

TO: Commissioners and Bureau/Office Chiefs

SUBJECT: Federal Advisory Committees

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Distribution:  
A, B

Originating Office:  
Associate Managing Director/PERM  
Office of Managing Director

1. Purpose - The purpose of this Instruction is to set forth the Commission's policy, administrative guidelines, and management controls relative to advisory committees as required by the Federal Advisory Committee Act (Act), as amended (PL 105-153), OMB Circular A-135, OMB Implementing Section 204 as related to FACA (M-95-20), FACA Final Rule 2001, Executive Order 12024, and Executive Order 12838.

2. Background - Prior to enactment of the Federal Advisory Committee Act, advisory committees established by the Commission were governed by various Executive Orders. The Act requires each agency head to designate an Advisory Committee Management Officer, who shall exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees, and to establish uniform guidelines and management controls for advisory committees established by the agency. The Federal Communications Commission has designated the Managing Director as the Committee Management Officer (CMO). The Managing Director delegated the responsibility for this function to the Associate Managing Director/PERM (AMD-PERM).

3. Cancellation. This revised Instruction supersedes previous Instructions.

4. Policy- Advisory committees shall be established or continued only if they are essential; are advisory only; their functions cannot be performed by Commission staff or another existing committee; they are effectively fulfilling the purpose for which they were established; and in their creation, operation, and duration they are governed by the standards and guidelines set forth herein.

5. Scope -This Directive applies to advisory committees established by the Commission under the rules of the Federal Advisory Committee Act. Excluded from this instruction is (a) any local civic group whose primary function is that of rendering a public service with respect to any Commission program, (b) any state or local committee or similar group established to advise state .or local officials or agencies, and (c) any committee which is composed wholly of full-time officers or employees of the Federal Government.

6. Definitions - For the purposes of this Instruction:

a. The term "Act" means the Federal Advisory Committee Act.

b. The term "committee" shall mean Federal Advisory Committee.

c. Federal Advisory Committees are established when:

(1) The agency head,

(2) Seeks advice, opinions, or recommendations on a predefined topic or subject,

(3) From a group acting in a collective or consensus mode,

(4) Whose representatives are primarily a fixed or static group,

(5) Not composed wholly of full-time, or permanent part-time Federal employees.

d. Under these conditions a Federal Advisory Committee must be established regardless of whether the group is called a committee, board, commission, council, conference, panel, task force, or any formal subcommittee or other formal subgroup.

- e. A formal subgroup or subcommittee is one which independently contains most of the requirements of a Federal Advisory Committee. Subgroups which have an individual charter apart from that of the parent committee or contain members not included in the membership of the parent committee are considered to be committees.
- f. An informal subgroup or subcommittee is one possessing few of the characteristics of an advisory committee; (e.g., an advisory committee may divide itself into several groups to discuss topics relating to the work of the committee). Such groups would not be chartered independently, but are included on the charter of the parent committee.)

## 7. Responsibilities

- a. Managing Director. The Managing Director will:
  - (1) Establish uniform administrative guidelines and management controls for committees consistent with the Act and implementing directives.
  - (2) Act as Committee Management Officer (CMO) for the Commission and furnish his/her name and the name of the FCC Contact Person for Federal Advisory Committees to the Committee Management Secretariat of the General Services Administration.
- b. Committee Management Officer. The CMO will:
  - (1) Approve all actions concerning the establishment, termination and renewal of FCC advisory committees.
  - (2) Delegate responsibility for administering this function to the Associate Managing Director/PERM (AMD-PERM).
  - (3) Carries out the responsibilities outlined in the following sections on establishing, operating, renewing, and terminating committees.
- c. Associate Managing Director/PERM (AMD-PERM). The AMD-PERM will:
  - (1) Recommend revisions, as necessary, to the administrative guidelines and management controls for committees established by the Commission and make the necessary revisions to keep this directive current with guidelines issued by the Government Services Administration (GSA).
  - (2) Be available as a resource for the Commission and staff on questions concerning the application and administration of the Act.
  - (3) Coordinate the administrative processes required for establishment and annual reporting on the committees.

(4) Advise each Bureau/Office Chief of the termination date of a committee 60 days in advance of such date.

