

## Subject: COMMITTEE MANAGEMENT POLICY AND PROCEDURES

1. PURPOSE. This Order establishes policy, prescribes procedures, and assigns responsibility for the sound management of:
  - a. Department of Transportation (DOT) sponsored committees, and
  - b. Participation of DOT employees on other governmental committees.
2. CANCELLATIONS. DOT 1120.3B, Committee Management Policy and Procedures, dated September 23, 1993.
3. BACKGROUND. The proper use of committees can provide benefits obtainable only through group deliberations and from a variety of opinions. Improper use can waste resources, delay action, and operate to the detriment of management's decision-making process.
4. REFERENCES
  - a. The Federal Advisory Committee Act (FACA) (1972), Pub.L. 92-463, requires the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government.
  - b. Government in the Sunshine Act (1976), 5 U.S.C. § 552b, lists situations when meetings may be closed to the public.
  - c. OMB Policy Letter 93-I "Management Oversight of Service Contracting" (1994) establishes Government-wide policy, assigns responsibilities, and provides guiding principles for Executive Departments and agencies in managing the acquisition and use of services.
  - d. OMB Circular No. A-135, as applied to FACA, "Management of Federal Advisory Committees" (1994) provides guidance and instructions on managing Federal advisory committees and requires executive departments and agencies to establish a committee planning and review process.
  - e. Federal Advisory Committee Management, 41 CFR Part 102-3, provides management controls and administrative guidelines to executive agencies in implementing FACA.

- f. Ethics Reform Act of 1989, 18 U.S.C. § 208, as amended, describes the restrictions that apply to Federal officers and employees related to matters affecting a personal financial interest.
- g. Organization and Delegation of Powers and Duties, 49 CFR Part 1, describes the organizational structure of the Department, assignments of responsibilities within the Department, and the delegation of authorities that are vested in the Secretary of Transportation.
- h. The Freedom of Information Act (FOIA) (1966), 5 U.S.C. § 552, as amended, describes when records are exempt from mandatory disclosure to the public.
- i. OMB Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (2014), 79 FR 47482, clarifies that the ban on appointing or reappointing federally registered lobbyists to advisory committees and other boards and commissions applies to persons serving in their individual capacity and does not apply if they are specifically appointed to represent the interests of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, environmental groups, etc.), or State or local governments.
- j. General Records Schedule (GRS) 6.2, covers Federal records created or received by Federal advisory committees and their subgroups pursuant to FACA and records related to the management of these committees.
- k. OMB/NARA M-19-21, Transition to Electronic Records (June 28, 2019), outlines goals and requirements for agencies to transition to modern records management practices.
- l. Office of Government Ethics, DO-05-012, “Federal Advisory Committee Appointments” (August 18, 2005), which discusses the factors agencies should consider when making FACA committee member designations.
- m. Executive Order 13875, “Evaluating and Improving the Utility of Federal Advisory Committees,” (June 14, 2019), imposes requirements on Federal agencies related to the establishment of new advisory committees.

## 5. DEFINITIONS.

- 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 any agency official for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of his or her responsibilities, and has at least one member who is not a full-time officer or employee of the Federal Government. Generally, these groups are subject to FACA. See also “Committee.”

- b. Alternate. An individual who is officially authorized to act for a committee member in his or her absence.
- c. Approving official. The DOT official having authority to approve committee actions and make recommendations to the Secretary concerning establishment, modification, renewal, or termination, and appointment of members.
- d. Chairperson. The presiding officer of the committee who guides all efforts in completing assigned tasks and, with the Designated Federal Officer as applicable, ensures that committee members are fulfilling their responsibilities.
- e. Committee. For purposes of this Order, any Federal advisory committee, as defined in Pub.L. 92–463, and any group of individuals with collective responsibility to consider, investigate, study, advise, or make recommendations to a departmental official. Advisory, intergovernmental, international, and committees are all considered to be committees for the purpose of this Order, regardless of whether or not FACA governs their operation. Intra-departmental or intragovernmental committees (i.e., committees comprised solely of DOT employees), such as the Council on Credit and Finance, are not Committees for the purpose of this Order. This order does not apply to committees established pursuant to the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. ch. 71, or a collective bargaining agreement (CBA).
- f. Committee Management Officer (CMO). The individual designated by the Secretary to implement the provisions of section 8(b) of FACA and any responsibilities delegated from the Secretary.
- g. Committee manager. An official designated by a Secretarial office or Operating Administration (OA) who is responsible for committee management and staff support to committees within the organization. Duties include monitoring committee meetings, membership performance, and progress. The Designated Federal Officer is the committee manager for FACA committees.
- h. Committee sponsor. The Secretarial office or OA responsible for the committee and the maintenance of committee records.
- i. 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.

- j. Designated Federal Officer (DFO). The DOT official responsible for providing staff support to a FACA advisory committee. The DFO must call and attend meetings, approve agendas, adjourn meetings when it is in the public interest, serve as chairperson when directed by the official to whom the committee reports, and otherwise monitor the committee's meetings, membership performance, and progress. Along with the chairperson, the DFO ensures that advisory committee members are fulfilling their responsibilities.
  - k. Discretionary Committee. An advisory committee established within the authority of the Secretary.
  - l. FACA Committee. Any advisory committee subject to the Federal Advisory Committee Act.
  - m. Intergovernmental committee. A committee formed by an agency of the Government and composed wholly of government employees from more than one Federal agency.
  - n. International committee. A committee having representatives of foreign governments, industries, or organizations, usually established by a treaty or agreement between the United States and a foreign government or by legislation. Participation, sponsorship, and establishment are dictated by treaty, agreement, or legislation.
  - o. Regular Government Employee. An individual employed within the meaning of 5 U.S.C. § 2105, or a Federal officer as defined in 5 U.S.C. § 2104. This category also includes a Federal officer holding a position in the uniformed services.
  - p. Representative. A committee member who is appointed to provide the committee with the point of view of a particular nongovernmental entity or recognizable interest group (e.g. labor unions, an industry sector, environmental groups). If an individual is a Federally registered lobbyist and is appointed to an advisory committee, he or she may only serve as a representative.
  - q. Special Government Employee (SGE). A committee member who is appointed solely for his or her individual views or expertise. SGEs are subject to Federal ethics laws and regulations, including filing a public financial disclosure report and completing annual ethics training. SGEs are expected to discuss and deliberate in a manner that is free from conflicts of interest. A committee member may not serve as an SGE if he or she is a Federally registered lobbyist.
  - r. Statutory committee. Any advisory committee required to be established by statute.
6. POLICY
- a. The following policies apply to all committees:

