

report, as well as the *Congressional Record* (daily ed. October 10, 1986, pp. S 15865-15868), should provide an adequate basis for an agency to determine if its employees may be authorized home-to-work transportation.

Additional examples of employees who may perform field work in-home-to-work transportation are not limited to, quality assurance inspectors, construction inspectors, customs inspectors, dairy inspectors, revenue officers, compliance inspectors, and personnel background investigators. The assignment of an employee to such a position does not, in itself, entitle an employee to receive daily home-to-work transportation. When authorized, such transportation should be provided only on days when the employee actually performs field work, and then only to the extent that such transportation will substantially increase the efficiency and economy of the Government.

(c) Instances may occur when an employee, by the nature of his/her job, is designated as being authorized home-to-work transportation under the field work provision. However, circumstances may require that field work only be performed on an intermittent basis. In those instances, the agency shall establish procedures to ensure that a Government passenger carrier is used only when field work is actually being performed.

(d) In making field work determinations under § 101-6.403(b), an agency head may elect to designate positions rather than individual names, especially in positions where rapid turnover occurs. The determination should contain sufficient information, such as the job title, number, and operational level where the work is to be performed (i.e., five recruiter personnel or positions at the Detroit Army Recruiting Battalion) to satisfy an audit, if necessary.

(e) Situations may arise where it is more cost-effective for the Government to provide an employee a vehicle for home-to-work transportation rather than have the employee travel a long distance to pick up a vehicle and then drive back toward or beyond his/her residence to perform his/her job. In those situations agencies should consider basing the vehicle at a

Government facility located near the employee's job site. If such a solution is not feasible, an agency must then decide if the use of the vehicle should be approved under the compelling operational considerations definition. Home-to-work transportation in such cases may be approved only if other available alternatives would involve substantial cost to the Government or expenditure of substantial employee time.

**Subparts 101-6.5—101-6.9—  
[Reserved]**

**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.

**SOURCE:** 52 FR 45929, Dec. 2, 1987, unless otherwise noted.

**§ 101-6.1001 Scope.**

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

(b) The Act and this subpart do not apply to advisory meetings or groups listed in § 101-6.1004.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

**§ 101-6.1002 Policy.**

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in the creation or elimination of, or change in regulations, guidelines, or rules affect-

ing agency business. Information to be available through a committee or subcommittee of the Federal Government; the committee will make recommendations in significant service or reduction of the cost of the committee will provide an alternative perspective on agency operations.

(b) An advisory committee terminated when the functions of the committee are accomplished; the work of the committee is completed by the passage of time; or the functions by and through the Federal Government determines that the committee is excessive in number or is accruing to the cost of the Government.

(c) An advisory committee shall be fairly balanced in terms of the political and functional interests of the public and the functions of the committee.

(d) An advisory committee shall be open to the public, except in those cases where a closed meeting is proper and consistent with the provisions in the Government Sunshine Act, 5 U.S.C. 552.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

**§ 101-6.1003 Definitions.**

**Act** means the Federal Advisory Committee Act, 5 U.S.C. 572.

**Administrator of General Services** means the Administrator of General Services.

**Advisory committee** means any committee, task force, or any subcommittee thereof, which is established, created, or established by the President or a Federal agency for the purpose of making recommendations which are within the responsibility of the

ing agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the provisions in the Government in the Sunshine Act, 5 U.S.C. 552(b).

(52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989)

#### § 101-6.1003 Definitions.

*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 means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

*Agency* has the same meaning as in section 551(1) of title 5 of the United States Code.

*Committee Management Secretariat (Secretariat)*, established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

*Committee member* means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

*Presidential advisory committee* means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

*Staff member* means any individual who serves in a support capacity to an advisory committee.