(5) Carries out the responsibilities outlined in the following sections on establishing, operating, renewing, and terminating committees.

d. Commissioners, Bureau and Office Chiefs. Commissioners, Bureau and Office Chiefs will:

(1) Recommend to the CMO the establishment or renewal of an advisory committee and furnish to the CMO information which will provide a basis for approving the recommendation.

(2) After the advisory committee has officially been established, the Bureau/Office Chief, who has been given responsibility for the committee, will conduct the operations of the committee in accordance with the provisions of this Instruction and assist the AMD/PERM in carrying out its responsibility under the Act.

(3) Notify the CMO in writing of the termination date of a committee if termination is scheduled to take place prior to the committee's official termination date.

(4) Appoint a Designated Federal Officer (DFO) and, if necessary, an alternate Designated Federal Officer) to each advisory committee.

(5) Provide the CMO with the names of the Designated Federal Officer and alternate Designated Federal Officer.

(6) Carries out the responsibilities outlined in the following sections on establishing, operating, renewing, and terminating committees.

e. Designated Federal Officer or alternate:

(1) shall have sole authority for calling a committee meeting;

(2) must approve the agenda for all meetings;

(3) must chair or attend all meetings of the committee or its formal or informal subgroups determined to be in the public interest.

(4) is authorized to adjourn any committee meeting whenever adjournment is determined to be in the public interest;

(5) Assembles and maintains for his/her committee(s) a complete set of (a) charters, (b) membership lists, (c) minutes or reports from the committee, and (d) records which fully disclose the disposition of funds, if any, at the disposal of each committee. The DFO shall make this information available to the General Accounting Office and/or Inspector General for examination or audit upon request.

(6) Carries out the responsibilities outlined in the following sections on establishing, operating, renewing, and terminating committees.

8. Establishment Procedures - Whenever a Commissioner, or a Bureau or Office Chief seeks to establish an advisory committee, or to utilize an existing committee in an advisory manner, the following procedures shall apply:

a. FCC and GSA Approval.

(1) A memorandum recommending the establishment of the committee shall be submitted to the CMO. The memorandum shall state:

(a) the nature, purpose, objectives and name of the proposed advisory committee;

(b) names of proposed subcommittees;

(c) the reasons why a committee is needed and why the functions of the proposed committee cannot be performed by the staff or by an existing committee;

(d) the estimated time needed for the committee to complete its objectives;

(e) the estimated amount of staff time (expressed in FTEs) and cost to the Federal Government for, (i) support services provided to the committee and (ii) participation by Federal employees in the committee's work;

(f) when funding is to come from private sources, estimated private contributions and manner in which funds will be raised;

(g) the proposed plan to attain balanced membership on the committee, (including a description of the efforts which will be undertaken to obtain adequate representation of women and minority members);

(h) names of recommended primary and alternate (if any) Designated Federal Officers, and

(i) if the committee membership is fixed, the proposed number of members.

(2) Upon approval by the CMO to establish a committee, AMD/PERM shall send a letter to the GSA Committee Management Secretariat which shall include those matters described in 8.

(3) AMD/PERM will request from the appropriate Commissioner, or Bureau/ Office Chief, five copies of the committee charter. AMD/PERM will file the committee's charter with the Congressional committees concerned not less than 15 days after the notice of establishment appears in the *Federal Register*.

(4) When the GSA Committee Management Secretariat, and, if necessary, any other government entity, has advised the FCC of its concurrence with the establishment of the committee, the Designated Federal Officer for the committee shall:

(a) publish in the *Federal Register*, 15 calendar days before the committee charter is filed, a notice which (i) advises of the establishment of the committee, (ii) certifies that creation of the committee is in the public interest, and (iii) sets for the nature and purpose of the committee;

(b) renewed charters may be published in the *Federal Register* at the same time they are filed with the appropriate Congressional committees.

(5) At the discretion of the Designated Federal Officer, a press release may be issued after publication of the notice in the *Federal Register*.

(6) Establishment procedures described in paragraph 8a (1) shall apply to all formal subcommittees, as well as parent committees. To establish informal subcommittees, the Designated Federal Officer of the parent committee must notify the CMO when a new subcommittee is to be established and provide the CMO with the terms of reference for the subcommittee. The CMO must be notified of any amendments to committee or formal subcommittee charters.

b. Filing Committee Charters:

(1) For each established, utilized, or renewed committee, AMD/PERM will retain one copy of the charter and transmit copies to the Chairman of the agency's Authorization and Appropriations Committees, to the Library of Congress (Library of Congress, Exchange and Gifts Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, D.C. 20540), and to the Secretariat indicating the congressional filing date of the charter.

