

Sport Fishing and Boating Partnership Council 2014

Overview of FACA & Ethics Rules

FACA Background

In the early 1970s, Congress found that numerous committees, boards, commissions, councils, and similar groups were established to advise executive branch agencies.

FACA Background

- Congress found:
 - **Duplicative/unnecessary committees**
 - **No uniform standards or procedures**
 - **Undue influence by special interests**
 - **Inadequate access or accountability to public/Congress**

Federal Advisory Committee Act

- **Became law in 1972 (P.L. 92-463)**
- **Governs how Federal Advisory Committees operate**
- **Purpose: increases access/accountability and manages costs of Advisory Committees by requiring:**
 - **Open meetings**
 - **Chartering**
 - **Public involvement/access**
 - **Reporting**

Characteristics of a FACA Committee

**Any group that is established or
utilized by a Federal Agency that—**

- Provides advice to the agency, and**
- Has at least one person that is not a full
time Federal or state/local government
employee.**

FACA Meetings Requirements

- **Must have 15 days advance notice in the Federal Register.**
- **Must be open to the public unless limited statutory bases for closure apply.**
- **Must have a Designated Federal Officer in attendance.**
- **Must have minutes which are available for public inspection (except for portions of a meeting which was closed).**

FACA Meetings Requirements

- **Note about informal gatherings of Council members:**
 - **Please take steps to make sure that no gathering of Council members may be construed as an impromptu or informal meeting of the Council.**
 - **FACA prohibits such informal meetings of the Committee**

Failing to Comply with FACA

- **Can lead to legal challenge of regulations, laws, or policies adopted by the agency on the basis of advisory committee recommendations**
- **If the challenge is successful, the agency cannot use advice, recommendations, or information developed by the noncompliant advisory committee**
- **Time and government resources spent in defending in court**

Status of FACA Committee Members

- **Special Government Employees (SGEs):** hired by Federal government to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period
- **Representatives:** used by Federal agencies to obtain the views of non-Govt. groups/orgs usually have specific expertise

Status of FACA Committee Members

- Council members are “Representative” members – not subject to Federal ethics laws and most ethics statutes
- Council Members are subject to the ethics language in the Council Charter

Charter Language

“No Council or subcommittee member will participate in any SPECIFIC PARTY matter in which the member has a direct financial interest in lease, license, permit, contract, claim, agreement, or related litigation with the Department.”

Specific Party Matters

- Examples:
 - Grant, Agreement
 - Application
 - Enforcement Action
 - Request for a ruling or other determination
 - Controversy, Claim, or Litigation
 - Lease
 - Permit
 - Contract

Direct Financial Interest

- Personal Financial Interest – Yours
 - But consider the financial interest of your spouse and minor children
- Financial Interest
 - **Stocks, bonds, real estate, certain mutual funds**
 - **Salary, job offer**
 - **Potential for gain or loss as a result of Governmental action on the matter**

Conflicts of Interest

- How will the Council and USFWS resolve the conflict?
 - **Minor conflicts may require only notice to the Committee, DFO, and Ethics Counselor**
 - **Significant conflicts may require further action**

Example 1

- Carrie, a Representative, has been asked to provide a recommendation concerning a proposed land use in Colorado Springs, Colorado. She owns a 15% partnership interest in the company that possesses a right-of-way interest on the land in question. Can she provide a recommendation to the FACA committee she serves?

Example 2

- Doug serves on the FACA council as a representative and works for multi-national corporation. The corporation is a large concessionaire with revenue in excess of \$4 million annually. The corporation has large contract with USFWS. Is it permissible for Doug to participate in discussions regarding increases for concessionaires?

Example 3

- Vanessa, a representative on a FACA committee, owns recreational property that borders a USFWS Refuge. The committee duties include providing recommendations on potential annexations to the Refuge. May she provide a recommendation to the FACA committee regarding annexations?

Questions or Advice?

- **If you have questions about any of the issues discussed above, please contact the Council DFO or me, Kim Hintz, Associate Ethics Counselor (703) 358-2534 or email me at kimberly_hintz@fws.gov**