*Utilized (or used)*, as referenced in the definition of "Advisory committee" in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this Subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be

covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101-6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, the responsible agency head shall follow the procedures provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

§ 101-6.1006 [Reserved]

§ 101-6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a con-

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sultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

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

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes the date of establishment or renewal. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

#### § 101-6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by § 101-6.1009 and § 101-6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1009 Responsibilities of an agency head.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this subpart;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee and its subcommittees;

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics in 5 CFR parts 734, 735,

and 737, and additional requirements, if any, established by the sponsoring agency pursuant to Executive Order 12674, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41215, Oct. 5, 1989]

§ 101-6.1010 [Reserved]

§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this subpart and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of § 101-6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1012 [Reserved]

§ 101-6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—

(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the filed charter with the Library of Congress, Exchange and Gift Division, Federal Documents

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Section, Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter indicating the Congressional filing date, with the Secretariat.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee shall file—

(1) The charter with the Secretariat;

(2) A copy of the filed charter with the Library of Congress; and

(3) If specifically directed by law, a copy of the charter indicating its date of filing with the Secretariat, with the standing committees on the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

§ 101-6.1014 [Reserved]

§ 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the FEDERAL REGISTER is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the FEDERAL REGISTER that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 calendar days before the committee

charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an advisory committee meeting a notice in the FEDERAL REGISTER, which includes:

(i) The exact name of the advisory committee as chartered;

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

(iii) A summary of the agenda; and

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

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

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

§ 101-6.1016 [Reserved]

§ 101-6.1017 Responsibilities of the agency Committee Management Officer.

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

(a) A set of approved charters and membership lists for each advisory committee;

(b) Copies of the agency's portion of the Annual Report of Federal Advisory Committees required by paragraph (b) of § 101-6.1035;

§ 101-6.1019

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

(d) Agency determinations to close advisory committee meetings as required by paragraph (c) of § 101-6.1023.

§ 101-6.1018 [Reserved]

§ 101-6.1019 Duties of the Designated Federal Officer.

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

(a) Must approve or call the meeting of the advisory committee;

(b) Must approve the agenda;

(c) Must attend the meetings;

(d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

§ 101-6.1020 [Reserved]

§ 101-6.1021 Public participation in advisory committee meetings.

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

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

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

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§ 101-6.1022 [Reserved]

§ 101-6.1023 Procedures for closing an advisory committee meeting.

(a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency or, in the case of an independent Presidential advisory committee, the general counsel of the General Services Administration should review all requests to close meetings.

(c) If the agency head or, in the case of an independent Presidential advisory committee, the Administrator agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) State the reasons why all or part of the meeting is closed, citing the specific exemptions used from the Government in the Sunshine Act in the meeting notice published in the FEDERAL REGISTER.

§ 101-6.1024 [Reserved]

§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

(1) Time, date, and place;

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(2) A list of who were present;

(i) Advisory staff;

(ii) Agency

(iii) Member

presented oral or

(3) An estimate

members of the

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(5) Copies of

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(b) The chair

committee shall

copy of all minutes

committee meetings.

§ 101-6.1026 [Reserved]

§ 101-6.1027 Termination of committees.

(a) Any advisory committee shall terminate automatically 2 years after established, or renewed,

(1) Its duration by law;

(2) The President renews it periodically; or

(3) The President terminates it by revoking or abolishing authority.

(b) If an advisory committee is terminated, the Secretary shall notify the Secretary of State of the date of termination.

§ 101-6.1028 [Reserved]

§ 101-6.1029 Requirements for advisory committees.

(a) Advisory committees shall be directed by law.

(1) Whose duration shall be 2 years shall the filing of the law after the law established a new charter

tee is not to meet or take action.

(2) Which provisions and for which

(2) A list of the following persons who were present:

(i) Advisory committee members and staff;

(ii) Agency employees; and

(iii) Members of the public who presented oral or written statements;

(3) An estimated number of other members of the public present;

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

(5) Copies of each report or other document received, issued, or approved by the committee.

(b) The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

§ 101-6.1026 [Reserved]

§ 101-6.1027 Termination of advisory committees.

(a) Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

(1) Its duration is otherwise provided for by law;

(2) The President or agency head renews it prior to the end of such period; or

(3) The President or agency head terminates it before that time by revoking or abolishing its establishment authority.

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

§ 101-6.1028 [Reserved]

§ 101-6.1029 Renewal and rechartering of advisory committees.