(2) Any formal subgroup that is established at a time other than the time the committee is established or renewed shall submit its charter when the subgroup is established. To charter informal subcommittees, AMD/PERM shall revise the charter of the parent committee to include the name and functions of the subcommittees. Copies of the revised: charter shall be filed in accordance with 8b (1).

(3) No advisory committee shall meet to conduct any business or take action until a charter is

filed in accordance with 8b (1). Such charter shall be filed no earlier than 15 days after publication of committee's certification in the *Federal Register*.

c. Selection of Members

- (1) The membership of each committee shall be fairly balanced in terms of the points of view represented and the committee's function.
- (2) There shall be no discrimination in the selection of members on the basis of race, color, national origin, religion or sex.
- (3) Appropriate safeguards shall be included in the organization of the committee to assure that the committee's advice and recommendations will not be inappropriately influenced by any special interest.

9. Renewal and Termination

a. Renewal

- (1) AMD/PERM will advise the Bureau/Office Chief 60 days in advance of the termination date of a committee.
- (2) If a committee has not completed its work and there is need to continue its existence, the Designated Federal Officer responsible for it shall, not less than 45 days before the scheduled date of termination, file with the CMO:
  - (a) A request that the committee be renewed, giving, (i) reasons why, continuation of the committee is considered necessary and in the public interest, (ii) the committee's plan to assure continuation of balanced membership, (iii) reasons why the committee's functions could not be performed by sources within the FCC or by another committee, and (iv) estimated amount of staff time and Federal costs, during each of the next two years, for both support services provided to the committee and participation by Federal employees in the work of the committee.
  - (b) Five copies of a new charter, which shall be prepared in accordance with the format noted in 8a (1).

(3) After the CMO has been assured that continuation of the committee is necessary and in the public interest, a memorandum will be prepared to the requesting official informing him/her of the final determination.

(4) After the CMO has determined that renewal is necessary, the CMO shall:

(a) inform the GSA Committee Management Secretariat by letter, not less than 30 days before the committee expires of the Commission's determination.

(b) ensure that the Designated Federal Officer for the committee submits a renewal notice to the Publications Branch for publication in the *Federal Register* after GSA Secretariat's concurrence. This notice shall (i) briefly state the committee's nature and purpose as cited in the original notice of the committee's establishment, (ii) state that renewal of the committee is necessary and in the public interest and (iii) state that the committee has been renewed, giving duration of renewal.

(c) transmit copies of the charter in accordance with Section 8b (1). For committees being renewed, the charter may be filed as soon as the GSA Secretariat has concurred in renewal.

(5) At the discretion of the Designated Federal Officer, a press release may be issued after publication of the renewal notice in the Federal Register.

(6) No advisory committee which has been approved for renewal shall meet to conduct any business or take any action, other than the preparation and filing of the new charter, between the date the new charter is required and the date it is filed.

b. Termination - All committees shall terminate no later than two years after their charters have been filed unless earlier renewed or terminated.

c. Subgroups - Unless provided otherwise, the duration of a subgroup shall be the same as that of the parent committee.

## 10. Committee Operations

a. Meetings - The following requirements govern the preparation for and conduct of committee meetings:

### (1) Calling of meetings

No committee, or formal subcommittee, shall hold any meetings except at the call or with the advance approval of the Designated Federal Officer.

### (2) Agenda

Each meeting of a committee or formal subcommittee shall be conducted in accordance with an agenda approved by the Designated Federal Officer. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters which are within the exemptions of the "Government in the Sunshine Act", 5 USC 552b [See 9a(6)]. Normally copies of the agenda should be



distributed to the members of the committee prior to the date of the meeting.

(3) Attendance of Designated Federal Officer

No committee or formal subcommittee shall conduct any meeting in the absence of the Designated Federal Officer.

(4) Federal Register Notice

(a) at least 20 days before each meeting of an advisory committee or subcommittee, the Designated Federal Officer shall submit five copies of a notice of the meeting to the Publications Branch for publication in the *Federal Register*.

