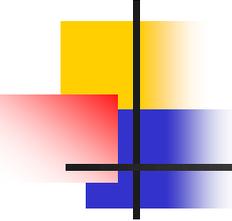


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# Federal Advisory Committee Act Legal Requirements

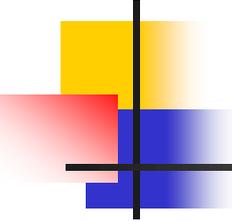
Marilyn Kuray  
Attorney-Advisor  
Office of General Counsel



# Federal Advisory Committee Act

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- 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

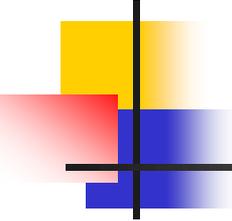


# Purpose of FACA

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Ensure that advisory committees are:

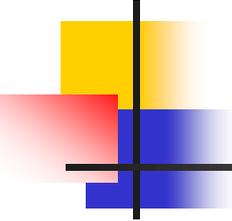
- established only when needed
- terminated when their work is completed
- balanced in points of view represented
- governed by uniform procedures
- limited to providing advice to the Agency
- open to public scrutiny



# Function

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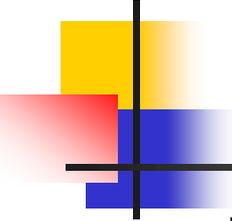
- The sole function of an EPA advisory committee is to provide advice and recommendations to EPA
- An advisory committee may not take action to implement recommendations or monitor EPA's implementation



# NACEPT and the Assumable Waters Subcommittee

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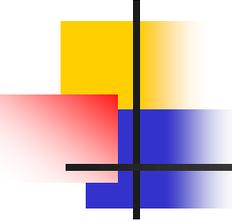
- This group is formed as a subcommittee of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT).
- NACEPT advises EPA on ways to improve the development and implementation of domestic and international environmental management policies, programs, and technologies.
- This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



# NACEPT Charter

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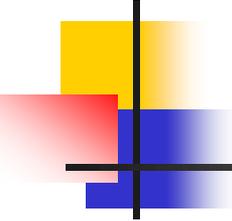
- Renewed every 2 years
- Must be filed with Congress before committee may meet
- Subcommittees are not required to have a charter.



# Charter Contents

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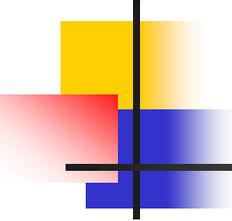
- Objectives and scope of activity
- Official to whom it reports
- Costs and funding responsibilities
- Membership
- Frequency and number of meetings
- Date charter is filed with Congress



# Subcommittees

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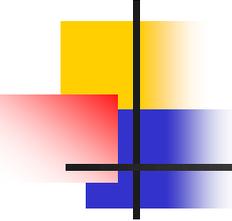
- Subcommittees report their recommendations to the chartered committee
- The chartered committee must discuss and deliberate on all subcommittee recommendations before making those recommendations to EPA
- If a subcommittee fails to follow this procedure, EPA could be prohibited from relying on the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



# Subcommittees

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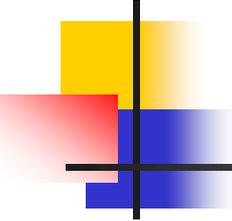
- Subcommittees follow all of FACA's openness requirements (open meetings, timely public notice of meetings, document availability)
- A DFO is appointed for and attends subcommittee meetings
- Subcommittee members are appointed by EPA



# Limitations

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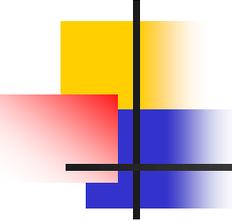
- Subcommittees and working groups:
  - May **not** advise EPA directly;
  - Must work through the chartered committee
- EPA staff may **not** use advice of a subcommittee or working group prior to its being forwarded to EPA as the recommendation of the chartered committee



# Openness & Transparency

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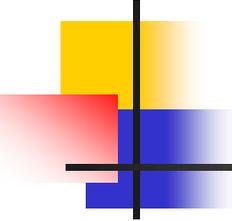
- Meetings open to the public, with limited exceptions
- Meeting notices and summary of agendas published in the Federal Register
- Opportunity for public comment
- Meeting minutes prepared for each meeting (certified by the chair)



# Availability of Documents

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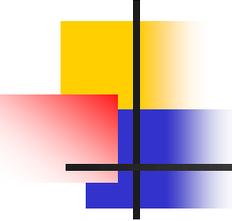
- Subject to the exceptions in FOIA, EPA provides the public access to all documents made available to or prepared by or for the subcommittee (including draft reports and working papers)
- Detailed minutes are kept of each meeting and made available to the public



# Designated Federal Officer

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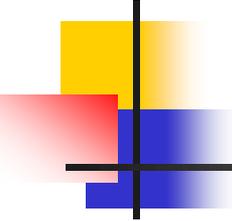
- EPA appoints a Designated Federal Officer (DFO) for each subcommittee
- The DFO attends each committee meeting or arranges for a designee to attend



# DFO's Responsibilities

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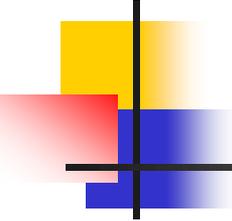
- Approve the agenda
- Call the meetings
- Stop a meeting when it is in the public interest to do so



# Lobbying

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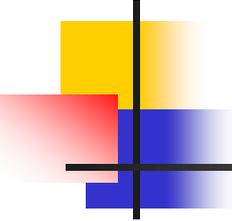
- EPA employees may not encourage members to lobby Congress
- Members may not develop strategies for lobbying Congress during an advisory committee meeting or using advisory committee funds



# Lobbying

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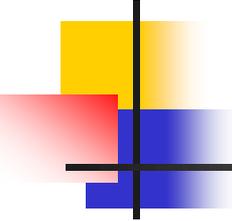
- Members should not lobby Congress in their capacity of advisory committee member (orally or in writing).
- They may, however, communicate with Congress in their personal capacity and on personal time.



# Lobbying

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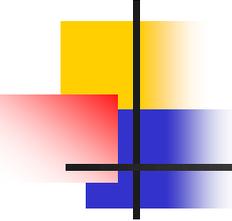
- EPA policy is that, under certain circumstances, committee members who are on invitational travel may contact members of Congress on days they are performing duties as a FAC member, but not during the time the committee is meeting.
- If you plan to contact a member of Congress during the time you are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



# Members

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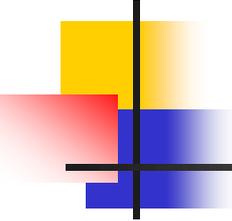
- Membership of a subcommittee is balanced in the points of view represented for the function the committee is to perform



# Representative Members

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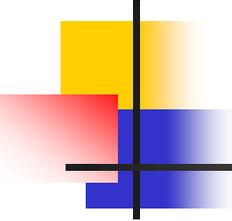
- Appointed to represent a defined organization or group and are expected to present that group's view on the issues
- Your invitation letter stated the group whose views you are representing



# Representative Members

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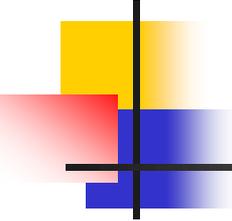
- Are not subject to ethics in government laws and regulations and do not complete financial disclosure forms
- Are expected to bring the views of the group they represent to the table



# Working Groups

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



# Working Groups

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- 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