(a) Advisory committees specifically directed by law:

(1) Whose duration extends beyond 2 years shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require

reauthorization by law, may be reestablished by an agency provided that the agency complies under general agency authority with the provisions of § 101-6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a committee complies with the provisions of § 101-6.1007.

§ 101-6.1030 [Reserved]

§ 101-6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or authorized by law; or established by the President.* The agency head shall be responsible for ensuring that any minor technical changes made to current charters are consistent with the relevant statute or Executive Order. When the Congress by law, or the President by Executive Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number or frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. The agency head retains final authority for amending the charter of an advisory committee. Amending any exist-



ing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

§ 101-6.1032 [Reserved]

§ 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this subpart shall require an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS-15 under the General Schedule, unless a higher rate is mandated by statute, or the head of

the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this subpart, an agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GS-18, as provided in 5 U.S.C. 5332.

(b) *Pay for staff members of an advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(c) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency

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Federal Property Management Regulations

§ 101-6.1035

from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(e) Travel expenses. Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(f) Services for handicapped members. While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) Exclusions. (1) Nothing in this section shall prevent any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section shall prevent any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and pay system in chapter 51 and chapter 53 of Title 5, United States Code.

§ 101-6.1034 [Reserved]

§ 101-6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101-6.1008, detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRMR subpart 201-45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304-GSA-XX.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of title 5, United States Code.

(d) Subject to section 552 of title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified in paragraph (a)(2) of § 101-6.1013.

[52 FR 45929, Dec. 2, 1987, as amended at 54 FR 41216, Oct. 5, 1989]

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(Cite as: 1994 WL 329522 (11th Cir.(Ala.)))

[26 F3d 1103]

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ALABAMA-TOMBIGBEE RIVERS  
COALITION, Offa S. Nichols, Plaintiffs-  
Appellees,

Edward Wilkinson Mudd, Jr., Intervenor,  
v.

DEPARTMENT OF INTERIOR, The Fish  
& Wildlife Service of the United States,  
George T. Frampton, Assistant Secretary  
for Fish and Wildlife and Parks,  
Kenneth Smith, Deputy director, U.S. Fish  
& Wildlife Service, James B. Steward,  
Bruce Babbitt, Defendants-Appellants.

No. 94-6089.

United States Court of Appeals,  
Eleventh Circuit.

July 27, 1994.

Coalition challenged release, use of, or reliance upon scientific committee report by Fish and Wildlife Service (FWS) as support for listing of sturgeon as endangered species. The United States District Court for the Northern District of Alabama, No. CV 93-AR-2322-S, William M. Acker, Jr., J., permanently enjoined use of report, and FWS appealed. The Court of Appeals, Fay, Senior Circuit Judge, held that: (1) injunction was available remedy under Federal Advisory Committee Act (FACA), and (2) injunction prohibiting use of advisory committee report was appropriately granted where committee process did not comply with requirements of FACA.

Affirmed.

[1] FEDERAL COURTS ⇨ 776  
170Bk776

Court of Appeals reviewed de novo district court's authority to grant injunctive relief under FACA, as inquiry involved interpretation of statute. Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A. App. 2.

[2] INJUNCTION ⇨ 85(1)  
212k85(1)

Injunctive relief was available remedy for violation of FACA. Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A. App. 2.

[3] FEDERAL COURTS ⇨ 814.1  
170Bk814.1

Court of Appeals reviews grant of injunctive relief under abuse of discretion standard.

[4] INJUNCTION ⇨ 85(1)  
212k85(1)

Fish and Wildlife Service (FWS) was properly enjoined from using report prepared by advisory committee, in investigating whether sturgeon should be designated endangered species, where advisory committee process did not comply with requirements of FACA. Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A. App. 2.

[5] UNITED STATES ⇨ 40  
393k40

Under FACA, public observation and comment must be contemporaneous to advisory committee process itself; public commentary may not be limited to retrospective scrutiny. Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A. App. 2.

Mark B. Stern, Patricia A. Millett, Dept. of Justice, Civil Div., Appellate Staff, Washington, DC, for defendants-appellants.

