that community and Board concerns related to EM are addressed
- Provides for adequate funding and staff support
- Attends all NSSAB meetings
- Approves meeting agenda and minutes
- Can adjourn meetings if it is in the public interest



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Administrator

Barbara Ulmer

- Arranges/facilitates meetings; prepares written summaries
- Provides day-to-day communications
- Coordinates travel activities
- Maintains complete files of NSSAB activities
- Works with NSSAB to finalize/format written recommendations



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Standard Operating Procedures

- Member Attendance
 - May not miss two consecutive Full Board meetings without an excused absence
 - Attendance is required at a minimum of 50% of regular meetings in any one-year period
 - To be considered “present,” must attend two-thirds of a meeting



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Standard Operating Procedures

(continued)

- Conflict of Interest
 - Board members are prohibited from participating as an NSSAB member in any matter in which they have financial interest
 - If aware of a conflict, Board members must refrain from discussions and recommendations
 - Members must report actual/potential Conflict of Interest to the DDFO in a timely manner



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Standard Operating Procedures

(continued)

- May not knowingly receive gifts or gratuities from persons having business with DOE EM, except if:
 - Less than \$20 (\$50 total per year)
 - Motivated by personal friendship
 - Result of outside activities and not enhanced by Board membership



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Standard Operating Procedures

(continued)

- Recommendations
 - Meetings are held to discuss information and perspectives and develop draft recommendations
 - Draft recommendation must be thoroughly reviewed and approved by Full Board
 - Minority Report can be included if consensus cannot be reached
 - Approved recommendation signed by the Chair and submitted to DOE within 15 days
 - Same process is used for EM SSAB recommendations



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Standard Operating Procedures

(continued)

- Voting
 - Meeting requires a quorum (at least 51% of voting members) for decision making
- Media
 - Only the Chair or Chair appointee may represent the Board with the press/media



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NSSAB Meetings

- The Board will meet as needed with length of meeting determined by agenda
- The DDFO, or appointed DOE representative, must be present at all NSSAB meetings
- Meetings follow agenda and conducted by the Chair with facilitation by the Administrator
- Voting is conducted according to Robert's Rules of Order



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NSSAB Meetings

(continued)

- Time and Location
 - Full Board typically meets the third Wednesday of selected months at 5 p.m. for two to three hours
 - Committees meet as needed (typically Monday through Thursday, day or early evening) to accomplish Work Plan tasks
 - Time and location must be accessible to the general public
 - While typically held in the Las Vegas area, meetings are also held in other southern Nevada communities



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NSSAB Meetings

(continued)

- Notices
 - 72-Hour Congressional Notice is required for all Full Board and committee meetings where a quorum will be present
 - Federal Register Notice is required for all Full Board meetings
 - Members and liaisons are sent notice of meeting with request for attendance response and draft agenda at least a week prior to meeting
 - News release (distributed to ~40 media outlets)
 - EM News Flash (distributed to ~2,200 individuals)
 - Social media (i.e., FaceBook, Twitter, etc.)



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NSSAB Meetings

(continued)

- Agendas
 - Prepared by Chair, DDFO, and Administrator
 - Provided to members the week prior to the meeting
 - Posted to the website
 - If available, items for vote are included with the Full Board agenda for review prior to the meeting



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NSSAB Meetings

(continued)

- Minutes
 - Prepared by Administrator
 - Provided to members and DDFO for review
 - Full Board minutes certified by Chair and DDFO and submitted to EM Headquarters within 45 days
 - Committee minutes reviewed by Committee Chair and submitted to EM Headquarters within 30 days
 - Posted to the website



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NSSAB Meetings

(continued)

- Public Participation
 - Meetings are open to the public
 - A section of the meeting space is available for public seating
 - Public comment is included in the agenda for oral comments
 - Written comments are always accepted



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NSSAB Meetings

(continued)

- Alternative meetings
 - On-line meetings have been and are continuing to be pursued
- Refreshments
 - Any refreshments are self-funded by members/ liaisons
- Meetings at the Nevada Support Facility require:
 - Badging at the DOE Badge Office
 - Vehicle inspection at facility entry gate
 - No prohibited articles



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Work Plan

- Work Plan developed at September Full Board meeting
- Outlines all activities the Board will participate in during the fiscal year
- Ensures Board members and DOE understand each others' expectations
- Items suggested by DOE and NSSAB members in accordance with guidance from EM Assistant Secretary
- NSSAB selects work plan items and requests approval from DOE prior to October 1
- Modifications may be requested during the fiscal year with DOE approval



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Committees

- Each September, the Full Board determines which Work Plan items will be addressed as a Committee of the Whole and which will be addressed by ad hoc committees
- Ad hoc committees are formed as needed in accordance with Work Plan requirements
- Committee Chairs for the fiscal year are elected by the Committee members
- Discussions held during committees that result in a draft recommendation must be rediscussed during a Full Board meeting to ensure all members have had the opportunity to fully understand all aspects of the recommendation



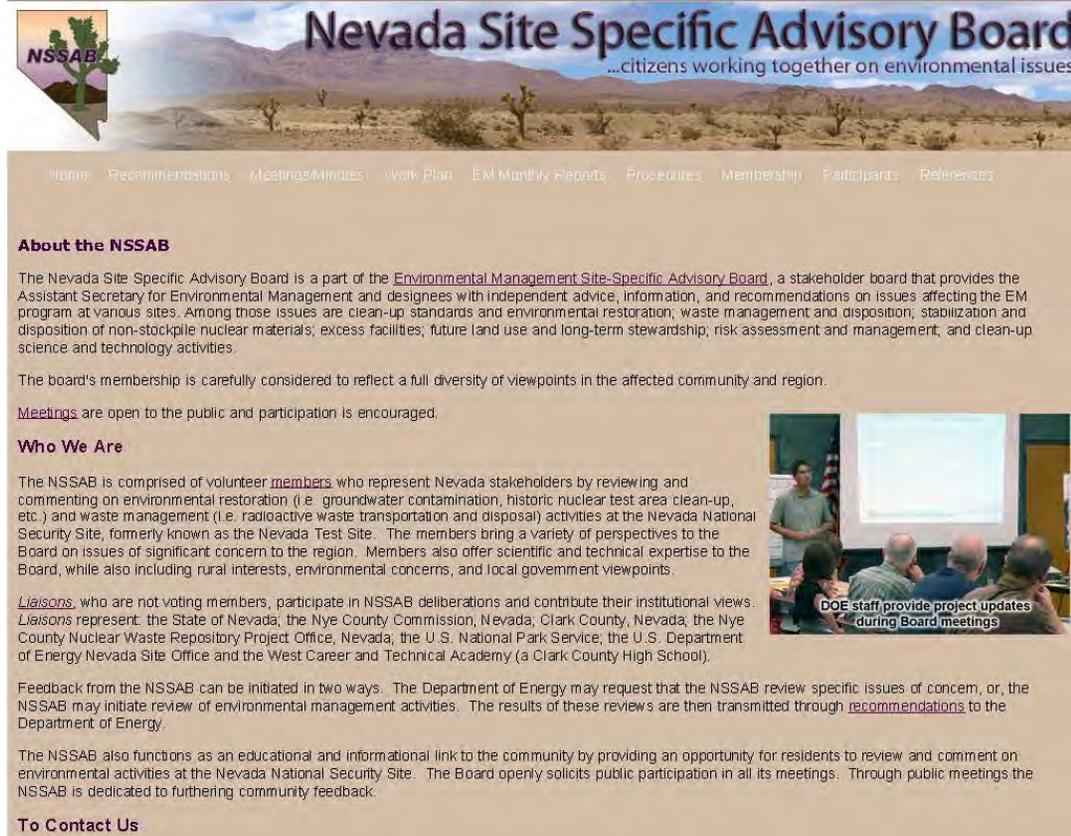
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NSSAB Website

www.nv.energy.gov/NSSAB



NSSAB

Nevada Site Specific Advisory Board

...citizens working together on environmental issues

Home Recommendations Meetings/Minutes Work Plan EM Monthly Reports Procedures Membership Participants References

About the NSSAB

The Nevada Site Specific Advisory Board is a part of the [Environmental Management Site-Specific Advisory Board](#), a stakeholder board that provides the Assistant Secretary for Environmental Management and designees with independent advice, information, and recommendations on issues affecting the EM program at various sites. Among those issues are clean-up standards and environmental restoration, waste management and disposition, stabilization and disposition of non-stockpile nuclear materials, excess facilities, future land use and long-term stewardship, risk assessment and management, and clean-up science and technology activities.

The board's membership is carefully considered to reflect a full diversity of viewpoints in the affected community and region.

[Meetings](#) are open to the public and participation is encouraged.

Who We Are

The NSSAB is comprised of volunteer [members](#) who represent Nevada stakeholders by reviewing and commenting on environmental restoration (i.e. groundwater contamination, historic nuclear test area clean-up, etc.) and waste management (i.e. radioactive waste transportation and disposal) activities at the Nevada National Security Site, formerly known as the Nevada Test Site. The members bring a variety of perspectives to the Board on issues of significant concern to the region. Members also offer scientific and technical expertise to the Board, while also including rural interests, environmental concerns, and local government viewpoints.

[Liaisons](#), who are not voting members, participate in NSSAB deliberations and contribute their institutional views. [Liaisons](#) represent the State of Nevada, the Nye County Commission, Nevada, Clark County, Nevada, the Nye County Nuclear Waste Repository Project Office, Nevada, the U.S. National Park Service, the U.S. Department of Energy Nevada Site Office and the West Career and Technical Academy (a Clark County High School).

Feedback from the NSSAB can be initiated in two ways. The Department of Energy may request that the NSSAB review specific issues of concern, or, the NSSAB may initiate [review](#) of environmental management activities. The results of these reviews are then transmitted through [recommendations](#) to the Department of Energy.

The NSSAB also functions as an educational and informational link to the community by providing an opportunity for residents to review and comment on environmental activities at the Nevada National Security Site. The Board openly solicits public participation in all its meetings. Through public meetings the NSSAB is dedicated to furthering community feedback.

To Contact Us



DOE staff provide project updates during Board meetings



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Administrative

- NSSAB office hours are Monday through Thursday, 7:30 a.m. to 4:30 p.m.
- Majority of NSSAB communication conducted via e-mail NSSAB@nnsa.doe.gov or phone 702-630-0522
- Report changes regarding contact information and work status to the NSSAB office
- Kelly Snyder, DDFO, contact information is e-mail kelly.snyder@nnsa.doe.gov or phone 702-295-2836



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Environmental Management in Nevada



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U.S. Department of Energy, Nevada Office
Nevada Site Specific Advisory Board Orientation
October 2, 2013



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Federal Responsibilities

- Two federal entities responsible for activities
 - National Nuclear Security Administration is responsible for national security mission and overarching management of the Nevada National Security Site (NNSS) (not within the NSSAB's purview)
 - The Department of Energy's (DOE's), Office of Environmental Management (EM) is responsible for remediating historic locations on the NNSS and portions of the Nevada Test and Training Range (NTTR) (within the NSSAB's purview)



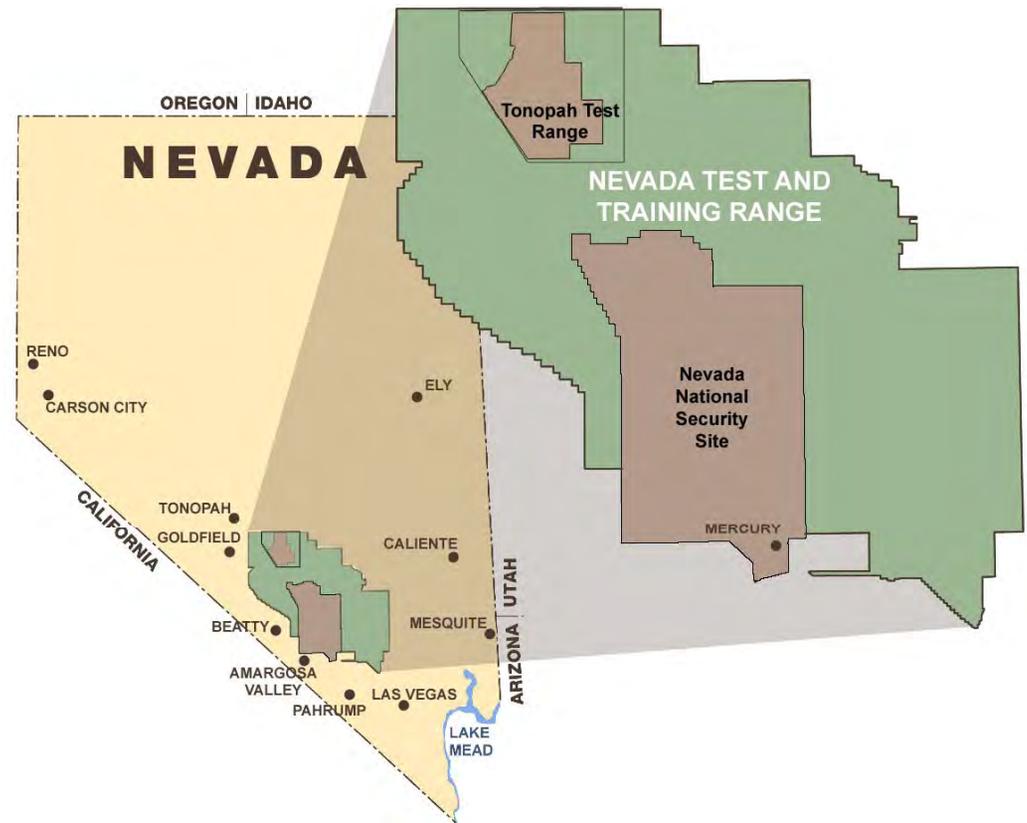
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The NNS and NTTR

- Approximately 1,360 square miles of federally owned and controlled land – surrounded by approximately 4,500 square miles of federally owned and controlled land
 - Tonopah Test Range is approximately 275 square miles on the NTTR
- Located 65 miles northwest of Las Vegas



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EM Activities

- Underground Test Area
- Industrial Sites
- Soils



- Low-Level Waste Transportation and Disposal

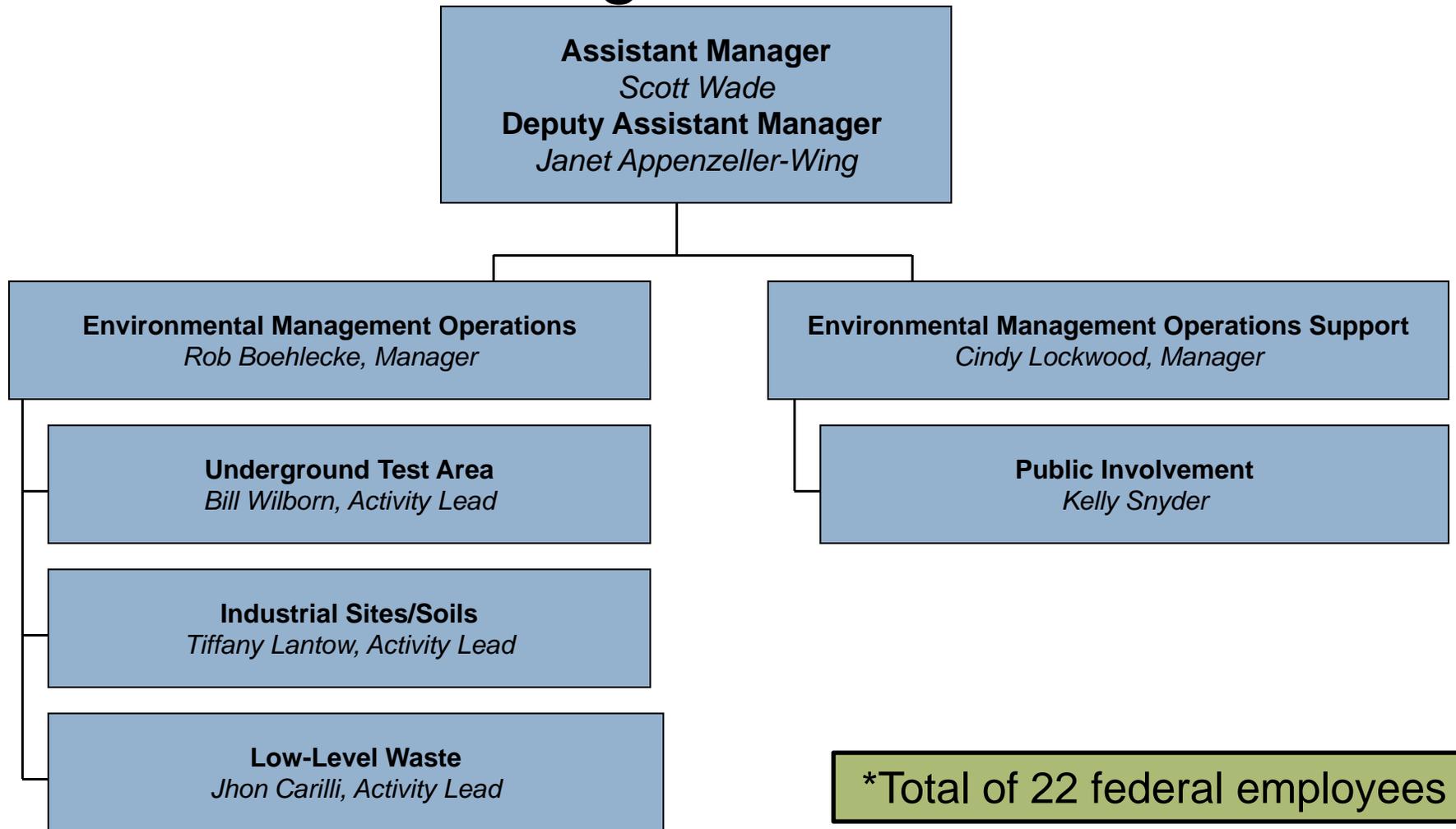


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Assistant Manager for EM Personnel*



