



August 29, 2012

**Overview of FACA &  
NEMSAC Code of Conduct**

# FACA Background

- **In the early 1970s, Congress found that numerous committees, boards, commissions, councils, and similar groups had been established to advise executive branch agencies**
- **A useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.**

# FACA Background

- **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 NEMSAC members:**
  - **Many of you know each other and work together frequently in a variety of venues.**
  - **Please take steps to make sure that no gathering of NEMSAC members may be construed as an impromptu or informal meeting of NEMSAC.**
  - **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; must have specific expertise and often have authority to bind an outside entity

# Status of NEMSAC Members

- **NEMSAC members are “Representative” members – not subject to Federal ethics laws and most ethics statutes as they are not Federal employees (unlike SGEs)**
- **Members are subject to the NEMSAC Code of Conduct – based on the Federal ethics standards and statutes**
- **Representatives can only provide advice but may not perform any NHTSA employee duties (unlike SGEs)**

# NEMSAC Code of Conduct

- **Member Communications**
- **Media Contact**
- **Conflicts of Interest**
- **Misuse of Position**
- **NHTSA Contacts**
- **Getting Advice**

# Conflicts of Interest

- **Basic Rule: Members represent the interests of a specific sector or discipline in the EMS community and have an obligation to provide advice that is consistent with the best interests of that sector or discipline, as a whole**
- **Members do not represent their employers or any specific EMS organizations**

# Conflicts of Interest

- What if a conflict arises between a member's representation of an EMS sector or discipline and the specific interests of that member's employer or organization?
  - **The member must promptly notify the DFO or Chair of the conflict**

# Conflicts of Interest

- How will NEMSAC and NHTSA resolve the conflict?
  - **Minor conflicts may require only notice to the Committee**
  - **Significant conflicts may require further action**

# Change to Printed Code of Conduct on Conflicts of Interest

Significant conflicts or appearance problems may require further action, including but not limited to recusing the member from NEMSAC activities or discussions relating to the source of the conflict (for example, if NHTSA contracts with a member or an organization with which a member has a particularly close relationship, such as an employee, consultant, officer or director, the member would likely be asked not to participate in the review/discussion). Resolution of such appearance or conflict of interest issues requires a fact-specific inquiry.

# Misuse of Position

- **Basic Rule: Members may not use NEMSAC membership for private gain – or to further the interests of their family members, associates, employers or organizations to which they belong (except to the extent that those organizations are part of the EMS sector or discipline that the member represents on the Council)**



# Misuse of Position

- **Members may not display or indicate their NEMSAC membership on their business cards or letterhead**
- **Members may not solicit or accept gifts from any individual or entity whose interests may be affected by the advice provided by NEMSAC to NHTSA**
- **Members may not make unauthorized commitments or promises of any kind purporting to bind NEMSAC or NHTSA**

# Misuse of Position

- **Bottom Line: Members must refrain from taking any actions that could create the appearance that the member is using his or her NEMSAC membership for personal gain or otherwise impermissibly**

# Questions or Advice?

- **If you have questions about any of the issues or standards of conduct discussed above, please contact the NEMSAC DFO or Dana Sade of NHTSA's Office of the Chief Counsel at (202) 366-5251 or email us at [dana.sade@dot.gov](mailto:dana.sade@dot.gov)**