

Bureau of Land Management National Policy for the

**Federal Advisory
Committee Act**

What BLM Staff Need to Know When Working with ADR-Based Collaborative Community Working Groups

**Alternative Dispute Resolution and Conflict Prevention
Program**

May 2005

BLM/WO/GI-05/007+1614

Bureau of Land Management
Alternative Dispute Resolution and Conflict Prevention Program
Office of the Assistant Director, Renewable Resources and Planning (WO-200)
1849 C Street NW, Mail Stop 1050 LS
Washington, DC 20240

Phone: 202-452-0349

www.blm.gov/adr

Available at BLM's Printed Materials and Distribution Section (PMDS)
Fax Number 303-236-0845 or BLM_NCS_PMDS@blm.gov
PMDS Number P-450

Editing, design, and production services provided by the
BLM National Science and Technology Center, Branch of Publishing Services.

Contents

What BLM Offices Need to Know When Working with ADR-based Collaborative Community Working Groups

[Introduction](#)

What Is FACA?

How Does FACA Apply to BLM's ADR-Based Collaborative Activity?

How Will This Guidebook Help BLM Field Offices?

[Key Considerations](#)

Summary

Guidance for Meeting With Groups

Best Practices

What Is Required of an Advisory Committee Under FACA?

[How FACA Works](#)

Background

Does the Group Involve People Outside the Federal Government?

Is the Group Organized and Cohesive?

Did the Agency "Establish" an Advisory Group?

Did the Agency "Utilize" an Advisory Group?

Did the Group Offer Specific Advice or Recommendations to the Agency?

[Does FACA Apply? Decision Chart](#)

[When Does FACA Apply in Practice?](#)

Case Example

Alternatives

[Meeting Checklist](#)

[Frequently Asked Questions](#)

[Further Information](#)

Statutes

Regulations

Significant Cases

Law Review Articles

Other Secondary Sources

World Wide Web

This guidebook was jointly prepared by the Bureau of Land Management's Alternative Dispute Resolution and Conflict Prevention Program in coordination with the Department of the Interior Solicitor's Office, and the University of Montana's Public Policy Research Institute in conjunction with the Consensus Building Institute, through a Cooperative Ecosystem Studies Unit Agreement between the Bureau and the University.

Introduction

What Is FACA?

Congress passed the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (App.), in 1972 to create an orderly procedure by which Federal agencies may seek advice and assistance from citizens and experts. Congress was concerned that there were too many unregulated advisory groups, that some of those advisory groups were either not contributing anything of substantive value or were duplicating other committees' efforts, and that the public could not participate in advisory group activities. FACA was one of several "good government" laws enacted to promote meaningful public participation in government decisions and to ensure that no particular interest groups would have unfair access to policy makers.

Now, any time a Federal agency intends to establish, control, or manage a group that gives advice as a group and has at least one member who is not a Federal, Tribal, State, or local government employee, the agency must comply with FACA and the related administrative guidelines developed by the General Services Administration (GSA). For the Bureau of Land Management (BLM), additional requirements for administering advisory committees are found at 43 CFR § 1784.

How Does FACA Apply to BLM's ADR-Based Collaborative Activity?

The BLM charters its Resource Advisory Committees (RACs) and other advisory committees pursuant to the requirements of FACA and the BLM's Advisory Committee regulations. The agency has many other opportunities, however, to participate in collaborative community working groups and other less formal assemblages of stakeholders without implicating FACA.

Alternative Dispute Resolution (ADR)-based collaborative community working groups are often set up by Federal, Tribal, State, and local government agencies, communities, and private entities as a way of bringing communities together to address common problems; work through conflicts; and develop forward-thinking strategies for medium- to long-term multiple use management, protection, and development. These multiparty and place-based groups utilize ADR strategies such as consensus-building, collaborative problem-solving, interest-based negotiating, mediating or facilitating, and joint fact-finding to seek common ground and to identify or elicit shared goals. Objectives of the groups include sharing knowledge, developing a common understanding of issues that need to be addressed, and achieving mutual gains. ADR-based collaborative community working groups also employ innovative forms of public

participation to prevent conflict and promote cooperative solutions in which the public has a degree of ownership.

