

## Subject: COMMITTEE MANAGEMENT POLICY AND PROCEDURES

1. PURPOSE. This order establishes policy, prescribes procedures, and assigns responsibility for the sound management of U.S. Department of Transportation (DOT) committees subject to the Federal Advisory Committee Act (FACA).
2. CANCELLATION. DOT 1120.3C, Committee Management Policy and Procedures, dated October 23, 2020.
3. BACKGROUND. The proper use of advisory 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. FACA ensures that Congress and the public are kept informed with respect to the number, purpose, membership, activities, and costs of DOT's advisory committees.
4. REFERENCES
  - a. The Federal Advisory Committee Act (FACA) (1972), 5 U.S.C. App. 2, 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. Office of Management and Budget (OMB) Policy Letter 93-1 "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) to manage records electronically and implement consistent records management programs across the Government.
- 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.

5. DEFINITIONS.

- a. Alternate. An individual who is officially authorized to act for a committee member in his or her absence.
- b. Approving Official. The DOT official having authority to make recommendations to the Secretary concerning the establishment or termination of a committee, modification, or renewal of a charter, and having either authority to make recommendations to the Secretary concerning the appointment of members to serve on the committee or delegated authority to appoint members to serve.
- c. Chairperson. The presiding officer of a FACA committee who guides all efforts in completing assigned tasks and, with the Designated Federal Officer (DFO) as applicable, ensures that committee members are fulfilling their responsibilities.

- d. Committee Management Officer (CMO). The individual designated by the Director of the Executive Secretariat (or designee) to implement the provisions of section 8(b) of FACA and any responsibilities delegated from the Secretary or Director.
- e. Committee Sponsor. The Secretarial Office or Operating Administration (OA) responsible for the committee and the maintenance of committee records.
- f. 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.
- g. Designated Federal Officer (DFO). An official designated by the approving official, who is the DOT official responsible for providing staff support to a FACA 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 FACA committee reports, and otherwise monitor the FACA committee's meetings, membership performance, and progress. Along with the chairperson, the DFO (and the DFO's designee if applicable) ensures that the FACA committee members are fulfilling their responsibilities.
- h. Discretionary Committee. A FACA committee established within the authority of the Secretary—not established by statute or presidential directive.
- i. FACA Committee (Committee). Any advisory committee subject to the Federal Advisory Committee Act.
- j. Regular Government Employee (RGE). 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.
- k. 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, or 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.
- l. S-1. The Office of the Secretary
- m. S-2. The Office of the Deputy Secretary
- n. S-10. The Office of the Secretary (OST) Executive Secretariat
- o. 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 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.

- p. Statutory Committee. A FACA committee required to be established by statute or by presidential directive (also known as a nondiscretionary committee).

## 6. POLICY

The following policies apply to FACA committees:

- (1) Committees will be used only in an advisory capacity to management or for investigating, reporting, recommending, or providing a forum or mechanism for coordination or exchange of information, except as otherwise required by statute or other law.
- (2) All committee activities and the committee-related activities of individual members will be conducted in a manner that ensures equal opportunity for all people and avoids discrimination on the basis of race, religion, sex, gender identity, sexual orientation, national origin, disability, or age. Committee-related activities, including committee membership solicitations, will be undertaken in a manner that encourages participation by members of underrepresented and underserved communities in accordance with Executive Order 13985.
- (3) DOT will not establish or utilize a FACA committee unless directed or authorized by statute, the President, or secretarial action.
- (4) A FACA committee will not be considered established until:
  - (a) It has been determined 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;
  - (b) The CMO has consulted with U.S. General Services Administration (GSA), as appropriate;
  - (c) A charter has been approved by the Secretary;
  - (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 Senate Committee on Commerce, Science and Transportation, the House Committee on Transportation and Infrastructure, and the Library of Congress.

