

EITI and FACA

Extractive Industries Transparency Initiative
Advisory Committee Meeting

February 13, 2012

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FACA Background

- Passed by Congress in 1972 to regulate numerous groups providing advice to the Federal Government
- Codified at 5 U.S.C. App. 2; 41 C.F.R. Part 102-3
- Purpose: FACA was passed in the Watergate era as part of a series of laws designed to increase government transparency and to make it more accountable

FACA Background Cont'd

FACA ...

- 1) Is a procedural statute which provides for public participation in Federal agency decision making

- 2) Allows Congressional oversight
 - Agencies file charters to Congress
 - Agencies file reports to Congress
 - Congress appropriates funds

FACA's General Applicability

- FACA applies to groups established or utilized by the Executive branch for the purpose of obtaining advice or recommendations
- “Utilized” means ‘actual management and control’
- Does not apply to:
 - individual advice
 - operational committees
 - inter/intra-governmental committees
 - Exchanges of facts or information

Consequences of a FACA violation

- Good news:
 - No criminal penalties, no fines
- Bad news:
 - Failure to follow FACA rules may lead to litigation
 - time-consuming
 - future meetings could be prohibited
 - use of the group's past recommendations and/or supporting documents could be prohibited

FACA Roles and Responsibilities

2 Types of Members:

Government Members: Provide expert advice representing interests of agency

Representative Members: Provide expert advice representing interests of non-governmental entities or a recognizable group of persons/entities or segments of civil society

FACA Roles and Responsibilities

Cont'd - Ethics Rules

Government Members

- Provide their own independent opinions
- Participation must be free from conflicts of interest
- Federal Standards of Conduct rules apply

Representative Members

- Represent views of non-governmental entities or segments of civil society
- Charter-defined conflicts of interest

FACA Roles and Responsibilities

Cont'd

Designated Federal Official

- Approves and calls all committee and subcommittee meetings
- Approves all committee and subcommittee meeting agendas
- Attends all committee and subcommittee meetings
- Chairs meetings when directed by SecInt

FACA Requirements

Committees ...

- Perform advisory functions
- Are established by law, Presidential authority, or discretionary
- File a Charter containing authority, mission, goals, objectives, and logistics
- Maintain a balanced membership
- Maintain all committee documents for public inspection

FACA Requirements, cont'd

Committees ...

- Hold open public full committee meetings
- Allow public to speak or file written statements
- Announce all full committee meetings in the Federal Register – 15 days in advance
- Create and certify detailed public minutes
- Terminate according to statute, when purpose completed, or after 2 years (unless renewed)

FACA Subcommittees

- Defined as groups reporting to full advisory committee; may include non-committee members
- Do not directly advise the president or any federal agency
- Must act only under direction of DFO.
- FACA notice and open meeting requirements do not apply
 - Permissible *only* when subcommittee reporting to full committee for its consideration and deliberation
- Subcommittees v. caucuses v. preparatory and administrative committee work

Questions?