Will Hill Tankersley, Jr., Balch & Bingham, Birmingham, AL, for plaintiffs-appellees.

Edward N. Mudd, Jr., Marshall Timberlake, Balch & Bingham, Birmingham, AL, for intervenor.

Appeal from the United States District Court for the Northern District of Alabama.

Before KRAVITCH, Circuit Judge, FAY and HENDERSON, Senior Circuit Judges.

FAY, Senior Circuit Judge:

\*1 The Fish and Wildlife Service of the United States Department of the Interior ("FWS") appeals an order entered by the District Court for the Northern District of Alabama granting a permanent injunction against FWS' use of a scientific report prepared in violation of the Federal Advisory Committee Act ("FACA") [FN1]. Because we

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agree with the District Court that the report was prepared in violation of FACA and that injunctive relief is appropriate, we affirm.

## I. FACTS

On June 15, 1993, FWS published a proposed rule to list the Alabama Sturgeon [FN2] as an endangered species and to designate its critical habitat. Pursuant to the Endangered Species Act, the Secretary of the Interior has one year to promulgate a final rule that either lists the species as endangered or to withdraw the proposed rule.

Accordingly, Secretary Babbitt directed FWS to organize a scientific advisory panel in an effort to "consider the best available scientific information and assess the current status of the species." See May 25, 1993 Babbitt Letter to Senator Howell Heflin (R-1 ex. A). In response to Babbitt's directive, FWS organized an original panel of four scientists to conduct the necessary analysis. After the Alabama Congressional delegation raised concerns regarding the objectivity of the panel and the topics to be analyzed, FWS reconstituted the panel with nine members. Of the nine member panel, none were drawn from any of the six scientists that the Alabama Congressional delegation proposed. Furthermore, FWS retained, as panel members, three of the four original scientists to which the delegation had objected. Consequently the Plaintiff, Alabama-Tombigbee Rivers Coalition ("Coalition") [FN3], felt motivated to express its concern regarding the operation and conclusions of the advisory panel.

Acting on that concern, on October 12, 1993, the Coalition wrote a letter to John D. Leshy, Solicitor for the Department of the Interior, regarding FWS' compliance with FACA. In response, the Department of the Interior stated in writing that it would provide legal advice to the officials in order to "fully comply with the requirements of the law, including the FACA...." See Leshy Letter to William Satterfield (R-1 ex. B).

It appears from the record that the

government originally intended for the scientists on the "panel" to conduct independent evaluations and file, individual reports. [FN4] However, shortly before the "panel" was to convene to relay their individual reports, FWS substantially changed the structure of the "panel." The modified structure was for the scientists to meet and compile a single collective report. [FN5]

Three days before the planned release of the committee report, the Coalition gave notice of its intention to seek a temporary restraining order in an effort to stop the release of the report because of purported FACA violations. The same day that the Coalition filed its complaint seeking a TRO, preliminary and permanent injunction against the release, use of, and reliance upon the scientific committee report, FWS expeditiously announced in a press release that the scientists' summary findings supported the listing of the Alabama Sturgeon as an endangered species. [FN6]

\*2 Subsequently, in an order dated December 22, 1993, as a result of FWS' FACA violations, the district court permanently enjoined the defendants from "publishing, employing and relying upon the Advisory Committee report which is the primary subject of the above entitled cause, for any purpose whatsoever, directly or indirectly, in the process of determining whether or not to list the Alabama sturgeon as an endangered species." (R2-62) FWS appeals from that finding and raises the following issue for our review: Whether the district court's injunction should be overturned because it frustrates the purposes of the Federal Advisory Committee Act, the Endangered Species Act, and the Administrative Procedure Act? [FN7]

## II. DISCUSSION

### A. STANDARDS OF REVIEW

[1][2] Given the nature of this case, we find it necessary to employ two different standards of review with respect to the two separate inquiries we must make. First, we must conduct a de novo review of the district court's authority to grant injunctive relief under

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FACA as this inquiry involves the interpretation of a statute. *Centel Cable Television Co. v. Thomas J. White Dev. Corp.*, 902 F.2d 905, 908 (11th Cir.1990). FWS has not been able to point to any authority that clearly prohibits injunctive relief for a FACA violation. Furthermore, after our review of the Federal Advisory Committee Act, we do not think such a remedy is unavailable. [FN8]

[3] Second, having determined that the grant of injunctive relief for a violation of FACA is within the district court's authority, we turn to the standard of review applicable to the grant of such relief. We review the grant of injunctive relief under an abuse of discretion standard. *Centel Cable*, 902 F.2d at 910.