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EM Baseline for Fiscal Year (FY) 2014

Scope	Baseline (\$K)
Soils	\$8,690
Underground Test Area	\$21,968
Industrial Sites	\$1,161
Low-Level Waste	\$21,118
Program Management	\$11,545
Agreements in Principle and Grants	\$3,800
EM Nevada Office Total	\$68,282



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State of Nevada's Role

- The State of Nevada's Division of Environmental Protection provides programmatic and regulatory oversight of Environmental Restoration and Waste Management activities conducted by the DOE's EM in the State of Nevada
- Participates as NSSAB liaison



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Key Documents

- Federal Facilities Agreement and Consent Order (FFACO)
- Federal Facility Compliance Act-Consent Order (FFCAct-CO)



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Soils Overview



Tiffany Lantow

Soils/Industrial Sites Activity Lead
U.S. Department of Energy, Nevada Office
Nevada Site Specific Advisory Board Orientation
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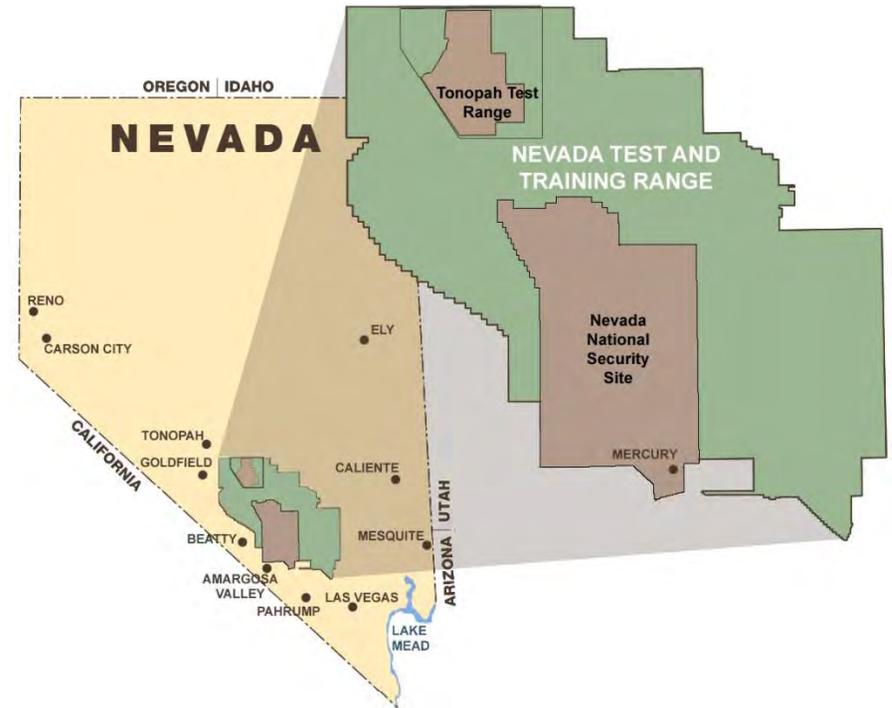
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Background

Atmospheric nuclear weapons tests, nuclear safety experiments, and evaluation tests for peaceful uses of nuclear explosives conducted at the Nevada National Security Site and Nevada Test and Training Range (operated by the U.S. Air Force) resulted in the radioactive contamination of surface and near surface soils



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Background

(continued)

- The Soils activity is responsible for:
 - Characterizing and/or remediating surface soil contamination
 - Characterize means to identify the nature and extent of the contamination present
 - Remediating means to select a closure option (clean close, closure in place, etc)



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Background

(continued)

- Ensuring appropriate controls (i.e. postings, barriers, etc.) are in place at the sites with remaining contamination
- Conducting long-term monitoring of sites
- State of Nevada Division of Environmental Protection (NDEP) provides oversight under the Federal Facility Agreement and Consent Order



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Terminology

- Corrective Action Site - A site that has been identified as needing remediation
- Corrective Action Unit (CAU) - A grouping of Corrective Action Sites that are similar in remediation technique, type of contaminants or proximity to each other

There are 31 Soils CAUs
which consist of 130 Corrective Action Sites*

* As of 8/31/13



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Remediation Processes

- Corrective Action Investigation Plan - Details the investigation plan and provides information for planning investigation activities
- Site Investigation – Act of conducting field characterization activities
- Corrective Action Decision Document - Describes the results of the characterization, multiple corrective action alternatives, and the recommended corrective action alternative and the rationale for its selection
- Corrective Action Plan - Plan for implementing the selected corrective action



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Remediation Processes

(continued)

- Closure Field Work - Act of implementing the chosen corrective action in the field
- Closure Report - Provides an overview and results of the corrective actions implemented, closure verification information, and use restriction and monitoring requirements (when applicable)
 - All documents must be approved by NDEP

Note: Corrective Action Decision Document/Closure Report can be used when only “minor” corrective actions are needed as agreed to by NDEP



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Timeline

- 1981 to 1986 – Surveyed surface soils to identify the level and location of radioactive contamination
- 1996 to 1997 – Remediated surface soils at Double Tracks and Clean Slate I; closure under the Federal Facility Agreement and Consent Order was not achieved
- Challenges in closure decision processes led to a lull in completing Soils work



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Timeline

(continued)

- 2006 - Renewal of Soils work focusing on Nevada National Security Site; existing postings at Nevada Test and Training Range confirmed
- 2007 – Aerial radiological survey performed (Clean Slate sites and Double Tracks) and gross contaminant migration is not evident
- 2009 – First historic atmospheric weapons test location (T-4 in Area 4 at the Nevada National Security Site) received closure approval from the NDEP



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Timeline

(continued)

- 2009-2013 – 69 Corrective Action Sites received closure approval from NDEP
- 2014-2016 – Complete characterization for most of the remaining sites on the Nevada National Security Site
- 2014 – Begin addressing Nevada Test and Training Range sites

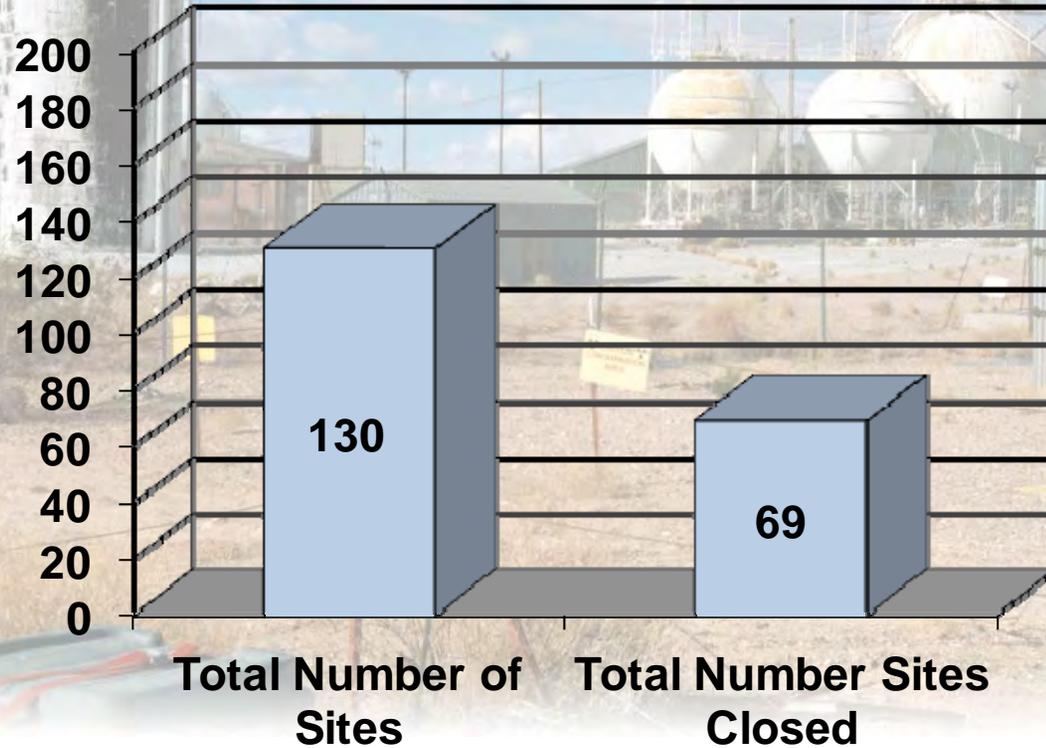


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Soils Sites Cleanup



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Industrial Sites



Overview



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Background

- Portions of the facilities and land at the Nevada National Security Site and Nevada Test and Training Range were used in direct support of nuclear testing
 - Facilities included such things as gas stations, motor pools, worker housing, and research buildings
- Activities resulted in hazardous and radioactive waste generation and subsequent environmental contamination



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Background

(continued)

- Nevada Field Office Environmental Management program established the Industrial Sites activity to remediate the contaminated sites
- Industrial Sites have included leach fields, sumps, disposal wells, tanks, contaminated waste piles, ordnance sites, etc.
- Contaminants of Concern may include hazardous chemicals, unexploded ordnance, and radionuclides
- Potential risks are to workers and the environment

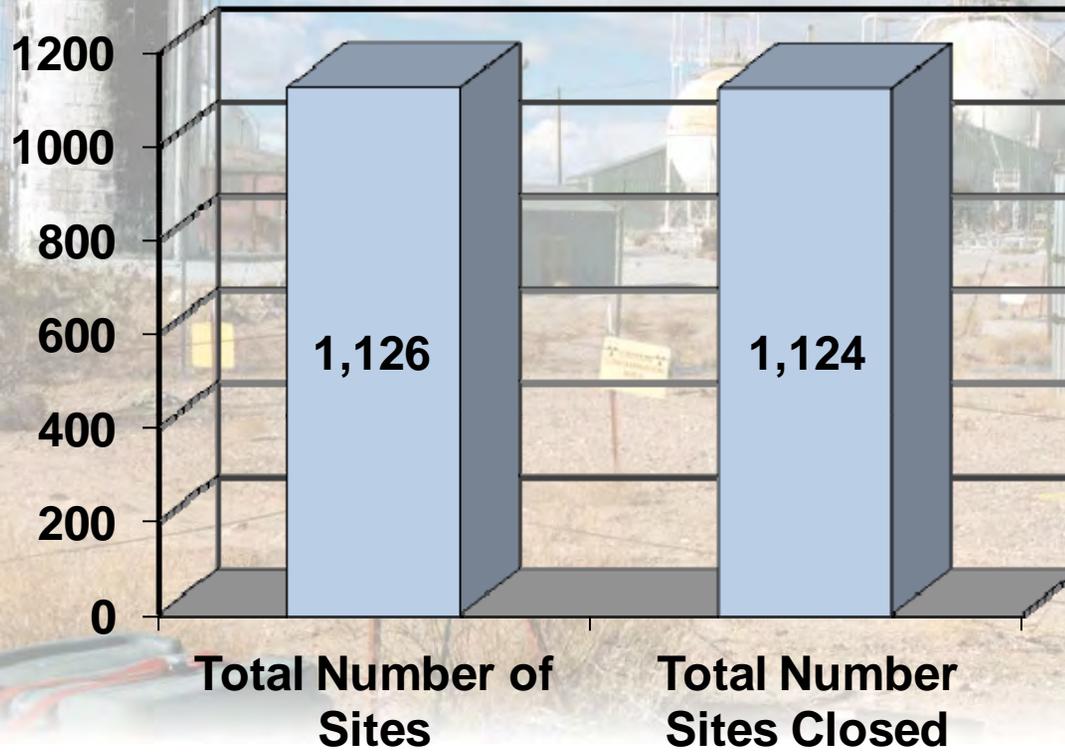


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Industrial Sites Cleanup



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Industrial Sites Wrap-up

- Almost all Industrial Sites activity is complete
- Remaining Corrective Action Sites at Engine Maintenance, Assembly and Disassembly will not be addressed for a few years
- Continue to conduct *Resource Conservation and Recovery Act* (RCRA), Non-RCRA, and Tonopah Test Range (TTR) post-closure inspections and submit monitoring reports to NDEP



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Groundwater Overview



Bill Wilborn

Underground Test Area (UGTA) Activity Lead
U.S. Department of Energy, Nevada Office
Nevada Site Specific Advisory Board Orientation
October 2, 2013



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Historic Nuclear Testing Impacts on the Groundwater

- 828 underground nuclear tests conducted at the Nevada National Security Site from 1951 to 1992
- Underground tests conducted at depths ranging from approximately 90 to 4,800 feet below the ground surface
- One-third of these tests occurred near, below, or in the water table
- Some radioactive contamination detected in groundwater on the Nevada National Security Site and the Nevada Test and Training Range



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Nevada National Security Site Groundwater Program Objectives

- Because of the significant worker safety concerns and cost associated with any type of active remediation, the Department of Energy (DOE) in consultation with the State of Nevada Division of Environmental Protection has selected an end state that requires modeling and monitoring strategy that is documented in the Federal Facilities Agreement and Consent Order; this strategy is supported with the activities described below:
 - Tackle challenges using investigative methods, such as drilling wells to investigate the hydrology and geology (Underground Test Area [UGTA])



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Nevada National Security Site Groundwater Program Objectives (continued)

- Sample wells, analyze samples, and build computer models from gathered data (UGTA)
- Implement controls to prevent access to contaminated groundwater (UGTA and National Nuclear Security Administration)
- Ongoing monitoring of wells on and off the Nevada National Security Site (National Nuclear Security Administration)
- Establish a comprehensive long-term monitoring network to ensure public protection (UGTA)

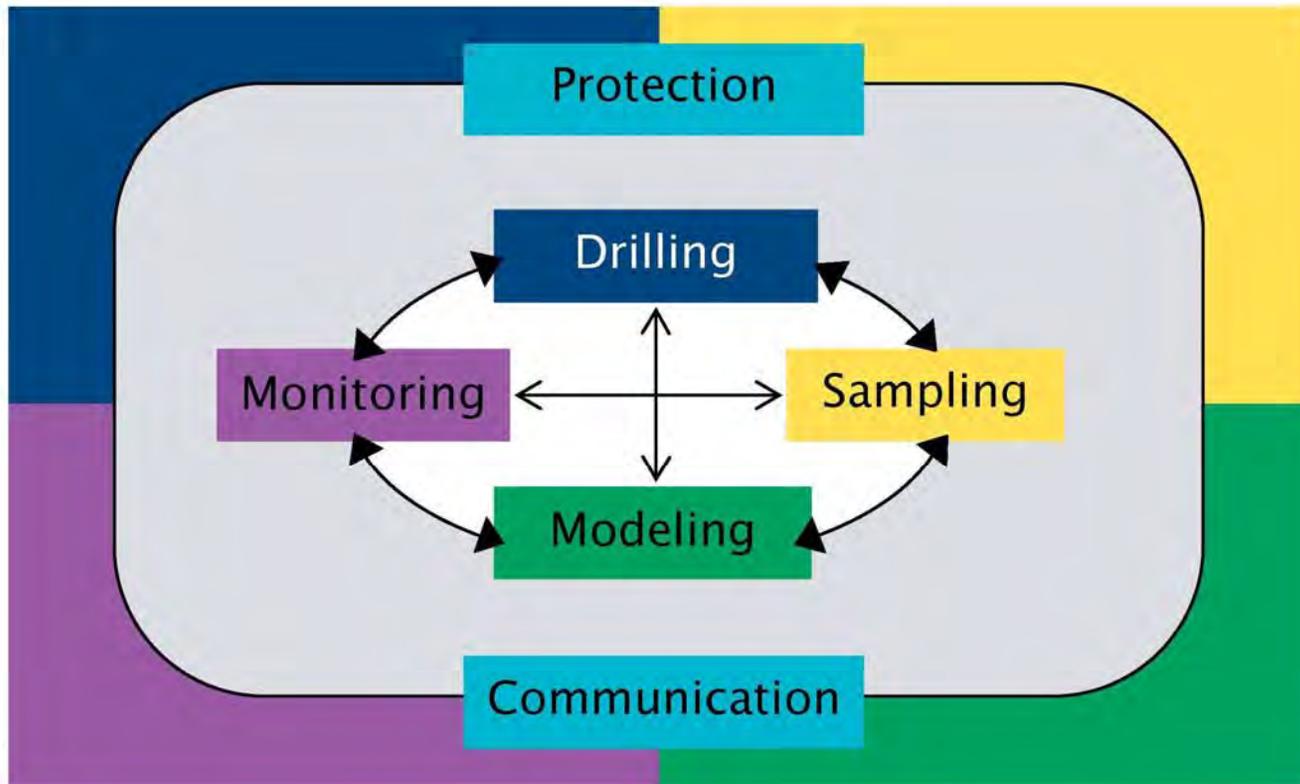


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Understanding Groundwater... an Integrated Approach



