

Issue Date: 05/23/2003

COMMITTEE MANAGEMENT

I. Purpose

This Management Directive (MD) establishes policies, assigns responsibilities, and prescribes procedures for the management of committees that fall under the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) (FACA); and participation by Department of Homeland Security (DHS) personnel on committees of other organizations.

II. Scope

This MD applies to all DHS organizational elements.

III. Authorities

- A. The Federal Advisory Committee Act (5 U.S.C. App. 2).
- B. GSA Regulations Governing Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3.
- C. All applicable GSA Committee Management Secretariat guidance memoranda.
- D. All applicable OMB Directives.

IV. Definitions

TYPES OF COMMITTEES

- A. **Advisory Committee**. Any committee board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, which is established by statute or established or utilized by the President or by any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities and which has at least one member who is not a full-time officer or employee of the Federal government.

- B. **Department Committee**. A formally established committee that is composed solely of employees within a department of the Federal government.
- C. **Interagency Committee**. One formed by an agency of the Federal government and composed wholly of Federal employees from more than one agency.
- D. **International Committee**. One having representatives of foreign governments, industries, or organizations, usually established as a result of a treaty or agreement between the United States and a foreign government or by legislation. Participation, sponsorship, and establishment of international committees are dictated by treaty, agreement, or legislation.
- E. **Non-Government Committee**. One sponsored by any organization not part of the Federal government.
- F. **Operational Committee**. A committee established to perform primarily operational functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing government decisions or policy.

OTHER DEFINITIONS

- G. **Approving Official**. The official having authority to approve committee actions (e.g., establish modify, extend, or terminate committees) and to appoint members. For DHS and its component agencies FACA committees, the Secretary is the approving official.
- H. **Alternate**. An individual who is officially authorized to act for a committee member in his or her absence.
- I. **Chairperson**. The presiding officer of the committee appointed to direct the committee's efforts in the effective completion of its assigned tasks.
- J. **Committee Management Officer (CMO)**. The official designated with the responsibility for exercising control, supervision, and management of committees within his or her organization.
- K. **Consultant**. An individual who serves as an advisor, giving views or opinions on specific problems or programs, but who neither performs nor supervises agency operating functions and is not a Federal employee.

- L. **Designated Federal Officer (DFO) or Executive Director (ED)**. The DHS official designated with the responsibility to approve or call meetings, approve agendas, attend meetings, and adjourn meetings when doing so is in the public interest. The DFO implements the provisions of sections 10(e) and (f) of FACA.
- M. **DHS personnel**. All military personnel, civilian employees, and contractors of the Department of Homeland Security.
- N. **Ex Officio Member**. An individual whose membership is designated by position or title rather than by name and who serves only while an incumbent of such a position.
- O. **Member**. An individual duly appointed to attend and participate in committee meetings and who may, within prescribed limits, represent his/her organization.
- P. **Secretary**. "Secretary" shall mean the Secretary of the Department of Homeland Security.
- Q. **Sponsor**. The individual designated by the approving official to be responsible for the committee and the maintenance of committee records.
- R. **Utilize**. A committee that is not established by the Federal government is utilized when a Federal office or agency exercises actual management or control over the committee's operation.

V. Responsibilities

- A. The **Secretary or Deputy Secretary** shall:
1. Approve proposals for the establishment, modification, extension or termination of:
 - a. Departmental committees concerned with policy matters.
 - b. Advisory and interagency committees sponsored by DHS or one of its component agencies.
 2. Approve the designation of:
 - a. Membership for Department-established advisory committees.

- b. DHS representatives to interagency committees sponsored by other departments established at the secretarial level when these representatives act on behalf of the Secretary.
 - c. DHS representatives on advisory committees sponsored by other agencies.
 - d. Membership for Departmental committees concerned with policy matters.
 - e. DHS representatives on international committees.
3. Execute all interagency agreements for establishment of interagency committees on a secretarial level.