#### B. THE INJUNCTION

[4] The Federal Advisory Committee Act requires, inter alia: (1) a written charter that explains the "mission" of the committee; (2) timely notice of committee meetings in the Federal Register; (3) fair and balanced composition of the committee; (4) government submission of a plan to the committee to ensure that the same is not "inappropriately influenced" by the appointing authority; (5) that the committee meetings be open to the public; (6) that the government prepare and provide detailed minutes of the committee meetings; (7) that the information upon which the committee relies in its determination be made available for public inspection. See 5 U.S.C.App. § 5 et seq.

Through the passage of FACA, Congress sought to recognize the importance of having advisory committees to the Executive Branch be completely open to public observation and comment. See generally *Public Citizen v. United States Dept. of Justice*, 491 U.S. 440, 459, 109 S.Ct. 2558, 2569, 105 L.Ed.2d 377 (1989) (principal purpose to enhance public accountability of advisory committees); *Washington Legal Foundation v. United States Dept. of Justice*, 691 F.Supp. 483, 490 (D.D.C.1988) (central purpose to open to public scrutiny the manner in which the government obtains advice from private individuals), aff'd sub nom. *Public Citizen v. United States Dept.*

*of Justice*, 491 U.S. 440, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989).

\*3 [5] Because FACA's dictates emphasize the importance of openness and debate, the timing of such observation and comment is crucial to compliance with the statute. Public observation and comment must be contemporaneous to the advisory committee process itself. *Public Citizen v. National Economic Comm'n.*, 703 F.Supp. 113, 129 (D.D.C.1989). If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless. Here, the government concedes that it did not follow FACA's requirements during the advisory committee process and the record clearly supports that concession. As the district court aptly pointed out:

A simple "excuse us" cannot be sufficient. It would make FACA meaningless, something Congress certainly did not intend.... The court sees no reason to retreat from its conclusion that FACA was designed by Congress to prevent the use of any advisory committee as part of the process of making important federal agency decisions unless that committee is properly constituted and produces its report in compliance with the procedural requirements of FACA, particularly where, as in this case, the procedural shortcomings are significant and the report potentially influential to the outcome.

Memorandum Opinion of December 23, 1993 (R2-61), 1993 WL 646410.

We agree with the district court that to allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of the Act. Furthermore, "[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction." *California v. Yamasaki*, 442 U.S. 682, 705, 99 S.Ct. 2545, 2569, 61 L.Ed.2d 176 (1978). The broad equitable power necessarily encompasses the ability to fashion equitable relief in order to "adjust and reconcile public and private needs." *United States v. Montgomery County Bd. of Ed.*, 395 U.S. 225, 227, 89 S.Ct. 1670, 1671, 23 L.Ed.2d 263

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(1969). We find injunctive relief as the only vehicle that carries the sufficient remedial effect to ensure future compliance with FACA's clear requirements. Anything less would be tantamount to nothing. [FN9]

### III. CONCLUSION

Because we find that the district court had the discretion to grant injunctive relief and did not abuse that discretion, the order is **AFFIRMED**.

**AFFIRMED.**

FN1. 5 U.S.C.App. 2.

FN2. The Sturgeon is a fish that inhabits several rivers in Alabama and Mississippi.

FN3. The Coalition is comprised of thirty-four businesses and organizations that operate in Alabama and Mississippi. A finding that the Alabama Sturgeon is an endangered species will purportedly have an adverse affect on thousands of jobs.

FN4. The Appellees argue that the government chose to have the "panel" members file individual reports in an effort to fit a narrow exception that would take the advisory process outside FACA's requirements. The government denies any bad motive and we find it unnecessary to resolve this side issue.