## 7. RESPONSIBILITIES

- a. The Secretary will do the following:
  - (1) Approve the establishment, amendment, renewal, termination, or re-establishment of FACA committees sponsored by DOT.
  - (2) Designate departmental representatives to committees, when applicable.
- b. The Secretary, or the approving official as the Secretary's designee, will do the following:
  - (1) Approve the designation of:
    - (a) Membership for SGEs and non-departmental representatives to FACA committees sponsored by DOT;
    - (b) Membership for other FACA committees where at least half of the committee's whole membership includes non-DOT representatives;

NOTE: Membership approval process may vary where statute, executive order, directive, international agreement, or charter specifies otherwise.
- c. The approving official will do the following:
  - (1) Recommend for the Secretary's approval the establishment, amendment, renewal, termination, or re-establishment of FACA advisory committees sponsored by DOT;
  - (2) Recommend for designation by the Secretary or the Secretary's designee;
    - (a) Membership for SGEs and non-departmental representatives to FACA committees sponsored by DOT;
    - (b) Membership for other FACA committees where at least half of the committee's whole membership includes non-DOT representatives.
  - (3) Designate the DFO and approve the DFO's designee for their office or OA;
  - (4) Review the GSA Annual Comprehensive Review within their office, OA, or bureau and report the outcome of this review to the CMO no later than December 30 each year; and
  - (5) Approve any documents prepared by DFOs for secretarial approval.

- d. The committee sponsor's Office of Chief Counsel and, for committees sponsored by OST, the Office of the General Counsel, will do the following:
  - (1) Ensure that all individuals recommended to serve as members have been properly classified as either a representative, Regular Government Employee (RGE), or SGE (if the individual would be appointed solely for his or her expertise);
  - (2) Advise on possible conflicts of interest;
  - (3) Give guidance to DFOs, or the DFO's designee, on compliance with the requirements of FACA and its implementing regulations, the Privacy Act, and FOIA, the Federal Records, ethics statutes and regulations, as applicable;
  - (4) Review all Federal Register notices concerning FACA committees, including charters, meeting notices and membership appointment packages;
  - (5) Coordinate with DFOs to ensure that all SGEs receive ethics training; and
  - (6) Review statements of employment and financial interests submitted by advisory committee members and candidates, as appropriate.
  
- e. The Committee Management Officer will do the following:
  - (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 FACA advisory committee activity to ensure compliance with this order and conduct annual reviews of departmental advisory committees;
  - (3) Approve GSA's 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 GSA, the Senate Committee on Commerce, Science and Transportation, the House Committee on Transportation and Infrastructure, and the Library of Congress;
  - (6) Maintain the central DOT FACA 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), as appropriate.
- f. The Designated Federal Officer (or their designee) appointed to each FACA committee will do the following:
- i. Perform the duties assigned to DFOs pursuant to FACA and its implementing regulations;
  - ii. Prepare required FACA committee documentation, including charters and membership balance plans, in accordance with DOT and GSA formatting guidelines;
  - iii. Ensure that all individuals recommended for appointment to a committee are properly vetted using section 10(h)(5) of this order;
  - iv. Ensure compliance with the requirements of this order and those prescribed by the CMO;
  - v. Work with the CMO to develop any supplementary procedures that may be necessary for effective committee management within their office;
  - vi. Advise committee sponsors and review committee action documents before transmittal to approving authorities;
  - vii. Ensure DOT committee-related websites are maintained with updated information;
  - viii. Coordinate committee activities closely with the CMO:
  - ix. Ensure information memorandums about upcoming meetings and summarizing meeting minutes are submitted to the Secretary 30 days before or 30 days after the meeting, respectively;
  - x. 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;

- xi. Maintain basic committee record files, as required by law, and develop reports, as required by the CMO;
- xii. Manage technical, administrative, and other arrangements for meetings;
- xiii. Complete the Annual Comprehensive Review, required by GSA for all FACA committees;
- xiv. 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;
- xv. Complete the requirements of FACA 101 and 201 courses; and
- xvi. Ensure that all SGEs receive ethics training either before or concurrently with their first FACA meeting, and annually thereafter.