B. **The Under Secretaries and Heads of DHS Organizational Elements**
shall:

- 1. Recommend to the Secretary the establishment, modification, extension, or termination of:
 - a. Departmental committees concerned with policy matters.
 - b. Advisory and interagency committees sponsored by DHS or one of its organizational elements.
- 2. Designate for the Secretary's consideration:
 - a. Membership for advisory committees sponsored by DHS or one of its organizational elements except where statute or other directive specifies otherwise.
 - b. DHS representatives on advisory committees sponsored by other agencies.
 - c. Membership for Departmental committees concerned with policy matters.
 - d. DHS representatives to interagency committees sponsored by other agencies established at the secretarial level when these representatives act on behalf of the Secretary.
 - e. DHS representatives to international committees.
- 3. Designate CMOs for their Organizational Element.

4. Conduct management reviews of committee activity within their area of responsibility.

C. **The Under Secretaries and Heads of DHS organizational elements** may:

1. Establish, modify, extend, or terminate departmental committees involving non-policy matters and request membership from other DHS offices.
2. Establish, modify, extend, or terminate committees sponsored by their headquarters and field organizations.
3. Approve the closing of advisory committee and subcommittee meetings within their Organizational Element in accordance with the procedures set forth in VI Policy & Procedures, Procedures for FACA Committees VI.I.3 of this MD.
4. Appoint their representatives to committees sponsored by other DHS offices, to interagency committees sponsored by other agencies that are established below the secretarial level, and to non-Government committees.

D. **The Assistant General Counsel (Rules and Administration) and the Ethics Advisor or their designees** shall:

1. Advise the Secretary on possible conflicts of interest.
2. Review statements of employment and financial interests submitted by advisory committee members and candidates.
3. Provide liaison with the Department of Justice on the application of statutes, regulations, and executive orders affecting committees and their members.

E. **The DHS CMO** shall:

1. Exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by the DHS or one of its component agencies.
2. Develop policies and provide guidance on the interpretation and implementation of FACA, its implementing regulations, and Department policy and on the Privacy Act, the Freedom of Information Act (FOIA), and the Ethics Reform Act as they pertain to advisory committees.

3. Prepare for GSA an annual report and annual comprehensive review of all DHS advisory committees.
4. Review committee action documents which require secretarial approval.
5. File committee charters and renewal documents with the appropriate oversight agencies and the Congress.
6. Maintain copies of establishing and renewal documents for all advisory committees as well as membership lists, advisory committee reports, data used to prepare reports to oversight agencies, and copies of all advisory committee documents requiring the Secretary's approval.
7. Provide guidance on the requirements for non-FACA committees.
8. Coordinate departmental responses to requests from Members of Congress, Government agencies, and the general public for information on DHS committees.
9. Maintain liaison with oversight agencies.

F. **The Organizational Element CMOs so designated by the Under Secretaries and/or Heads of DHS Organizational Elements** shall:

1. Exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees within their organizational element; develop policies and provide guidance on the interpretation and implementation of FACA, GSA regulations, and Department policy; and provide guidance on the requirements for non-FACA committees.
2. Maintain copies of establishing and renewal documents for all advisory committees as well as membership lists, advisory committee reports, data used to prepare reports to oversight agencies, and copies of all advisory committee documents requiring the Secretary's approval.
3. Review all documents for approval by the Secretary, including, but not limited to, appointment of committee members and charter actions.
4. Develop policies, guidelines and procedures to establish and operate an effective committee management program within their organizational element.

5. Direct Executive Directors on committee matters and review all committee action documents before formal submission through clearance channels.

G. **The Committee Sponsor** shall:

1. Serve as the principal responsible official for the committee. In this capacity, designate an Executive Director (ED) for the committee. The ED or his or her designee shall serve as the Designated Federal Officer (DFO) as required under FACA.

2. Provide staff, secretarial, and other support services to the committee.

3. Maintain committee records and files, including establishing documents, official correspondence, membership information, agendas, minutes of meetings, invitations, studies, analyses, compilations of data or working papers.