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Technical Working Group

- Federal staff continually work with outside organizations to ensure a collaborative approach to understand the nature and extent of groundwater contamination
 - Lawrence Livermore National Laboratory
 - Los Alamos National Laboratory
 - Desert Research Institute
 - United States Geological Survey
 - State of Nevada, Division of Environmental Protection (NDEP)
 - National Security Technologies, LLC
 - Navarro–Intera, LLC



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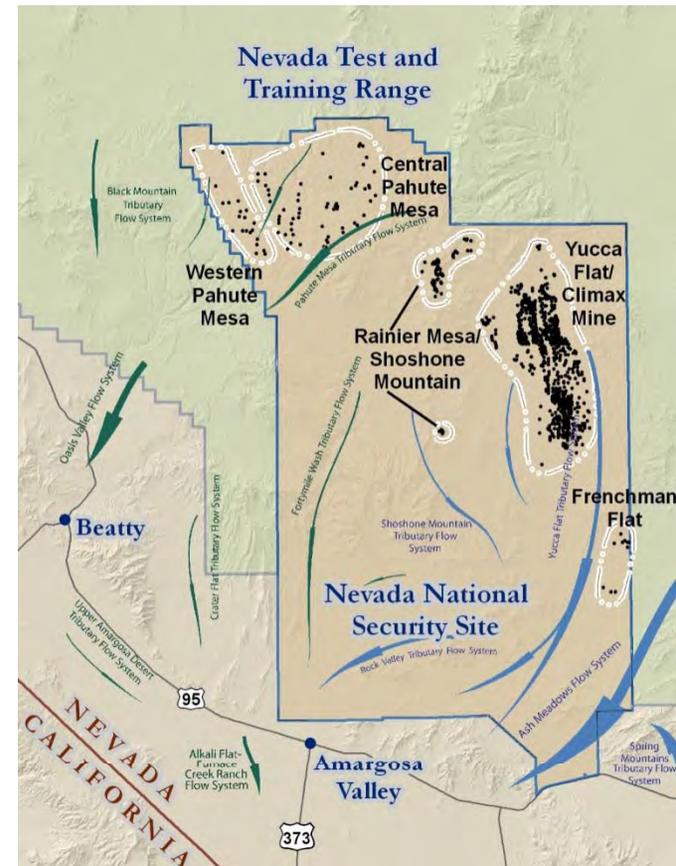
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Corrective Action Units

- There are five Corrective Action Units that make up the UGTA activity
 - Corrective Action Units are determined by location and geologic conditions

Note: Western and Central Pahute Mesa are managed as one entity



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UGTA Closure Strategy

- Outlined within the Federal Facility and Consent Order
- Corrective Action Investigation (some Corrective Action Units may require a Phase I and II)
 - Corrective Action Investigation Plan
 - Data collection
 - Modeling
 - Contaminant boundary
 - Peer review



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UGTA Closure Strategy

(continued)

- Corrective Action Decision/Corrective Action Plan
 - Corrective Action Decision Document/ Corrective Action Plan
 - Use restriction boundary
 - Regulatory boundary
 - Model evaluation



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UGTA Closure Strategy

(continued)

- Closure
 - Closure Report
 - Address boundary changes from model evaluation
 - Closure in place with long-term monitoring
 - Institutional controls



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Why Do We Drill?

- Provides access to the complex subsurface for sampling
 - More than 300 different geologic units (types of rock) representing more than 500 million years of geologic history
- Gives access to groundwater and surrounding geology
- Provides multiple/ongoing opportunities to sample and monitor
- In addition to recent groundwater studies, the UGTA team is tapping into, and expanding upon, approximately 50 years of groundwater research



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Geology/Hydrology 101

- Rocks are categorized according to their hydrologic properties (e.g., aquifer or confining unit)
 - An aquifer is a unit through which water moves (could be single or dual porosity)
 - A confining unit generally is impermeable to water movement (no porosity or single porosity)



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Geology/Hydrology 101

(continued)

- Units are then grouped into larger hydrostratigraphic units (colored layers on the cross sections)
 - These hydrostratigraphic units together with faults, form the three dimensional Hydrostratigraphic Framework Models
 - Faults are structural breaks in the rock units with significant continuity and typically displacing the units



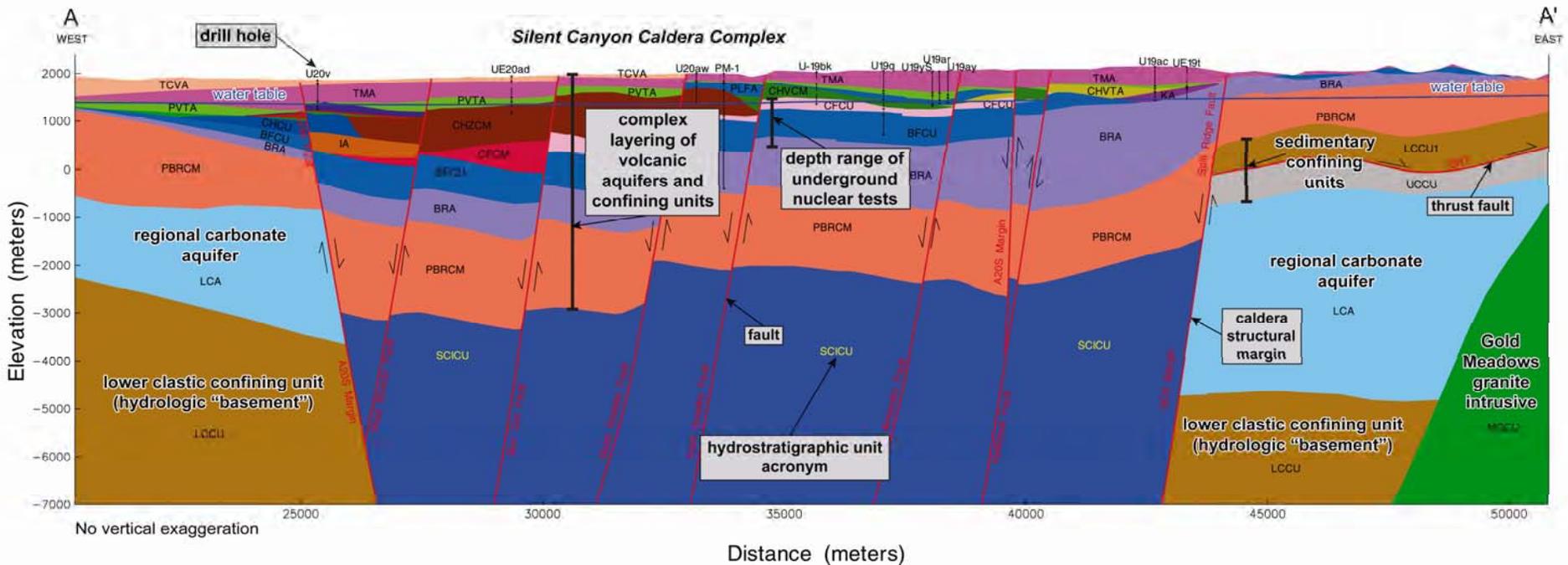
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Geology/Hydrology 101 (continued)

West-East Cross Section (A-A') through Pahute Mesa



Why Do We Sample?



- Identify the natural conditions of groundwater and geology in the subsurface, and constituents introduced by nuclear testing
- Acquire data used as building blocks for computer models
- Obtain laboratory results for regulatory compliance, stakeholder communications, and additional subsurface investigations



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Obtaining Information from Well Sampling

- Water and rock cuttings/core collected
 - Aquifer specific samples
 - Depth discrete samples (various zones within an aquifer)
- Samples used and analyzed by several organizations, such as the Desert Research Institute and the U.S. Geological Survey
- Analysis of samples includes identifying the presence of dissolved metals, tritium, carbon-14, strontium-90, technetium, iodine-129, and plutonium
- Analysis results used as input for groundwater flow and transport modeling



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Sampling for Regulatory Compliance

- Samples collected from springs/surface waters and groundwater wells
 - More than 60 locations on and off the Nevada National Security Site
 - Frequency ranges from every three months to every three years
 - Frequency partially dictated by proximity to a contaminated aquifer
- Samples analyzed for tritium, gross alpha and beta activity, gamma-emitting radionuclides, plutonium, carbon-14, strontium-90, and technetium



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Sampling for Regulatory Compliance

(continued)

- Analysis results used to monitor radionuclide concentrations for comparison to those set by state and federal regulations, and DOE directives
 - *Safe Drinking Water Act*
 - *Clean Water Act*
 - *Radiation Protection of the Public and the Environment*
 - *A Graded Approach for Evaluating Radiation Doses to Aquatic and Terrestrial Biota*



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Why Do We Monitor?

- Helps protect the public by providing a system of continuous detection
- Provides baseline to establish existing conditions
- Identifies trends and verifies compliance with regulatory standards



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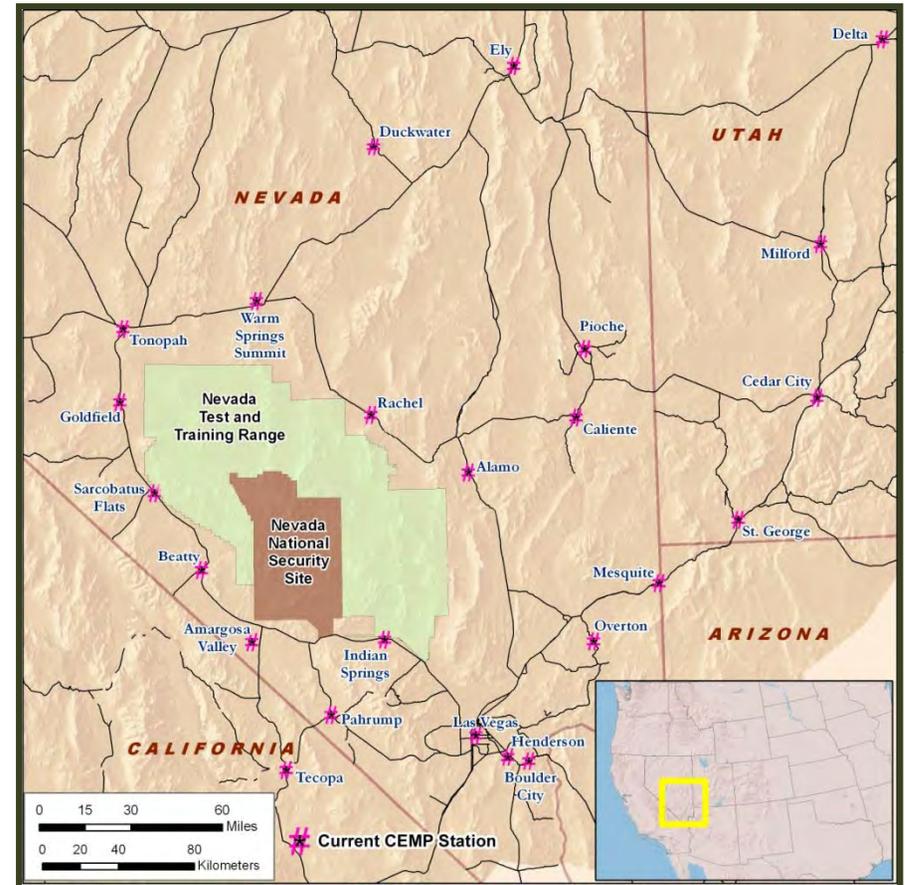
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Why Do We Monitor?

(continued)

- Community Environmental Monitoring Program
 - performs independent, annual monitoring at 24 springs and water supplies
 - operates 24 radiation/air monitoring stations
 - provides a hands-on role in the monitoring process for members of the community



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Why Do We Model?

- Creates 3-dimensional representations of otherwise inaccessible subsurface
- Tool that helps forecast where contamination is moving and how fast
- Provides flexibility for integrating available data
- Provides basis for regulatory compliance and risk decisions



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What do we know today?

- Groundwater affected by historic Nevada National Security Site activities has not reached public water sources
- Groundwater models are providing output that is key to enhancing current, and developing future monitoring strategies
- No forecasted threat to public



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Low-Level Waste Disposal Overview



Jhon Carilli

Low-Level Waste Activity Lead
U.S. Department of Energy, Nevada Office
Nevada Site Specific Advisory Board Orientation
October 2, 2013



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What is Low-Level Waste?

- Radioactive waste not classified as high-level waste, transuranic waste, spent fuel, or by-product material
- Typical waste includes metal, debris, soils, clothing, tools, etc.
- Mixed Low-Level Waste contains Low-Level Waste and a hazardous component (i.e. toxic, corrosive, reactive, ignitable or is listed by U.S. Environmental Protection Agency as a hazardous waste)
- Nuclear Regulatory Commission does not regulate the U.S. Department of Energy's (DOE's) radioactive materials and/or waste



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Background

- Cold War-related activities and nuclear research generated Low-Level Waste at sites across the country
- DOE is responsible for consolidating and disposing Low-Level Waste generated by DOE clean-up activities
 - Ensures the safety of the public
 - Allows for the permanent closure of these sites



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Background

(continued)

- The Nevada National Security Site (NNSS) was chosen due to its isolated location and arid climate
 - No groundwater pathways
 - Deep groundwater (~700 feet – 1,600 feet)
 - Low precipitation (5-7 inches per year)
- Currently, the NNSS is the only federal site disposing off-site generated Low-Level Waste



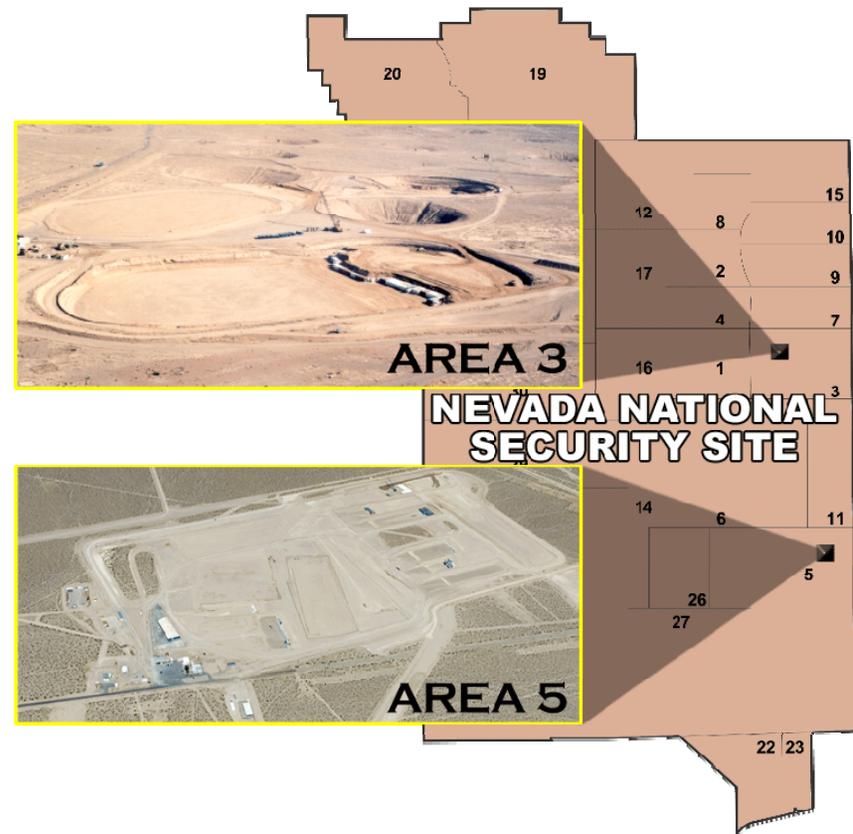
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Activity Locations

- Low-Level Waste can be disposed at two disposal sites at the NNSS
 - Area 3 uses subsidence craters created by past underground nuclear tests to dispose of bulk and containerized waste
 - Area 5 uses engineered shallow-land burial to dispose of containerized waste



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Activity Locations

(continued)

- Area 3 Radioactive Waste Management Site
 - Seven craters, representing five disposal cells
 - Total disposed volume is nearly 19 million cubic feet
 - Currently in cold stand-by (not active)



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Activity Locations

(continued)

- Area 5 Radioactive Waste Management Site
 - 38 disposal cells
 - 31 total closed cells
 - ✓ five operationally closed
 - ✓ 26 permanently closed in 92-acre area
 - Six active Low-Level Waste cells
 - One active Mixed Low-Level Waste cell
 - Total current disposed volume is more than 24 million cubic feet



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Area 5 Monitoring Activities

- Monitoring activities
 - Verifies the continued safety of workers and the public
 - Provides a measure of performance
- Continuous and ongoing

Monitor (Type)	Number of Locations
Air	2
Groundwater	3
Meteorology	1
Radon	1
Evapotranspiration	2
Soil Moisture	6
Soil Temperature	7
TLD*	12