## 8. ESTABLISHMENT, REESTABLISHMENT AND AMENDMENT

- 1) Establishment: If DOT wants to establish a committee (discretionary or statutory), the appropriate procedure must be followed:
  - a. The committee sponsor will do the following:
    - (1) Request establishment of a committee only after determining that it is justified by considering whether:
      - a) It is essential to the conduct of agency business;
      - b) It is in the public interest;
      - c) The functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and
      - d) The information to be obtained is not already available through another advisory committee or source within the Federal Government.
    - (2) Draft establishment documents, including an action memorandum to the Secretary, the charter and, for discretionary committees, the membership balance plan and a Federal Register notice announcing the committee's establishment. FACA committee charters will be drafted in accordance with section 9 of FACA and its implementing regulations, 41 CFR 102-3.75.
  - b. For all FACA committees, the committee sponsor (or the approving official) will submit an action memorandum addressed to the Secretary, which includes the



draft charter and, if applicable, a membership balance plan and Federal Register notice. The action memorandum will follow the established template format and contain:

- (1) A statement that there is a compelling need for the committee and that the establishment of the committee is in the public interest;
- (2) 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);
- (3) The plan to attain a fairly balanced membership (for discretionary committees);
- (4) The plan to solicit members;
- (5) An explanation of any necessary steps before the committee begins meeting;
- (6) Other information that the committee sponsor and approving official wish to convey to the Secretary concerning the committee;
- (7) A cost summary for committee's annual operating expenses; and
- (8) A request for approval to establish the committee.

c. The CMO will do the following:

- (1) Coordinate with GSA to provide consultation for the following items:
  - a) committee charters (with statutory language, if applicable);
  - b) membership balance plans (for discretionary committees only).
- (2) Coordinate with the appropriate Department official for concurrences and comments including:
  - a) action memorandums to the Secretary;
  - b) draft committee charters;
  - c) statutory language (for statutory committees only); and
  - d) membership balance plans (for discretionary committees only).

NOTE: In the event the Secretary or delegated approving official does not approve the draft, or if adjustments are made as a result of the

coordination, the CMO will return it to the requesting committee sponsor for revision, withdrawal, or resubmission. The CMO will coordinate any FACA committee redrafts with GSA.

- (3) After the charter is approved by the Secretary, the CMO will notify the committee sponsor through the committee's DFO or the DFO's designee.
- (4) Publication of 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 committee sponsor. A notice in the Federal Register is required when a discretionary FACA committee is established, reestablished, or renewed. A notice is not required for statutory committees.
- (5) Filing of FACA Committee Charter.
  - a) After a minimum of 15 calendar days following publication of the notice of establishment of a discretionary FACA committee ("waiting period"), the CMO will file the charter with the Senate Committee on Commerce, Science and Transportation, the House Committee on Transportation and Infrastructure, 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 or delegated approving official approves the charter—no Federal Register notice is required.
  - b) The CMO will provide a copy of the charter with the filing date entered to GSA and the committee sponsor. The CMO will also provide a copy of the signed secretarial approval memorandum to the committee sponsor.
- (6) Effective Date of a Charter. The effective date of the charter is the date on which the charter is filed with the Senate Committee on Commerce, Science and Transportation, the House Committee on Transportation and Infrastructure, and the Library of Congress.
- (7) FACA Committee Renewal. A charter to renew a FACA committee will be processed in the same manner as a charter for establishment, except that the draft charter for renewal will be submitted to the Secretary for approval at least 90 days prior to the charter's termination date. For discretionary committees, a 15-calendar 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.

- 2) Reestablishment: If a charter expires before a new charter is filed, the FACA committee terminates and must be reestablished in order to continue to operate. The same procedure is followed to reestablish a FACA committee as establishment above, including the 15-calendar day waiting period to file the charter following the publication of the notice of re-establishment in the Federal Register.
- 3) Charter Amendments: When it is necessary to amend an existing charter, the committee will follow the procedure used for the establishing documents above. FACA committee charter amendments will adhere to FACA requirements regarding amendments. See 41 CFR 102-3.80, 102-3.85.
- 4) Subcommittees.
  - a. The approving official (not the DFO or parent committee) has the authority to create subcommittees.
  - b. Establishment and renewal of subcommittees require email notification to the CMO detailing the need and structure of the subcommittee unless established through the FACA parent committee charter. The CMO will add the notification to the weekly reports shared with senior leadership.
  - c. Subcommittees of FACA committees must report back to the parent committee and must not provide advice or work product directly to the agency.