4. Initiate committee action documents including any required reports.

5. Comply with the requirements of this MD and other applicable regulations and instructions.

H. **The Executive Director** shall act as the Designated Federal Officer (DFO) and shall carry out the provisions of sections 10(e) and (f) of FACA. As DFO, the Executive Director shall:

1. Approve or call the meeting of the advisory committee or subcommittee.

2. Approve the agenda.

3. Attend the meetings.

4. Adjourn any meeting when he or she determines it to be in the public interest.

VI. Policy & Procedures

Policy:

A. The DHS and any of its organizational elements shall not establish or utilize an advisory committee unless directed or authorized by statute, executive order, Presidential direction, or Secretarial action.

B. Prior to establishing or utilizing a committee, the sponsoring office shall consult with their appropriate legal office and the CMO (either for the organizational element or for DHS if the organizational element does not have its own CMO) to determine applicability of FACA and options for meetings with industry and the public that do not require establishing a committee under FACA.

C. Prior to approving participation of DHS personnel on non-Government committees, the approving official shall consult with their appropriate legal office and the CMO (either for the organizational element or for DHS if the organizational element does not have its own CMO) to determine whether such participation is appropriate or in the best interest of the DHS.

D. **Federal Advisory Committees.**

1. The DHS and any of its organizational elements shall not establish or utilize an advisory committee, as defined under FACA, unless directed or authorized by statute, executive order, Presidential direction, or Secretarial action.

2. The DHS and any of its organizational elements shall establish advisory committees only when they afford the most expeditious, economical, and appropriate means for accomplishing the intended purpose. An advisory committee must be essential to the conduct of DHS business and in the public interest. If the objective of the committee can be accomplished by an existing entity within the DHS, by an existing committee, through public hearings, by hiring an employee or consultant, or by awarding a study contract, a committee should not be established.

3. The function of advisory committees shall be advisory only, and all matters under committee consideration shall be determined by DHS officials.

E. **Non-FACA Committees.** The DHS and any of its organizational elements shall establish or participate in non-FACA committees only when such participation:

1. Reduces overlapping efforts among counterpart Departments.

2. Promotes the quality of performing DHS missions, mission support functions, or management processes.

3. Supports required external management initiatives.

4. Contributes unique DHS expertise needed by other public sector entities.

5. Enhances service to the American public; or
6. Provides mutual benefit to the participating entities.

Procedures For Non-FACA Committees:

A. **Participation by DHS Personnel on Department-Sponsored Committees.** DHS personnel serving on Department-sponsored committees shall fulfill their responsibilities as a committee member as follows:

1. The member shall assess the work of the committee to ensure that it is directed toward and serving a valid and useful purpose and shall, when appropriate, recommend to the establishing authority changes in purpose or scope, withdrawal of membership, or termination of the committee.
2. When a member is presumed to speak for or represent the DHS or when designated to do so, he or she shall obtain DHS coordination, review, and approval from the appropriate officials to ensure that such representation accurately reflects the official position of the DHS.
3. If the committee charter provides for alternates, the member shall ensure attendance of his or her alternate at committee meetings when the member cannot be present.

B. **Participation by DHS personnel on Non-Department-Sponsored Government Committees.**

1. DHS personnel may not participate on advisory, interagency, or international committees which are not sponsored by the Department or on committees which are not sponsored by agencies of the Federal Government unless a determination has been made that such participation is justified, is in the public interest, and does not constitute a conflict of interest for the Department or the employee. The approving official must clearly define in writing the extent of the DHS member's authority to represent or commit the DHS to a course of action or position as well as the member's responsibilities in so doing.