- (1) Committees shall be used only in an advisory capacity to management, or for investigating, reporting, recommending, or providing a forum or mechanism for coordination or the exchange of information.
  - (2) Committees shall be established only when they afford the most expeditious, economical, and appropriate means for accomplishing the intended purpose. The committee's efforts must be capable of providing added strength, objectivity, and confidence to management's decision-making process. When practical, in lieu of establishing committees, the use of normal organizational channels and authority, staff action, liaisons, or informal meetings is encouraged.
  - (3) If it is desirable to establish a committee by legislation, executive order, or directive, the Secretary must transmit a recommendation to the appropriate officials. Recommendations to modify such a committee will follow the same procedure.
  - (4) All committee activities and the activities of individual committee members shall be conducted affirmatively to ensure equality of opportunity for all people and avoid discrimination or the appearance of discrimination because of race, religion, sex, gender identity, sexual orientation, national origin, disability, or age.
- b. In addition, the following policies apply to FACA committees:
- (1) DOT shall not establish or utilize a FACA committee unless directed or authorized by statute, the President, or secretarial action.
  - (2) Efforts to establish a new FACA committee shall comply with the applicable requirements of Executive Order 13875.
  - (3) A FACA committee shall not be considered established until:
    - (a) A draft charter has been submitted to the Secretary for approval;
    - (b) It has been determined in writing by the Secretary that there is a compelling need for the committee, and that formation of the committee is in the public interest, except in cases where a committee is directed by statute or established by the President;
    - (c) The Committee Management Officer (CMO) has consulted with GSA, as appropriate;
    - (d) The notice of establishment has been published in the Federal Register, except where the committee is directed by statute or established by the President; and
    - (e) The CMO has filed the charter with GSA, the appropriate congressional committees and the Library of Congress.

## 7. RESPONSIBILITIES

### a. The Secretary will:

- (1) Approve proposals for the establishment, modification, extension, or termination of committees sponsored by DOT.
- (2) Designate Departmental representatives to committees, when applicable.
- (3) Approve the designation of:
  - (a) Membership for SGEs and non-Departmental representatives to advisory committees sponsored by DOT;
  - (b) Membership for other committees where at least half of the committee's whole membership includes non-DOT representatives;
  - (c) DOT representatives to intergovernmental committees sponsored by DOT;
  - (d) DOT representatives to advisory committees sponsored by other agencies;
  - (e) DOT representatives to intergovernmental committees sponsored by other agencies established at the secretarial level when these representatives act on behalf of the Secretary; and
  - (f) DOT representatives on international committees.

NOTE: Membership approval process may vary where statute, executive order, directive, international agreement, or charter specifies otherwise.

- (4) Execute all intergovernmental agreements for establishment of intergovernmental committees on a secretarial level.

### b. Secretarial officers and heads of OAs within their functional areas of responsibility, shall:

- (1) Recommend for the Secretary's consideration the establishment, modification, extension, or termination of committees sponsored by DOT.
- (2) Establish advisory committee subcommittees when appropriate.
- (3) Recommend for designation by the Secretary:
  - (a) DOT representatives to intergovernmental committees sponsored by DOT;
  - (b) DOT representatives on advisory committees sponsored by other agencies;

- (c) DOT representatives to intergovernmental committees sponsored by other agencies established at the secretarial level when these representatives act on behalf of the Secretary; and

- (d) DOT representatives to international committees.

(4) Designate for the Secretary's consideration:

- (a) Membership for advisory committees sponsored by DOT, except where statute or charter specifies otherwise;

- (b) Membership for other committees where at least half of the committee's whole membership includes non-DOT representatives.

NOTE: Membership designation process may vary where statute, executive order, directive, or charter specifies otherwise.

(5) Designate DFO and committee managers for their office, administration, or bureau.

(6) Conduct management reviews of committee activity within their office, administration, or bureau, and report the outcome of this review to the CMO no later than September 30 each year.

c. The Assistant Secretary for Aviation and International Affairs, or his or her designee, shall coordinate with the U.S. Department of State on the designation of DOT representatives to international committees and make a recommendation to the Secretary for approval.

d. The Committee Sponsor's Office of Chief Counsel shall:

- (1) Advise on possible conflicts of interest;

- (2) Give guidance to DFOs, and committee managers on compliance with the requirements of FACA and its implementing regulations, the Privacy Act, the Freedom of Information Act (FOIA), and applicable Federal ethics statutes and regulations, as they pertain to committees;

- (3) Review all charters and appointments;

- (4) Coordinate with DFOs to ensure that all SGEs receive ethics training; and

- (5) Review statements of employment and financial interests submitted by advisory committee members and candidates.