These groups are a relatively new development in agency efforts, and were clearly not contemplated or anticipated when FACA was signed into law. Depending on the nature of a particular group and the circumstances of its creation, FACA may govern its activities. Our working groups can nonetheless be designed and used in ways so as not to qualify as advisory committees under FACA. In designing and creating ADR-based collaborative community working groups, it is important to understand when a group may qualify as an advisory committee, because in instances where the group qualifies as an advisory committee, the BLM will need to comply with certain statutory and regulatory requirements, such as certification and notification under FACA.

How Will This Guidebook Help BLM Field Offices?

Whether or not a group falls under FACA, open public involvement should be a major consideration in the collaborative processes when participating in or designing ADR-based collaborative community working groups. This guidebook provides key considerations and best practices, examples of when FACA might or might not apply, and answers to frequently asked questions. With this information, field offices designing and setting up ADR-based collaborative community working groups will be able to decide which type of group will best serve the needs of the community and the agency. By following the key considerations, field offices can work with communities proactively and support and assist ADR-based collaborative community efforts while recognizing which types of actions would require a formal FACA charter.

Those with less familiarity with FACA may wish to refer to the “How FACA Works” section of this guidebook for background information before continuing on to the next section.

Key Considerations

Summary

When participating in and encouraging ADR-based collaborative community working groups, the BLM, other agencies, and stakeholders often find that they do not want to form an advisory committee, either because of the time it takes to get a FACA charter approved, or because of the complexity of the issue and the desire for setting up temporary or ad hoc groups with enough flexibility to address a range of different needs and purposes. Such offices should take a two-pronged approach:

1. Avoid creating advisory committees that require FACA compliance; and
2. Minimize the potential for harmful effects should a court later determine that a working group designed to avoid FACA is in fact subject to the requirements of FACA.

Of course, if it is determined that an advisory committee would be useful to a particular issue, staff should go the traditional route of seeking a FACA charter and, once it is approved, set up an advisory committee in accordance with FACA. For more information about how to set up an advisory committee, contact your Committee Management Officer; for advice about whether to set up an advisory committee, contact your Solicitor's Office.

Guidance for Meeting With Groups

BLM offices should first determine whether participants in the collaborative group will probably include members that are not Federal, Tribal, State, or local government employees. If participants are solely Federal, Tribal, State, and local government employees operating in their official capacities, the group is exempt from the administrative requirements of FACA.

If participants will meet regularly or formally, you have two options without implicating FACA:

1. Ensure that the BLM does not establish, manage, or control the group. Ensure that the BLM does not make decisions on or otherwise control group membership, send out meeting invitations, or host the meeting. Ensure that the BLM does not manage or control the group's agenda. Limit the BLM's role to that of a group participant; avoid taking on a leadership role in the group. If facilitation is necessary to run meetings, encourage the group to hire a neutral facilitator who is not connected with the BLM rather than have the BLM facilitate. Funding the group or holding a disproportionate number of the group's meetings on BLM property may be seen as indicators of management or control.

Many offices have found that State, County, or local agencies with a stake in an issue are willing to establish or manage groups. Since FACA only applies to Federal agencies, if a non-Federal agency forms or manages the group, there is no FACA concern. Also, some offices funded partnership series programs in the community, at which community members came together and spontaneously formed their own group. This too is acceptable, as long as the BLM does not provide the driving force behind the group's formation.

Or,

2. If the BLM establishes, manages, or controls the group, ensure that the group does not render specific advice or recommendations to the agency as a group, whether by consensus majority or otherwise. Seek only information, not advice, from the group as a whole. Seek advice only from individual members of the group; make clear to the group that you will not accept advice from the group as a whole and that the purpose of the meeting is not to develop group-based advice on the issue or issues. Ensure that meetings that are not ad hoc are well publicized and that membership remains open to all, such as through town hall-style meetings.

This approach will probably be rarely used, as the goal of most ADR-based collaborative community working groups will be to reach a group consensus on an issue.

Alternatively, if you wish to obtain advice from a group, you may pursue a charter for a FACA committee. Benefits of forming such a chartered committee include assuring participants that their advice will be formalized. FACA also allows the BLM to have a central role in the formation and agenda of the committee, and may be useful when stakeholders are defined and issues are long-standing within an area and need a formalized, lengthy commitment by and involvement of the BLM. Another alternative is to set up a subcommittee of an existing FACA committee, usually a Resource Advisory Committee (RAC), to study or consider an issue. The subcommittee will not have to comply with FACA procedures, but will have to submit its advice to the parent FACA committee for full consideration before it is transmitted to the Bureau.

