

**FISH AND WILDLIFE SERVICE
COMMITTEES AND ADVISORY BOARDS**

Committees and Advisory Boards

Part 107 Advisory Committees

Chapter 1 Management of Advisory Committees

107 FW 1

1.1 What is the purpose of this chapter? This chapter introduces Part 107, Advisory Committees. The chapters in Part 107:

A. Establish policies and procedures for managing and using advisory committees to ensure compliance with the Federal Advisory Committee Act (FACA),

B. Provide employees with an overview and understanding of the Federal advisory committee process, and

C. Provide guidance and procedures for:

(1) Establishing, renewing, and terminating advisory committees (107 FW 2);

(2) Developing charters and bylaws (107 FW 3);

(3) Appointing committee members (107 FW 4); and

(4) Conducting meetings, keeping records, and reporting (107 FW 5).

1.2 What is the scope of Part 107? Part 107 applies to all employees who are involved with advisory committees or who want to establish or utilize an advisory committee.

1.3 What authorities govern advisory committees?

A. Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App.).

B. Public Contracts and Property Management Regulations, Federal Advisory Committee Management (41 CFR 102-3).

C. Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.).

D. Negotiated Rulemaking Act of 1990 (5 U.S.C. 561-570).

E. Office of Management and Budget (OMB) Circular A-135, Management of Federal Advisory Committees.

F. 308 DM 1-8, Committee Management.

G. 205 DM 16, Advisory Committee Management.

H. Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3115, Title VIII).

I. Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4721-28).

1.4 What is the Federal Advisory Committee Act? FACA:

A. Defines what constitutes a Federal advisory committee;

B. Governs the creation, operation, and termination of advisory committees;

C. Requires agencies to use open meetings and public involvement; and

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D. Ensures that Congress and the public are informed about the number, purpose, membership, activities, and costs of advisory committees.

1.5 What are advisory committees, and when must they comply with FACA?

A. An advisory committee is any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup established to provide advice or recommendations to the President or one or more agencies or officers of the Executive Branch of the Federal Government. These committees may be established by statute, reorganization plan, the President, or one or more agencies.

B. With limited exceptions, advisory committees that Federal agencies establish or utilize and that have at least one member who is not a Federal employee must comply with FACA.

1.6 What does “utilize” mean? Under FACA, “utilize” does not have its ordinary meaning. Even if the Federal Government did not establish a group, it could “utilize” a group if the President or a Federal agency exerts management or control over the group. If a Federal agency does one or more of the following things, it is exerting actual management or control over a group and the group may have to comply with FACA:

A. Selects (or controls the selection of) members,

B. Sets the agenda, or

C. Funds the group’s work.

1.7 What agency oversees advisory committees? The General Services Administration (GSA) oversees the implementation of FACA across all Federal departments and agencies. Each Federal agency that establishes or utilizes advisory committees must adhere to both FACA requirements and GSA regulations.

1.8 What are the different types of advisory committees? Table 1-1 describes the types of advisory committees.

Table 1-1: Types of advisory committees	
Committee	Description
A. Presidential advisory committee	A committee that Congress authorizes or the President directs to advise the President.
B. Nondiscretionary advisory committee	(1) A committee required by statute or by Presidential directive. (2) A statute usually identifies the committee by name, purpose, or function. (3) The Secretary of the Interior does not legally control the committee’s establishment and termination.
C. Discretionary advisory committee	(1) A committee the Secretary establishes. (2) This type of committee may be referenced in general (nonspecific) authorizing language or congressional committee report language as discretionary.

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Table 1-1: Types of advisory committees	
Committee	Description
	(3) The Secretary legally controls the committee's establishment and termination.

1.9 What is a negotiated rulemaking advisory committee? A negotiated rulemaking advisory committee is a type of discretionary Federal advisory committee established under the authority of the Negotiated Rulemaking Act and FACA and has the following features:

A. In a negotiated rulemaking proceeding, a balanced group of stakeholders representing the regulated public, communities, public interest groups, State and local governments, and representatives of the Federal agency negotiate the text, outline, or concept of a rule.

B. If the committee reaches consensus on the rule, it sends a committee report with the recommended text of the rule to the concerned Federal agency for consideration for its proposed rule. The proposed rule is still subject to general rulemaking requirements, including public notice and comment.