- e. The Office of the General Counsel shall:
  - (1) Advise on possible conflicts of interest;
  - (2) Give guidance to the CMO, DFOs, and committee managers on compliance with the requirements of FACA and its implementing regulations, the Privacy Act, the Freedom of Information Act (FOIA), and applicable Federal ethics statutes and regulations, as they pertain to committees;
  - (3) Provide ethics training to all SGEs serving on OST advisory committees;
  - (4) Review all charters and appointments; and
  - (5) Review statements of employment and financial interests submitted by advisory committee members and candidates.
- f. The Committee Management Officer (CMO) shall:
  - (1) Administer the provisions of this Order and, when required, amend the implementing procedures, standards, and guidelines for effective committee management;
  - (2) Conduct management reviews of all DOT committee activity to ensure compliance with this Order and conduct annual reviews of departmental advisory committees;
  - (3) Prepare for GSA an annual comprehensive review of all DOT FACA committees;
  - (4) Review and coordinate committee action documents that require secretarial approval;
  - (5) File FACA committee charters, renewal documents, and reports with appropriate oversight committees and the Library of Congress;
  - (6) Maintain the central DOT committee management files;
  - (7) Advise on the methods and procedures required for the establishment of FACA committees and the maintenance of documentation, as required by law;
  - (8) Coordinate departmental responses to requests from Members of Congress, Government agencies, and the general public for information on DOT committees;
  - (9) Maintain liaison with oversight agencies; and



- (10) Provide input on the sponsor's committee management performance as part of the Department's performance management review (PMR).

g. Designated Federal Officers (DFOs) shall:

- (1) Perform the duties assigned to the DFOs pursuant to FACA and its implementing regulations;
- (2) Prepare required FACA committee documentation, including charters and membership balance plans, in accordance with Agency and GSA formatting guidelines;
- (3) Ensure that all individuals recommended for appointment to a committee are properly vetted using the process outlined in this order;
- (4) Manage technical, administrative, and other arrangements for meetings;
- (5) Ensure detailed minutes of each FACA committee meeting, including ones that are closed or partially closed to the public, are kept, and ensure they are certified in accordance with 41 CFR 102-3.165;
- (6) Ensure information memorandums are submitted to the Secretary. Required information memorandums include reminders of upcoming meeting when meetings are approved far in advance, and submission of meeting minutes;
- (7) Complete the Annual Comprehensive Review;
- (8) Manage committee records in accordance with General Records Schedule (GRS) 6.2 (or any subsequent applicable GRS) and provide copies of each committee report to the CMO;
- (9) Take annual FACA training;
- (10) Ensure GSA and DOT committee related websites are maintained with updated information; and
- (11) Ensure that all SGEs receive ethics training either before or concurrently with their first FACA meeting, and annually thereafter.

h. Committee managers shall:

- (1) Ensure compliance with the requirements of this Order and those prescribed by the CMO;
- (2) Work with the CMO to develop any supplementary procedures which may be necessary for effective committee management within their office;

- (3) Ensure that all individuals recommended for appointment to a committee are properly vetted using the process outlined in this order;
- (4) Advise committee sponsors and review committee action documents before transmittal to approving authorities;
- (5) Ensure DOT committee related websites are maintained with updated information;
- (6) Coordinate committee activities closely with the CMO; and
- (7) Maintain basic committee record files, as required by law, and develop reports, as required by the CMO.

8. ESTABLISHING AND OPERATING REQUIREMENTS

- a. Evaluation. Unless required by statute or other law, a committee shall be established or maintained only when it is essential to the conduct of agency business. Proposed committees and committees under annual review shall be carefully evaluated to ensure that they will not:
  - (1) Make operational, administrative, or management decisions;
  - (2) Perform functions, duties, or responsibilities that can best be achieved by existing or proposed organizational structures or relationships;
  - (3) Consider matters outside their area of competence or responsibility; or
  - (4) Perform functions that are the responsibility of, or can be assigned to, an organizational unit or existing committee.
- b. Budget. The sponsor shall, prior to establishment and throughout their duration, ensure that funds are available to cover the costs of committees, and that committees do not exceed established budget limitations. The Sponsor shall affirm this budget analysis has been done in the action memorandum establishing or renewing the committee.

- c. **Contract Support.** Unless otherwise approved by the CMO, after consultation with the Assistant Secretary for Administration, committee sponsors are prohibited from obtaining contract support for committee work, including but not limited to stenography, recordkeeping, meeting planning, taking notes, arranging travel, report writing and other administrative work. To use contract support, a sponsor must submit a request to the CMO for approval that indicates the proposed contract, a cost estimate, and justification. For purposes of this Order, “contract support” includes assistance from the Volpe Center. This provision shall not preclude the use of a facilitator for negotiated rulemakings.
- d. **Administrative Support.** The sponsor shall provide no more staff resources than necessary to support a committee’s mission. If more than one annual full-time equivalent employee is needed to support the committee, the sponsor shall submit documentation to the CMO describing the role each additional employee will have in relation to the committee’s work and describe why that role is necessary.
- e. **Data Security.** In the event the activities of a committee involve access to, or the development of, classified data, the approving official shall ensure compliance with security measures prescribed by DOT Order 1640.4E, Classified National Security Information, January 21, 2011, or any successor directive and that all members are cleared at the appropriate level.
- f. **Documentation.** A committee is not established until it has been documented. FACA committees must be established pursuant to the FACA implementing regulations.
- g. **Committee Officers.** Each committee shall have a chairperson. Other officers may be required, depending on the size and type of committee, the frequency of its meetings, and the nature of its assignments. Dual, joint, or rotating chairpersons should be avoided.
- h. **Committee Establishment.**
  - (1) The Sponsor shall:
    - (a) Request establishment of a committee only after determining that it is justified by considering whether:
      - (i) It is essential to the conduct of agency business;
      - (ii) It is in the public interest;
      - (iii) It is the most effective, expeditious, and economical means of accomplishing the objective;

- (iv) The objective could be accomplished by an existing entity within the Department, an existing committee, hiring an employee or consultant, or awarding a study contract; and
  - (v) If applicable, the establishment of the committee would comply with the requirements of Executive Order 13875.
- (b) Draft the charter and, if required by FACA, the membership balance plan with the advice of the CMO, chief counsel, and General Counsel. FACA committee charters will be drafted in accordance with section 9 of FACA and its implementing regulations, 41 CFR 102-3.75. A membership balance plan and Federal Register notice are required for discretionary FACA committees.
- (2) The sponsor's approving official shall forward to the Secretary, the draft charter, action memorandum, and if applicable a membership balance plan and Federal Register notice. The action memorandum shall follow the established template format and contain:
- (a) A statement that there is a compelling need for the committee, and that the establishment of the committee is in the public interest;
  - (b) An explanation as to why the functions cannot be performed within the Department or by an existing committee (for committees not required by statute or other law);
  - (c) The plan to attain a fairly balanced membership (for discretionary FACA committees);
  - (d) The plan to solicit members;
  - (e) An explanation of any necessary steps before the committee begins meeting;
  - (f) Other information that the sponsor and approving official wish to convey to the Secretary concerning the committee; and
  - (g) A request for approval to establish the committee.
- (3) The CMO shall:
- (a) Coordinate draft FACA committee charters and any applicable membership balance plans with GSA; and the draft charter, action memorandum, applicable membership balance plan or Federal Register notice among appropriate departmental officials for concurrence or comments.
  - (b) Forward to the Secretary:

- (i) The draft charter, action memorandum, and applicable membership balance plan or Federal Register notice with concurrences, and non-concurrences.