FN5. The district court found, and the FWS conceded (although characterizing any violation as inadvertent and de minimis), that it had not fully complied with FACA's requirements. See Memorandum Opinion and Order of November 23, 1993 (R1-33).

FN6. During the litigation, Edward Wilkinson Mudd, Jr. intervened into the action in an effort to have the report released. Subsequently, he voluntarily dismissed his appeal and his brief was stricken upon the Coalition's motion. Accordingly, our discussion is limited to

the remaining parties on appeal.

FN7. We will only address the question with respect to the purported FACA violation and remedy granted thereunder because we find no merit in the Appellant's arguments involving the Endangered Species Act or the Administrative Procedure Act.

FN8. We acknowledge that other Circuits have affirmed the denial of injunctive relief requested as a result of FACA violations. See, e.g., *Public Citizen v. National Advisory Committee*, 386 F.2d 419 (D.C.Cir.1969); *National Nutritional Foods Ass'n v. Califano*, 603 F.2d 327 (2nd Cir.1979). However, neither Circuit held that injunctive relief was a categorically unavailable remedy for a FACA violation. Rather, the consideration of the possibility of injunctive relief suggests that those courts found no express or implied prohibition of this remedy. They merely found that on the individual facts of the cases before them, injunctive relief was inappropriate. We have different facts before us and, accordingly, reach a different result.

FN9. It is simply insufficient for the government to contend that because the subject matter is serious, the environment is being threatened, and the objective is worthy, courts should not interfere or be concerned with minor transgressions. Quite the contrary. Because the matters are so serious and of such great concern to so many with differing interests, it is absolutely necessary that the procedures established by Congress be followed to the letter. This is not a situation where the entire procedure was delegated to the agency and it could promulgate its own rules. Congress outlined in detail exactly what procedures were to be used and it is the responsibility of the courts to see that such laws are carried out.

END OF DOCUMENT

Reg. Ser. C-16  
9/8/94



General Services Administration  
Office of Administration  
Washington, DC 20405

March 21, 1994

MEMORANDUM FOR COMMITTEE MANAGEMENT OFFICERS

FROM: JAMES L. DEAN, DIRECTOR *JAMES L. DEAN*  
COMMITTEE MANAGEMENT SECRETARIAT

SUBJECT: Application of the Federal Advisory Committee Act (FACA) to Intergovernmental Contacts

This memorandum provides guidance regarding the applicability of the Federal Advisory Committee Act (FACA) to contacts between the Federal Government, and State, local, and tribal governments. We are providing this information to you as requested by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB).

While FACA's scope encompasses many contacts between Federal officials and individuals who are not full-time employees of the Executive Branch, it does not extend to all such interactions. Circumstances will require the application of the Act in some situations; however, there are many instances where it will not be necessary to establish advisory committees. In determining the applicability of the Act to your specific needs, you should consult GSA's regulations located at 41 CFR Part 101-6 and your agency's Office of General Counsel. Some of the most frequently raised questions involving contacts with individuals who are not full-time employees of the Federal Government are discussed in this memorandum.

I. BACKGROUND

President Clinton recently announced several initiatives to promote more effective intergovernmental cooperation in the development and implementation of Federal regulatory actions. These efforts are the result of recommendations issued as part of the National Performance Review lead by Vice President Gore, as well as the Administration's commitment to streamline the Executive Branch's regulatory review process and encourage more direct interaction with entities affected by Federal policies.

Executive Order 12866

Executive Order 12866 of September 30, 1993, entitled "Regulatory Planning and Review," encourages agencies to seek to "harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions." Each agency is directed to "explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking." No specific approach for the accomplishment of

these goals is required, but the directive states it should be an "effective process" dictated by the order and magnitude of the issues involved.

#### Executive Order 12875

Executive Order 12875 of October 26, 1993, entitled "Enhancing the Intergovernmental Partnership," was issued to reduce the imposition of nonstatutory unfunded mandates upon State, local, and tribal governments. The Order directs each agency to establish a meaningful and timely mechanism for consultation with these affected parties in the development of regulatory proposals containing significant nonstatutory unfunded mandates.