## 9. OPERATING REQUIREMENTS

- a. Evaluation. Unless required by statute or other law, a FACA committee will be established or maintained only when it is essential to the conduct of agency business. GSA Annual Comprehensive Review is one tool DOT officials should use to carefully evaluate whether committees are conducting work that is duplicative of other committees or internal DOT teams. FACA committees will not make operational, administrative, or management decisions unless the charter states otherwise.
- b. Budget. The committee sponsor will, 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 committee sponsor will affirm this budget analysis and cost summary have been done in the action memorandum establishing or renewing the committee.
- c. Administrative Support. The committee sponsor will provide no more staff resources than necessary to support a committee's mission. Staff resources should be outlined in the committee charter.
- d. Classified National Security Information. In the event the activities of a committee involve access to, or the development of, classified information, the

approving official will 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.

- e. **Controlled Unclassified Information.** In the event the activities of a committee involve access to, or the development of, controlled unclassified information, the approving official will ensure compliance with security measures prescribed by DOT Order 1650.5, Controlled Unclassified Information Program, December 31, 2020, DOT Order 1351.37, DOT Cybersecurity Policy, February 3, 2012, DOT Order 1351.18, Departmental Privacy Risk Management, September 30, 2014, or any successor directives, and that all members are authorized for access to the information.

## 10. MEMBERSHIP

- a. **Size.** A committee will be large enough to promote deliberations but will include only the number necessary to ensure the breadth and balance of expertise and background required to accomplish its mission. For any new FACA advisory committees approved on or after the date of this order, membership will not exceed 25 members, unless there is a compelling need for more members, which has been approved by the Secretary, Deputy Secretary, or Chief of Staff, or otherwise required by statute or other law. For existing committees with more than 25 members, new vacancies on the committee will 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 can be invited to participate as observers when matters concerning their areas of interest are to be considered.
- c. **Membership Equity.** Membership on committees will be open to all people otherwise qualified regardless of race, religion, sex, gender identity, sexual orientation, national origin, disability, or age.
- d. **Term.** Members of FACA committees may serve until replacements have been appointed, except where a statute specifies otherwise, or the DFO determines that continued appointment is not in the public interest.
- e. **Fees.** The Department and its committees must not charge membership fees or require that members pay membership dues to a third party to serve on the committee.
- f. **FACA Member Designation.** FACA committee members will be designated as a representative of a particular interest or party, a SGE, or an RGE. Committee

sponsors will 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, a SGE, or an 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. Solicitations should also include a provision regarding non-discrimination in the selection of members. Non-voting membership designations are subject to GSA approval.

- (1) Representative Members. FACA committee members, who 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 his or her employment, education, experience, or affiliation with a specific group, industry, or organization will 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:
  1. the designated organization approves of the continued representation by that member;
  2. the head of the sponsoring OA or secretarial office concurs with the representative's continued participation;
  3. the member's continued participation is consistent with any applicable statutory authority and Presidential directive, and
  4. the member's continued participation is deemed essential for the fulfillment of the committee's mission.
- (2) Special Government Employees (SGE). A member of a committee or subcommittee, who is appointed solely for his or her expertise must be appointed as an SGE. The committee sponsor will 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) will be reviewed by their sponsor's chief counsel ethics officer and DAEO.

g. FACA Membership Solicitation:

- (1) The approving official approves the issuance of FACA committee membership solicitation materials. The sponsoring office will submit an information memorandum to the Secretary that briefly describes the committee's upcoming membership solicitation prior to the document being transmitted externally (including transferred to the Federal Register, if applicable).
- (2) Once the committee sponsor has a list of interested candidates, the committee sponsor will follow the membership appointment process described below.

h. Appointment of members to FACA committees and subcommittees.