Best Practices

Offices of the BLM should ensure that all ADR-based collaborative community working group meetings in which the BLM participates meet general open government criteria.

- Establish by word and deed that all working group meetings are open to the public;
- Publish timely notice of each working group meeting in appropriate local forums to ensure that all interested persons know about the meeting in advance;
- Permit interested persons to attend, appear before, or file statements with any working group; make sure group membership is balanced across the spectrum of interests and stakeholders;
- Until the group ceases to exist, make available for public inspection and copying at the BLM’s office (and online if possible) all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that are made available to or prepared for or by the group;
- Make sure that detailed minutes of each meeting of the working group are kept, containing a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the working group.

See Meeting Checklist on page 14 for a quick reference when attending or participating in collaborative working group meetings.

What Is Required of an Advisory Committee Under FACA?

If a group is considered an advisory committee under FACA, the statute requires the BLM to follow a number of specific procedural requirements. Note that the BLM also has specific advisory committee regulations that must be followed. For specific statutory and regulatory language, see 5 U.S.C. App. and 43 CFR § 1784, respectively, which are accessible through links listed in the Further Information section of this guidebook. In fact, many of FACA’s requirements are closely related to standard “best practices” for conducting collaborative work:

Best Practices for Conflict Management-Based	Collaboration FACA and BLM Requirements
Conduct a convening or situation	Analyze the need and membership before

assessment to define issues and affected parties.	establishing a committee.
Involve all affected parties in a manageable-sized group.	Maintain a balanced membership.
Develop a clearly defined purpose and outcomes and a collective definition of purpose, roles, schedule, procedures, and outcomes.	State objectives, scope, schedule, and resources in a formal charter. Develop additional ground rules or protocols to further define operations.
Conduct discussions in a transparent and participatory manner.	Conduct open public meetings and provide opportunity for public comment.
Plan and announce meetings in advance so that attendees are prepared.	Announce meetings 30 days in advance in the Federal Register.
Provide access to information; build common information base.	Prepare meeting summaries and make them publicly available.

In some instances, chartering an advisory committee is the best approach for achieving the BLM’s management objectives. A chartered committee assures participants that their advice will be formally acknowledged in a structured, transparent, and inclusive public process. FACA allows the BLM to have a central role in the formation and agenda of the committee, which may be useful when stakeholders are defined and issues are long-standing and need a formalized, lengthy commitment by and involvement of the BLM. A FACA-chartered committee allows the BLM to expend funds to support committee work; subcommittees can be used to further the work of collaborative groups, which report back to the FACA-chartered committee. Chartering an advisory committee also avoids potentially disruptive and time- and resource-consuming litigation regarding compliance with FACA.

On the other hand, chartering an advisory committee is time-consuming and may unduly restrict the scope of an ADR-based collaborative community working group’s discussions. If seeking to encourage and participate in collaborative work that does not fall under the auspices of FACA, BLM managers should nonetheless seek to satisfy FACA’s important principle of open public participation.

How FACA Works

Background

This section of the guidebook is intended for those with little knowledge of FACA or those seeking deeper analysis of FACA.

There are few court decisions interpreting FACA’s application to collaborative groups. A 1989 decision by the U.S. Supreme Court (*Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440) provides the most influential guidance, but subsequent court decisions have focused on issues

especially relevant to BLM's collaborative community working groups. This discussion summarizes the key decisions interpreting FACA, particularly those concerning whether or not a group is an "advisory committee" subject to the statute's strict procedural requirements.

At the outset, it is important to note that the courts have generally looked favorably on agency participation in collaborative groups. Under FACA, agency representatives may freely participate in groups formed and controlled by Tribal, State, or local officials or nongovernmental organizations, contributing ideas and information and soliciting ideas that may be implemented in on-the-ground management. They must, in doing so, be cautious of the key FACA "triggers" illustrated in the decision chart on page 10 and discussed in more detail here, as well as any other policy considerations.

Does the Group Involve People Outside the Federal Government?