(b) The notice should contain:

- (i) the name of the committee,
- (ii) the time and place of the meeting, if open to the public,
- (iii) purpose of the meeting and a summary of the agenda,
- (iv) information as to whether the meeting is open to the public,
- (v) the extent to which the public can participate by presenting oral or written statements. Additional means of informing the public of an upcoming meeting, such as press releases, should be utilized to the extent practicable.

(c) A copy of the notice of meeting shall be sent to the CMO at the same time as copies are delivered to the Publications Branch.

(d) A notice of a meeting can be omitted only on a determination by the Committee Management Secretariat, GSA, that such notice would be inconsistent with national security. Requests for such a determination must be submitted to GSA at least 30 days before such a meeting and shall be submitted through the CMO.

(5) Public Participation

Each advisory committee meeting shall be open to the public except as described in (6)(a) below and shall be subject to the following:

(a) The meeting shall be held at a reasonable time and at a place that is accessible to the public;

(b) The meeting room shall be of reasonable size, considering the size of the committee, expected public attendance and resources available to the committee and the Commission;

(c) Any member of the public can file a written statement before or after the meeting;

(d) Interested persons may be permitted by the committee or its chairman to present oral statements to the extent that time available for the meeting permits and must be in accordance with existing committee procedures;

(e) Participation other than by presentation of oral or written statements by members of the public in committee meetings or questioning of committee members shall not be permitted except in accordance with established committee procedures.

(6) Closed Meetings

(a) Portions of or entire meetings may be closed to the public if the expressed purpose of the meeting (or portion thereof) will be to discuss subject matter which is within the exemptions contained in the "Government in the Sunshine Act" (5 USC 552b). Pursuant to subsection (c) of Section 552b of Title 5, United States Code, a meeting or portions of a meeting may be closed where the Commission has determined that the proceedings are likely to:

(i) disclose matters that are specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such executive order;

(ii) relate solely to the internal personnel rules and practices of an agency;

(iii) disclose matters specifically exempted from disclosure by statute (other than 5 USC 552), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(iv) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) involve accusing any person of a crime, or formally censoring any person;

(vi) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(vii) disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records, or information would (a) interfere with enforcement proceedings, (b) deprive a person of a right to a fair trial or an impartial adjudication, (c) constitute an unwarranted invasion of personal privacy, (d) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (e) disclose investigative techniques and procedures, or (f) endanger the life or physical safety of law enforcement personnel;

(viii) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(ix) disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

(b) A committee seeking to close a meeting (or portion thereof) must notify the CMO in writing at least 30 days before the date of meeting of its reasons for desiring to close the meeting. The CMO will make a determination in writing and include a brief statement of the reasons for closing the meeting. After a closed meeting has been held, the CMO may review the appropriateness of the determination to close the meeting and take whatever corrective action may be required. An annual report of closed meetings must be prepared and notice of its availability published in the *Federal Register*.

(c) Any determination made by the CMO to close a meeting shall be reviewed and approved by the General Counsel.

(d) When a meeting (or portion) is closed, members of the committee shall not disclose the matters discussed, except to other members of the committee, the staff of the committee, or agency employees.

#### (7) Minutes

Detailed minutes shall be kept of each committee meeting including meetings of formal subgroups. The committee chairperson may designate a member or a person who is not a member to take the minutes. The committee chairperson, or if unable to attend, his delegate, shall certify to the accuracy of the minutes. At a minimum, the minutes shall contain:

(a) the time and place of the meeting;

(b) a list of committee members and staff and Commission employees present;

(c) a complete summary of matters discussed and conclusions reached;

(d) copies of all reports received, issued or approved by the committee;

(e) a statement as to the extent to which the meeting was open to the public and the extent of public participation (including a list of members of the public who presented oral or written statements);

(f) an estimate of the number of members of the public who attended the meeting.

#### (8) Transcripts

A transcript of meetings, if made, shall be made available to any person at the cost of duplication.

#### b. Submission of Reports

Eight copies of each report adopted by a committee shall be submitted to the CMO for transmission

to the Library of Congress

c. Access to Records

(1) Each committee shall make its records, reports and other documents available in one location for public inspection and copying, except:

(a) access may be restricted on the basis of the exemptions contained in 5 USC 552(b). When the only basis for denying access to a document is exemption (5), the CMO must make a positive determination that such a denial is essential to protect the free expression of internal views and to avoid interference with agency or advisory committee operations. This determination shall be reviewed and approved by the General Counsel.