- (1) The Secretary will approve the chairperson, unless directed or authorized or delegated by charter, statute, executive order, presidential directive, or secretarial action.
- (2) Subcommittee membership appointments are submitted to the Secretary through an information memorandum at least 60 days prior to the appointment date. The committee sponsor will approve subcommittee members upon the concurrence of the White House Liaison, unless otherwise noted in the FACA parent committee charter.
- (3) The committee sponsor will ensure that each candidate is appropriately vetted prior to appointing or recommending that the Secretary appoint the candidate, including obtaining concurrence by the office or OA senior leadership.
- (4) After the committee sponsor vets members for appointments, the committee sponsor will submit an action memorandum to the Deputy Secretary for approval at least 60 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 will identify whether the nominee is a new appointment or reappointment and the name of any member being replaced. The memorandum will also briefly explain the selection process, efforts made to ensure that membership is diverse, equitable, and inclusive, 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 will follow established template format. If the committee sponsor would like to propose various slates for the S-1 and S-2 Offices to review, they are to coordinate with the CMO and the S-10 Director so that a briefing can be scheduled.

- (5) Upon the S-1 and S-2 Offices' approval of the action memorandum, the CMO will share the list of recommended candidates with the White House Liaison for vetting. The committee sponsor will update the memorandum for the Secretary's signature within 5 business days. The appointment package will follow the established template format and include:
  - (a) a biographical summary for each nominee highlighting their expertise;
  - (b) an appointment letter (Appendix 1) for each nominee to be signed by the Secretary;
  - (c) a note from the DFO or sponsor to accompany the secretarial letter that states:
    - i. the interests 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's or the DFO's designee contact information.
  - (d) current committee roster;
  - (e) any waiver issued for an SGE; and
  - (f) the committee's membership balance plan (if applicable)
- (6) After appropriate OST clearances, including clearance from the White House Liaison's Office, the Secretary will review the recommended

appointments and approve or disapprove the recommendations. The CMO will notify the committee's sponsor accordingly.

i. Member Responsibilities.

- (1) When a DOT official is appointed by the Secretary, or designee, to serve as a RGE representative of the Department, the appropriate officials will ensure the representative obtains DOT coordination, review, and approval from the appropriate officials to accurately reflect the official position of the Department.
- (2) The member may only speak with Congress and the media in his or her personal capacity. The member of the FACA committee must not hold himself or herself out as a representative of the Department or the FACA committee when speaking with Congress or the media. If the FACA 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.
- (3) If the FACA committee charter provides for alternates, the member will ensure attendance of his or her alternate at FACA committee meetings when the member cannot be present.
- (4) The member is expected to attend at least three-quarters of all meetings during their 2-year term.
- (5) FACA committee members will prepare all committee reports, recommendations, and other similar committee work products.

11. 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 FACA advisory committee meetings will be held in the Washington Metropolitan Area or through virtual/teleconference alternatives. If it is more cost-effective or convenient to hold a meeting elsewhere, or if a site visit is planned, the sponsor must submit a written request to the CMO and receive authorization before proceeding to plan such a meeting. If the proposed meeting location—whether it is in the Washington Metropolitan Area or another location— involves the use of resources offered by a prohibited source (as defined in 5 CFR § 2635.203(d)), the CMO will consult with the Office of the General Counsel before providing authorization. All meeting invitations will include a statement offering



reasonable accommodations for attendees and providing a point of contact to make accommodation requests.

- c. **Closed Meetings.** To close a FACA committee meeting or portion of a meeting to the public, the DFO must submit a written request to the CMO at least 60 days prior to the meeting date and 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 CMO must be in writing and will be made available to the public on request. The 60 calendar days 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 will 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 that has held closed or partially closed meetings will issue an annual report summarizing its activities consistent with the policies of FOIA. Notice of availability of this report will be published in the Federal Register not later than 60 days after its completion.
- e. **Designated Federal Officer.** Each FACA committee meeting will 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 or other official to whom the committee reports.
- f. **Publication of Notice of Meetings in the Federal Register.** Timely notice of each FACA committee meeting, whether open or closed to the public, will be published in the Federal Register no later than 15 calendar days prior to the meeting date. The notice will contain the name of the committee, the time, date, 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 to the public. Notices for meetings that are open to the public will contain a statement offering reasonable accommodations to attendees, and a point of contact at DOT to receive accommodation requests. If notices are not submitted to the Federal Register in time, the CMO can cancel the meeting.
  - (1) The approving official approves the issuance of all FACA committee meeting notices. An information memorandum will be submitted to the Secretary that briefly describes the committee's upcoming meeting agenda 10 business days prior to the submission of the notice being transferred to the Federal Register.
- g. **Arrangements for Meetings.** The sponsor will ensure that FACA committee meetings are held at a reasonable time and place and that the committee meeting room, 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. As

