

Clarifying EPA Policy regarding Communications between Members of Scientific and Technical Federal Advisory Committees and Outside Parties

Background:

EPA recently issued guidance regarding communications between members of federal advisory committees (FACs) and parties outside of EPA including the press, Congress, and Congressional staff. This document is intended to clarify the implementation of that policy regarding FAC members who serve as Special Government Employees (SGEs) on scientific or technical FACs.

Because members of scientific and technical FACs are appointed to provide their individual, expert advice rather than to represent the views of a specific interest group, they are hired as Special Government Employees. FACs develop their independent, consensus or group advice in public meetings in accordance with the requirements of the Federal Advisory Committee Act (FACA) and EPA policy. FACA requires the EPA to establish administrative guidelines and management controls for its FACs. FACA also requires EPA to ensure that the advice of its federal advisory committees is not inappropriately influenced either by the Agency or outside parties.

SGE members of a FAC have roles and responsibilities as independent members of the scientific community, for example as professors at their universities. They have a different set of roles and responsibilities as Special Government Employees when they are doing the work of their FAC. EPA policies apply to SGE members of FACs when they are engaged in the work for which they were appointed, but not when they engage in other, non-government activities as part of their private professional lives.

EPA management of FACs

- EPA has the management responsibility for communicating with parties outside of EPA regarding the work of its federal advisory committees. This includes responding to requests regarding the scope of tasks before federal advisory committees, FACA requirements, and applicable EPA policies.
- Under FACA and consistent with the EPA Scientific Integrity Policy¹, EPA is required to ensure that the advice of all FACs, including scientific and technical FACs, is not inappropriately influenced by Agency employees or outside interests, and remains independent.
- The Agency has operational guidelines for its FACs. SGE FAC members are also subject to the EPA Scientific Integrity Policy.
- Statements, reports or recommendations of a FAC are not subject to review or approval by the agency. For example, all advisory reports of the EPA Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC) include a disclaimer, noting that the report “has not been reviewed for approval by the agency and, hence, the contents of this report do not represent the views and policies of the EPA.”

Inquiries from the Media and the General Public

- Should a FAC member receive a press or other inquiry related more generally to their scientific area of expertise or related to their participation in a FAC (other than related to deliberations), they are free to respond to the inquiry in their capacity as a private citizen.
- Individual members of FACs should not represent their views as that of the committee, panel or group in which they participate, nor should they represent their views as those of the Agency.
- The Agency’s Scientific Integrity Policy also states that government employees, (which includes SGEs) are to “freely exercise their right to express their personal views provided they specify

¹ http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf

that they are not speaking on behalf of, or as a representative of, the agency, but rather in their private capacity.” (SI Policy, p. 6)

- The Scientific Integrity Policy notes that agency scientists “are expected to . . . be available to answer inquiries from the news media regarding their scientific work.” [SI Policy, p. 6] This expectation extends to SGE members of FACs, with the proviso that, to protect the integrity of the advisory process, SGE FAC members should not discuss the work of the FAC during the deliberative phase (i.e., when the FAC is still actively developing its advice for the Agency). During the deliberative phase, FAC members are asked to check with the appropriate DFO before speaking with the press or other outside parties regarding the activity of the FAC. This helps to ensure that record-keeping and other FACA requirements are met.
- After the FAC has sent its final advice or recommendations to EPA, FAC members may discuss the final recommendations with outside parties. Often, the Chair will be the designated spokesperson for the FAC both during the active phase of the project and when the advice has been finalized.
- When made aware of substantive press contacts to a Chair or other FAC member, the Designated Federal Officer (DFO) for the committee will notify the Office of External Affairs (OEA) for general awareness. OEA can assist reporters in obtaining relevant background information from EPA programs or regions as relevant.
- During the deliberative phase, members should refrain from characterizing study conclusions and recommendations to the press, the agency, or other members of the public. For example, the handbook for SAB members² advises that the “chair of the committee or panel “may respond to press inquiries to provide general background information on the issues under discussion and the committee’s review process” as well as refer the requester to publically available materials including draft reports, meeting minutes, and other materials. This best practice should be followed by all EPA scientific and technical FACs.
- After the advice and recommendations of the FAC have been formally conveyed to the Agency (e.g., by means of a letter or report), the Chair of the chartered FAC or the chair of the relevant sub-committee or panel is encouraged to respond to inquiries regarding the FAC’s findings and recommendations. As a courtesy, Chairs are asked to inform the DFO of all interactions with the media regarding the findings of the FAC.

Inquiries from Congressional Committees, Congressional Members or Congressional Staff

- In contrast to inquiries from members of the public or the press, inquiries from Congressional committees or staff sometimes include requests for information not limited to ongoing or planned advisory activities.
- SGE FAC members who receive Congressional requests to testify as a FAC member can respond to acknowledge receipt of the request. The DFO will notify the Office of Congressional and Intergovernmental Relations (OCIR) to coordinate the scheduling and logistics of the hearing.
 - When speaking to Congressional requestors, SGE FAC members should not discuss the work of the FAC during the deliberative phase (i.e., when the FAC is still actively developing its advice for the Agency).

²[http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/\\$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf)

- After the FAC has sent its final advice or recommendations to EPA, SGE FAC members may discuss the final recommendations with Congressional requestors. Often, the Chair will be the designated spokesperson for the FAC, but FAC members may discuss this information so long as they reflect the views of the FAC, not the views of the Agency.
- SAB members who receive Congressional requests pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) (e.g., requests to change or supplement charge questions or to convene additional SAB reviews or panels) should acknowledge receipt of the request and indicate that EPA will provide a response. The request should be forwarded to the appropriate DFO. Decisions on who and how best to respond to these requests will be made by EPA on a case by case basis. Congressional requests to SAB members regarding additional scientific issues or charge questions with respect to the work of the SAB will be evaluated by the agency in light of their relationship to ongoing or planned advisory activities and available resources.