

Federal Advisory Committee Act Legal Requirements

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Federal Advisory Committee Act

- Enacted in 1972
- Established a system governing the creation, operation, and termination of Executive Branch advisory committees
- Found at 5 U.S.C. App. 2



Purpose of FACA

Ensure that advisory committees are:

- established only when needed
- terminated when their work is completed
- balanced in points of view represented
- governed by uniform procedures
- limited to providing advice to the Agency
- open to public scrutiny



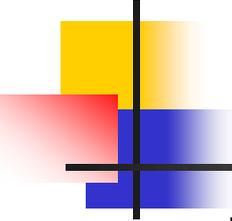
Function

- The sole function of an EPA advisory committee is to provide advice and recommendations to EPA
- An advisory committee may not take action to implement recommendations or monitor EPA's implementation



NACEPT and the Assumable Waters Subcommittee

- This group is formed as a subcommittee of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT).
- NACEPT advises EPA on ways to improve the development and implementation of domestic and international environmental management policies, programs, and technologies.
- This subcommittee will report its recommendations to NACEPT, which will report to EPA.



NACEPT Charter

- Renewed every 2 years
- Must be filed with Congress before committee may meet
- Subcommittees are not required to have a charter.



Charter Contents

- Objectives and scope of activity
- Official to whom it reports
- Costs and funding responsibilities
- Membership
- Frequency and number of meetings
- Date charter is filed with Congress



Subcommittees

- Subcommittees report their recommendations to the chartered committee
- The chartered committee must discuss and deliberate on all subcommittee recommendations before making those recommendations to EPA
- If a subcommittee fails to follow this procedure, EPA could be prohibited from relying on the advice



Subcommittees

- Subcommittees follow all of FACA's openness requirements (open meetings, timely public notice of meetings, document availability)
- A DFO is appointed for and attends subcommittee meetings
- Subcommittee members are appointed by EPA



Limitations

- Subcommittees and working groups:
 - May **not** advise EPA directly;
 - Must work through the chartered committee
- EPA staff may **not** use advice of a subcommittee or working group prior to its being forwarded to EPA as the recommendation of the chartered committee



Openness & Transparency

- Meetings open to the public, with limited exceptions
- Meeting notices and summary of agendas published in the Federal Register
- Opportunity for public comment
- Meeting minutes prepared for each meeting (certified by the chair)



Availability of Documents

- Subject to the exceptions in FOIA, EPA provides the public access to all documents made available to or prepared by or for the subcommittee (including draft reports and working papers)
- Detailed minutes are kept of each meeting and made available to the public



Designated Federal Officer

- EPA appoints a Designated Federal Officer (DFO) for each subcommittee
- The DFO attends each committee meeting or arranges for a designee to attend



DFO's Responsibilities

- Approve the agenda
- Call the meetings
- Stop a meeting when it is in the public interest to do so



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



Lobbying

- Members should not lobby Congress in their capacity of advisory committee member (orally or in writing).
- They may, however, communicate with Congress in their personal capacity and on personal time.



Lobbying

- EPA policy is that, under certain circumstances, committee members who are on invitational travel may contact members of Congress on days they are performing duties as a FAC member, but not during the time the committee is meeting.
- If you plan to contact a member of Congress during the time you are on invitational travel, you should let the DFO know what your plans are.



Members

- Membership of a subcommittee is balanced in the points of view represented for the function the committee is to perform



Representative Members

- Appointed to represent a defined organization or group and are expected to present that group's view on the issues
- Your invitation letter stated the group whose views you are representing



Representative Members

- Are not subject to ethics in government laws and regulations and do not complete financial disclosure forms
- Are expected to bring the views of the group they represent to the table



Working Groups

- Report to the subcommittee
- May not provide advice directly to EPA



Working Groups

- A group made up of only a few committee or subcommittee members to:
 - analyze relevant issues and facts,
 - draft proposed position papers, or
 - conduct research