



# **RAIL ENERGY TRANSPORTATION ADVISORY COMMITTEE**

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## **PRESENTATION ON THE FEDERAL ADVISORY COMMITTEE ACT**

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**Surface Transportation Board**

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# FACA BACKGROUND

- **Advisory committees to the Federal Government have a long and storied history**
  - George Washington/Whiskey Rebellion
  - Warren Commission/JFK
  - Three Mile Island Commission, 9/11 Commission, BRAC Commission
- **Today, approx. 1000 Federal advisory committees advise the Executive Branch, with over 60,000 committee members**
- **The STB has two other advisory committees**
  - Rail Shipper Transportation Advisory Council (RSTAC)
  - National Grain Car Council (NGGC)



# *What is a FACA Advisory Committee?*

- **1972 Federal Advisory Committee Act (FACA) – Public Law 92-463**
  - Provide advice that is important, relevant, objective, open to public
  - Act promptly to complete work
  - Comply with reasonable cost controls and recordkeeping requirements
- **Established by Statute, the President or a Federal Agency**
  - To obtain advice or recommendations for the President or agency
  - Contains at least one non-Federal employee



## *General FACA Requirements*

- Develop and file a charter with Congress
- Maintain a balanced membership
- Hold open public meetings
- Keep detailed minutes or summaries of meetings
- Allow public filing of written statements
- Announce all meetings in Federal Register
  - 15 days in advance
- Maintain all committee documents for public inspection



# Designated Federal Official (“DFO”)

- Each FACA advisory committee must have a DFO who:
  - Calls, attends and adjourns meetings
  - Works closely with advisory committee Chair
  - Prepares Federal Register notices for meetings, etc.
  - Approves agendas, press releases, etc.
  - Maintains required official records of committee, including minutes, membership and cost records
  - Maintains meeting records for availability to the public



## Designated Federal Official (“DFO”) for RETAC

Scott M. Zimmerman  
Office of the Chairman  
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# *Why Does FACA Require Public Meetings?*

## **Public Meetings**

- Goals of the FACA statute include:
  - Preventing inappropriate influence on government decisions
  - Eliminating government decisions made behind closed doors
  - Improving public confidence in Agency decision-making
  - Allowing public contemporaneous access to decision process



## *Public Meetings – cont'd*

- **FACA is a public access, not a public participation statute:**
  - All “deliberations” of a FACA advisory committee seeking to reach “consensus” on advice to be given to the Agency are to occur in a public meeting.
  - GSA says “consensus” requires a quorum:
    - For RETAC, a quorum equals a simple majority of members (1/2 of number of members, plus 1)

Main objective is openness and accountability to the public.



## *Public Meetings – cont'd*

### **To Assure Public Access:**

- Advance notice of meeting: Time, location and agenda – must be published in the Federal Register at least 15 calendar days before the scheduled meeting.
- Accessible meeting location: But Agency is not required to accommodate all of the public.
- Accessible committee information: Includes minutes and documents considered at each meeting. Posting committee information on website recommended.
- Public may submit documents/written statements: Committee is free to use public input as it sees fit.
- Teleconferences are possible: But need public access, e.g., separate room with speakerphone, call-in/meet-me line. Also need Federal Register notice.



## *Public Meetings – cont'd*

### **“Closed Meetings” – Exceptions to Public Meeting Requirement:**

- National security
- Trade secrets, or commercial or financial information
- Criminal investigatory records
- Issuance of subpoenas or litigation strategy
- Specifically exempted by statute
- Personnel issues
- Closing a FACA meeting takes place under “Government in Sunshine Act.” Must be planned in advance, reviewed by the General Counsel’s Office and approved by Agency Head. Written Agency determination required, with public access to the determination.



## *Public Meetings – cont'd*

### **“Non-FACA Meetings” – Activities not Subject to FACA:**

- Purely administrative sessions
  - Schedule
  - Membership
  - Operating principles
- Preparatory meetings
  - Drafting sub-groups
- Purely fact-finding meetings
  - Site visits by sub-groups
  - Research, information-gathering
- “Non-FACA meeting” determination memo required in advance; signed by DFO and the General Counsel’s Office



## *Questions?*

### **FACA:**

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