a best practice, public meetings should include sign language interpretation. DOT should also make every reasonable attempt to accommodate attendee requests for additional accommodations in advance of the meeting.

- h. Minutes. The DFO will ensure that detailed minutes are kept for each FACA committee meeting and that the chairperson certifies their accuracy within 90 calendar days of the meeting. Minutes will 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.

## 12. RECORDS

- a. Committee Sponsor's Responsibilities. The committee sponsor is responsible for the maintenance of committee records. Such records will 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 will be maintained electronically on a DOT information system, to the fullest extent possible, 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 will maintain copies of establishment 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. The DFO's (or the DFO's designee) Responsibilities. DFOs will maintain copies of all establishing and renewal documents (including those approved by an approving official), reports, and membership data for committees sponsored by their organization, copies of all information submitted for General Services Administration Annual Comprehensive Review, and a record of employees who participate in non-DOT sponsored committees.

- d. Access. In addition to the committee webpages listed at <https://facadatabase.gov>, each FACA committee will have a public website where committee documents, meeting announcements, membership rosters, and meeting minutes are available. This information must be accessible to persons with disabilities.

### 13. TERMINATION AND DURATION

- a. Committee Termination Process. A committee will be terminated if its stated objectives have been accomplished, its work becomes obsolete, the cost of its operation is excessive in relation to the benefits accruing to DOT, or upon the expiration of the committee's charter. When the sponsor determines that a committee should be terminated, they will submit a recommendation for termination to the Secretary. If the Secretary approves such action, the sponsor will notify the committee members and others having an interest in the committee. The CMO will notify GSA in writing of any committees that are terminated. The sponsor's approving official is responsible for initiating the above actions. These procedures will 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 will terminate 2 years from the date of filing, unless the Secretary determines in writing prior to the end of the 2-year period that renewal is in the public interest.
- c. Charter Renewal. Even if a FACA committee has a predetermined termination date, it must renew its charter at the end of each 2-year period.

14. PROHIBITED DATA. Unless prior concurrence is given by the Chief FOIA Officer, FACA committees will not receive, compile, or discuss data or reports concerning matters that would be exemption eligible for withholding under exemptions 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 will 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.

15. 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 plan or course of action, the question should be referred to the DAEO.

16. IMPLEMENTATION. Where appropriate, secretarial offices and operating administrations will develop supplemental guidance required to implement this order and provide a copy of that guidance to the CMO within six months of the date of this order.

Director, Office of the Executive Secretariat

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Justine Hong      Date

# **APPENDIX 1**

First-Term Appointment Letter

Reappointment Letter

DFO or Sponsor Letter to Member

## First Term Appointment Letter

Date

Name

Title

Organization

Address

Dear [Mr. or Mrs. NAME]:

The U.S. Department of Transportation is pleased to appoint you to serve 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 will greatly benefit the COMMITTEE/ORGANIZATION and the Department's efforts to XX, XX, and XX. Your experience will add valuable insights and perspectives that will help further the COMMITTEE/ORGANIZATION'S mission.

Thank you for contributing your time and expertise. If you have any questions, please contact, NAME, TITLE, at PHONE NUMBER or EMAIL.

Sincerely,

[SECRETARY'S NAME]

## Reappointment Letter

Date

Name

Title

Organization

Address

Dear [Mr. or Mrs. NAME]:

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

[INFORMATION ON COMMITTEE/ORGANIZATION].