NOTE: In the event the Secretary does not approve the draft, or if adjustments are made as a result of the coordination, the CMO shall return it to the requesting sponsor for revision, withdrawal, or resubmission. The CMO will coordinate any FACA committee redrafts with GSA.

- (c) After the charter is approved by the Secretary, the CMO will notify the approving official and sponsor through the committee's DFO or committee manager.
- (4) Publication Notice of FACA Committee Establishment. After the committee's DFO is notified of its approval, a notice of establishment may be published in the Federal Register by the sponsor. A notice in the Federal Register is required when a discretionary FACA committee is established, reestablished, or renewed.
  - (5) Filing of FACA Committee Charter.
    - (a) Fifteen days following publication of the notice of establishment of a discretionary FACA committee, the CMO shall forward the charter to the appropriate congressional committees and the Library of Congress. In the case of FACA committees directed by statute or established by the President, the filing letters may be sent as soon as the Secretary approves the charter. No Federal Register notice is required.
    - (b) The CMO shall furnish to GSA and the originating sponsor a copy of the charter with the filing date entered. The CMO shall also furnish to the sponsor a copy of the signed secretarial approval memorandum.
  - (6) Effective Date of a Charter. The date the charter is filed with the appropriate congressional committees and the Library of Congress shall be the effective date of a FACA committee charter. The effective date of all other committee charters will be the date of secretarial approval of the charter.
  - (7) FACA Committee Renewal. A charter to renew a FACA committee shall be processed in the same manner as a charter for establishment, except that the draft charter for renewal shall be submitted to the Secretary for approval at least 90 days prior to the charter's expiration date. For discretionary FACA committees, a 15-day waiting period following publication of the notice of renewal in the Federal Register is not required before the CMO files the charter. The Federal Register notice may be published concurrently with the filing of the charter.

- (8) Non-FACA Committee Renewal and Reestablishment. A charter to renew a non-FACA committee shall be processed in the same manner as a charter for establishment.
- i. FACA Committee Reestablishment. If a charter expires before a new charter is filed, the FACA committee terminates and must be reestablished in order for it to continue to operate. The same procedure is followed to reestablish a FACA committee as establishment, including the 15-day waiting period to file the charter following the publication of the notice of reestablishment in the Federal Register.
- j. Charter Modifications.
- (1) When it is necessary to modify an existing charter, the committee shall follow the procedure used for the establishing documents. FACA committee charter amendments will adhere to FACA requirements regarding amendments. See 41 CFR 102-3.80, 102-3.85.
- (2) Charters for committees established by legislation, executive order, or Presidential direction may be modified by the above procedure, except no modifications may be made for items specified in legislation, executive order, or Presidential direction. If it is desirable to modify or replace such items, it must be done by the establishing authority on the recommendation of the Secretary.
- k. Subcommittees.
- (1) The head of the sponsoring OA or Secretarial office (not the DFO or parent committee) has the authority to create subcommittees.
- (2) Establishment and renewal of subcommittees, require an information memorandum to the Secretary detailing the need and structure of the subcommittee. Unless otherwise specified by statute, the appointment of members to subcommittees that are not members of the parent committee requires Secretarial approval and shall follow the process outlined in Section 9.g. Subcommittees shall terminate after one year, unless renewed. This renewal shall be documented in the committee's minutes.
- (3) FACA subcommittees must report back to the parent committee and must not provide advice or work product directly to the agency or to another subcommittee.

## 9. MEMBERSHIP

- a. **Size.** A committee shall be large enough to promote deliberations, but shall include only the number necessary to ensure the breadth and balance of expertise required to accomplish its mission. For any new committees approved on or after the date of this Order, membership shall not exceed 25 members, unless there is a compelling need for more members, which has been approved by the Secretary, or otherwise required by statute or other law. For existing committees with more than 25 members, new vacancies on the committee should remain vacant until the committee no longer exceeds 25 members, unless there is a compelling need for filling a particular vacancy.
- b. **Observers.** Representatives of offices within DOT or other departments or agencies having a limited interest in a committee's work should be invited to participate as observers when matters concerning their areas of interest are to be considered. Informal reports may be made to other interested nonparticipating offices, departments, or agencies.
- c. **Membership Equity.** Membership on committees shall be open to all people otherwise qualified regardless of race, religion, sex, national origin, age, or disability.
- d. **Term.** Members of committees may serve until replacements have been appointed, except where statute specifies otherwise.
- e. **Fees.** The Department and its committees must not charge membership fees or require that members pay membership dues to a third party in order to serve on the committee.
- f. **FACA Member Designation.** FACA committee members shall be designated as a representative of a particular interest or party, or as a Special Government Employee (SGE), or a Regular Government Employee (RGE). Committee sponsors should consult with their chief counsel's ethics officer and the Designated Agency Ethics Official (DAEO), in consideration of DAEOgram DO-05-012, "Federal Advisory Committee Appointments," to determine the appropriate designation. To the extent that applications for committee membership are publicly solicited, the solicitation should clearly indicate whether the prospective member would serve as a representative, SGE, or RGE. Solicitations for representative members should clearly indicate the representative interest(s) for which the committee seeks applications, and should seek information from the candidates regarding their qualifications to represent that particular interest. Non-voting membership designations are prohibited unless otherwise required by statute or Presidential direction.