2. Representation Limitations. Representation by DHS personnel on non-Department committees will normally be limited to one member and one alternate. In the event that more than one Department administration participates in a non-Department activity, the Department Committee Management Officer will designate the lead organization which will coordinate with the various participants to ensure a single Department position and avoid unnecessary duplication. When more than one DHS representative participates on a committee, a single coordinated position shall be developed for representation to the committee. DHS personnel serving as members of such committees shall keep all other DHS elements having an interest in the committee's work fully advised of its activities and ensure that appropriate and adequate coordination takes place in the development of any position or comments presented to the committee.

C. Participation by DHS Personnel on Non-Government Committees that may be officially related to DHS activities. This section does not apply to membership by DHS personnel in private associations, organizations, or committees that have no official relationship to the DHS.

1. DHS personnel generally should not participate in the management or control of private associations or non-Government committees or groups in which the membership of other individuals is for the purpose of representing entities which may incidentally have, or are seeking to obtain, contractual or financial relationships with the Department or which conduct activities that are regulated by the Department.

2. DHS personnel shall not participate in non-Government committees unless the approving official documents in writing that DHS participation in such committees is in the best interests of the Government, that potential embarrassment is not likely to result from such representation, and that the participant is not involved in formulating recommendations or standards which would later have an effect on the regulatory authority or responsibilities of the Government.

3. DHS personnel shall not assume positions of leadership in non-Government committees, organizations, or groups without prior authorization from the approving official in consultation with the CMO and General Counsel. The approving official must have clear evidence that such leadership would be in the best interests of the Government.

4. If participation in non-Government committees is determined to be necessary, DHS personnel must avoid any real or apparent conflict of interest in connection with such participation. DHS personnel must not directly or indirectly commit the Department or the Government to a course of action which is not in the public interest; espouse any cause which might be detrimental or embarrassing to the Department or Government; permit their names to be associated with documents or reports which, if distributed, would be potentially embarrassing; nor under any circumstances receive pay from an non-Government committee for work performed or contributions made to the committee in connection with its activities.

5. Participation Approval. Official participation of DHS personnel on any non-DHS-sponsored committee shall be justified in a memorandum submitted via the chain of command to the approving official with a copy to the organizational element's CMO (or to the DHS CMO if the organizational element does not have its own). The justification for participation shall include a statement explaining the nature of participation and why such participation is in the interest of the Government. In approving a request, the extent of the DHS member's authority to represent or commit the DHS, as well as the responsibilities in doing so, must be clearly defined in writing by the approving official. In lieu of official participation as a member, the approving official should consider permitting DHS personnel to participate as an observer or liaison, particularly for non-Government committees.

Procedures For FACA Committees:

A. **Establishment Policy.** No advisory committees shall meet or take any action until it has been formally established according to procedures set forth herein. An advisory committee shall not be considered formally established until:

1. A draft charter has been submitted to the Secretary for approval.
2. The Secretary has determined that there is a compelling need for the committee's establishment, except in cases where the Department is directed by statute or executive order to establish a committee.
3. GSA and OMB have been consulted, except in cases where the Department is directed by statute or executive order to establish a committee.
4. A notice of establishment has been published in the Federal Register, except where a committee is directed established by statute or executive order.

5. The charter has been filed with appropriate congressional committees and the Library of Congress.

B. Establishment Procedures.

1. The Sponsor shall request establishment of an advisory committee after determining that such committee is essential to the conduct of DHS business, is in the public interest, is the most effective, expeditious, and economical means of accomplishing the objective, and that the objective could not be accomplished by an entity existing within the DHS, by an existing committee, by hiring an employee or consultant, or by awarding a study contract.

2. The Sponsor shall draft the committee charter with assistance from their organizational element's CMO and legal counsel (or the DHS CMO and the Assistant General Counsel (Rules and Administration) if the organizational element does not have its own CMO and/or legal counsel). The Sponsor shall then submit through appropriate clearance channels the draft charter with justification for establishment and any other information about the committee that the Sponsor may wish to convey to the Secretary. Proposed committee membership for appointment may also accompany the charter; however, appointments may be forwarded separately after the charter is approved.

3. Notice of Establishment. A notice of committee establishment, reestablishment, or renewal is required to be published in the Federal Register except for a committee that is specifically directed by statute or established by executive order.

