

# Federal Advisory Committee Act Overview

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# Federal Advisory Committee Act

- "FACA"
- Enacted in 1972
- Established a system governing the creation, operation, and termination of Executive Branch advisory committees

# Purpose of FACA

- Provide a structure for the establishment of groups to provide advice to the Federal government
- Maximize public access to advisory committee deliberations and minimize the influence of special interest groups
- Reduce wasteful expenditures

# General FACA Requirements

- Provide advice and recommendations — do not make decisions
- Advisory committees are to be fairly balanced in terms of the points of view represented and the functions to be performed
- The recommendations of an advisory committee are to be the result of the committee's independent judgment

# General Requirements

- A Designated Federal Officer (DFO) must be appointed for each committee. The DFO approves all meetings and agendas and attends all meetings
- The committee may not meet if the DFO or designee is not present
- Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium must meet the FACA requirements

# Charters

- The committee's charter must be filed with Congress before the committee can meet or conduct any business
- The charter sets out the scope of activity and objectives of the committee as well as membership, frequency of meetings and funding.

# Requirements for Meetings

- Advisory committee meetings are required to be open to the public, with limited exceptions.
- Meeting notices and agendas must be published in the Federal Register at least 15 days before the meeting.
- Any member of the public is permitted to file a written statement with the advisory committee.

# Requirements for Meetings

- Any member of the public may provide oral comments
- Amount of time provided for comments may be limited
- Advisory committee meetings must be 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

# Requirements for Meetings

- Detailed minutes of each advisory committee meeting must be kept and certified by the chair as accurate
  - Record of persons present
  - Complete and accurate description of matters discussed and conclusions reached
  - Copies of all reports issued, received or approved by the committee

# Document Requirements

- All documents prepared by or for or presented to the chartered committee must be available for public inspection and copying (subject to FOIA)
- Includes drafts, reports, transcripts, minutes, working papers, studies, agenda or other documents prepared by or for or presented to the full committee

# Document Requirements

- Materials shared with one or two other members do not become committee materials that must be provided to the public. If, however, such materials are provided to the entire committee for its consideration, the materials must be made available to the public

# Membership

- Members are appointed and may be removed by the EPA Administrator or his designee
- Members serve at the discretion of the Administrator

# Representative vs. Special Government Employee

- Representative members are not subject to the government ethics laws
- SGEs are subject to ethics rules
  - Must submit financial disclosure documentation annually
  - Must have ethics training each year
  - Do not represent a group, but provide independent advice

# Limitations

- Advisory Committees provide only advice and recommendations
- Decisionmaking and implementation authority remains with EPA
- The DFO has the authority to close a meeting when it is in the public interest to do so

# EPA Policy on Subcommittees

- Follow all of FACA's openness requirements (open meetings, timely public notice of meetings, document availability, etc.) and balanced membership requirement
- Report their recommendations to the chartered committee
- The chartered committee must discuss and deliberate on the subcommittee recommendations (may not be a "rubber stamp")
- A DFO usually is assigned to and attends all subcommittee meetings

# Work Groups

- A group made up of only a few committee members to analyze relevant issues and facts, draft proposed position papers, or conduct research (often include individuals who are not members of the chartered committee)
- Exempt from FACA's openness and balance requirements, but EPA encourages working groups to hold open meetings and balance membership where feasible
- Documents are available to the public under FACA only if they are presented to the chartered committee

# Limitations

- Subcommittees and Working Groups may not advise EPA directly; must work through the chartered committee
- EPA staff may not rely on advice prior to its being forwarded to EPA as the recommendation of the chartered committee

# Lobbying

- Members may not lobby Congress in their capacity as an advisory committee member
- While on EPA-paid travel, members should not contact or lobby Congress on the days he/she is performing FACA-related duties

# Lobbying

- EPA employees may not encourage members to lobby Congress
- Members may not develop strategies for lobbying Congress during an advisory committee meeting or using advisory committee funds

# Privilege

- Documents created by or for an advisory committee are not privileged or confidential
- Generally, other documents provided to the FACA also are not privileged or confidential
- If confidential or privileged materials are provided to the committee, the DFO will notify the members and inform them of confidentiality procedures