FACA's procedural requirements do not apply to committees composed wholly of officers or employees of the Federal government or officers or employees of Tribal, State, or local governments. Thus, for example, several Federal land management agencies could join together to coordinate planning activities across agency boundaries without implicating FACA. A court has also ruled that the Forest Service may consult with Tribal, State, and local officials concerning historic preservation plans at a national historic landmark without violating FACA. Questions will arise when an advisory group composed of government officers brings in an outside consultant to aid the group's work. Several courts have noted that one-time consultation will not trigger FACA, but that the statute will apply if the consultant's work is functionally indistinguishable from that of other committee members. If further questions arise about consultants, please contact your Solicitor's Office.

Is the Group Organized and Cohesive?

The procedural requirements of FACA apply to any "committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof" that meets the criteria set out in the statute. Thus, it is immaterial whether an agency names a group an "advisory committee." Instead, courts consider whether the members share a common and defined purpose, whether the group is organized and cohesive, and whether the agency is seeking input from the group as a collective body.

Thus, agency officials may consult freely with various stakeholder representatives, either individually or as a group, as long as there is no effort to solicit group-based opinion or advice concerning the agency's policy or management. For example, a BLM manager might convene a town hall-type meeting to share information and solicit individual opinions on a current issue of public concern. As long as the manager does not ask for a group vote or consensus on the issue, this does not raise FACA concerns. If, however, the agency then takes the initiative to organize particular audience members into a working group to meet regularly and draft management alternatives to deal with the issue, FACA would most likely apply.

Did the Agency "Establish" an Advisory Group?

Agencies are most likely to fall within FACA when they play the primary role in establishing a working group including nongovernmental parties aimed at obtaining group-based advice and recommendations. Agency officials are most at risk when they convene a group, choose its members or otherwise control the methods of their selection, direct its focus on particular issues, provide the group's funding, and provide its meeting places.

For example, courts have found that FACA applied in several cases in which Congress, the President, or Federal agencies have convened groups of experts to recommend management alternatives for national forests or to develop strategies for achieving regional wetlands restoration goals. In each of these cases, Federal officials assumed management authority over the advisory groups, controlling their membership and defining their work product goals.

In short, courts look at whether an agency actually formed an advisory group in determining whether it was "established" pursuant to FACA. Thus, BLM managers may cooperate with organizing efforts led by non-Federal agencies (i.e., Tribal, State, County, or local agencies) and nongovernmental organizations, as long as the agency is not the driving force behind the meetings and does not exert control over who attends and what is discussed.

Did the Agency "Utilize" an Advisory Group?

FACA is not limited to advisory groups directly established by the Federal government. On occasion, courts may also find that FACA applies because a Federal agency has "utilized" an outside group by exerting actual management and control over its structure and operations—in other words, the agency has acted as if it did, in fact, establish the group.

Courts have repeatedly emphasized their reluctance to find that an agency has "utilized" an advisory group under this strict standard. For example, several Federal courts have refused to apply FACA when agencies provided logistical, scheduling, and financial support to a group organized by others to discuss policy matters, reasoning that the agencies did not exert "substantial control" over the group's work. Even when agency officials have served on these groups' steering committees and provided substantial input to the groups' findings, courts have clearly stated that "influence is not control."

Thus, BLM managers may confidently encourage and participate in collaborative groups created by non-Federal entities. The key caution is to avoid acting as if the group belongs to the agency by exerting control over its membership, agenda, and activities.

Did the Group Offer Specific Advice or Recommendations to the Agency?

Sometimes Federal officials meet with stakeholder groups simply to share information or to monitor the results of management projects. Courts have viewed such joint efforts to gather data and otherwise implement Federal policy as "operational" work, not subject to FACA's constraints. Thus, for example, BLM managers do not violate FACA by participating in collaborative groups focused on exchanging information or monitoring rehabilitation of private lands or Geographic Information System ecosystem maps. FACA concerns arise if the group turns its attention to developing advice or recommendations on agency policies or activities.

Does FACA Apply?

Indicators for determining the applicability of the Federal Advisory Committee Act (FACA) to the Bureau of Land Management's Alternative Dispute Resolution-based Collaborative Community Working Groups

Q.1. Will the group solely comprise members who are full- or part-time Federal employees or Tribal, State, or local government employees acting in their official capacities?