(b) access shall be only to records which relate directly to the open part of a meeting, where parts of a meeting were closed. In addition, a copy of the determination to close the meeting shall be made available to the public on request.

(2) Committee records shall be available for public inspection until the committee ceases to exist.

(3) Requests for access to records should be directed to the Designated Federal Officer.

11. Administrative Remedies

a. Records - Any person whose request for access to committee records has been denied can request administrative review in accordance with 0.461(i) of the Commission's Rules.

b. Other - Any committee member, individual or organization aggrieved because of alleged non-compliance with this directive should within 30 days of the alleged infraction, report in writing, to the CMO details concerning the allegation. Any report of non-compliance shall be reviewed and acted upon promptly, and written notice of the disposition of the matter shall be provided to the aggrieved person or persons by the CMO.

12. Administrative Requirements

a. Support services include such matters as staff, quarters, supplies, and funds (e.g., funds for publication of reports or transcription of meetings when appropriate). Each Bureau or Office responsible for a committee shall provide the necessary support services to the committee, except as provided in 12b below. It shall include in its budget submission a separate item for operation of committees.

b. Private funds permitted - A committee may deem it necessary to finance the supporting services, in whole or in part, through private funds. A memorandum to the CMO requesting that private funding be permitted must be prepared by the Commissioner, Bureau or Office Chief responsible for the committee. It should include; (1) the reasons for requesting private funding; (2) the amount of money to be raised; (3) the manner in which the solicitation is to be made to avoid undue influence; (4) the proposed budget; and (5) a statement that an accounting system approved by the CMO will be used.

13. Financial Records - Each committee which received funds from private sources shall:

a. Submit to the CMO:

(1) a description of the safeguards which have been provided against undue influence by any special interest in the solicitation of funds (whenever these safeguards are revised the CMO should be advised of the nature of the changes);

(2) the proposed annual budget for the private funds to be used in the operation of the committee;

(3) quarterly and annual financial reports which fully disclose the disposition of funds received from private sources.

b. Establish and submit to the CMO for approval a system for maintaining financial records which willfully disclose the source and amount of receipts and disposition of funds obtained from private sources.

c. Maintain on a current basis financial records in accordance with the system approved per 12b.

d. Provide the data required for the annual report.

14. Reports

a. Commissioners, and Bureau and Office Chiefs

The General Services Administration requires an annual comprehensive review of each advisory committee pursuant to Section 7(b) of *PL. 92-463*. This report is submitted annually at the direction of the Committee Management Secretariat of GSA, and is used to compile the President's Annual Report to Congress pursuant to Section 6(c) of P.L. 92-463.

Each Designated Federal Officer responsible for a committee will submit to the AMD/PERM information and other data required as part of the annual report.

Appropriate forms and instructions regarding completion of the above report will be distributed to the advisory committee Designated Federal Officers approximately four weeks in advance of the dates on which the report is to be submitted to the AMD/PERM.

Additionally, the Time and Expense Logs used to record staff time utilized and expenses incurred in support of committee operations should be provided to the AMD/PERM with the committee's annual report submission.

b.

Committee Management Officer

(1) The CMO will submit updated or corrected forms to the GSA Committee Management Secretariat as appropriate to inform the Secretariat of changes in the status of FCC advisory committees. These forms must be submitted no later than ten days following any changes in status.

(2) Pursuant to instructions received from GSA, the CMO will submit the Annual Report on Federal Advisory Committees by the due dates.

c. AMD/PERM

(1) The AMD/PERM will prepare the annual report for the Managing Director each year, based upon input from the Designated Federal Officials.

d. Committees

(1) Committees holding meetings which have been closed to the public shall issue a report by January 15 each year, for the previous calendar year, setting forth a summary of its activities and related matters which is informative and consistent with the Freedom of Information Act. Notice of availability of this report shall be submitted to the Publications Branch for publication in the *Federal Register*. The notice of availability for this report shall include instructions which will allow the public access to the report.

(2) Committees which receive funds from private sources will submit to the CMO the reports required in 13a(3) above.

Andrew S. Fishel  
Managing Director

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