* Thermoluminescent Dosimeters

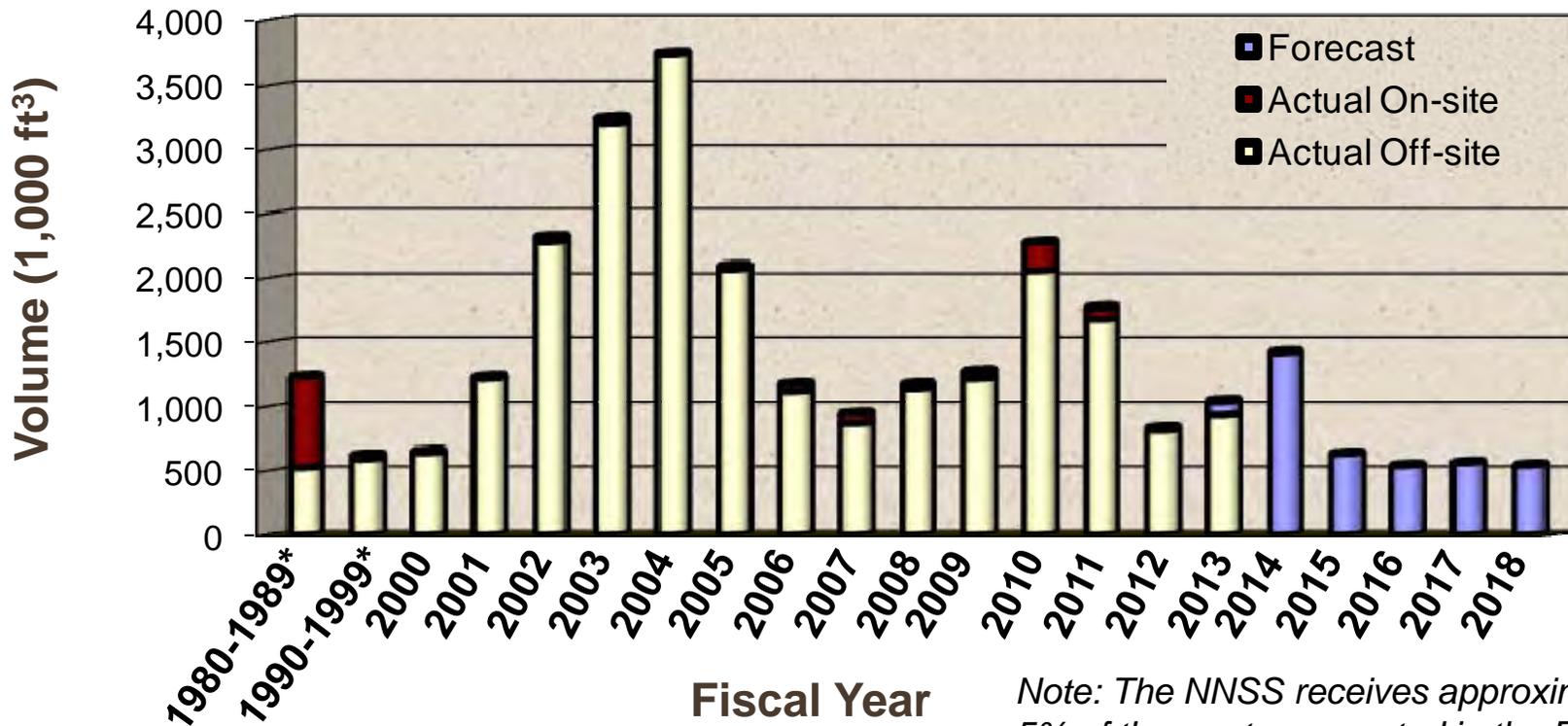


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NNSS Low-Level and Mixed Low-Level Disposal Volumes



Note: The NNSS receives approximately 5% of the waste generated in the EM program



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Disposal Fee Surcharge

- Since 2000, generators that ship Low-Level and Mixed Low-Level Waste to the NNSS for disposal are charged an additional \$0.50 per cubic foot to fund a rural county emergency preparedness grant
 - Over \$11 million distributed through 2012



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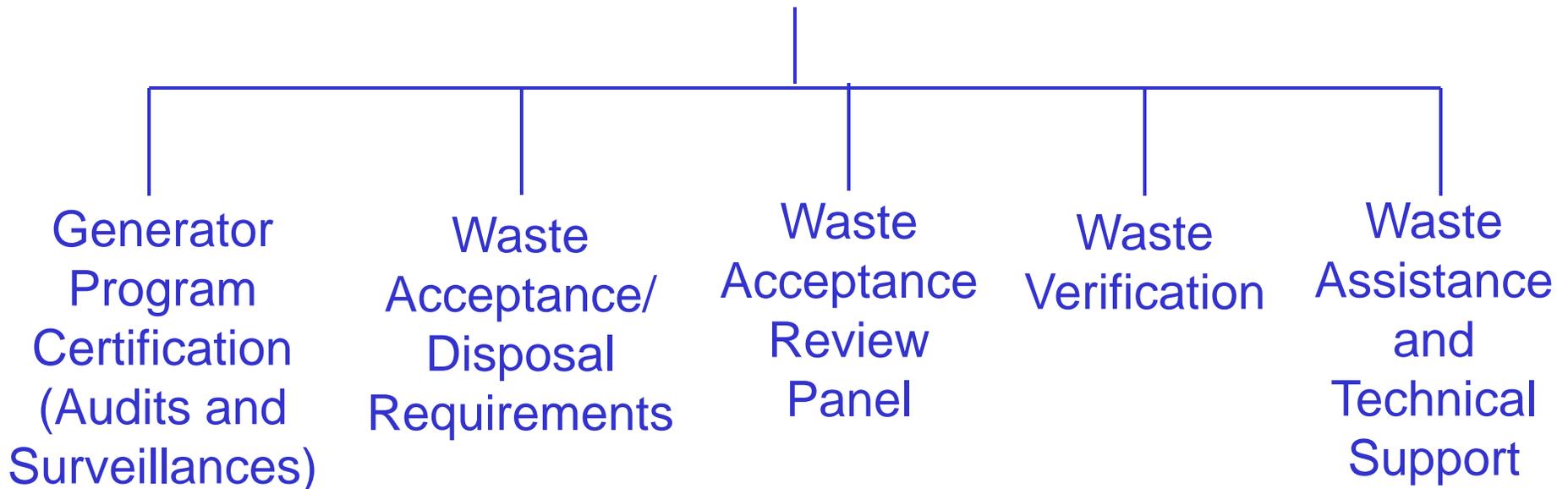
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Radioactive Waste Acceptance Program

The Radioactive Waste Acceptance Program consists of five programs below:

Radioactive Waste Acceptance Program (RWAP)



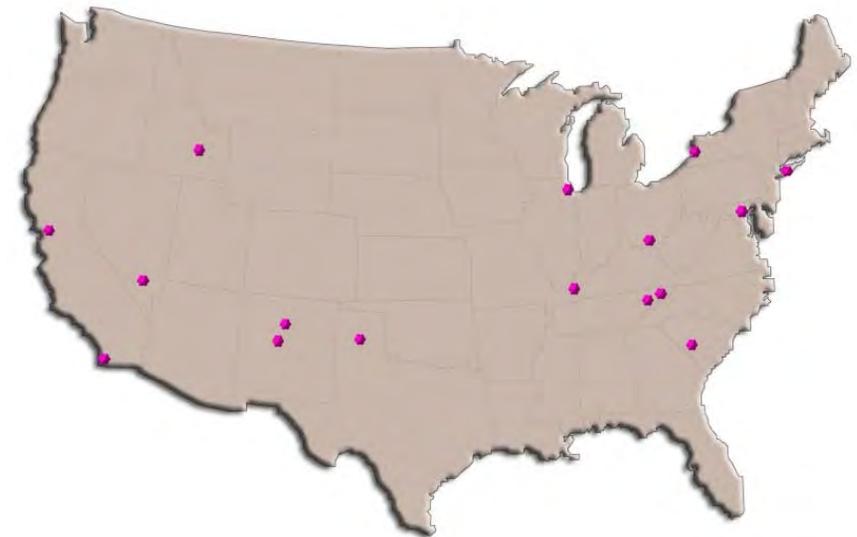
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Generator Program Certification (Audits and Surveillances)

- Approved generators undergo an initial audit to ensure their waste program conforms to NNS requirements
- After a waste generator obtains approval status, periodic announced and unannounced surveillances are conducted to ensure the waste program maintains compliance



◆ Approved Waste Generators



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Waste Acceptance/ Disposal Requirements

- Waste disposed at the NNSS must meet a rigorous disposal acceptance criteria
 - Waste must be generated at a DOE facility or defense-affiliated site
 - NNSS and its stakeholders expect absolute compliance with the Waste Acceptance Criteria and noncompliance results in adverse impacts to the generator's program until compliance is ensured
 - Waste may not contain free liquids
 - All waste must be containerized
 - Examples of containers include 55-gallon steel drums and carbon steel boxes



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Waste Acceptance Review Panel

- Reviews waste streams to ensure it meets waste acceptance criteria
- Waste Acceptance Review Panel consists of following:
 - Radioactive Waste Acceptance Panel
 - State of Nevada Division of Environmental Protection (Resource Conservation and Recovery Act and Joint Oversight)
 - Operations
 - Performance
 - Safety Basis Team
 - Nuclear Criticality Team
 - Eligibility Team



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Waste Verification

- Mixed waste permit, issued by State of Nevada Division of Environmental Protection, requires verification
- Verification Types
 - Physical
 - Visual inspection
 - Real-time-radiography
 - Chemical
 - Field chemical screen
 - Split sample



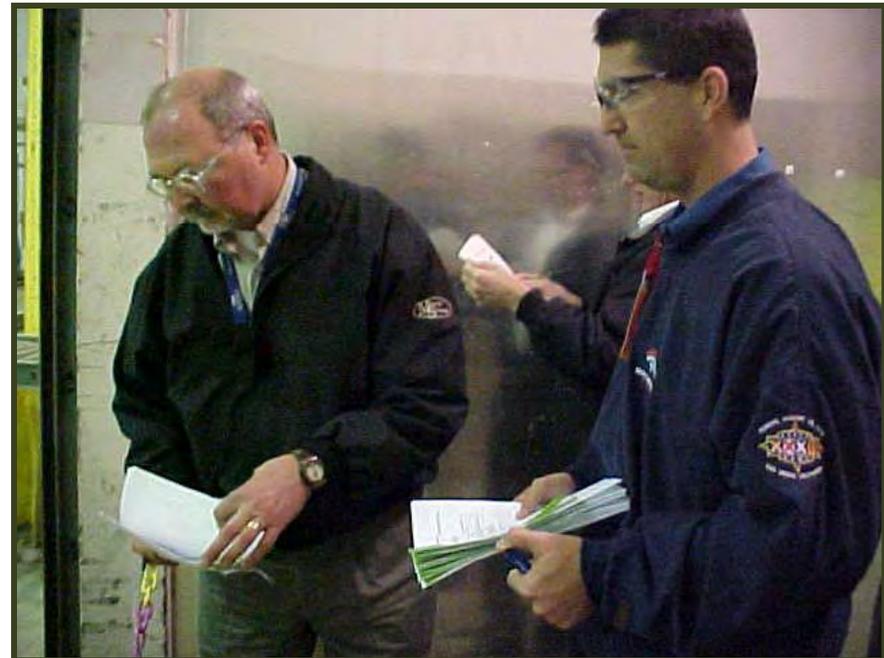
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Waste Assistance and Technical Support

- Performs:
 - Site visits to generators
 - Assist generators to be compliant with NNSS Waste Acceptance Criteria



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Transportation

- Shipping is regulated by the U.S. Department of Transportation – not by DOE



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Transportation

(continued)

- NNSS Waste Acceptance Criteria encourages shippers to travel along “preferred routes” and requires that selected routes avoid I-15/US 95 interchange in Las Vegas and O’Callaghan-Tillman bridge
 - If generators violate this requirement, a Corrective Action Request will be issued



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Environmental Management Outreach Initiatives



Dona Merritt
Environmental Management Public Involvement
Navarro-Intera
Nevada Site Specific Advisory Board Orientation
October 2, 2013



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Environmental Management (EM) Outreach Initiatives

- Utilize a variety of outreach techniques to inform and involve stakeholders in EM activities through written, oral and visual methods
 - Nevada Site Specific Advisory Board
 - Operation Clean Desert
 - Fact Sheets
 - Displays
 - Social Media (FaceBook, Twitter, Flickr, YouTube)
 - Open Houses/Public Meetings
 - EM News Flash
 - Websites
 - Electronic Mailing List
 - Public Reading Rooms



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Operation Clean Desert

- Used to teach middle school-age children about the EM program
- Concept created by the EM Student Forum
 - Grant funded from 2001-2006
- Public outreach tools include:
 - Display
 - Activity Book
 - Interactive Computer Game
- Approximately 23,000 activity books, computer games, and teacher guides distributed



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Fact Sheets

- More than 20 fact sheets available covering Environmental Management activities
- Available at libraries (Amargosa, Beatty, Pahrump, and White Pine County), Central Nevada Museum (Tonopah), U.S. Department of Energy (DOE Public Reading Room (Las Vegas), and DOE facilities and website



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Displays

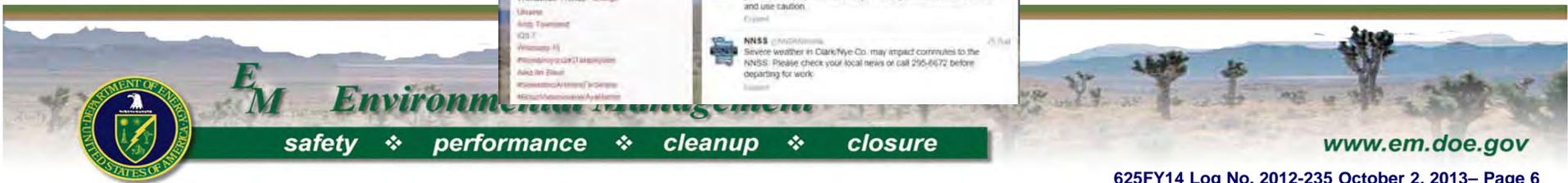
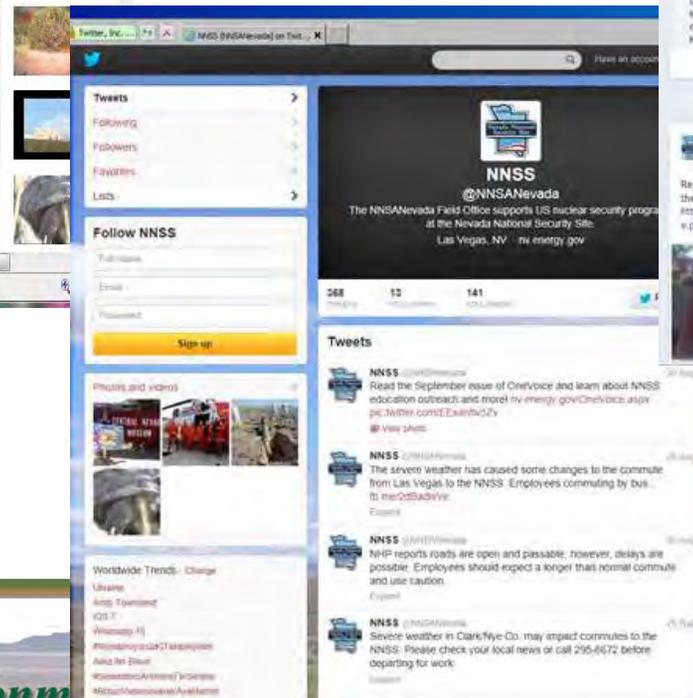
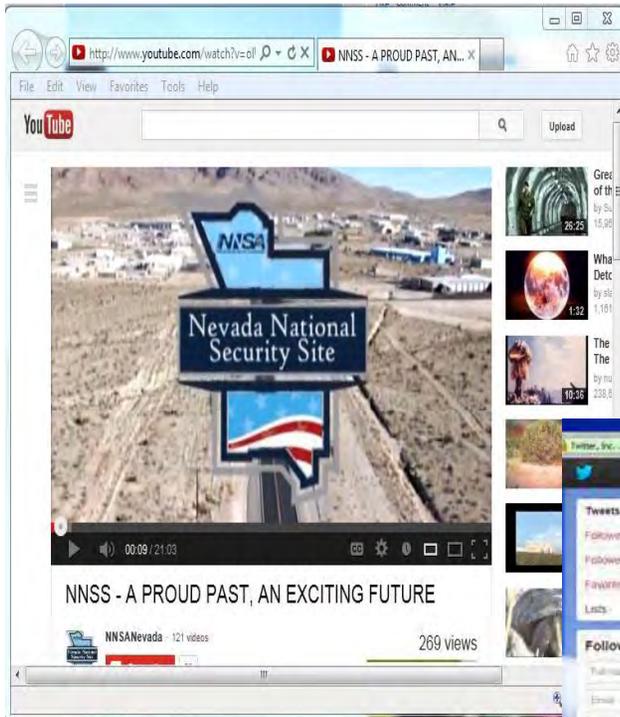


- Transportation, Waste Disposal, and Groundwater displays have been located at:
 - Pahrump Library
 - Caliente Library
 - Beatty Library
 - Amargosa Library
 - Esmeralda County Repository Oversight Office
 - Central Nevada Museum (Tonopah)
 - White Pine County Library (Ely)



Social Media

- Facebook
- Twitter
- YouTube
- Flickr



EM News Flash

- Published on an as-needed basis
- Distributed to mailing list, employees and media



April 20, 2010

Nevada Site Office Environmental Management

EM NEWS FLASH

Public Meeting on the Proposed Storage of Mixed Low-Level Radioactive Waste at the Nevada Test Site

U.S. Department of Energy (DOE), National Nuclear Security Administration representatives will hold a public meeting on Monday, April 26, 2010, regarding the upcoming submittal of an application to the State of Nevada for a Resource Conservation and Recovery Act (RCRA) Part B permit to store mixed low-level radioactive waste prior to permanent disposal in Area 5 of the Nevada Test Site.