Your work will continue to benefit the COMMITTEE/ORGANIZATION and the Department's efforts to XX, XX, and XX. Your insights 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,

[SECRETARY'S NAME]

DFO/Sponsor Letter

Date

Name

Title

Organization

Address

Dear [NAME],

Attached is a letter from Secretary [NAME] appointing/reappointing you to the [COMMITTEE NAME] for a period of [#] years beginning on [DATE].

You will serve as a [TYPE OF MEMBER]. [ANYTHING ELSE NEEDED ABOUT MEMBER TYPE].

If you have any questions, please contact [NAME and CONTACT INFORMATION].

Sincerely,

[DFO/SPONSOR'S NAME]



## **APPENDIX 2**

Action Memo to the Secretary (Establishment of a committee)

## **ACTION MEMORANDUM TO THE SECRETARY**

**From:** Click here and enter name  
Click here and enter title  
Click here and enter extension

**Prepared by:** Click here and enter name  
Click here and enter title  
Click here and enter extension

**Subject:** Request for Approval to Publish a Federal Register Notice of Establishment of the [COMMITTEE NAME]

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### **ACTION REQUIRED**

I request that you approve the establishment of [COMMITTEE NAME] charter for a 2-year period and publication of a notice in the Federal Register to announce its establishment.<sup>1</sup>

### **SUMMARY**

Summarize the purpose of the Committee. If the committee is statutory, cite the statutory authority. Include reference to its applicability to FACA and that a charter is required before a committee can function.

Include a few sentences on how you expect the Hill, industry stakeholders, and advocacy groups to respond to this action.

If time sensitive, please explain why and share any implications if the approval is delayed (statutory deadline, planned announcement, etc.).

### **BACKGROUND**

Provide background on why there is a compelling need to establish the committee, and if the committee is discretionary that it is in the public's interest.

- If statutory, explain the requirements.

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<sup>1</sup> Only include reference to FRN if necessary

- Include any anticipated end-date for the committee.
- Explain why the function of the committee cannot be performed within the Department or by an existing committee.
- Describe the process that will be used to attain members and balanced membership.
- Explain any next steps needed to begin holding committee meetings.
- Explain how the committee will fulfill membership balance requirements

**STATEMENT OF LATENESS**

Please provide an explanation if the request does not meet a required due date (i.e., statutory due date for Reports to Congress). If due to internal processes, provide some additional context. If applicable, explain the impact of the delay so the Secretary’s Office can understand any potential consequences (on day-to-day operations, relationships with stakeholders, etc.).

**RECOMMENDATION**

I recommend that you approve the charter for [COMMITTEE NAME] and the Federal Register notice for publication.

The Secretary

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

COMMENTS:

Attachments:

- Proposed Charter
- Membership Balance Plan (if applicable) – Discretionary committee
- Federal Register Notice
- Statutory Language (if applicable) – Statutory committee

## **APPENDIX 3**

Action Memo to the Deputy Secretary (Membership appointment/reappointment package)

Action Memo to the Secretary (Membership appointment/reappointment package)

## **ACTION MEMORANDUM TO THE DEPUTY SECRETARY**

**From:** Click here and enter name  
Click here and enter title  
Click here and enter extension

**Subject:** **Approval of Candidates Recommended for Appointment** to [NAME OF COMMITTEE]

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### **ACTION REQUESTED**

I request that you approve the recommended candidates by [SPONSORING OFFICE OR OPERATING ADMINISTRATION] to the [NAME OF COMMITTEE]. Pending your approval, an Action Memo will be sent through the OST clearance process for the Secretary's signature. Your approval is contingent on successful vetting by the White House Liaison.

### **SUMMARY**

Summarize the appointments – is it the whole committee, or some portion, or are you just replacing a single departing member. Explain if the members are being newly appointed or reappointed. Include the term of the appointment and, when applicable, how the total committee appointments represent the broad range of expertise and background necessary to successfully fulfill the mission of the FACA.

Include a few sentences on how you expect the Hill, industry stakeholders, and advocacy groups to respond to this action.

### **BACKGROUND**

Provide background on your committee, its activities, membership, etc.

Include:

- If the committee is statutory, include a citation of the statutory authority.
- What is the committee's purpose?
- How long has it been active?
- What recommendations has it made?
- When was the charter last renewed?