4. Charter Filing.

a. Fifteen days following publication of the notice in the Federal Register, the DHS CMO shall forward the charter to the appropriate congressional committees and the Library of Congress.

b. For committees directed by statute or established by executive order, the filing letters may be sent as soon as the charter is approved by the Secretary. No GSA/OMB consultation or Federal Register notice is required.

c. The effective date of the charter is the date the charter is filed with the appropriate congressional committees and the Library of Congress. The DHS CMO will provide this date.

C. **Renewal Procedures.** FACA requires that charters must be renewed every 2 years unless otherwise provided for by statute. Prior to recommending renewal of a charter, the Sponsor must critically examine the need for the committee's continued existence. When a committee has completed its mission, the Sponsor should recommend the committee be terminated.

1. Draft charters for renewal must be received by the DHS CMO at least 60 days prior to the charter's expiration date.
2. The Sponsor shall review the charter for appropriate amendments and then submit through appropriate clearance channels the charter with any proposed revisions with an action memorandum from the Under Secretary or Head of the Organizational Element to the Secretary justifying the need to continue the committee and explaining any charter amendments.
3. After the Secretary approves the charter, the DHS CMO shall forward the charter to the appropriate congressional committees and the Library of Congress. Notice of renewal shall be published in the Federal Register per VI Policy, Procedures for FACA Committees, VI.B.3 of these procedures.

D. **Termination Procedures.** An advisory committee should be terminated as soon as it has completed its mission. If a committee is no longer serving the purpose for which it was established, the Sponsor should make a recommendation for termination to the Secretary.

E. **Charter Requirements.** Charters for advisory committees shall contain the following minimum information. Additional information, as appropriate, may be included:

1. **Official Designation.** Advisory committees shall be designated as "committees" and their subordinate units as "subcommittees." When a committee's name is not specified by statute, the first word of the committee's name should readily describe a key element of its function (e.g., Towing Safety Advisory Committee rather than National Advisory Committee on Towing Safety).
2. **Objectives and Scope of Activities.** Describe the expected goals and parameters of the committee's mission.
3. **Duration.** When determined by statute, the date should be stated and shall cite the establishing statute. Otherwise, the duration may be described as "continuing".

4. Official to Whom the Committee Reports. This official can be the Sponsor, Head of the Organizational Element, or appropriate Under Secretary.
5. Sponsor and Office Providing Support. Any planned use of contractual services must be included in this section.
6. Duties. Describe the particular functions the committee is expected to perform.
7. Meetings. Provide the estimated number of meetings anticipated within a fiscal year. This section should also include procedural information.
8. Membership. Provide the number of members, length of terms, and groups to be represented.
9. Officers. Provide the method of choosing the chairperson, other officers, and length of terms.
10. Subcommittees. The chairperson of advisory committees may establish subcommittees with the Sponsor's approval. To the extent practical, subcommittees should be composed of members of the parent committee. If that is not feasible, at least some members, including the chairperson, must be members of the parent committee. Subcommittees that are continuing should be listed in the charter and updated when the charter is renewed. DHS subcommittees shall conform to FACA's requirement of advertised, open meetings unless the procedures for closing meetings in VI Policy, Procedures for FACA Committees, VI.I.3 of this MD are followed.
11. Costs. The estimated annual fiscal year costs to operate the advisory committee in dollars and staff years. The cost data reported in the Annual Comprehensive Review of Federal Advisory Committees shall be used for these costs.
12. Member Compensation. Include any compensation, travel, or per diem allowance permitted to be paid to committee members. Unless otherwise provided for, compensation for members of DHS advisory committees is set at zero (\$0).
13. Filing Date. The DHS CMO will provide the date the charter is filed.

F. **Charter Modification.**

1. Modifications to existing charters may be made when the charter is renewed. The memorandum to the Secretary must include a description of and justification for any changes. Substantive modifications—such as a change of objectives and scope of activities (see 41 CFR 102-3.85)—will require a new charter.