The public meeting will be held from 5:30 p.m. to 8:30 p.m. at the Bob Ruud Community Center, located at 150 North Highway 160 in Pahrump, NV.

Subject matter experts will give an overview presentation to discuss the proposed plans, and answer questions. Members of the public are encouraged to attend, ask questions, and provide comments related to the proposed storage of mixed low-level radioactive waste.

Members of the public requiring special access to participate in the meeting are encouraged to contact the DOE at least 72 hours prior to the meeting.



Proposed locations of mixed low-level waste storage prior to disposal in a RCRA-permitted disposal cell at the Nevada Test Site Area 5 Radioactive Waste Management Complex.

Mixed low-level radioactive waste is low-level radioactive waste with a RCRA hazardous waste component. The hazardous component of the waste contains material that is toxic, corrosive, reactive, ignitable, or specifically identified by the U.S. Environmental Protection Agency (EPA) as "hazardous." Mixed low-level radioactive waste includes items such as building debris, soil, trash, equipment, tools and protective clothing.

You have received this announcement as a member of the U.S. Department of Energy National Nuclear Security Administration Nevada Site Office Environmental Management distribution list. If you would like to be removed from the list, please call 702-295-3521 or e-mail your request to envmot@nv.doe.gov with the words "EM News Flash Remove" in the subject line. If you know anyone who would like to begin receiving these articles, please have them send a request to envmot@nv.doe.gov with the words "EM News Flash Subscribe" in the subject line. You can also follow us on Facebook at [NNSA Nevada Site Office](#).



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Other Outreach Mechanisms

- Websites
 - DOE/National Nuclear Security Administration – www.nv.energy.gov
 - Nevada Site Specific Advisory Board – www.nv.energy.gov/nssab
- Electronic Mailing List
 - Used to distribute meeting notices, press releases, etc.
 - More than 2,300 people and businesses



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Other Outreach Mechanisms

(continued)

- DOE/National Nuclear Security Administration
Public Reading Rooms
 - Nuclear Testing Archive
755 E. Flamingo, Las Vegas
 - Nevada State Library and Archives
100 Stewart Street, Carson City



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Environmental Management

Common Acronyms



A&E	Architect & Engineering (Contractors)	A
ACWP	Actual Cost of Work Performed	
AEA	Atomic Energy Act	
AIP	Agreement(s) in Principle	
ALARA	As Low As Reasonably Achievable	
AMEM	Assistant Manager for Environmental Management	
ARRA	American Recovery and Reinvestment Act	
ATM	Atomic Testing Museum	
<hr/>		
BCWP	Budgeted Cost of Work Performed	B
BCWS	Budgeted Cost of Work Scheduled	
BLM	Bureau of Land Management	
<hr/>		
CAB	Community Advisory Board	C
CADD	Corrective Action Decision Document	
CAP	Corrective Action Plan	
CAIP	Corrective Action Investigation Plan	
CAR	Corrective Action Request	
CAS	Corrective Action Site	
CAU	Corrective Action Unit	
CEMP	Community Environmental Monitoring Program	
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	
CFR	Code of Federal Regulations	
CNTA	Central Nevada Test Area	

COC	Contaminant of Concern	
CPM	Central Pahute Mesa	
CR	Closure Report	
<hr/>		
D&D	Decontamination and Decommissioning	D
DFO	Designated Federal Officer	
DDFO	Deputy Designated Federal Officer	
DAMEM	Deputy Assistant Manager of Environmental Management	
DOE	U.S. Department of Energy	
DOE/HQ	DOE Headquarters	
DoD	Department of Defense	
DOT	U.S. Department of Transportation	
DRI	Desert Research Institute	
DSA	Documented Safety Analysis	
DTRA	Defense Threat Reduction Agency	
<hr/>		
EA	Environmental Assessment	E
EM	Environmental Management	
EM SSAB	Environmental Management Site-Specific Advisory Board	
EMAD	Engine Maintenance Assembly and Disassembly Facility	
EMO	Environmental Management Operations	
EMOS	Environmental Management Operations Support	
EMP	Environmental Monitoring Plan/Program	
EMPIRE	Environmental Management Public Involvement Review Effort (CAB)	
EOC	Emergency Operations Center	
EMO	Emergency Management Operations	

EMOS	Emergency Management Operations Support	
EPA	Environmental Protection Agency	
EPWG	Emergency Preparedness Working Group	
EPT	Environmental Protection Team	
ER	Environmental Restoration	
ERP	Environmental Restoration Project	
FB	Full Board (NSSAB)	F
FF	Frenchman Flat	
FFACO	Federal Facility Agreement and Consent Order	
FFCA	Federal Facility Compliance Agreements	
FFCAct	Federal Facility Compliance Act	
FOIA	Freedom of Information Act	
FY	Fiscal Year	
GCD	Greater Confinement Disposal	G
GZ	Ground Zero	
HAZMAT	Hazardous Materials	H
HAZTRAK	Hazardous Materials Tracking System	
HLW	High-Level Waste	
HM	Hazardous Materials	
HQ	Headquarters	
HW	Hazardous Waste	
IG	Inspector General	I
INL	Idaho National Laboratory	
IS	Industrial Sites	

ISM	Integrated Safety Management	
JIC	Joint Information Center	J
LANL	Los Alamos National Laboratory	L
LDR	Land Disposal Restrictions	
LLNL	Lawrence Livermore National Laboratory	
LLW	Low-Level Waste	
M&O	Management and Operating (Contractors)	M
MLLW	Mixed Low-Level Waste	
M/TRU	Mixed/Transuranic Waste	
N-I	Navarro-Intera, LLC (Contractor)	N
NATHI	Nevada Atomic Testing History Institute	
NDEP	Nevada Division of Environmental Protection	
NEPA	National Environmental Policy Act	
NNSA	National Nuclear Security Administration	
NNSA/NFO	National Nuclear Security Administration Nevada Field Office	
NNSS	Nevada National Security Site	
NNSSER	Nevada National Security Site Environmental Report	
NNSSWAC	Nevada National Security Site Waste Acceptance Criteria	
NRC	Nuclear Regulatory Commission	
NFO	Nevada Field Office	
NSO	Nevada Site Office	
NSSAB	Nevada Site Specific Advisory Board	
NSTec	National Security Technologies (M&O Contractor)	
NTS	Nevada Test Site (former name for NNSS)	

NWRPO	Nuclear Waste Repository Project Office (Nye County)	
NTTR	Nevada Test and Training Range	
OAMEM	Office of the Assistant Manager for Environmental Management	O
OCD	Operation Clean Desert	
OMB	Office of Management and Budget	
OPA	Office of Public Affairs	
ORR	Operational Readiness Review	
PA	Performance Assessment	P
PA	Preliminary Assessment (Industrial Sites)	
PAAA	Price-Anderson Amendment Act	
PIC	Pressurized Ion Chamber	
PM	Pahute Mesa	
POC	Point of Contact	
PSG	Program Support Group	
QA	Quality Assurance	Q
RA	Readiness Assessment	R
RCRA	Resource Conservation Recovery Act	
RH	Remote Handled	
RM/SM	Rainer Mesa/Shoshone Mountain	
RMAD	Reactor Maintenance Assembly and Disassembly (Facility)	
RTR	Real Time Radiography	
RWAP	Radioactive Waste Acceptance Program	
RWMC	Radioactive Waste Management Complex	
RWMS	Radioactive Waste Management Site	

SAFER	Streamlined Approach for Environmental Restoration	S
SDWA	Safe Drinking Water Act	
SNJV	Stoller-Navarro Joint Venture	
SOP	Safe Operating Procedure	
SRS	Savannah River Site (Georgia)	
SSAB	Site-Specific Advisory Board	
SWA	Safe Water Act	
TRU	Transuranic Waste	T
TTR	Tonopah Test Range	
TWG	Transportation Working Group	
UGTA	Underground Test Area	U
UNLV	University of Nevada, Las Vegas	
UNR	University of Nevada, Reno	
USDOE	U.S. Department of Energy	
USGS	U.S. Geological Survey	
VERB	Visual Examination Repackaging Building	
WAC	Waste Acceptance Criteria	
WARP	Waste Acceptance Review Panel	
WIPP	Waste Isolation Pilot Plant	
WM	Waste Management	
WMP	Waste Management Project	
WPM	Western Pahute Mesa	
YF	Yucca Flat	Y
YM	Yucca Mountain	

ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD
U.S. Department of Energy

Advisory Board Charter

- 1. Committee's Official Designation.** Environmental Management Site-Specific Advisory Board (EM SSAB).
- 2. Authority.** This charter establishes the Environmental Management Site-Specific Advisory Board (Board) under the authority of the U.S. Department of Energy. The Board is being renewed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C, App. 2.
- 3. Objectives and Scope of Activities.** The EM SSAB will provide the Assistant Secretary for Environmental Management (EM), the appropriate Department of Energy (DOE) Field Managers or Assistant Managers for EM activities, and any other DOE official the Assistant Secretary shall designate with advice and recommendations concerning issues affecting the EM program at various sites. At the request of the Assistant Secretary or the Field Managers, the Board may provide advice and recommendations concerning the following EM site-specific issues: clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities. The Board may also be asked to provide advice and recommendations on any other EM project or issue.
- 4. Description of Duties.** The duties of the Board are solely advisory.
- 5. Official(s) to Whom the Committee Reports.** The Board will report to the Assistant Secretary for Environmental Management, the appropriate DOE Field Managers or Assistant Managers for EM activities, and any other DOE official the Assistant Secretary shall designate.
- 6. Agency Responsible for Providing Necessary Support for this Committee.** The Department of Energy. Within the Department, primary support shall be furnished by the Office of Environmental Management.
- 7. Estimated Annual Operating Costs in Dollars and Staff Years.** DOE will provide resources sufficient to conduct EM SSAB business, as well as authorized travel and subsistence (per diem) expenses for eligible members. The estimated annual costs associated with supporting the EM SSAB is approximately \$4.4 million in direct Federal and contractor costs, and approximately 10 full-time employees (FTEs).
- 8. Designated Federal Officer.** A full-time or permanent part-time DOE employee, appointed in accordance with agency procedures, will serve as the Designated Federal Officer (DFO) or designee. The DFO or designee will approve or call all of the Board's

and subcommittee's meetings, prepare and approve all meeting agendas, attend all Board and subcommittee meetings, and adjourn any meeting when the DFO or DDFO determines adjournment to be in the public interest.

The DFO may designate Deputy Designated Federal Officers (DDFOs), to be responsible for conducting the day-to-day operations of the EM SSAB subcommittees (the local boards).

9. Estimated Number and Frequency of Meetings. The full local boards will meet approximately 6-12 times per year at each site represented on the EM SSAB. In addition, members from each local board may be asked by DOE to participate in semi-annual meetings of the EM SSAB Chairs to discuss complex-wide EM issues.

10. Duration. Continuing in nature.

11. Termination. The Board terminates two years from the Charter filing date and may not meet if the Charter is not renewed biennially.

12. Membership and Designation. Pursuant to delegated authority by the Secretary of Energy, the Assistant Secretary for Environmental Management is authorized to appoint and remove EM SSAB members.

- a. The standard term for Board members is two years, and members are to serve no more than three two-year terms for a total of six years.
- b. In areas where the member pool is limited, or where the nominee represents a governmental entity or Tribal Nation, or where membership is defined by a Memorandum of Understanding, a request for an exception from term limits may be made by the affected Field Office Manager. The requested exception will be reviewed during the membership package process and must be approved by the Assistant Secretary.
- c. Board member appointments are staggered so that one-half of the membership is retained for continuity.
- d. Board membership shall reflect a full diversity of viewpoints in the affected community and region, and will be composed primarily of people who are directly affected by DOE site clean-up activities.
- e. Members shall be appointed as representatives of local government, Tribal Nations, environmental or public health groups, civic groups, labor organizations, local educational institutions, and/or businesses and other affected peoples or organizations. The Assistant Secretary or DOE Field Managers may request that other Federal, State, or Tribal organizations name liaisons to the local boards to provide information and represent their agency's interests at local board meetings. These liaisons may participate in discussions, but shall have no voting privileges and shall not be included in the quorum count.

- f. Nomination and appointment of Board members shall be accomplished using procedures designed to ensure a diverse Board membership and a balance of representative viewpoints.
- g. Approximate number of members: 200. This number is based on each local board having approximately 10-31 Board members.
- h. Members of the Board serve without compensation; however, each member may be reimbursed in accordance with the Federal Travel Regulations for authorized travel and per diem expenses incurred while attending Board meetings.

13. Subcommittees. The Department of Energy has the authority to form subcommittees. To facilitate the functioning of the Board, subcommittees (locally referred to as committees) may be formed for each local board with the approval of the DFO or Deputy DFO. The objectives of the subcommittees are to make recommendations to the full local board with respect to particular matters which are related to the responsibilities of the full local board. Such subcommittees or workgroups may not work independently of the chartered full local board and must report their recommendations and advice to the full local board for deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the local board, nor can they report directly to DOE.

14. Recordkeeping. The records of the Board shall be handled in accordance with General Records Schedule 26, Item 2 and Administrative Records Schedule 16, Item 8b (1.1), and approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

15. Filing Date.

Date filed with Congress: APR 11 2012



Carol A. Matthews
Committee Management Officer



Federal Register

**Thursday,
July 19, 2001**

Part II

General Services Administration

**41 CFR Parts 101–6 and 102–3
Federal Advisory Committee Management;
Final Rule**

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This action is necessary due to legislative and policy changes that have occurred, and judicial decisions that have been issued since the regulation was last updated. It is based also on suggestions for improvement from other Federal agencies and interested parties, and clarifies how the regulation applies or does not apply to certain situations.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561, or electronically at the following Internet address: charles.howton@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's authority for administering the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. (also referred to as "the Act"), is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act. GSA's responsibilities for administering the Act have been delegated to the Associate Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997), GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional

comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on: (1) Suggested issues to address; (2) specific recommendations about changes needed in the current Federal Advisory Committee Management subpart; (3) examples of situations where FACA was either a useful tool or a hindrance to public involvement; and (4) GSA's intent to include illustrative examples and principles. On January 14, 2000, GSA published a proposed rule in the **Federal Register** (65 FR 2504) and requested comments over a 60-day period ending on March 14, 2000. All comments received were considered in drafting this final rule.

This final rule provides administrative and interpretive guidelines and management controls for Federal agencies to implement the provisions of the Act, and is intended to improve the management and operation of Federal advisory committees in the executive branch.

B. Discussion of Comments

Twenty-six commenters responded to the invitation for comments, including twenty commenters from the executive branch and six commenters from non-Federal sources. Of the twenty comments received from executive branch sources, three comments were submitted by subcomponents of a Federal department or agency. A total of fifty-nine specific issues or recommendations were identified, of which seven were either fully supportive of the proposed rule or concerned typographical errors. GSA addressed the disposition of the remaining fifty-two issues or recommendations as follows:

The Final Rule Should Include More Guidance Relating to the Management of Advisory Committees, Including the Impact of Other Statutes and Issues on Day-to-Day Operations

Several commenters provided suggestions regarding the addition of guidance on issues that, although not addressed by the Act, likely would improve the management of advisory committees. For example, one commenter suggested that the final rule include a provision to encourage agencies to streamline their internal processes and procedures in order to expedite the establishment of advisory committees. Other commenters requested that GSA: (1) Provide more detailed provisions on the compensation of advisory committee members and staff, and experts and consultants; (2) expand the range of

information required to be listed in an advisory committee's charter to include the nature and disposition of records; and (3) incorporate new regulatory requirements for increasing access to advisory committee information, such as providing meeting notices, minutes, and reports via the Internet.

In response to these recommendations, GSA expanded the number of examples included within the final rule to illustrate how other statutes or issues potentially could affect the effective management of advisory committees.

In addition, GSA reorganized the examples and other guidance into appendices to avoid any ambiguity between actions required by the Act and the final rule, and actions that are suggested only within an implementing framework of "best practices." In the final rule, a "Key Points and Principles" appendix appears at the end of each subpart to which it relates.

In applying the "best practices" offered in the appendices, users of the final rule should continue to examine the extent to which other factors, including agency-specific statutory provisions and internal agency procedures, may affect a specific advisory committee or program. Although GSA believes that the examples contained in the appendices to the final rule represent the circumstances most commonly encountered during the day-to-day management of advisory committees, the listing is not exhaustive and must be supplemented based upon the unique requirements of the user.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do To Comply With the Act

Many commenters expressed concern over language contained in the preamble to the proposed rule relating to coverage of subcommittees under the Act. The preamble to the proposed rule noted that:

The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 101–6.1007(b)(3).) This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type

of advisory committee that is subject to some, but not all of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

In evaluating the comments received, GSA notes that there were no objections to the exclusions contained in § 102-3.185 of the proposed rule (now § 102-3.160 of the final rule), relating to "What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?" The exclusions in § 102-3.160 of the final rule continue to cover the types of activities routinely performed by subcommittees. By this reasoning GSA sought to bring into harmony these activities with those provisions in the proposed rule differentiating subcommittees reporting to a parent advisory committee from those reporting directly to a Federal officer or agency.