Yes – FACA will not apply

No – go to Q.2

Q.2. Will the BLM “establish” the group?

- Will the BLM play a primary role in establishing the group? Or

- Will the BLM set the group's membership or agenda?

No – go to Q.3

Yes – skip to Q.4

Q.3. Will the BLM “utilize” the group?

- Will the BLM assume authority over a group established by others? Or

- Will the BLM assert actual management or control over the group's structure and operations?

No – FACA will not apply

Yes – go to Q.4

Q.4. Will the group offer specific advice or recommendations to the BLM?

- Sharing information or monitoring conditions is not enough to implicate FACA

- Recommendations to other non-Federal bodies or private landowners will not implicate FACA

- Members expressing individual views (as opposed to group advice) will not implicate FACA

No – FACA will not apply

Yes – FACA will apply

Note: This chart was derived from a decision tree published in the Administrative Law Journal in 1996, included in the Further Information section at the end of this guidebook.

When Does FACA Apply in Practice?

Case Example

“So then what can we do if we’re worried about violating FACA but want consensus advice from an ADR-based collaborative community working group?”

The following is an illustrative example consisting of an actual case and analysis of possible options. In this scenario, the BLM was sued for violating FACA. Here is what happened, and what you can do to avoid this type of legal action from being brought:

- The BLM office prepared an environmental impact statement (EIS) and a record of decision (ROD). They completed the ROD and then started putting the working group into place to advise the BLM on implementation of the EIS decisions.
- The BLM established the working group, determined the group’s membership, and controlled the agenda of the original working group. Meetings with the same group were recurring.
- The BLM was sued for violating FACA; this halted the work of the working group, as they had to be chartered in order to reconvene. It took two years to obtain the charter, and another year to reappoint members to the working group. This delayed the implementation of this portion of the ROD.

Note: Until the committee was chartered as a FACA advisory committee, the office used an interim measure—town hall-style meetings operated by the field manager—in which input was taken from individuals but not from the group as a whole or by consensus.

Alternatives

Knowing what we do now about FACA, what could have been done differently to avoid violating FACA and needing to obtain a charter to proceed? There are several alternatives; although each avoids a FACA violation, they have different drawbacks that must be evaluated in deciding which alternative is most appropriate to use in a particular situation:

1. The BLM could have established a working group with solely government entities—other Federal, Tribal, State, and local government employees working in their official capacities. This solution would work in a place where many of the governmental organizations have constituencies that represent the different interests of the public; it is a form of indirect public representation, and such working groups made up only of governmental employees are exempt from FACA because of a provision in the Unfunded Mandates Reform Act of 1995. The disadvantage to this approach is that the public is not directly involved, and this approach may not work as well in situations where part of the goal of the collaboration is to gain greater trust of the BLM and public acceptance of BLM’s programs.
2. The BLM could have determined if one of the non-Federal entities involved would be interested in taking the lead in organizing and setting up the group. FACA only applies to Federal agencies, so if a Tribal, State, County, or local agency—or even a public interest group—was willing to put the collaborative group together and control membership, set up meetings, and handle other duties, the BLM would be able to participate without violating FACA. The BLM could even offer to provide funding for a neutral facilitator to organize and facilitate the process, as long as the BLM itself did not retain control or

management of the process. The disadvantage to this approach is that the BLM would not have a leadership role in the process, which is sometimes desired. The group also may not focus on matters for which the BLM may need advice. This approach would work better where the BLM is most interested in what the community will come up with collaboratively, and the BLM does not have a need to manage or control the process. However, this approach still allows the BLM to be involved. The BLM could participate by providing information to be used in the collaborative process, answering questions, and providing a “reality check” for the direction in which the group is heading, without managing or controlling the deliberative process. If the BLM needs a stronger role or if it wishes to manage or control group advice and is most interested in advice from the group, it should consider chartering an advisory committee.