On January 11, 1994, the Administrator of OIRA issued detailed guidance covering the scope, nature, and timing of intergovernmental contacts incident to the implementation of E.O. 12875. While agencies have been given broad latitude to determine which combination of tools to employ in accomplishing the President's goals, including the use of negotiated rulemaking advisory committees, they are required to integrate their activities into the ongoing regulatory process defined by E.O. 12866.

#### II. INTERACTIONS SUBJECT TO FACA

The use of Federal advisory committees, subject to FACA, in accomplishing the goals outlined by E.O. 12866 and E.O. 12875 is one option in developing an effective process for facilitating intergovernmental coordination. While the Administration encourages the appropriate use of advisory committees to accomplish rulemaking, the establishment of new advisory committees is subject to review by OMB under the terms of Executive Order 12838 of February 10, 1993, entitled "Termination and Limitation of Federal Advisory Committees," and GSA as required by the Act.

The following situations will require agencies to comply with FACA and E.O. 12838:

(A) Negotiated Rulemaking Committees. The use of advisory committees to accomplish rulemaking in selected circumstances has been effectively employed by several agencies, including the Department of Transportation and the Environmental Protection Agency. Advisory committees may be used to accomplish rulemaking where there is a clear need to obtain advice and recommendations while developing a Federal regulatory or other position in a relatively short timeframe. Such committees are subject to FACA as required by the Negotiated Rulemaking Act.



(B) Use of Existing Advisory Committees. As part of its overall regulatory strategy, agencies may require supplemental advice and recommendations to support ongoing activities. In such cases, the membership and/or structure of existing advisory committees may be expanded or modified to obtain additional information. While consultation with GSA is required to amend the charter of an existing FACA committee, the additional review requirements of E.O. 12838 do not apply if the scope of the original committee is not significantly altered.

Regulations promulgated by GSA provide substantial flexibility in addressing the operating requirements of existing advisory committees, including subgroups created to achieve their goals. For example, section 101-6.1004 provides a detailed listing of committee meetings or groups which are not covered by FACA and/or other regulatory requirements.

(C) General FACA Coverage. In determining coverage under FACA, agencies must continue to apply a "totality of circumstances" analysis against the functions to be performed by an individual or group providing advice or recommendations. Since the Act's scope is quite broad and based upon the functions to be performed, various factors such as the desire for consensus, frequency of meetings, or rotation of membership individually may not determine coverage. Accordingly, the application of FACA to specific circumstances should be reviewed with GSA, and the agency's Committee Management Officer and Office of General Counsel.

### III. INTERACTIONS NOT SUBJECT TO FACA

As part of the regulatory process, agencies may receive unsolicited requests from pre-existing external organizations, including industry associations or associations of State, local, or tribal officials, to express their views. Conversely, the Government may seek to obtain information from such groups to achieve maximum participation in the decisionmaking process. There are several avenues for obtaining advice and recommendations from such groups which are not subject to FACA. The extent to which these types of interactions are not subject to the Act have been addressed in GSA's governmentwide regulations implementing FACA and recent Court decisions, and are summarized below.

(A) Meetings With Pre-Existing External Groups. From time-to-time agencies may receive unsolicited requests from pre-existing external groups to provide their views on pending actions. Such meetings, whose primary purpose is to present to the Government the views of the group on a particular matter are not subject to FACA. Similarly, the Executive Branch may under certain circumstances initiate meetings with pre-existing external groups for the purpose of obtaining views and information without applying the Act.

Exempting such meetings with pre-existing external groups from FACA assumes that the Government has not encouraged, promoted, funded, or otherwise controlled the creation and/or activities of the group being consulted. Accordingly, such interactions may be subject to FACA if these factors are present, even though the group existed previously.

(B) Meetings with Individuals. A meeting between an individual and Federal official(s) is not covered by FACA [see 41 CFR 101-6.1004(h)].