However, the preamble to the proposed rule did not explain and describe adequately the legal framework for GSA's decision to differentiate subcommittees that report only to a parent advisory committee more clearly from advisory committees that report directly to a Federal officer or agency. The Act defines the term "advisory committee" as "any committee, * * * or any subcommittee or other subgroup thereof which is established or utilized by the President or an agency in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government". Under this definition, a subcommittee is an "advisory committee" subject to the Act if it provides advice to the President or a Federal officer or agency. Most subcommittees, however, report only to a parent advisory committee and it is the parent committee that is normally responsible for providing advice or recommendations to the Government. In this conventional scenario, the subcommittee is not subject to the Act because it is not providing advice to the Government.

Case law supports this conclusion. In *National Anti-Hunger Coalition v. Executive Committee*, 557 F.Supp. 524 (D.D.C.), *aff'd*, 711 F.2d 1071 (D.C. Cir. 1983), the question presented was whether the Act applied to task forces reporting to the Executive Committee of the President's Private Sector Survey on

Cost Control in the Federal Government. The task forces had no authority to make recommendations to agencies or to the President. Instead, their function was to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports." (557 F.Supp. at 526). Although it was undisputed that the Executive Committee was subject to the Act, the court held that the Act did not apply to the task forces under the following reasoning:

There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." The Act does not cover groups performing staff functions such as those performed by the so-called task forces. (557 F.Supp. at 529). (See also *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 898, 911-913 (D.C. Cir. 1993).)

GSA believes that as a result of this decision, subcommittees that report to a parent advisory committee generally are not subject to the Act. GSA also believes that subcommittees whose advice or recommendations are provided directly to a Federal officer or agency are subject to the Act. However, GSA further believes that this decision does not shield those subcommittees from coverage under the Act whose advice or recommendations are not subject to deliberation by their parent advisory committees.

From this reasoning, it is not permissible for parent advisory committees simply to "rubber-stamp" the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in, an advisory committee's deliberations. Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.

To address these issues more clearly, GSA strengthened language in the final rule by: (1) Adding a new § 102-3.35 that outlines policies relating to subcommittees; (2) clarifying language

in § 102-3.145 relating to subcommittee meetings; and (3) clarifying the examples contained in Appendix A to Subpart C.

Correct and Clarify the Definition of "Utilized"

Nine commenters recommended that GSA revise its definition of the term, "utilized" to conform to governing case law.

As noted by some of the commenters, the definition of the term "utilized" in § 102-3.30 of the proposed rule inadvertently misstated the applicable legal test. The proposed rule stated that a committee is "utilized within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation." This construction would require an agency both to have management of the committee and to exercise control over the committee before the committee can be deemed "utilized." The proper statement of the "utilized" test is whether an agency either has management of the committee or, in some fashion other than management, exercises control over the committee.

The controlling legal authority is *Washington Legal Foundation v. U. S. Sentencing Commission*, 17 F.3d 1446 (D.C. Cir. 1994). In that case, the appeals court gave structure to the U.S. Supreme Court's prior decision interpreting the term "utilized." (See *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989).) The appeals court ruled that the word "utilized" indicates "something along the lines of actual management or control of the advisory committee." (17 F.3d at 1450). The operative criterion for determining whether a committee has sufficiently close ties to an agency in order to render it "utilized" is whether the agency has either *management* of the committee or exerts some other type of *control*, but not necessarily both.

Similarly, § 102-3.50(b) of the proposed rule (now § 102-3.185(b) of the final rule) used the phrase "actual management and control" with regard to section 15 of the Act. In explaining the relationship between Federal agencies and the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) covered by section 15 of the Act, § 102-3.50(b) of the proposed rule states that "[a]gencies must not manage or control the specific procedures adopted by each academy." However, committees covered by section 15 of the Act must be under *both* the actual management *and* the control of the academies, not that of a Federal agency. In this instance, the use of the conjunctive

word “and” is appropriate and indicates that the academies cannot relinquish *either* management or control of their committees to Federal agencies.

Accordingly, GSA revised the language contained in the final rule by changing *management and control* to *management or control* in the definition of the term “utilized,” now in § 102–3.25 of the final rule, and in those instances in which it appears in the “Key Points and Principles” guidance in the appendices to the final rule.

Clarify the Application of the Act to Agency Interactions With the Public

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, or recommendations on which to base decisions. They expressed concerns that: (1) Uncertainty about the scope of the Act creates a disincentive for Federal officers and agencies wishing to engage in public outreach; (2) the requirements of the Act are being interpreted differently within and among agencies; and (3) GSA’s current regulations do not adequately differentiate between those groups and activities covered by the Act and others that are not. (See 41 CFR 101–6.10.)

GSA recognizes that the broad definition in the Act of an “advisory committee” might be interpreted to extend coverage by the Act to any gathering or two or more persons from whom the President or other Federal officers or agencies seek advice or recommendations. However, in the cases discussed above, the courts have rejected such a broad reading of “advisory committee.” GSA believes that the sections in the final rule on definitions and on groups not covered by the Act, §§ 102–3.25 and 102–3.40, respectively, clarify the limits of the coverage by, or scope of, the Act when applied together.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration that is not subject to the Act. Although advisory committees support Federal decisions in a variety of situations, GSA believes that the ability of agencies to interact with the public in numerous other ways is particularly important because advisory committees are only one method for agencies to obtain the views of the public for their programs. Federal agencies may engage in continuous collaboration using diverse, but complimentary, tools, techniques, and methods. Whether or

not a selected approach includes the use of advisory committees, the potential or perceived applicability of the Act must not prevent constructive collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of Federal advisory committees, but also for information about alternative forms of public involvement.

In GSA’s view, agencies have broad latitude to consult with the public using many different approaches that are not subject to the Act. Public consultation formats that generally fall outside of the scope of the Act include public meetings, information exchange forums, meetings initiated with or by non-governmental organizations, Federal participation on groups that are not established or utilized by the Government, and certain work products generated by contractors as a result of consultation with the public.

While FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement. Within this context, agencies wishing to consult with private individuals, non-governmental organizations, or with the public at large through other assemblages often must consider whether or not the Act applies to a given situation.

The number and range of scenarios presented by the commenters underscore the importance of presenting a clearer understanding of how advisory committees are established by Federal agencies or how the Government’s relationship with groups not established within the meaning of the Act may nevertheless become subject to the Act if they are *utilized*. Based upon the comments received, the circumstances under which advisory committees are *established* within the executive branch appear to be well understood. Accordingly, GSA retained the language contained in § 102–3.30 of the proposed rule in § 102–3.25 of the final rule and throughout subpart B.

However, as noted in the above discussion of the proposed rule’s treatment of the term “utilized,” agencies must determine whether or not their relationship with a group created by non-Federal entities constitutes *actual management or control* within the meaning of the Act. To help agencies make this determination, GSA has included within the final rule several new examples illustrating the application of the *actual management or control* test to different situations.

These additions are contained in the “Key Points and Principles” guidance in Appendix A to Subpart A.

Explain the Relationship Between Committees Established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) and the Act

The Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, December 17, 1997, established separate procedures for committees that are managed and controlled by NAS or NAPA. Subpart E of the final rule contains implementing instructions for the new section 15 of FACA.

Clarify the Distinction Between Advisory Committees Subject to the Act and Operational Committees Not Covered by the Act

Five commenters suggested that further guidance in the final rule is necessary to assist agencies in differentiating an operational committee not covered by the Act from one that performs primarily advisory functions and is, therefore, subject to the Act. GSA added guidance within Appendix A to Subpart A listing those characteristics generally associated with committees having primarily operational, as opposed to advisory, functions.

Clarify the Applicability of the Act to Advisory Committee Meetings Conducted Through Electronic Means

Four commenters supported GSA’s language contained in the proposed rule extending the definition of “committee meeting” to meetings conducted in whole or part through electronic means. However, two commenters suggested additional clarifications, which GSA has adopted.

First, GSA slightly modified the definition of “committee meeting” contained in § 102–3.25 of the final rule to include a “gathering” of advisory committee members whether in person or through electronic means. This change was made to highlight coverage by the Act of both physical and “virtual” meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

Second, GSA amended the language contained in § 102–3.140 of the final rule to provide for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This change complements existing policy covering advisory committee meetings that are held within a physical setting, such as a conference room, by ensuring that agencies adequately plan for public

participation by adding additional capability (such as a designated number of public call-in lines for a teleconference) to ensure access to committee deliberations.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter expressed concern that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members. GSA recognizes that the guidance contained in the proposed rule is limited to the language of the Act, but believes that the provisions of section 5(c) of the Act are broad enough to allow for agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive orders, and the needs of the agency responsible for the advisory committee.

However, GSA added a list of possible considerations within Appendix A to Subpart B that, while not comprehensive or universally applicable, may help in developing a plan for balancing an advisory committee's membership.

Emphasize the Importance of Maximizing an Advisory Committee's Independent Judgment

Five commenters offered various suggestions to address the requirement contained in section 5(b)(3) of the Act, which is intended to ensure that the work products of an advisory committee reflect the group's independent judgment.

Included among these suggestions were recommendations from the U.S. Office of Government Ethics (OGE) that GSA modify the language contained in § 102-3.155 of the proposed rule (now contained in Appendix A to Subpart C of the final rule) to clarify the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members. GSA adopted all of OGE's suggestions.

The remaining suggestions received concerned the appointment of advisory committee members, including a recommended change to § 102-3.155 of the proposed rule (now Appendix A to Subpart C) to clarify that: (1) An agency may appoint a member to an advisory committee based upon the recommendation of an organization to be represented; and (2) recommendations from an advisory committee may be a part of an agency's process to nominate new members. GSA adopted these changes and suggestions.

Provide Additional Guidance on the Management of Federal Records

GSA received suggestions from the National Archives and Records Administration (NARA) regarding three areas where additional guidance on records management issues could be useful. Specifically, NARA recommended that § 102-3.190 of the proposed rule: (1) Be expanded to include all recordkeeping requirements specified by the Act, not just those relating to advisory committee minutes; (2) include a statement that records should be scheduled for disposition before actual termination of the advisory committee; and (3) with regard to information that must be included within an advisory committee's charter, include a determination as to whether its records fall within the Presidential Records Act, 44 U.S.C. Chap 22.

GSA addressed these recommendations by expanding § 102-3.200 of the proposed rule (now Appendix A to Subpart D) to include additional guidance relating to records management and to highlight the applicability and importance of Federal recordkeeping statutes and policies to advisory committee operations. GSA decided to include this guidance within this appendix because the Act generally is silent on records management issues, with the exception of the responsibilities of the Committee Management Officer (CMO) in section 8(b)(2) of the Act.

Pursuant to the National Archives and Records Administration Act, 44 U.S.C. Chap. 21, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition. The Archivist, working in conjunction with the agencies' Records Management Officers, also is responsible for identifying records that are appropriate for transfer to the permanent Archives of the United States and those that must be processed in accordance with the Presidential Records Act.

Strengthen Provisions Relating to the Public's Access to Advisory Committee Records

Two commenters suggested that the final rule contain more explicit guidance regarding the public's access to committee records under section 10(b) of the Act. In particular, the commenters recommended adding language describing the circumstances under which records may be withheld pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

GSA believes that timely access to advisory committee records is an important element of the public access provisions of the Act and, therefore, agrees with these suggestions. GSA further believes that there are two separate, but equally important issues related to the availability of advisory committee records under section 10(b) of FOIA: (1) The extent to which records may be protected from disclosure under FOIA; and (2) the extent to which agencies may require that requests for non-exempt records be processed under the request and review process established by section 552(a)(3) of FOIA.

Section 10(b) of the Act provides that:

Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Records covered by the exemptions set forth in section 552(b) of FOIA generally may be withheld. However, it should be noted that FOIA Exemption 5 generally cannot be used to withhold documents reflecting an advisory committee's internal deliberations.

An opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 Op. O.L.C. 73, April 29, 1988, entitled "Disclosure of Advisory Committee Deliberative Materials," concludes that FOIA Exemption 5 "is not generally applicable to materials prepared by or for an advisory committee, but that it does extend to protect privileged documents delivered from the agency to an advisory committee." The opinion further states that:

This construction gives meaning to exemption 5 without vitiating Congress' enumeration of deliberative documents such as working papers and drafts as subject to disclosure. It is also supported by a close reading of exemption 5 itself. Because by its terms exemption 5 protects only inter-agency and intra-agency documents and because an advisory committee is not an agency, documents do not receive the protection of exemption 5 by virtue of the fact that they are prepared by an advisory committee. On

the other hand, documents prepared by an agency do not lose the protection of exemption 5 by virtue of the fact that they are delivered to an advisory committee.

In determining whether or not such records fall within these narrow exclusions, the OLC opinion provides that consideration should be given to determining whether or not section 10(b) of FACA is applicable in the first instance. As noted in the OLC opinion:

Section 10(b) itself applies only to materials made available to or prepared for or by an advisory committee established by statute or reorganization plan or established or utilized by the President or an agency. 5 U.S.C. app. I, 3(2), 10(b). Accordingly, in determining whether a document is to be disclosed the first issue is not whether it is subject to an exemption under 5 U.S.C. 552 but whether it meets this threshold definition.

In explaining this threshold determination of whether particular records are subject to the section 10(b) disclosure requirement, the OLC opinion states that:

The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)'s application to the work prepared by a staff member of an advisory committee or a staffing entity within an advisory committee, such as an independent task force limited to gathering information, or a subcommittee of the advisory committee that is not itself established or utilized by the President or agency, so long as the material was not used by the committee as a whole.

Although advisory committee records may be withheld under the provisions

of FOIA if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

In *Food Chemical News v. Department of Health and Human Services*, 980 F.2d 1468, 299 U.S. App. DC 25, the appeals court held that:

Under section 10(b) of FACA an agency is generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. Except with respect to those materials that the agency reasonably claims to be exempt from disclosure pursuant to FOIA, a member of the public need not request disclosure in order for FACA 10(b) materials to be made available. Thus, whenever practicable, all 10(b) materials must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply.

Accordingly, GSA included language within § 102-3.170 of the final rule describing the policy to be followed in implementing section 10(b) of the Act, and included additional guidance in Appendix A to Subpart D concerning the applicability of FOIA to records covered by section 10(b) of FACA.

Improve the Organization of the Final Rule

During the course of evaluating comments received from all sources,

GSA conducted a review of the proposed rule's general organization and structure for the purpose of achieving greater clarity and consistency in presentation. This effort led to a number of changes, such as redesignating the "Key Points and Principles" sections following each subpart as appendices. Other changes were made throughout the final rule to improve alignment between section headings and the material that follows. Similar changes were made within the appendices in order to improve the linkage between the examples or questions and the corresponding guidance.

In addition, GSA reorganized the final rule to redesignate subpart B as subpart E to improve the flow of information distinguishing Federal advisory committees subject to the Act from those committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) which, if not *utilized* by the executive branch, are not subject to the Act's provisions. Section numbers previously assigned in the proposed rule affected by the redesignation of subpart B as subpart E, subpart C as subpart B, subpart D as subpart C, and subpart E as subpart D have been changed accordingly.

C. Technical and Procedural Comments

The final rule incorporates several technical and procedural recommendations made by a range of commenters, particularly in the following sections or appendices:

Section/Appendix	Modification
102-3.60	Specific procedures for consulting with the Secretariat have been eliminated. GSA will issue separate guidance to agencies covering the administration of the consultation requirement.
Appendix A to Subpart B	Addition of guidance relating to the achievement of "balanced" advisory committee membership.
Appendix A to Subpart B	Addition of guidance covering the legal duration of the charter of an advisory committee required by statute where Congress authorizes the advisory committee for a period exceeding two years.
Appendix A to Subpart C	Addition of guidance addressing the designation of an alternate Designated Federal Officer (DFO).
102-3.130	All references to compensation limits imposed by the Act have been updated, and references to alternative similar agency compensation systems other than the General Schedule have been included.
102-3.130	All references to the word, "handicapped," have been replaced with the phrase, "with disabilities."
Appendix A to Subpart D	Addition of guidance regarding activities that are not subject to the notice and open meeting requirements of the Act.
102-3.165	The requirement for the completion of advisory committee meeting minutes now requires the DFO to ensure certification within the time limit specified.

D. Consultation With Other Federal Agencies

Pursuant to section 7(d) of the Act, the guidelines contained in this final

rule with respect to uniform fair rates of compensation for comparable services of members and staff of, and experts and consultants to advisory committees have

been established after consultation with the U.S. Office of Personnel Management (OPM).

Although not required by the Act, the guidelines contained in this final rule that refer to the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members have been established after consultation with the U.S. Office of Government Ethics (OGE).

Although not required by the Act, the guidelines contained in this final rule that relate to the management of advisory committee records have been established after consultation with the National Archives and Records Administration (NARA).