2. Changes to charters of committees established by legislation, executive order, or Presidential direction must not conflict with the authorizing statute, executive order, or Presidential directive. If changes to the provisions of such charters are necessary, a recommendation must be made to the establishing authority by the Secretary.

G. **Membership.** Each appointed member shall be designated as a representative of a particular interest or group, a Special Government Employee, or a Federal government employee.

1. **Representative.** A candidate must represent a particular interest or party other than the U.S. Government and must be qualified to represent that interest by virtue of his or her employment, education, experience, or affiliation with a specific group, industry, or organization. If a committee charter specifies that member organizations shall name their own representatives, those persons shall be considered in the representative category. Individuals or organizations representing foreign governments or interests may not serve on DHS advisory committees unless required by statute.

2. **Special Government Employee.** A candidate appointed to represent the public (i.e., for his or her own views rather than a particular interest or industry) must be appointed as a Special Government Employee (SGE). The Sponsor shall ensure that each candidate shall be advised of his or her status as an SGE and that he or she is subject to the Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements applicable to executive branch officials. The sponsoring office shall comply with all Federal requirements for appointing SGEs.

Public members must complete and submit a Confidential Financial Disclosure Report (CFDR), OGE Form 450, at the time of their appointment and on an annual basis.

3. Federal Government Employees. Advisory committees are established to provide the Federal government the benefit of perspectives, input, and advice unavailable from its employees. Therefore, unless specifically required by a committee's authorizing legislation or charter, Federal government employees should not be members of DHS advisory committees. Federal government employees from other Federal agencies may participate as observers on DHS advisory committees.

H. **Appointments.** Unless otherwise provided for, the Secretary shall appoint committee members through recommendation by the Under Secretaries and/or the Heads of Organizational Elements.

1. A notice of upcoming vacancies and request for applications shall be published in the Federal Register. Requests for applications should also be published in all appropriate industry and general interest publications.

2. A list of candidates for appointment is due to the Secretary's office 60 days prior to term expiration dates. The memorandum to the Secretary accompanying the list of candidates shall briefly explain each candidate's qualifications and indicate whether the candidate is recommended for reappointment or appointment. A statement that CFDRs for candidates for public member have been reviewed and no conflict of interest exists or that a waiver has been issued shall be included for each candidate for public member. Attachments to the memorandum should include, but may not be limited to:

a. An biographical application form for each candidate.

b. An appointment letter to be signed by the Secretary which states the particular interest the individual represents and the term expiration date.

c. When applicable, the appointment letter must state that the member is being appointed as an SGE and is subject to Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements..

d. Any letter of recommendation from a Member of Congress, a copy of the interim response to the letter, and a final response for the Secretary's signature notifying the Member of the candidate's appointment.

I. **Meetings.**

1. **Call of Meetings.** Advisory committee or subcommittee meetings may only be held with the approval of the Sponsor and at the call of the ED who has formulated and approved the agenda. An advisory committee or subcommittee shall not conduct any meeting in the absence of the ED or his or her designee.

2. **Open Meetings.** Advisory committee meetings shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee subject to reasonable rules established by the committee. Meetings shall be held at reasonable times, and meeting places shall be accessible to all members of the public, including persons with disabilities. DHS subcommittees shall also comply with the public notice and open meeting requirements of FACA.

3. **Closed Meetings.** No advisory committee meeting or portion of a meeting may be closed to the public without written approval of the Under Secretary or Head of the Organizational Element to whom the committee reports and public notification that the meeting or part of a meeting will be closed. The written approval must cite the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. §552b(c), that justify the closure and must be reviewed by the Organizational Element's CMO and legal counsel (or the DHS CMO and the Assistant General Counsel (Rules and Administration) if the organizational element does not have its own CMO and/or legal counsel. The agenda approved by the DFO and published in the Federal Register must indicate if any part of the meeting will be closed to the public.