C. If consensus is not reached, the committee report should describe the areas where consensus was reached and provide any other information, recommendations, or materials the committee considers appropriate to the concerned Federal agency.

1.10 Who can establish committees and appoint members? Except as provided by statute, regulation, or Departmental directive, the Secretary establishes, utilizes, and terminates advisory committees and appoints and removes members.

1.11 What general policies apply to advisory committees?

A. The function of an advisory committee must be solely that of giving advice unless otherwise provided by law.

B. Only officials of the Department or other employees of the Federal Government may make decisions based on the committees' advice.

C. Advisory committees must not administer or conduct a function that is the assigned responsibility of an organizational entity of the Department.

D. Appropriations law generally prohibits interagency funding of interagency boards, commissions, councils, committees, or similar groups absent specific statutory authority. FACA committees are included in this prohibition.

1.12 What Service officials are responsible for advisory committees?

A. The Director:

(1) Oversees the committee management program,

(2) Appoints the Service Group Federal Officer, and

(3) Designates a member of the Service's Directorate to appoint a Designated Federal Officer (DFO) for

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each of the advisory committees. The DFO must be a full-time or permanent part-time employee.

B. The Assistant Director - Budget, Planning and Human Capital recommends appointment of the Service Group Federal Officer.

C. The Chief, Division of Policy and Directives Management provides advice and assistance in FACA matters.

D. The Service Group Federal Officer, Division of Policy and Directives Management:

(1) Provides advice and assistance to employees on establishing, renewing, terminating, and managing advisory committees;

(2) Develops policy for managing committees and appointing members;

(3) Serves as liaison between Service advisory committees and the Departmental Committee Management Office;

(4) Maintains information on all Service advisory committees;

(5) Reviews annually, or as requested, the operations of advisory committees for which the Service is responsible; and

(6) Coordinates the completion of the annual comprehensive review for all advisory committees.

E. Members of the Directorate must consider and adhere to FACA when seeking the advice of the public. They must:

(1) Appoint a DFO for each advisory committee within their areas of responsibility (a DFO may serve on more than one committee), and

(2) Ensure that DFOs within their areas of responsibility meet all recordkeeping and reporting requirements.

F. The DFO, working with the committee chair, is responsible for the day-to-day operations and management of the committee (or committees if he/she is responsible for more than one) and must:

(1) Call, attend, and adjourn committee meetings;

(2) Approve the agenda in advance of the meeting;

(3) Maintain records on costs and membership;

(4) Submit appropriate paperwork to establish or renew the committee and appoint members (see 107 FW 2, 3, and 4),

(5) Ensure efficient operations;

(6) Make committee records available to the public; and

(7) Approve the creation and operation of subcommittees.

1.13 How do I determine if FACA applies to a committee? Not all advisory committees are subject to

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FACA. Exhibit 1 provides information on groups that are not subject to FACA.

A. FACA does not apply to:

- (1)** Specific advisory groups that Congress exempts through legislation;
- (2)** Meetings that are not meant to come to consensus or that seek to get individual views on issues, such as public meetings;
- (3)** Meetings between Federal, State, tribal, and local officials acting in their official capacities (Unfunded Mandates Reform Act); and
- (4)** Subcommittees if they report to a parent advisory committee and not directly to a Federal officer or agency.

B. FACA generally applies to groups that meet the following criteria:

- (1)** Are established or utilized by a Federal official (see section 1.6),
- (2)** Include at least one member who is not a Federal Government employee, and
- (3)** Provide group advice and recommendations to a Federal agency or the President.

C. Groups subject to FACA usually have:

- (1)** A fixed membership (i.e., the number and composition of members is set or nondiscretionary),
- (2)** An organizational structure (e.g., officers and staff), and
- (3)** A clearly defined purpose.

D. If you have a question about whether or not a group is subject to FACA or about the scope of FACA, contact the Solicitor's Office (General Law) or the Service Group Federal Officer in the Division of Policy and Directives Management.

1.14 What could happen if a committee does not comply with FACA? Not complying with FACA and GSA regulations could result in a legal challenge and possible court order, prohibiting us from using any reports, recommendations, or other material originating from the advisory committee.

/sgd/ Rowan W. Gould
DEPUTY DIRECTOR

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