3. In some situations, the BLM can use a preexisting Resource Advisory Committee (RAC) or other FACA-chartered Advisory Committee (AC) and form a working group as a subcommittee. In this particular case, the state involved did not have any RACs or ACs, and this was not an option. However, where a RAC or AC exists, if the committee will form a working group subcommittee that reports back to the committee, the working group will not violate FACA. Make sure the working group always reports to the RAC or AC and not directly to the BLM. Also make sure that the BLM’s specific advisory committee regulations are complied with.
4. Sometimes group consensus is not the desired outcome; the BLM may only need input from a variety of different stakeholders in the public. Alternatively, sometimes the BLM needs to educate the community about its programs and decisions. In these situations, the best approach may be to hold town hall-style meetings with open public participation. As long as the BLM is not seeking advice from a group but is sharing information or seeking advice from individuals, this style of meeting will not trigger FACA. As indicated, this is the form of participation the office in the above scenario used while waiting for a FACA charter. The disadvantage is that since most often the BLM is seeking collaborative solutions in using ADR-based collaborative community working groups, this approach of seeking individual advice may not be adequate or appropriate for many of the BLM’s needs. Sometimes, however, this type of forum will generate the need for a working group in which the BLM can assist in the process development by using the guidelines discussed in the other scenarios in this section.

Other options for consideration:

- Fund neutral facilitators,
- Fund partnership series within the community to educate people in collaborative processes that may spark a community’s interest in forming its own groups as needed,
- Share management needs and ideas with Tribal, State, and local officials so that, when possible, efforts can be combined and non-Federal entities can take the lead in setting up collaborative community working groups,
- Share information with the community to help people better understand the complexity of the problem and real limitations faced by the BLM. Keep interactions with the public as open as possible.

Meeting Checklist

Things to do for _____
ADR-based Collaborative Community Working Group Meeting

Date _____

Time _____

Place _____

Before the Meeting

- Define purpose—is it to get information or advice for the BLM? If advice, is it advice from the group or advice from individuals?
- Determine location—non-Federal property preferred; if held on BLM property, make sure there is no BLM establishment or control of meeting
- Ensure adequate seating and public access

Meeting Notice

- Publicize in local news media
- Notify the general public and all potentially interested parties and stakeholders in a timely way
- Ensure that meeting notices are neutral and are not a way of exercising agency control over the agenda or membership

At the Meeting

- Don't facilitate—encourage use of a neutral facilitator
- Don't control group's agenda
- Ensure that minutes of the meeting are taken
- Participate and contribute; don't take on a leadership role
- Give interested parties the chance to attend, appear before, and file statements with the group
- Don't engage in a dialogue that results in or seems to be arriving at group advice.

After the Meeting

- Make any reports, working papers, and minutes from meetings available to the public
- Publicize followup meetings

Frequently Asked Questions

Q1. Do we risk violating FACA if we meet just once with a group of stakeholders to discuss land management issues?

A1. Generally, no, if the group initiates the meeting or if the format is town hall style. FACA will also not be triggered if you meet one-on-one with a stakeholder as opposed to meeting with a group. FACA may apply if the agency establishes, manages, or controls the group or suggests subsequent meetings with the group to discuss issues. Even a one-time meeting can violate FACA if the BLM organizes the meeting and seeks the group's analysis of issues or a recommended course of action for the agency.

Q2. Does FACA apply to meetings with permittees or contractors?

A2. No, as long as the discussion is limited to routine matters directly related to the permit or contract. Additionally, FACA won't apply if the meeting is solely intragovernmental and contractors are present but not part of the meeting.

Q3. What about "meetings" on the Internet?

A3. Treat such meetings the same as any other kinds of gatherings; avoid organizing a group for the purpose of soliciting consensus opinion or reaching a decision on policy issues.

Q4. To what extent can the agency host and facilitate meetings and provide logistical support?

A4. It is acceptable to provide in-kind or financial support for facilitation and to allow meetings to occur in Federal buildings. Be cautious not to imply that the agency wishes to control the group's membership or agenda in exchange for providing a meeting place or logistical support. Furthermore, be sure that in providing a meeting place or support that you do not in any way appear to be hosting an advisory committee. Hosting occasional meetings may be seen as more neutral than hosting every meeting of a group.

Q5. What precautions can we take to avoid FACA challenges?

A5. Refer to the best practices section of this guidebook for specific suggestions. Most important, make sure to practice good public involvement at every stage of your process. Stakeholders who feel that their voices are heard and respected are less likely to threaten or pursue a FACA challenge. FACA should not be cited as a reason to avoid meeting with a group of concerned citizens.