4. **Notice of Meetings.**

a. The public shall be given timely notice of all committee and subcommittee meetings, whether open or closed to the public, through publication of a notice of the meeting in the Federal Register. The notice shall contain, at a minimum, the name of the committee, the date and time, place, and purpose of the meeting, a summary agenda, and, if appropriate, a statement that the meeting or portion of a meeting is to be closed.

b. The notice shall be published by the Sponsor a minimum of 15 days prior to the meeting date. Failure to do so will result in cancellation of the meeting by the organizational element or DHS CMO. Shorter than 15-day notice may be granted by the organizational element or DHS CMO in consultation with the organizational element's legal counsel or the Assistant General Counsel (Rules and Administration) in exceptional circumstances that must be explained in the notice.

5. Meeting Procedures.

a. The ED shall prepare and approve the meeting agenda in cooperation with the committee's chairperson.

b. Meetings shall be conducted in general accordance with Robert's Rules of Order but may deviate from such rules when necessary or desirable for the management of a committee.

c. Committees may meet via teleconference. However, such meetings must comply with the requirements for open meetings, including publication of a notice in the Federal Register. Appropriate provisions, such as having sufficient communication lines available for non-members, must be made to permit public participation.

d. DHS committees shall not vote by e-mail. Mail ballots may be used only in the case of issues that have been discussed in a public meeting, except for those meetings that have been closed according to the procedures in VI Policy, Procedures for FACA Committees, VI.I.3.

e. Interested persons are permitted to attend, appear before, or file statements with a committee subject to reasonable rules established by the Chairperson and ED (e.g., a copy of proposed remarks provided in advance to the Chairperson, speakers may be limited to 3 minutes, etc.). However, advisory committee meetings shall not be used as forums to discuss issues not within the scope of the committee's charge or responsibility. If necessary the ED, in his or her capacity as DFO, shall stop or close an advisory committee meeting when the ED determines it is in the public interest to do so per section 10(e) of FACA.

6. Meeting Locations and Arrangements, Meals and Refreshments.
The Sponsor shall ensure that:

a. Meetings are held at a reasonable time and place.

b. The meeting room, the resources, and facilities are sufficient to accommodate those who could reasonably be expected to attend and are accessible to persons with disabilities. When appropriate, the Sponsor will provide an interpreter for the hearing impaired.

c. Meetings at facilities provided by industry. An offer to hold a meeting free of charge at a company's facility is a gift to the Federal government. All offers of meeting space must be reviewed by the appropriate legal office for determination on a case-by-case basis of whether the gift can be accepted. All meeting sites must be fully open and accessible to all members of the public who wish to attend an advisory committee meeting.

NOTE: Any appearance of favoritism—using one facility multiple times when there is no use of a competitor's facility—must be avoided. Even the perception of favoring one company over another must be avoided.

d. Meals hosted by non-government entities. Offers from non-government entities (e.g., companies, individuals, etc.) to host meals for committee members are considered gifts to the Federal government, and each such offer shall be reviewed and a determination made by the appropriate legal office on whether the gift can be accepted.

e. Refreshments. The Federal government may provide light refreshments at meetings if more than half of the attendees, not including public attendees, are on travel status. (See 41 CFR Part 301-74, Conference Planning.)

7. Minutes.

a. The Sponsor shall ensure that detailed minutes of all committee and subcommittee meetings are kept, and the chairperson shall certify the accuracy of the minutes. Subject to 5 U.S.C. 552, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location until the advisory committee ceases to exist. Minutes shall include:

- (1) The time, date, and place of the meeting.

- (2) A list of all attendees including members, staff, and public observers.
- (3) A summary of matters discussed and conclusions reached.
- (4) Copies of reports received, issued, or approved by the committee.
- (5) A description of public participation, including oral and written statements.

b. The Sponsor is solely responsible for recording the proceedings of all advisory committee or subcommittee meetings. In some cases, it may be appropriate to hire a court reporter to ensure a verbatim record of the proceedings. Recording or videotaping of meetings shall only be done by the Sponsor or his or her designee.