E. Executive Order 12866

GSA has determined that this final rule is a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

F. Regulatory Flexibility Act

GSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impact small entities and applies only to Federal officers and agencies.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

H. Small Business Regulatory Enforcement Fairness Act

This final rule is being submitted for Congressional review as prescribed under 5 U.S.C. 801.

List of Subjects in 41 CFR Parts 101-6 and 102-3

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,
Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

1. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

§ 101-6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 102-3 (41 CFR part 102-3).

CHAPTER 102—[AMENDED]

2. Part 102-3 is added to subchapter A of chapter 102 to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this subpart cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15 Who are the intended users of this part?
- 102-3.20 How does this part meet the needs of its audience?
- 102-3.25 What definitions apply to this part?
- 102-3.30 What policies govern the use of advisory committees?
- 102-3.35 What policies govern the use of subcommittees?
- 102-3.40 What types of committees or groups are not covered by the Act and this part?

Appendix A to Subpart A of Part 102-3—Key Points and Principles

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What are the authorities for establishing advisory committees?
- 102-3.55 What rules apply to the duration of an advisory committee?
- 102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?
- 102-3.65 What are the public notification requirements for discretionary advisory committees?
- 102-3.70 What are the charter filing requirements?
- 102-3.75 What information must be included in the charter of an advisory committee?
- 102-3.80 How are minor charter amendments accomplished?
- 102-3.85 How are major charter amendments accomplished?

Appendix A to Subpart B of Part 102-3—Key Points and Principles

Subpart C—How Are Advisory Committees Managed?

- 102-3.90 What does this subpart cover and how does it apply?
 - 102-3.95 What principles apply to the management of advisory committees?
 - 102-3.100 What are the responsibilities and functions of GSA?
 - 102-3.105 What are the responsibilities of an agency head?
 - 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
 - 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
 - 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
 - 102-3.125 How should agencies consider the roles of advisory committee members and staff?
 - 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?
- Appendix A to Subpart C of Part 102-3—Key Points and Principles

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.135 What does this subpart cover and how does it apply?
 - 102-3.140 What policies apply to advisory committee meetings?
 - 102-3.145 What policies apply to subcommittee meetings?
 - 102-3.150 How are advisory committee meetings announced to the public?
 - 102-3.155 How are advisory committee meetings closed to the public?
 - 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
 - 102-3.165 How are advisory committee meetings documented?
 - 102-3.170 How does an interested party obtain access to advisory committee records?
 - 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?
- Appendix A to Subpart D of Part 102-3—Key Points and Principles

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.180 What does this subpart cover and how does it apply?
 - 102-3.185 What does this subpart require agencies to do?
- Appendix A to Subpart E of Part 102-3—Key Points and Principles

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102–3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

- (1) Executive branch officials and others outside Government currently involved with an established advisory committee;
- (2) Executive branch officials who seek to establish or utilize an advisory committee;
- (3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and
- (4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102–3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and

specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102–3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means 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 for the President or on issues or policies within the scope of an agency official’s responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer (“CMO”), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (“Secretariat”), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer (“DFO”), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President’s delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or

agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102–3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an advisory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

§ 102–3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under

the requirements of the Act and this part.

Appendix A to Subpart A of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.	102-3.25, 102-3.40(d), 102-3.40(f)	1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners?"	A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency. B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102-3.25, 102-3.40(d), 102-3.40(f)	1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped?	A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	<ol style="list-style-type: none"> 1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an “individual” apply only to “natural persons?” 	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.” (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting “as a group” under the Act. (ii) In this respect, “individual” is not limited to “natural persons.” Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not “managed or controlled” by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform “operational” duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are “operational committees” subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the “primary” mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily “operational” functions are not subject to the Act.	102–3.40(k)	1. What characteristics are common to “operational committees?” 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation’s parks. Part of the committee’s role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA?	A. In answer to question 1, non-advisory, or “operational” committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program. B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily “operational” and not covered by FACA. C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

§ 102–3.50 What are the authorities for establishing advisory committees?

FACA identifies 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*).

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102–3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102–3.30(b), it can be

reestablished in accordance with § 102–3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102–3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in accordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540-4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102-3.75.

§ 102-3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102-3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102-3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102-3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope

substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102-3.70.

§ 102-3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in

objectives and scope, duties, and estimated costs, are the same as in § 102-3.80, except that for discretionary advisory committees an agency must:

(a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and

(b) File the amended charter as specified in § 102-3.70.

Appendix A to Subpart B of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102-3.60, 102-3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102-3.60(a), 102-3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102-3.105(e) and reflect consultation with the Secretariat under § 102-3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102-3.30(c), 102-3.60(b)(3) ..	1. What factors should be considered in achieving a "balanced" advisory committee membership?	A. The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102-3.70(b)	1. If an advisory committee's duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Subpart C—How Are Advisory Committees Managed?

§ 102-3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102-3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff

support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, limitations, if any, on its duties, and the agency's goals and objectives. In general, the more specific an advisory committee's tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102-3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

- (1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;
- (2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;
- (3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;
- (4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;
- (5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and
- (6) Providing recommendations for transmittal by the Administrator to the

Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102-3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;
- (b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;
- (c) Designate a Committee Management Officer (CMO);
- (d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;
- (f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;
- (g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;

- (i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and
- (j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to § 102-3.140 and the agency's guidelines.

§ 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§ 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102-3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by § 102-3.105.

§ 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

- (a) Approve or call the meeting of the advisory committee or subcommittee;
- (b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;
- (c) Attend the meetings;
- (d) Adjourn any meeting when he or she determines it to be in the public interest; and
- (e) Chair the meeting when so directed by the agency head.

§ 102-3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory

committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to

any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which

the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS-15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the

members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their

duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(l) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as

an individual with disabilities as provided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

Appendix A to Subpart C of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102-3.105, 102-3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	<p>A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff.</p> <p>B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements.</p> <p>C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.</p>
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102-3.130(a)	<p>1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization?</p> <p>2. If so, can different persons represent the organization at different meetings?</p>	<p>A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members.</p> <p>B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.</p>
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102-3.130(d), 102-3.130(e), 102-3.130(g).	<p>1. May members and staff be compensated for their service or duties on an advisory committee?</p> <p>2. Are the guidelines the same for compensating both members and staff?</p> <p>3. May experts and consultants be employed to perform other advisory committee work?</p>	<p>A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.</p>

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			<p>B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency “may” pay members on either an hourly or a daily rate basis, and “may not” provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency “must” pay staff on an hourly rate basis only, and “may” provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.</p> <p>C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)</p>
<p>IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..</p>	<p>102–3.105(h)</p>	<p>1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules? 2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?</p>	<p>A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member’s status. The determination of a member’s status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a “representative” or a “special Government employee” (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes, while representatives are not subject to these ethics requirements.</p> <p>B. The answer to question 2 is the agency’s Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.</p>
<p>V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..</p>	<p>102–3.105(c), 102–3.105(i)</p>	<p>1. Must an agency’s CMO and each advisory committee DFO be appointed by the agency head?</p>	<p>A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency’s policies and procedures.</p>

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102–3.125(c)	<p>2. May an agency have more than one CMO?</p> <p>1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?</p>	<p>B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its sub-components, which are subordinate to the CMO's agencywide responsibilities and functions.</p> <p>A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.</p>

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102–3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a

reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with all openness requirements of this subpart.

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval*. Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102-3.150.

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102-3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102-3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the

Presidential advisory committee pursuant to § 102-3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102-3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304-GSA-AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102-3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29-33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102-3.140, 102-3.145(a), 102-3.155.	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the Federal Register announcing advisory committee meetings.	102-3.150	1. Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102-3.150. (i) "Blanket notices" should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee's schedule. (ii) An agency's Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
<p>III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.</p>	<p>102-3.170</p>	<p>1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?</p>	<p>A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist. (i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged "inter-agency or intra-agency" documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002.)</p>

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
<p>IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.</p>	<p>102–175(e)</p>	<p>1. How must advisory committee records be treated and preserved?</p>	<p>A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA.</p> <p>B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA.</p> <p>C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee.</p> <p>D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.</p>

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart,

NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the

academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized

representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures

substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102-3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102-3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.

Nevada Site Specific Advisory Board

Environmental Management Site-Specific Advisory Board

OPERATING PROCEDURES

I. MISSION

The mission of the Nevada Site Specific Advisory Board (the Board or NSSAB) is to provide meaningful opportunities for collaborative dialogue among the diverse multicultural communities of Nevada, U.S. Department of Energy (DOE) Environmental Management (EM), and the DOE Nevada Site Office (NSO).

II. CHARTER

The Board is chartered under the EM Site-Specific Advisory Board Federal Charter. At the request of the Assistant Secretary or the NSO Assistant Manager for Environmental Management, the Board may provide advice and recommendations concerning EM site-specific issues.

III. FUNCTIONS, SCOPE, AND ACCOUNTABILITY

A. Functions: At the specific request of EM, the Board will provide independent advice and recommendations to the Assistant Secretary for Environmental Management or NSO EM personnel. The Board will provide advice and recommendations in response to requests issued by EM.

B. Scope: The scope of the Board's duties includes:

1. The opportunity for the Board to discuss with EM their proposals and plans for such matters as EM facility expansions and closings, environmental projects, and the impact of environmental regulations.
2. Any aspects of EM issues related to clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non stockpile nuclear materials; excess facilities; future land use and long term stewardship; risk assessment and management; and clean-up science and technology activities.
3. The Board may also be asked to provide advice and recommendations on any other EM project or issue. The Board ensures early, ongoing community access to information (and its interpretation and implications) and dialogue that improves the quality of the decision making process of EM.

C. Accountability: The Board interacts with the appropriate EM decision makers and NSSAB Liaisons to provide advice on matters it is charged with, on behalf of the citizens of Nevada.

1. The Board seeks a free and open two-way exchange of information and views between Board members and EM, where all are invited to speak and to listen.

2. Board members may request access to independent technical advice, staff, and training.
3. The Board will conduct business according to these specific operating procedures and undergo requisite training (any training necessary for participation in NSSAB activities, including Orientation) to ensure all members will hear a wide range of views and use constructive methods for resolving conflict, making decisions, and dealing with the differing viewpoints.
4. The Board will always remain accountable to the public and EM, and seek to promote diverse community involvement. The Board will develop culturally appropriate procedures to invite public participation in EM's decision-making processes.
5. In compliance with the DOE Federal Advisory Committee Act (FACA), Board meetings will be open to the public. Meetings of the Full Board will be published in the Federal Register to provide a minimum of 15-days advance notice. In addition, notification of any committee meetings (including ad-hoc), work groups, and any other NSSAB-sponsored function will be posted on the NSSAB website (www.nv.doe.gov/nnsab) no later than five days in advance of the activity to ensure stakeholder awareness. Board meetings will be held at regular times in publicly accessible locations to encourage maximum public and Board participation.
6. The Board is part of the Environmental Management Site-Specific Advisory Board chartered pursuant to the Federal Advisory Committee Act. The Board is thereby subject to the requirements of the Environmental Management Site-Specific Advisory Board Charter, the Federal Advisory Committee Act (5 USC Appendix), and Federal Advisory Committee Management requirements (41 CFR 101-6).

IV. MEMBERSHIP

A. SSAB Member Appointment / Removal: Pursuant to delegated authority, the Assistant Secretary for Environmental Management is authorized to appoint and remove EM SSAB members.

1. The standard term for Board members is two years, and members are to serve no more than three two-year terms for a total of six years. In areas where the member pool is limited, a request for an exception may be made by the Assistant Manager for Environmental Management to the Assistant Secretary.
2. In addition, membership appointments are usually staggered so that at least one-third of the Board is retained for continuity.
3. Board membership shall reflect a full diversity of viewpoints in the affected community and region and will strive to be composed primarily of people who are directly affected by DOE site clean-up activities.

4. Members may include, but are not limited to, interested stakeholders from local governments; tribal nations; environmental, civic, and religious groups; labor organizations; ethnic minorities; academia; and other interested individuals.
5. Selection and nomination of Board members shall be accomplished using procedures designed to ensure a diverse Board membership and a balance of representative viewpoints.
6. The Board will typically consist of 10 to 20 members. Total membership may fluctuate during recruitment activity periods due to transition and orientation time for incoming/outgoing members.
7. Members serve at the pleasure of the Assistant Secretary. The Assistant Secretary is authorized to appoint and remove members at any time.
8. The Assistant Secretary or Assistant Manager for Environmental Management may request that other federal, state, local entities or tribal organizations name liaisons to the local Boards to provide information and represent their agency's interests at local Board meetings. These liaisons may participate in discussions but shall have no vote and shall not be included in the quorum count.

B. Vacancies: The Board may recommend to the Deputy Designated Federal Official (DDFO) individuals to fill vacancies on the Board and may participate in interviews as requested by the DDFO. The DDFO shall interview nominees and forward recommendations, as appropriate, to the Assistant Manager for Environmental Management. After review and approval, the Assistant Manager will formally propose the slate of members to the Office of Environmental Management at DOE Headquarters.

V. MEMBERSHIP RESPONSIBILITIES

A. Board Commitments: Board members make the following commitments:

1. To attend regular meetings and receive training, as necessary;
2. To review and comment on EM and other documents within their purview that come before the Board, and submit timely recommendations to EM;
3. To be available for Committee work between Board meetings, and to participate fully in the affairs of the Board;
4. To work collaboratively and respectfully with other Board members and liaisons in the best interests of both the Board and the public;
5. To represent accurately all matters before the Board;
6. To handle, in a responsible manner, information and materials provided by the agencies, particularly drafts developed for an agency's in-house use, that might have significant future revisions as part of the agency's working practices;

7. To share all written communication about or for Board activities with the Board as a whole and with the DDFO;
8. To act for the Board or as its representative only with the majority vote of the Board;
9. To abide by the terms and conditions of the EM SSAB Charter and these operating procedures;
10. Any member who fails to attend two (2) full board meetings without an excused absence, or does not attend a minimum of 50% of the regularly scheduled meetings in any one-year period (regardless of excused or unexcused status), may be removed from the Board. An absence is excused if notice is provided to the NSSAB administrative support personnel prior to the scheduled meeting. This notice of absence must be provided each month that an excused absence is needed. A member must attend at least two-thirds of any meeting in order to be considered present for that meeting.

B. Liaison Commitments: The Board requests that liaisons make the following commitments:

1. To define and communicate clearly to the Board the respective decision making processes of the entities they represent;
2. To provide timely access to information pertinent to EM and associated environmental issues and related decision making;
3. To inform the Board in a timely and proactive manner of entity processes, programs, projects, and activities pertinent to the Board's mission and purpose;
4. Full Board Reports
 - a) Provide a short, verbal report on entity's EM activity at each Full Board meeting
 - b) If liaison is unable to attend the Full Board meeting, a written report will be submitted to the NSSAB Administrator via email two days prior to the Full Board meeting

VI. BOARD STRUCTURE

A. Chair and Vice Chair: The Board will elect by majority vote, a Chair and Vice Chair, who will ensure that a diversity of viewpoints are considered in all Board discussions. The Chair will support the Board in a balanced and unbiased manner, irrespective of any personal views on a particular issue and see that all Board members have the opportunity to express their views.

1. The election for Chair and Vice Chair will be held before September 30 of each year. The terms of the Chair and Vice Chair will be one year beginning October 1.
2. The Chair certifies to the accuracy of all Board minutes within 45 days.

3. The Chair signs Board recommendations passed by consensus/majority. If consensus/majority is not reached, the Chair may refer the matter back to a committee or sign and send to DOE both the majority and minority reports.
4. The Chair serves between regular meetings of the Board as contact for EM, interest groups, and the general public.
5. The Vice Chair serves as Chair in the absence or incapacity of the Chair.
6. The Chair and Vice Chair will have other duties, consistent with applicable statutes, regulations, charters, and operating procedures, as assigned by the Board.
7. In the absence of the Chair and Vice Chair, the immediate past Chair, if that person still serves on the Board, shall serve as Chair of the board meeting. In the absence of the immediate past Chair, the immediate past Vice Chair, if that person still serves on the Board, shall serve as Chair of the Board meeting. If none of these persons is present, those Board members present shall select, with the approval of the DDFO, a chair for the meeting.

B. Committees: The Board will establish its Committees prior to the beginning of each fiscal year to reflect the Board's approved work plan for that year. The Board may establish additional Committees as necessary throughout the fiscal year to address changes or adjustments to the approved work plan for that year.

C. Structure of Committees:

1. Membership on committees will be on a volunteer basis.
2. Committees shall be made up of at least four Board members. Non-Board members may serve on committees with the concurrence of the DDFO. Non-Board and liaison committee members may vote in committee when Board members constitute the majority in attendance.
3. Leadership positions may only be held by Board members.
4. Liaisons will not constitute a majority of the committee.
5. Committees will meet independently of the Board.
6. Committees may not directly submit recommendations to EM. They are solely responsible for producing draft proposals, recommendations, or information for the full Board. Before presenting a recommendation to the Board, the committee should have passed the recommendation by majority vote of the members attending the meeting.
7. Committee Chairs will be elected by majority vote of the committee at the beginning of each fiscal year, or as necessitated by vacancies. Committees may, at their discretion, internally select, elect, appoint, or remove committee Co-Chair or Vice-Chair (either title bearing the same intended meaning), from among only the properly appointed Board members of the committee. Co-Chairs or Vice-Chairs shall serve and act in the temporary absence of the committee Chair.