- (1) Representative Members. FACA committee members that are appointed to represent a particular interest or party other than the U.S. Government and are qualified to represent that interest by virtue of employment, education, experience, or affiliation with a specific group, industry, or organization shall be appointed as representative members. Unless otherwise specified by statute or Presidential directive, representative appointments are personal to the member and are not transferable. A member's status as a representative of a designated party or interest terminates if the member's status or relationship with the designated party or interest materially changes after appointment. In circumstances where a representative member's employment status or affiliation with an organization designated by name in statute or Presidential directive changes after appointment, the member's representative status may continue if (i) the designated organization approves of the continued representation by that member, (ii) the head of the sponsoring OA or Secretarial office concurs with the representative's continued participation, (iii) the member's continued participation is consistent with applicable statutory authorities and Presidential directives, and (iv) the member's continued participation is deemed essential for the fulfillment of the committee's mission.
- (2) Special Government Employees (SGEs). A member who is appointed solely for his or her expertise must be appointed as a SGE. The committee sponsor shall ensure that each SGE candidate is advised 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. After reviewing the required SGE financial disclosure report, the DAEO may waive the restrictions of 18 U.S.C. § 208 in accordance with 18 U.S.C. § 208(b)(3) by certifying in writing that the need for the individual's services outweighs the potential for conflict of interest. Committee members who are appointed to represent the public will be appointed as SGEs.
- (3) All FACA committee nominations and appointments (including subcommittees) shall be reviewed by their sponsor's chief counsel ethics officer and DAEO.

g. Appointment of Members.

- (1) The Secretary shall approve all FACA committee members regardless of who the charter specifies as responsible for the appointments. The Secretary shall approve all other committee members when at least half of the committee's membership composition as a whole is anticipated to include non-DOT representatives.
- (2) The Secretary will approve the chairperson and vice chairperson, unless directed or authorized by statute, executive order, Presidential directive, or secretarial action.



- (3) Once the sponsor has identified all potential nominees for a committee appointment that meet the committee's membership criteria, the sponsor's leadership will meet with Office of Secretary of Transportation leadership to discuss the membership. After the meeting, the sponsor shall submit a memorandum to the Secretary at least 120 days prior to the desired appointment date, with a list of qualified candidates for committee membership, including a short biography of each prospective nominee that addresses the candidate's qualifications. The memorandum should identify whether the nominee is a new appointment or reappointment, and the name of any member being replaced. The memorandum should also briefly explain the selection process and provide background information about the function of the committee. The sponsor may recommend a particular candidate or candidates from among those listed in the memorandum. The memorandum should provide the Secretary with an opportunity to approve the recommended candidates or to select from among other qualified candidates identified in the nomination process. The memorandum will follow established template format.
- (4) Upon the Secretary's selection of a prospective new nominee or nominees, the sponsor shall contact the prospective candidates for completion of candidate vetting documents. Each sponsor shall provide the candidate vetting documents to the CMO at least 60 days prior to the desired appointment date that will include for all recommended non-RGE individuals:

- (a) Completed Background Investigation Disclosure Form (appendix 1); and
- (b) Signed Background Investigation Authorization Form (appendix 2).

The CMO will ensure that each candidate is properly vetted utilizing the submitted DOT vetting forms. Any record retention will be in accordance with applicable record schedules. If a prospective nominee withdraws from consideration for a particular appointment, the CMO shall promptly notify the Secretary, and provide an opportunity for the Secretary to select an additional nominee from the candidates identified in the memorandum described above.

- (5) To obtain the Secretary's final approval of candidates, the sponsor shall forward an appointment package to the Secretary at least 45 days prior to the desired appointment date that will include all the following:
- (a) A list of the nominees.
  - (b) A biographical summary for each nominee.
  - (c) An appointment letter (appendix 3) for each nominee to be signed by the Secretary that states:

- (i) The interest or party the individual is representing; or that the individual is being appointed as a SGE and is subject to Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements;
- (ii) The length of the appointment; and
- (iii) The DFO or committee manager's contact information.
- (d) An accompanying memorandum that briefly identifies each person's expertise. FACA committees should include a notation in the memorandum that all financial disclosure forms for SGEs have been received and reviewed by the DAEO. The forms must be refiled when a candidate is reappointed.
- (e) Current committee roster.
- (f) Any waiver issued for an SGE.
- (g) The committee's membership balance plan (if applicable).
- (h) Any letter of recommendation from a member of Congress, a copy of any interim response to such a letter, and a final response to be signed by the Secretary notifying the member of the candidate's appointment.
- (6) The Secretary shall review the recommended appointments and approve or disapprove the recommendations. The CMO shall notify the committee's sponsor accordingly.

#### h. Member Responsibilities.

- (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 appointed by the Secretary, or his or her designee, to serve as a representative of the Department, he or she shall obtain DOT coordination, review, and approval from the appropriate officials to ensure that such representation accurately reflects the official position of the Department.
- (3) The member may only speak with Congress and the media in his or her personal capacity. The member of the committee must not hold himself or herself out as a representative of the Department or the committee when speaking with Congress or the media. If the committee wishes to speak with Congress or the media, communications must be coordinated with the Office of the Secretary's Office of Governmental Affairs and Office of Public Affairs, respectively.

- (4) 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.
- (5) The member is expected to attend at least three-quarters of all meetings.
- (6) Committee members shall prepare all committee reports, recommendations, and other similar committee work products.

## 10. MEETINGS

- a. Calling of Meetings. FACA committee or subcommittee meetings may be held only with the approval of the committee sponsor and at the call of the DFO who has formulated or approved the agenda.
- b. Meeting Location. All committee meetings shall be held in Washington, D.C. at DOT headquarters, unless an alternative location is authorized by the CMO. If it is more cost-effective or convenient to hold a meeting elsewhere, or if a site visit is planned, the sponsor shall submit a written request to the CMO and receive authorization before proceeding to plan such a meeting.