(C) Meetings with a Group of Individuals. Meetings with a group of individuals for the purpose of obtaining individual opinions, rather than advice or recommendations as a group, are not covered by FACA [see 41 CFR 101-6.1004(i)]. However, such a group may be covered by the Act if it is relied upon as a de facto advisory committee over a period of time, e.g. if the agency asks the group to prepare advice or recommendations, or its activities for all intents and purposes assume the appearance of an advisory committee as defined by the Act.

For example, as part of the regulatory process, an agency may choose to use a series of "focus groups," "forums," or "roundtables" to obtain the views of individual attendees. Such mechanisms serve as useful conduits for obtaining a broad range of information required to achieve a complete regulatory analysis. Typically, this approach involves a series of sessions structured to obtain information from individuals, and attendees are rotated to provide a diversity of viewpoints.

(D) Public Meetings. Public or "town" meetings which are open to all interested parties for the purpose of exchanging views and information are not subject to FACA. Such meetings are frequently used by many agencies as a means of collecting a wide range of opinions in a short period of time. Often public meetings, "hearings," or "town meetings" are widely advertised and include invitations for both oral and written input into an agency's decisionmaking process.

#### IV. SUMMARY AND CONCLUSION

Establishing an effective and meaningful intergovernmental dialogue as part of the Administration's efforts to reduce nonstatutory unfunded mandates and streamline the regulatory review process will require the use of several approaches, including advisory committees. Agencies having specific questions or concerns regarding advisory committees may contact GSA's Committee Management Secretariat at (202) 273-3556.

cc: Office of Information and Regulatory Affairs  
Office of Management and Budget (OIRA/OMB)

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Exec. Order No. 12838  
58 FR 8207, 1993 WL 32721 (Pres.)  
(Publication page references are not available for this document.)  
Executive Order 12838

## Termination and Limitation of Federal Advisory Committees

February 10, 1993

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act ("FACA"), as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each executive department and agency shall terminate not less than one-third of the advisory committees subject to FACA (and not required by statute) that are sponsored by the department or agency by no later than the end of fiscal year 1993.

Sec. 2. Within 90 days, the head of each executive department and agency shall submit to the Director of the Office of Management and Budget, for each advisory committee subject to FACA sponsored by that department or agency: (a) a detailed justification for the continued existence, or a brief description in support of the termination, of any advisory committee not required by statute; and (b) a detailed recommendation for submission to the Congress to continue or to terminate any advisory committee required by statute. The Administrator of General Services shall prepare such justifications and recommendations for each advisory committee subject to FACA and not sponsored by a department or agency.

Sec. 3. Effective immediately, executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head (a) finds that compelling considerations necessitate creation of such a committee, and (b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests. These requirements shall apply in addition to the notice and other approval requirements of FACA.

Sec. 4. The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

Sec. 5. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM CLINTON  
THE WHITE HOUSE,  
February 10, 1993.

Editorial note: For the President's remarks on signing this Executive order, see issue 6 of the Weekly Compilation of Presidential Documents.

Exec. Order No. 12838, 58 FR 8207, 1993 WL 32721 (Pres.)

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This section of the ISDEA (reassumption of programs) has been amended to authorize reassumption in instances where a contractor mismanages trust funds, trust lands or interests in such lands under a contract or grant agreement. This section has also been amended to authorize partial reassumptions, and to broaden the authority of the Secretary to conduct emergency reassumptions to cases involving imminent substantial and irreparable harm to trust funds, trust lands, or interests in lands. The Secretary's authority for any emergency reassumption is limited, however, to cases where the threat is a result of the contractor's failure to fulfill the terms of the contract. The "clearly demonstrate" burden of proof standard imposed on the secretary for declination hearings is also incorporated in reassumption hearings.

Section 110

This section of the ISDEA (legal remedies and jurisdiction) has been amended as follows. In § 110(a), a provision was added to authorize Federal district courts to grant immediate injunctive relief to reverse a declination finding or to compel the Secretary to award and fund an approved ISDEA contract. In § 110(d), a provision was added to require all administrative relating to disputes under ISDEA contracts to be heard by the Interior Board of Contract Appeals, including disputes between an ISDEA contractor and the Department of Health and Human Services.

Michael J. Anderson

cc: All Regional Solicitors  
All Field Solicitors