Federal Management Regulation

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA). Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) Advisory committees of the Central Intelligence Agency and the Federal Reserve System. Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) Committees exempted by statute. Any committee specifically exempted from the Act by law;

(d) Committees not actually managed or controlled by the executive branch. Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) Groups assembled to provide individual advice. Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) Groups assembled to exchange facts or information. Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) Intergovernmental committees. Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002);

(h) Intragovernmental committees. Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) Local civic groups. Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) Groups established to advise State or local officials. Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(k) Operational committees. Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered
by the Act if it becomes primarily ad-
visory in nature. It is the responsi-
bility of the administering agency to
determine whether a committee is pri-
marily operational. If so, it does not
fall under the requirements of the Act
and this part.

APPENDIX A TO SUBPART A OF PART 102–3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked
questions and identifies key points and principles that may be applied to situations not cov-
ered elsewhere in this subpart. The guidance follows:

<table>
<thead>
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<th>Key points and principles</th>
<th>Section(s)</th>
<th>Question(s)</th>
<th>Guidance</th>
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</table>
| I. FACA applies to advi-
sory committees that are either “established” or “utilized” by an
agency. | 102–3.25, 102–
3.40(d), 102–
3.40(f) | 1. A local citizens group wants to
meet with a Federal official(s) to
help improve the condition of a for-
est’s trails and quality of conces-
sions. May the Government meet
with the group without chartering
the group under the Act?  
2. May an agency official attend
meetings of external groups where
advice may be offered to the Gov-
ernment during the course of dis-
cussions?  
3. May an agency official participate
in meetings of groups or organiza-
tions as a member without char-
tering the group under the Act?  
4. Is the Act applicable to meetings
between agency officials and their
contractors, licensees, or other
“private sector program partners”? | A. The answer to questions 1, 2, and 3 is
yes, if the agency does not either “es-
tablish” or “utilize” (exercise “actual
management or control” over) the
group. (i) Although there is no precise
legal definition of “actual manage-
ment or control,” the following factors
may be used by an agency to determine
whether or not a group is “utilized”
within the meaning of the Act: (a) Does
the agency manage or control the
group’s membership or otherwise de-
termin its composition? (b) Does the
agency manage or control the group’s
agenda? (c) Does the agency fund the
group’s activities? (ii) Answering “yes”
to any or all of questions 1, 2, or 3
does not automatically mean the group
is “utilized” within the meaning of the
Act. However, an agency may need to
reconsider the status of the group
under the Act if the relationship in
question essentially is indistinguishable
from an advisory committee estab-
lished by the agency.  
B. The answer to question 4 is no. Agen-
cies often meet with contractors and li-
censees, individually and as a group,
to discuss specific matters involving a
contract’s solicitation, issuance, and
implementation, or an agency’s efforts
to ensure compliance with its regula-
tions. Such interactions are not subject
to the Act because these groups are
not “established” or “utilized” for the
purpose of obtaining advice or rec-
ommendations. |

II. The development of
consensus among all
or some of the
attendees at a public
meeting or similar
forum does not auto-
matically invoke FACA. | 102–3.25, 102–
3.40(d), 102–
3.40(f) | 1. If, during a public meeting of the
“town hall” type called by an agen-
cy, it appears that the audience is
achieving consensus, or a com-
mon point of view, is this an indica-
tion that the meeting is subject to
the Act and must be stopped? | A. No, the public meeting need not be
stopped. (i) A group must either be
“established” or “utilized” by the exec-
utive branch in order for the Act to
apply. (ii) Public meetings represent a
chance for individuals to voice their
opinions and/or share information. In
that sense, agencies do not either “es-
tablish” the assemblage of individuals
as an advisory committee or “utilize”
the attendees as an advisory com-
mittee because there are no elements
of either “management” or “control”
present or intended. |