- Any major plans for future activities?
- Were there any changes to membership structure in the committee’s recent history?
- Is there a set end-date for the committee?

**SELECTION PROCESS**

Describe the process you used for selecting the appointees, including:

- The slots you need to fill and/or the qualifications you were looking for – if by statute or charter, your committee has to have a particular composition, describe it.
- If members are being replaced, explain any known reasons for the changes.
- Explain any changes in membership strategy and the reason for the changes.
- Outreach methods – Federal Register Notice? Ads in trade publications? Direct outreach to stakeholders?
- Any support letters received for the candidates. If congressional recommendations were received, but acted on, explain the justification.
- Any balance/diversity of expertise and background priorities considered?
- Who do you recommend as chair and why (if appropriate)?

**RECOMMENDATION**

I recommend that you approve the recommended candidates by [SPONSORING OFFICE OR OPERATING ADMINISTRATION] to the [NAME OF COMMITTEE]. Pending your approval, an Action Memo will be sent through the OST clearance process for the Secretary’s signature. Your approval is contingent on successful vetting by the White House Liaison.

The Deputy Secretary

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

COMMENTS:

Attachments:

- List of Nominations
- Current Full Committee Roster
- Biographies of Nominees
- Appointment Letters
- Charter
- Statutory Language (if any)
- Membership Balance Plan (if any)

## **ACTION MEMORANDUM TO THE SECRETARY**

**From:** Click here and enter name  
Click here and enter title  
Click here and enter extension

**Prepared by:** Click here and enter name  
Click here and enter title  
Click here and enter extension

**Subject:** Appointment of Members to [NAME OF COMMITTEE]

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### **ACTION REQUIRED**

I request that you approve the appointment of XX members to the [NAME OF COMMITTEE] and sign the attached letters.

### **SUMMARY**

Summarize the appointments – is it the whole committee, or some portion, or are you just replacing a single departing member. Explain if the members are being newly appointed or reappointed. Include the term of the appointment and, when applicable, how the total committee appointments represent the broad range of expertise and background necessary to successfully fulfill the mission of the FACA.

Include a few sentences on how you expect the Hill, industry stakeholders, and advocacy groups to respond to this action.

If time sensitive, please explain why and share any implications if the approval is delayed (statutory deadline, planned announcement, etc.).

### **BACKGROUND**

Provide background on your committee, its activities, membership, etc.

Include:

- If the committee is statutory, include a citation of the statutory authority.
- What is the committee's purpose?
- How long has it been active?
- What recommendations has it made?
- When was the charter last renewed?

- Any major plans for future activities?
- Were there any changes to membership structure in the committee's recent history?
- Is there a set end-date for the committee?

## **SELECTION PROCESS**

Describe the process you used for selecting the appointees, including:

- The slots you need to fill and/or the qualifications you were looking for – if by statute or charter, your committee has to have a particular composition, describe it.
- If members are being replaced, explain any known reasons for the changes.
- Explain any changes in membership strategy and the reason for the changes.
- Outreach methods – Federal Register Notice? Ads in trade publications? Direct outreach to stakeholders?
- What is the pool of people did you choose from?
- If you're re-appointing some, why not others?
- Any support letters received for the candidates. If congressional recommendations were received, but acted on, explain the justification.
- Any balance/diversity of expertise and background priorities considered?
- Who do you recommend as chair and why (if appropriate)?

## **STATEMENT OF LATENESS**

Please provide an explanation if the request does not meet a required due date (i.e., statutory due date for Reports to Congress). If due to internal processes, provide some additional context. If applicable, explain the impact of the delay so the Secretary's Office can understand any potential consequences (on day-to-day operations, relationships with stakeholders, etc.).

## **RECOMMENDATION**

I recommend that you approve the appointments to the [NAME OF COMMITTEE] and sign the attached letters.



The Secretary

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

COMMENTS:

Attachments:

- List of Nominations
- Current Full Committee Roster
- Biographies of Nominees
- Appointment Letters
- Charter
- Membership Balance Plan (if any)
- Statutory Language (if any)
- Letter of Recommendation from Congress