If the proposed alternative meeting location involves the use of resources offered by a prohibited source (as defined in 5 CFR § 2635.203(d)), the sponsor shall consult with an agency ethics official prior to submitting a written request to the CMO. The CMO shall consult with the Office of the General Counsel before providing authorization. Factors that may be considered in reviewing requests for off-site meetings include the following:

- (1) Whether other Federal facilities in the vicinity of the proposed meeting place were first considered;
- (2) Whether holding the meeting at the off-site location would further the work of the committee; and
- (3) Whether the offeror of the meeting space has matters pending before the Department.

- c. **Closed Meetings.** To close a FACA committee meeting or portion of a meeting to the public, a request must be made in writing to the Secretary at least 30 days prior to the meeting date and shall include reasons for requesting a partially or completely closed meeting. The request must be consistent with the provisions of the Government in the Sunshine Act, 5 U.S.C. § 552b(c). The determination by the Secretary shall be in writing and shall be made available to the public on request. The 30-day prior notice requirement for the request to the Secretary may be waived in matters of national security, safety, or counterterrorism. The agenda approved by the DFO shall indicate if any part of the meeting will be closed to the public within the exemptions of the Government in the Sunshine Act.
- d. **Reporting of Closed Meetings.** A FACA committee which has held closed or partially closed meetings shall issue a report annually summarizing its activities consistent with the policies of FOIA. Notice of availability of this report shall be published in the Federal Register not later than 60 days after its completion.
- e. **Designated Federal Officer.** Each FACA committee meeting shall be conducted in the presence of, the DFO. If the DFO is unable to attend a committee or subcommittee meeting, he or she may designate another full-time DOT employee to serve in this capacity. The DFO will chair the meeting when directed to do so by the Secretary.
- f. **Publication of Notice of Meetings in the Federal Register.** Timely notice of each FACA committee meeting, whether open or closed to the public, shall be published in the Federal Register no later than 15 days prior to the meeting date. The notice shall contain the name of the committee, the time, place, and purpose of the meeting, a summary of the agenda, and a statement as to whether the meeting is to be open, closed, or partially closed.
  - (1) Notice shall be submitted for approval to the Secretary with an accompanying action memorandum that briefly describes the committee's recent meeting history and background 60 days prior to the date the notice must be submitted to the Federal Register. Failure to adhere to these deadlines could result in cancellation of the meeting by order of the CMO. Shorter notice may be given in exceptional circumstances, which must be explained in the notice.
- g. **Arrangements for Meetings.** The sponsor shall ensure that Committee meetings are held at a reasonable time and place, and that the committee meeting room, the resources, and facilities are sufficient to accommodate those who could reasonably be expected to attend. Members of the public are allowed to file written statements to FACA committees, and interested persons may be permitted to speak at the FACA committee meetings in accordance with procedures established by the committee. In some cases, it may be desirable to hire an interpreter for individuals with disabilities.

- h. Minutes. The DFO shall ensure that detailed minutes are kept for each FACA committee meeting and that the chairperson certifies their accuracy within 90 days of the meeting. After the meeting is held, the meeting minutes must be submitted to the Secretary and the CMO with an information memo that includes a brief overview and analysis of the meeting. The memo should include a plan to address any assignments or tasks that require action before the next meeting. Minutes shall include:
  - (1) The time, date, and place of the meeting;
  - (2) A list of the persons who were present at the meeting, including FACA committee members and staff, agency employees, and members of the public who presented oral or written statements, including a description of the statements;
  - (3) An accurate description of each matter discussed and the resolution, if any, made by the FACA committee regarding such matter; and
  - (4) Copies of each report or other document received, issued, or approved by the FACA committee at the meeting.
- i. Bylaws. A copy of any FACA committee bylaws will be forwarded to the CMO.

## 11. RECORDS

- a. Sponsor's Responsibilities. The committee sponsor is responsible for the maintenance of committee records. Such records shall include establishing documents, official correspondence, membership information, agendas, minutes of meetings, invitations, studies, analyses, compilations of data or working papers, and a record of time served by special employees (experts, consultants, and non-Federal staff). These records shall be available in a single location for onsite review by the CMO, until General Records Schedule 6.2 or the committee-specific Records Control Schedule authorizes their destruction or transfer to the National Archives and Records Administration.
- b. CMO's Responsibilities. The CMO shall maintain copies of establishing and renewal documents for all DOT FACA committees as well as membership lists, FACA committee reports, data used by the CMO to prepare reports to oversight agencies, and copies of all FACA committee documents requiring the Secretary's approval.
- c. Committee Manager's Responsibilities. Committee managers shall maintain copies of all establishing and renewal documents, reports, and membership data for committees sponsored by their organization, copies of all information submitted for DOT's annual report and review, and a record of employees who participate in non-DOT sponsored committees. The committee DFO will perform this responsibility for DOT's FACA committees.

- d. Access. In addition to the committee webpages listed at <https://facadatabase.gov>, each FACA committee shall have a public website where committee documents, meeting announcements, membership rosters, and other information is available. This information, including reports and other committee documents, must be available to the public free of charge.

## 12. TERMINATION AND DURATION

- a. Committee Termination Process. A committee shall be terminated as soon as it has completed its assigned responsibilities. When the sponsor determines that a committee is no longer serving the purpose for which it was established, recommendation for termination shall be made to the Secretary. If the Secretary approves such action, notice of termination shall be made to the members and others having an interest in the committee, and, for FACA committees the CMO shall notify GSA in writing. The Sponsor's approving official is responsible for initiating the above actions. These procedures shall be followed for committees being terminated prior to the expiration of their charters as well as for those which will not be renewed at expiration time.
- b. FACA Committee Duration. A FACA committee whose duration has not been fixed by law or other predetermination shall terminate two years from the date of filing, unless the Secretary determines in writing prior to the end of the two-year period that renewal is in the public interest. If the committee serves a compelling need, and its charter is renewed at the end of each two-year period, it may be referred to as a "continuing" committee.
- c. Charter Renewal. Even if a FACA committee has a predetermined termination date, it must renew its charter at the end of each two-year period if the duration extends beyond a two-year period.