8. Committee Chairs shall notify the Board Chair and the DDFO of the selection, election, appointment, or removal of any committee Co-Chair or Vice-Chair.

D. Work Sessions: Work sessions are defined as meetings of the Board at which no official action or decision may be taken.

E. Closed Session: In general, all full board meetings must be open to the public and noticed in the Federal Register; exceptions are solely administrative discussions, issues that might relate to individual privacy (such as actions on individual board members) or meetings that are solely for research/education related to upcoming open meetings.

F. Removal of Board Officers: An officer of the Board (Chair, Vice Chair, or Committee Chair, Vice-Chair or Co-Chair), may be removed from their office for misconduct or neglect of duty by a two-thirds (2/3) vote of the Board. Recommendation for removal can be made by the DDFO, or as a duly authorized motion tendered by a Board member at a regularly scheduled Board meeting.

G. Replacement of Officers

1. A Board office vacancy (Chair, Vice-Chair) that comes into existence will be announced at a regularly scheduled Board Meeting.

2. An election by majority vote of the entire Board will be held at the next regularly scheduled Board meeting after the meeting at which the vacancy was announced. In the event of a removed, resigned, or abandoned vacancy in the Chair or Vice-Chair, the term of office of any interim replacement for the Chair or Vice Chair shall expire on September 30 and the regularly scheduled annual election shall be held as provided in Section VI.A.1.

3. If both the Chair and Vice-Chair become vacant at or near the same time, the Board shall elect, by majority vote, a Chair and Vice-Chair at the meeting at which the vacancy is announced, to serve the remainder of the term. To prevent delay in Board work, and in the absence of a timely interim election, the longest standing member will be appointed Acting Chair until a formal vote can be conducted

VII. DECISION MAKING

A. Quorum: A quorum of the Board consists of a majority (51%) of the voting members of the Board.

B. Rules of Order:

1. The current edition of "Robert's Rules of Order" governs the Board.

2. All decisions, other than changes to the Operating Procedures (Section XIV) and administrative decisions, are made at valid full Board meetings (see Section IX.A.2) by a majority vote of those members present and voting.

C. Requirements for Recommendations to EM:

1. Recommendations shall be approved by consensus/majority at a Board meeting; if consensus cannot be reached, a majority and a minority report(s) shall be written. These reports may be submitted to EM, but must be clearly marked as representing two (or more) points of view.
2. When an issue comes before the Board, the Chair may refer the issue to the appropriate Committee or create an Ad-hoc Committee for that issue. The Committee or Ad-hoc Committee will report progress to the Board at the next meeting.
3. Recommendations to be considered by the Board shall be processed in the following manner:
 - a) Full Board (Committee of the Whole): Information and diverse perspectives are discussed and exchanged by the full Board. In the process, the Board may request comment from outside technical experts, DOE staff, environmental groups, academia, and representatives from other public agencies, or other stakeholders. At least 15 minutes will be allowed for public comment at each meeting of the board and will take place, whenever possible, before board action on a recommendation. Recommendations are then prepared and voted on by the full Board as a Committee of the Whole. In the event consensus is not achieved, minority position(s) will be presented at the meeting and/or a position paper may be included.
 - b) Committees: Meetings are held, information and perspectives are discussed and exchanged, and draft recommendations are prepared and approved for review by the full Board. In the process, the Committee may hear from outside technical experts, DOE staff, environmental groups, academia, and representatives from other public agencies, or other stakeholders. In the event consensus is not achieved, a minority position paper may be included with the Committee recommendation. Committee recommendations are presented by the Committee Chairperson or designated committee member to the full Board for further action and consideration as a formal NSSAB recommendation, if appropriate, to EM.
4. Upon passage by the Board, all recommendations will be signed by the Chair and conveyed to EM in writing within fifteen (15) calendar days.
5. The Board requests EM provide timely response to Board recommendations and explain the basis for EM's decision and implementation of accepted recommendations.
6. Consideration of recommendations from other EM SSABs or conferences will be handled by the full board in open meetings in the manner described above.

D. Electronic Voting

Electronic voting may be used for solely administrative matters.

E. Administrative Decision Making:

1. Administrative functions of the Board may be delegated to the Chair.
2. Administrative functions of the Board refer only to functions related to self-governance as allowed by the agency, such as board conduct and agenda and meeting preparation.

VIII. ROLE OF THE FACILITATOR

A professional facilitator may be hired with the concurrence of the DDFO to help the Board organize its work, prepare an agenda based on consultations with the Board and the Chair, facilitate the Board meetings, and work with the staff to prepare the minutes of the meetings.

IX. FORMAT AND CONDUCT OF MEETINGS

A. Meeting Format:

1. Public notices will be printed in the Federal Register at least fifteen (15) days before full Board meetings. Announcements may be made via radio, television, local newspapers, or the NSSAB website.
2. A quorum of voting Board members is required to constitute a valid meeting.
3. The Board will meet as needed, with the length of meetings determined by the agenda.
4. The Chair, DDFO and support staff will develop draft agendas, meeting minutes and other required/requested services. Meeting agendas must be approved by the DDFO.
5. Meetings will be open to the public; a section of the meeting room will be set aside for observers, and public comment is invited at appropriate times during a meeting. Per DOE policy, a minimum of 15 minutes must be provided for public comment at each open meeting of the Board.
 - a) There will be a fixed agenda item for public comment. A non-recused Board member may not address the Board during the time set aside for public comment. The public comment period may be extended by the DDFO, Chair or by consensus of the Board members in attendance.
 - b) If required, at the discretion of the DDFO, the fixed time may be divided equally among the members of the public who request to speak.
 - c) In addition to the public comment period, the Chair may invite members of the public to offer their input before a decision on a recommendation is made. The Board will determine in advance how much time they will allocate for such additional public input.

d) Members of the public may offer their comments in writing and give them to the DDFO. They will be attached to meeting minutes.

e) Time will be set aside for Board member comments during each meeting.

6. Any meeting will be set up in terms of both the physical arrangements and the agenda to facilitate hearing and discussion.

7. Minutes of the meetings will be kept by support staff, distributed to the Board/Committee members for their review and made available to the public.

a) The Chair and DDFO must certify the accuracy of the Board minutes within 45 calendar days of the meeting to which they relate. In the absence of the Chair, the Vice-Chair must make such certification.

b) Committee minutes must be certified by the Committee Chair within 30 days of the meeting to which they relate.

8. Any product of the Board such as policies, positions, reports, advice or recommendations given to DOE must be reviewed by the Board before distribution.

9. The Board may utilize a neutral third-party facilitator to assist it in accomplishing its mission; in all instances the facilitator will operate in a completely neutral, balanced, and fair manner;

10. Board members will show respect to each other, EM, liaisons, and the public.

X. TRAVEL

The NSSAB Chair, Vice-Chair or designee is expected to attend national Site-Specific Advisory Board meetings and/or workshops. Any additional slots available (as determined by the DDFO) shall be offered to a member whose work is most closely related to the meeting topic.

A travel report shall be given to the Board at the next full Board meeting following completion of travel.

XI. BUDGET

A. Authority: The DDFO retains the fiscal responsibility for the Board.

B. Compensation: Board members will serve without compensation but may receive reimbursement for direct expenses related to the work of the Board and meeting attendance.

C. Travel Expense: Board members are required to follow applicable federal travel regulations. All travel expenses must be submitted to the appropriate support staff responsible for travel reimbursement according to federal guidelines.

1. Travel to out-of-town meetings (other than those at which the Chair is expected to attend) shall be offered to those NSSAB members (as determined by the DDFO) who are specifically engaged in topics pertinent to the meeting subject.
2. Travel for “official” NSSAB business is conducted under U.S. Government travel order procedures and rules. Thus, certain hotel rates, airline, car rental, and per diem expense restrictions will apply. Travel costs will be reimbursed according to U.S. Government Joint Travel Regulations.
3. Requests for travel shall be submitted to the NSSAB office in writing or via email. Board members must submit receipts for lodging, transportation (or actual mileage for personal vehicle), and incidental expenses to the appropriate support staff person within 10 days of completion of travel.

XII. EVALUATION

The Board shall contact the DDFO or the DDFO’s designee should it require administrative support during the preparation of the annual fiscal-year evaluation to assess how adequately it is representing stakeholder interests and completing work plans for review of the Board. The Board may also evaluate the responsiveness of EM. After Board review, discussion, and approval, but no later than October 15, the report will be submitted to the DDFO.

XIII. CONFLICT OF INTEREST

A. Definition: Board members are prohibited from personally and substantially participating, as a Board member, in any particular matter in which the Board member or the Board member’s spouse, minor child, organization in which he or she is serving as an officer, director, trustee, general partner, or employee has a financial interest. This restriction also applies if the Board member is negotiating or has any arrangement concerning prospective employment with any person or organization that has a financial interest in any particular matter before the Board.

B. Enforcement of Conflict of Interest Policy: Questions concerning conflict of interest shall be referred to the DDFO, who will seek the advice of legal counsel, for resolution, as required.

C. Recusal: If a Board member is aware of a conflict of interest, as defined above, the member shall immediately inform the DDFO of the interest and shall refrain from participating in discussions and recommendations in which a conflict or potential for conflict of interest exists. Such recusal shall be reported at the Board meeting and noted in the minutes.

D. Principles of Conduct: Board members shall abide by the following conflict of interest principles:

1. Members shall refrain from any use of their membership, which is or gives the appearance of being motivated by the desire for private gain;
2. Members shall not use, either directly or indirectly for private gain, any inside information obtained as a result of Board or Committee service;

3. Members shall not use their positions in any way to coerce, or give the appearance of coercing, another person to provide a financial benefit to the member or any person with whom the member has family, business, or financial ties;

4. Members shall not knowingly receive or solicit from persons having business with the DOE anything of value as a gift, gratuity, loan, or favor while serving on the Board or in connection with such service.

a) **Exceptions:** Members may receive an unsolicited gift from persons having business with or an interest in DOE if The gift has an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of the individual gift received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year;

(1) The gift is motivated by a family relationship or personal friendship rather than a member's position; and

(2) The gift results from the business or employment relationship of a member's spouse or the outside business or employment activities of a member when it is clear that such gifts are not enhanced because of the member's position; relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pay for the gift.

XIV. AMENDING THE OPERATING PROCEDURES

A. Policy

The Board shall have the power to alter, amend, and repeal these operating procedures in ways consistent with the Amended Charter of the Environmental Management Site-Specific Advisory Board, and other applicable laws, regulations and guidelines.

1. Any member of the Board, the Designated Federal Official (DFO), or the public may propose an amendment to the operating procedures. However, an amendment proposed by a member of the public must be sponsored by a Board member.
2. The Board may consider and take action on the amendment to the operating procedures 30 days after notice of proposed amendment.
3. Voting will be conducted by electronic ballot, duly submitted by electronic means, annotated and dated by the member.
4. Amendments require the affirmative vote of two-thirds majority of the membership of the Board.
5. All amendments to these operating procedures must have concurrence of the DFO in consultation with the Office of General Counsel.

XV. ADOPTION OF THE OPERATING PROCEDURES

These operating procedures will be effective:

- upon the affirmative vote of a two-third majority of the Board membership
- execution by the Chair
- review and concurrence by the DOE Office of General Counsel
- approval of the EM SSAB DFO

All previous bylaws or procedures are hereby rescinded.

XVI. SUBORDINATION AND SEVERABILITY OF THE OPERATING PROCEDURES

If a conflict arises with respect to any provision of these Operating Procedures, Federal law or regulation, DOE FACA Manual, and/or the EM SSAB Guidance shall control. In the event that any provision of these operating procedures is invalid, such invalidity shall not affect the remaining provisions that shall continue in full force and effect.

Nevada Site Specific Advisory Board Proposed FY 2014 Work Plan

Item 1	Work Plan Item:	<i>Corrective Action Alternatives for Corrective Action Unit (CAU) 550, Smokey Contamination Area</i>
	Deadline for Recommendation:	November 2013
	Description:	<p>The Nevada Field Office will provide a briefing to the NSSAB during the November 2013 Full Board meeting outlining the nature and extent of contamination, the potential risk to human health and the environment, and an overview of the <i>Evaluation of Corrective Action Alternatives</i> document (a copy of the draft document will also be made available). This evaluation utilizes the Environmental Protection Agency's screening criteria for ranking corrective actions (i.e. no further action, clean closure, and closure in place) and will provide the basis for Nevada Field Office's preferred corrective action option.</p> <p>The NSSAB will provide a recommendation, from a community perspective, on which corrective action alternative (e.g., closure in place or clean closure) should be selected for CAU 550.</p>
Item 2	Work Plan Item:	<i>External Peer Review for Yucca Flat</i>
	Deadline for Recommendation:	November 2013
	Description:	<p>The Nevada Field Office will provide a briefing to the NSSAB during the November 2013 Full Board meeting describing the External Peer Review for Yucca Flat. The briefing will include the set of questions prepared for the panel to answer during the review and an explanation of each question in support of the recommendation.</p> <p>The NSSAB will provide a recommendation, from a community perspective, on what types of representation should be on the external peer review panel and how the questions could be enhanced.</p>
Item 3	Work Plan Item:	<i>Radionuclide Decay at Use-Restricted Soil Sites</i>
	Deadline for Recommendation:	February 2014
	Description:	<p>The Nevada Field Office will provide a report to the NSSAB that analyzes the decay rates at closed soils sites and explains the timeframe for when use-restricted areas will have radiation readings greater than 25 mrem. Additionally, the Nevada Field Office will provide a briefing during either the November 2013 or February 2014 Full Board meeting explaining the report.</p> <p>The NSSAB will provide recommendations, from a community perspective, that answer the following two questions: are there any improvements or enhancements to be made to the report? What should DOE's actions be when the radionuclides in the use-restricted areas have decayed?</p>

Nevada Site Specific Advisory Board Proposed FY 2014 Work Plan

Item 4	Work Plan Item:	<i>Groundwater Open House</i>
	Deadline for Recommendation:	February 2014
	Description:	<p>The Nevada Field Office will host its annual groundwater open house during the first quarter of FY 2014. NSSAB members are asked to attend.</p> <p>The NSSAB will provide recommendations on how the Open House could be enhanced in the future (i.e., format, advertising, and subject matter).</p>

Item 5	Work Plan Item:	<i>NNSS Communication Plan for Groundwater Sampling Results</i>
	Deadline for Recommendation:	March 2014
	Description:	<p>The Nevada Field Office plans to develop a communication plan that will describe communication activities that will take place based on UGTA sampling and data collection results. The Nevada Field Office will provide a briefing to the NSSAB during the February 2014 Full Board meeting explaining the plan.</p> <p>The NSSAB will provide a recommendation on ways the communication plan could be enhanced from a community perspective.</p>

Item 6	Work Plan Item:	<i>FY 2016 Baseline Prioritization</i>
	Deadline for Recommendation:	March 2014
	Description:	<p>The Nevada Field Office will provide briefings on planned FY 2016 activities during the March 2014 Full Board meeting.</p> <p>The NSSAB will provide a recommendation ranking the activities.</p>

Nevada Site Specific Advisory Board Proposed FY 2014 Work Plan

Item 7	Work Plan Item:	<i>RWAP Assessment Improvement Opportunities</i>
	Deadline for Recommendation:	July 2014
	Description:	<p>The Nevada Field Office will provide a briefing to the NSSAB on the RWAP assessment process during the May 2014 Full Board meeting.</p> <p>The NSSAB will send 1-2 members to observe a RWAP assessment and look for improvement opportunities. Those members will present their observations to the Full Board during the July 2014 meeting. The NSSAB will develop a recommendation for ways to improve the RWAP assessment process.</p>
Item 8	Work Plan Item:	<i>Review Questions for Rainier Mesa/Shoshone Mountain Peer Review Panel ***Carry Over Work Plan Item From FY 2013***</i>
	Deadline for Recommendation:	May 2014
	Description	<p>Upon completion of the Rainier Mesa/Shoshone Mountain flow and transport model document, a peer review panel will be assembled to provide an independent review of the modeling, similar to the Frenchman Flat Peer Review conducted in 2010. A set of questions have been prepared for the panel to answer during the review. The Nevada Field Office provided a briefing to the NSSAB on this in August 2013. The Nevada Field Office can provide additional information/briefings based on the needs of the Board.</p> <p>The NSSAB will provide a recommendation, from a community perspective, on how the questions could be enhanced.</p>
Item 9	Work Plan Item:	<i>Commercial Waste Facility and/or a DOE Complex Waste Disposal Site Tours</i>
	Deadline for Recommendation:	July 2014
	Description	<p>One-two NSSAB members will have the opportunity to attend site tour of the commercial waste facility, Waste Control Specialists, at Andrews, Texas, and/or the DOE Complex waste disposal site at Hanford Site in southeastern Washington during the EM SSAB National Chairs' Meeting in April 2014. NSSAB members to observe and report back to the Board and provide a recommendation on ways, from a community perspective, that communication to the community surrounding the NNSS regarding waste disposal and storage could be improved/enhanced.</p>