Q6. When should we pursue chartering an advisory committee?

A6. When you find it necessary to take on a leadership role in soliciting group advice or recommendations from a group.

Q7. Do I need a FACA charter if my advisory group was not established by the BLM but required by legislation?

A7. Yes, unless the legislation specifically makes FACA inapplicable.

Q8. If a Resource Advisory Committee (RAC) sets up a subcommittee, is it subject to FACA or exempt from FACA's procedural requirements?

A8. RAC subcommittees are exempt from FACA's procedural requirements as long as they report back to the parent RAC and not directly to the BLM. However, a RAC subcommittee's purview must be consistent with the FACA committee's charter and follow the BLM's advisory committee regulations specifying formation, membership, and scope requirements.

Q9. Can the BLM fund group members' travel without implicating FACA?

A9. The answer to this question is unclear, as funding is one very significant factor that may strongly indicate that the agency is controlling or managing a group's agenda or membership, particularly if similar group members benefit from funding on a regular basis. Look for alternatives to funding group travel whenever possible, as it is not yet clear what implications funding travel may have on determining whether a group is subject to FACA.

Q10. Where can we get more detailed information on FACA's application in particular situations?

A10. See the references at the end of this guidebook. Consult your FACA Committee Management Officer (CMO) for more specific information about FACA or your Solicitor's Office for legal advice.

Further Information

Statutes

Federal Advisory Committee Act, 5 U.S.C. App.
Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b).

Regulations

2001 General Services Administration Regulations, 41 CFR Part 102-3.
1995 Bureau of Land Management Regulations, 43 CFR § 1784.

Significant Cases

Public Citizen v. U.S. Dept. of Justice, 491 U.S. 440 (1989).
Northwest Forest Resource Council v. Espy, 846 F. Supp. 1009 (D.D.C. 1994).
Calif. Forestry Assn. v. U.S. Forest Service, 102 F.3d 609 (D.C. Cir. 1996).
Byrd v. EPA, 174 F.3d 239 (D.C. Cir. 1999).
Natural Resources Defense Council v. Abraham, 223 F.Supp.2d 162 (D.D.C. 2002).
Miccosukee Tribe of Indians v. Southern Everglades Restoration Alliance, 304 F.3d 1076 (11th Cir. 2002).

Law Review Articles

Barker, Allyson, et al., "The Role of Collaborative Groups in Federal Land and Resource Management: A Legal Analysis," 23 J. of Land, Resources & Env't'l Law, 67 (2003).
Bierle, Thomas C., and Rebecca J. Long, "Chilling Collaboration: The Federal Advisory Committee Act and Stakeholder Involvement in Environmental Decisionmaking," 29 Env't'l Law Reporter 10399 (1999).
Croley, Steven P., and William F. Funk, "The Federal Advisory Committee Act and Good Government," 14 Yale J. of Regulation 451 (1997).
Croley, Steven P., "Practical Guidance on the Applicability of the Federal Advisory Committee Act," 10 Admin. L. J. 111 (1996).
Lynch, Sheila, "The Federal Advisory Committee Act: An Obstacle to Ecosystem Management by Federal Agencies?" 71 Wash. L. Rev. 431 (1996).

Other Secondary Sources

160 A.L.R. Fed. 483 Federal Advisory Committee Act
2 Fed. Info. Discl. Sec. 24 (3d ed.) Federal Advisory Committee Act

World Wide Web

These FACA materials and links to key resources are available online at <http://www.blm.gov/adr>

The General Services Administration (GSA) maintains a Web site with links to many relevant FACA documents and a FACA case law database.

GSA Web site: <http://www.gsa.gov>

FACA Database: <http://www.fido.gov/facadatabase>

Items available on the GSA Web site:

FACA statutory text

When is FACA applicable?

GSA FACA Final Rule 2001

Office of Management and Budget (OMB) Circular No. A-135

Executive Order 12838 (Clinton 1993)

Executive Order 12024 (Carter 1977)

Guidelines and Instructions for Implementing Section 204, "State, Local, and Tribal Government Input," of the Unfunded Mandates Reform Act of 1995 (Title II of P.L. 104-4, 2 U.S.C. 1534(b))