## 13. DOT-SPONSORED INTERGOVERNMENTAL COMMITTEES. Information contained elsewhere in this Order applicable to committees generally applies to DOT-sponsored intergovernmental committees. These committees, comprised solely of Federal Government officials, are not subject to FACA.

- a. Documentation. In addition to following the procedures already outlined in this Order for documenting, processing, and terminating, the memorandum to the Secretary establishing the committee shall also transmit a copy of the establishing document (intergovernmental agreement, charter, memorandum of understanding, etc.) that preceded establishment of the committee. If less than half of the committee's membership composition is anticipated to include non-DOT representatives, a membership list should be included in the transmittal.

- b. Meetings. An agenda shall be formulated or approved by the committee chairperson prior to each meeting, and minutes shall be kept and their accuracy certified by the chairperson or senior departmental member present. The approving official may waive all or part of these requirements when he or she determines that compliance would interfere with the proper functioning of the committee or would be impracticable, and that adequate provisions are otherwise made to ensure that the operation of the committee is consistent with its purpose. Authority for such waiver shall be included in the establishing document.
- c. Financing.
  - (1) The agency that chairs an intergovernmental committee is usually responsible for full support of the committee's activities (e.g. staff, funds, and space). If this is not feasible, funds to support the committee should be requested from OMB in the next budget.
  - (2) If the need is compelling and urgent and neither of the above alternatives is feasible, the sponsor may request reimbursement or transfer of funds from the participating agencies after receiving prior approval from OMB. This emergency method of financing will be discontinued as soon as OMB has acted upon a request to finance the committee through the chairing agency in connection with its next budget.

#### 14. NON-DOT SPONSORED COMMITTEES.

- a. General. DOT employees may participate in advisory, intergovernmental, or international committees that are not sponsored by the Department and in committees that are not sponsored by agencies of the Federal Government only after a determination has been made by the Secretary that such participation is justified, is in the public interest, and does not constitute a conflict of interest for the Department or for the employee. The extent of the authority to represent or commit DOT, as well as the responsibilities involved in doing so, must be clearly defined in writing by the approving official.
- b. Representative Limitations. DOT representation on non-DOT committees normally will be limited to one member and one alternate. If more than one DOT operating administration participates in a non-DOT activity, the CMO will designate the lead organization that will coordinate with the various participants to ensure a single DOT position and avoid unnecessary duplication.
- c. Justification. Attendance, per diem, and travel costs must be justified fully and separately, and the availability of funds verified.
- d. Release of Information. Dissemination or releases of DOT information or reports must follow DOT policy and procedures.

15. PROHIBITED DATA. Unless prior concurrence is given by the DAEO, FACA committees shall not receive, compile, or discuss data or reports concerning matters that would be covered by exemption 4 or 6 of FOIA 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 and the Department's regulations found in 49 CFR Part 10.
16. ANTITRUST LAWS. The activities of FACA committees are subject to the antitrust laws, and committee members are subject to those laws. Industry representatives and Government personnel officially connected with FACA committees should be made aware of the application of the antitrust laws by the sponsor. Should any specific question arise concerning any particular plan or course of action, the question should be referred to the DAEO.
17. IMPLEMENTATION. Where appropriate, secretarial offices and operating administrations shall develop supplemental guidance required to implement this Order and provide a copy of that guidance to the CMO within 6 months of the date of this Order.

ASSISTANT SECRETARY FOR ADMINISTRATION:

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Willis Morris      Date



# APPENDIX 1



## U.S. DEPARTMENT OF TRANSPORTATION

### COMMITTEE BACKGROUND INVESTIGATION DISCLOSURE FORM

#### DISCLOSURE

As part of the process of determining your eligibility for a Department of Transportation (DOT) committee appointment and, in the event you are appointed your continued involvement with the committee, DOT may conduct an investigation of your background by obtaining a consumer report or investigative consumer report relating to you from a consumer reporting agency of its choice. The report may contain information bearing on your credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, education, employment history, criminal history, motor vehicle history, workers compensation history or mode of living.

No consumer report will be used in violation of any federal or state equal employment opportunity law or regulation. I acknowledge receipt of a copy of my rights under the Fair Credit Reporting Act. If DOT intends to take any adverse action based in whole or in part on information contained in a consumer report, you will be provided with an additional copy of the report and a description of your rights under the Fair Credit Reporting Act.

#### Public Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0009. Public reporting for this collection of information is estimated to be approximately 15 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are voluntary. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

To assist DOT in obtaining a consumer report, the following information is provided:

**MA, MN, OK, NY, ME, WA, NJ, and CA applicants only: If you want a free copy of the report(s) ordered, check this box ☐.**

Full Name (Printed)

\_\_\_\_\_  
First Middle Last Maiden/Other

Signature \_\_\_\_\_ Date \_\_\_\_\_

Complete Residence Address

Street Number/ PO Box		Street Name	
City	State	Zip Code	County
Date of Birth*	Social Security Number*	Gender	Race
(*You may elect to call [INSERT NAME OF ENTITY CONDUCTING BACKGROUND INVESTIGATION] directly at [PHONE NUMBER] with this information)			
Driver's License Number		State Issued	
Daytime Telephone Number		Email	

**Please list all additional residences that you have resided in during the past 7 years:**

Street Number/ PO Box	Street Name	City	State	Zip	County
Street Number/ PO Box	Street Name	City	State	Zip	County
Street Number/ PO Box	Street Name	City	State	Zip	County

**Are you a federally registered lobbyist?**

**Are you a federally registered foreign agent?**

\*This information is voluntary. However, without this information, we will be unable to properly identify you in the event we find adverse information during the course of our background search.