J. **Reports.**

1. **Annual Report of the President on Federal Advisory Committees.** This report provides information on committee activities for each fiscal year and is due at the end of each fiscal year. The Executive Secretariat at GSA maintains the report on an electronic data base that is updated by EDs throughout the year. The CMO will provide due dates and instructions for close out of the report at the end of each year. The CMO will review and verify the reports for accuracy and completeness of information.
2. **Annual Report on Closed Meetings.** Each advisory committee that has held closed or partially closed meetings shall issue an annual report summarizing its activities consistent with the policies of the Freedom of Information Act (FOIA). Notice of the availability of the report shall be published in the Federal Register not later than 60 days after the report is issued.
3. **Filing of Committee Reports with the Library of Congress.** Formal reports issued by advisory committees shall be filed with the Library of Congress in accordance with section 13 of FACA. At least eight copies of the report and, when appropriate, reports prepared by consultants, shall be submitted to the Department CMO filing.

4. Follow up Reports for Presidential Advisory Committees. Within one year after a Presidential advisory committee sponsored by DHS has submitted a public report to the President, the sponsoring office must prepare a follow up report to Congress detailing the disposition of the committee's recommendations. The report must be transmitted by letter signed by the Secretary addressed to the President of the Senate and the Speaker of the House. The report will be printed in the Congressional Record. A copy of the report and transmittal letters shall be furnished to the DHS CMO.

K. Availability of Records. Section 10(b) of FACA requires that an agency be generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. The purpose of section 10(b) is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to fully comprehend the work of the committee. Records covered by the exemptions set forth in §552(b) of Title 5 of the United States Code (FOIA) may generally be withheld. However, 5 U.S.C. §552(b)(5) cannot be used to withhold documents reflecting an advisory committee's internal deliberations unless the meeting is closed in accordance with the procedures set forth in VI Policy, Procedures for FACA Committees, VI.I.3 of this directive.

Therefore, all committee documents—working papers, drafts, studies, etc.—must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply. The public shall not be required to submit a request for materials under FOIA unless the Sponsor can reasonably claim those materials as exempt from disclosure under FOIA provisions.

L. Privacy. FOIA exemption 6 (5 U.S.C. §552(b)(6)) allows an agency to withhold any information that, if released, would warrant a clear invasion of privacy. Releasing a committee member's home address, telephone number, private e-mail address, etc., would be an invasion of the member's privacy. Therefore, the DHS shall only release the business name and telephone number of advisory committee members. In those situations where the member's home address and telephone number is also their place of business, such information may be released only if the member permits the release of such information in writing. "Release" shall mean any means of providing the information, including but not limited to: verbally, in newsletters, correspondence, e-mail, or web pages. Member information in the Annual Report of the President on Federal Advisory Committees shall comply with this section.

M. **Prohibited Data.** Unless prior concurrence is given by the Assistant General Counsel (Rules and Administration), advisory committees shall not receive, compile, or discuss data or reports concerning matters which would be exempt from disclosure under 5 U.S.C. §§ 552(b)(4) and (6) which deal, respectively, with records that are trade secrets and commercial or financial information and records, the release of which would constitute a clearly unwarranted invasion of personal privacy. Further, no personal information shall be received, compiled, or discussed unless done so in compliance with the Privacy Act.

N. **Antitrust Laws.** The activities of advisory committees are subject to the antitrust laws, and committee members are subject to those laws. Industry representatives and Government personnel officially connected with advisory committees should be made aware of the application of the antitrust laws by the Sponsor. Should any specific question arise concerning a particular plan or course of action, the question should be referred to the General Counsel.

O. **Forms Availability.** All forms referenced in this MD are available from the CMO.

P. **Questions or Concerns Regarding the Process:** Any questions or concerns regarding this directive should be addressed to the Assistant General Counsel for Rules and Administration.