**Privacy Act Statement (5 U.S.C. § 552a, as amended):** AUTHORITY: The Federal Advisory Committee Act, Pub. L. 92-463, as amended, authorizes DOT to collect this information. PURPOSE(S): DOT will use the information provided to evaluate and select individuals for membership on advisory committees within the jurisdiction of the Department. ROUTINE USE(S): In accordance with DOT's system of records notice, Federal Advisory Committee Files, the information provided may be disclosed to other Federal agencies when necessary to administer DOT's advisory committees, and to the public to inform the public of advisory committee membership and activities. DISCLOSURE: Provision of the requested information is voluntary; however, failure to furnish the requested information may result in an inability of the Department to adequately evaluate an individual's application for members on a DOT advisory committee.

## APPENDIX 2



### U.S. DEPARTMENT OF TRANSPORTATION

#### COMMITTEE BACKGROUND INVESTIGATION AUTHORIZATION FORM

#### **AUTHORIZATION**

I hereby authorize the Department of Transportation (DOT) to make an independent investigation of my background by obtaining a consumer report relating to me from ***[INSERT NAME OF ENTITY CONDUCTING BACKGROUND INVESTIGATION]***). I understand and agree that the information contained in any consumer report will be used to determine eligibility for a Committee appointment and, if I am appointed, my eligibility for continued involvement, and that action may be taken by DOT based on this information.

I further authorize any person, business entity or governmental agency who may have information relevant to the above to disclose the same to \_\_\_\_\_, by and through ***[INSERT NAME OF ENTITY CONDUCTING BACKGROUND INVESTIGATION]***), including but not limited to, any courthouse, any public agency, any and all law enforcement agencies and any and all credit bureaus, regardless of whether such person, business entity or governmental agency compiled the information itself or received it from other sources, ***including alcohol and controlled substance information from previous employers.***

Full Name (Printed)

\_\_\_\_\_

First	Middle	Last	Maiden/Other
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Signature \_\_\_\_\_ Date \_\_\_\_\_

## **APPENDIX 3**

- a. First-Term Appointment Letter (Special Government Employee)
  - b. First-Term Appointment Letter (Representative)
- b. Reappointment Letter (Special Government Employee)
  - Reappointment Letter (Representative)

## First Term Appointment Letter (Special Government Employee)

Name  
Title  
Organization  
Address

Dear [Mr. or Mrs. NAME]:

The U.S. Department of Transportation is pleased to appoint you to serve as a Special Government Employee on its [COMMITTEE/ORGANIZATION] for a term of up to [YEARS] which will begin on the date of this letter.

[INFORMATION ON ORGANIZATION AND WHERE TO FIND MORE DETAILS].

Your work as Special Government Employee will greatly benefit the [COMMITTEE/ORGANIZATION] and the Department's efforts to XX, XX, and XX. Your experience and leadership will add valuable insights and perspectives that will help further the [COMMITTEE/ORGANIZATION'S] mission. You are being asked to provide your best independent judgment based on your expertise. As a Special Government Employee, you will be subject to Federal conflict of interest laws, agency standard of conduct regulations, and annual public financial disclosure requirements.

Thank you for contributing your time and expertise as an integral member of this important organization. If you have any questions, please contact, NAME, TITLE, at PHONE NUMBER or EMAIL.

Sincerely,

Elaine L. Chao

## First Term Appointment Letter (Representative)

Name  
Title  
Organization  
Address

Dear [Mr. or Ms. NAME]:

The U.S. Department of Transportation is pleased to appoint you to serve as a [REPRESENTED GROUP] representative on its COMMITTEE/ORGANIZATION for a term of up to [YEARS] which will begin on the date of this letter.

[INFORMATION ON ORGANIZATION AND WHERE TO FIND MORE DETAILS].

Your work representing the views of [REPRESENTED GROUP] will greatly benefit the COMMITTEE/ORGANIZATION and the Department's efforts to XX, XX, and XX. Your experience and leadership will add valuable insights and perspectives that will help further the COMMITTEE/ORGANIZATION'S mission.

Thank you for contributing your time and expertise as an integral member of this important organization. If you have any questions, please contact, NAME, TITLE, at PHONE NUMBER or EMAIL.

Sincerely,

Elaine L. Chao

## Reappointment Letter (Special Government Employee)

Name  
Title  
Organization  
Address

Dear [Mr. or Mrs. NAME]:

The U.S. Department of Transportation is pleased to reappoint you to serve as a Special Government Employee on its [COMMITTEE/ORGANIZATION] for a term of up to [YEARS], which will begin on the date of this letter.

[INFORMATION ON ORGANIZATION].

Your work as a member of the committee since XX, has been a benefit to the [COMMITTEE/ORGANIZATION] and the Department's efforts to XX, XX, and XX. Your experience and leadership adds valuable insights and perspectives that continue to help further the [COMMITTEE/ORGANIZATION'S] mission. As a Special Government Employee, you will continue to be subject to Federal conflict of interest laws, agency standard of conduct regulations, and annual public financial disclosure requirements. I ask that you continue to provide the committee with your best independent judgment based on your expertise.

Thank you for continuing to contribute your time and expertise as an integral member of this important organization. If you have any questions, please contact, NAME, TITLE, at PHONE NUMBER or EMAIL.

Sincerely,

Elaine L. Chao

## Reappointment Letter (Representative)

Name  
Title  
Organization  
Address

Dear [Mr. or Mrs. NAME]:

The U.S. Department of Transportation is pleased to reappoint you to serve as a [REPRESENTED GROUP] representative on its [COMMITTEE/ORGANIZATION] for a term of up to [YEARS], which will begin on the date of this letter.

[INFORMATION ON ORGANIZATION].

Your work since XX, representing the views of [REPRESENTED GROUP], will continue to benefit the COMMITTEE/ORGANIZATION and the Department's efforts to XX, XX, and XX. Your experience and leadership have added valuable insights and perspectives that will help further the COMMITTEE/ORGANIZATION'S mission.

Thank you for continuing to contribute your time as an integral member of this important organization. If you have any questions, please contact, NAME, TITLE, at PHONE NUMBER or EMAIL.

Sincerely,

Elaine L. Chao