

# **The Federal Advisory Committee Act and Public Participation in Environmental Policy**

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# **The Federal Advisory Committee Act and Public Participation in Environmental Policy**

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## **Abstract**

This paper discusses the Federal Advisory Committee Act (FACA) and how it affects public participation in environmental decision-making. Passed in 1972 as one of the "openness in government" laws, FACA governs how the federal government seeks outside advice. It has had a profound influence on who participates in government decision-making, when they participate, how they participate, and what influence participation has on policy.

FACA has had a number of notable successes. Primary among these has been its role in limiting the unbalanced influence of special interests, acting through advisory committees, on public policy-making. The advisory committees which the law governs have also achieved a number of the "social goals" of public participation, including: 1) educating the public, 2) bringing public values into government decision-making, 3) improving the substantive quality of decisions, 4) increasing trust in government institutions, and 5) reducing conflict. Often, advisory committees have given government relatively inexpensive access to experts and stakeholders in order to achieve these goals.

However, FACA has also created--directly and indirectly--a number of "chilling effects" on public participation in environmental decision-making. First are procedural requirements which make it difficult for groups outside of government to become advisory committees, and thereby gain access to decision-making. Second are ambiguities in the law and its regulations which limit the willingness of public agencies to engage the public outside of FACA. And third are Clinton Administration policies which limit the number of advisory committees that agencies are allowed to establish. Taken together, these chilling effects create a paradox wherein agencies are reluctant to engage the public in decision-making outside of FACA but significant barriers keep groups (and agencies) from forming advisory committees under the Act.

The paper concludes by recommending a streamlining of FACA's procedural requirements, a clarification of regulations and policies regarding what type of participation falls under FACA, and an elimination of administrative ceilings on advisory committee formation.

**Key Words:** public participation, Federal Advisory Committee Act (FACA), collaborative decision-making, alternative dispute resolution, consensus building, advisory committee, regulatory negotiation, mediation, policy dialogue, evaluation

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# THE FEDERAL ADVISORY COMMITTEE ACT AND PUBLIC PARTICIPATION IN ENVIRONMENTAL POLICY

Rebecca J. Long and Thomas C. Beierle<sup>1</sup>

## INTRODUCTION

Improving the ability of government agencies to engage the public in policy-making is becoming an increasingly important goal of environmental management. In the last few years, reports by the National Research Council and the Presidential/Congressional Commission on Risk Assessment and Risk Management have identified improving public involvement as one of the principal challenges facing government agencies responsible for managing environmental risks.<sup>2</sup> Innovations in environmental management--such as ecosystem management and community-based environmental protection--have also emphasized the use of collaborative processes that bring together local communities, interest groups, and government. More generally, political scientists have called attention to the role of public involvement as a remedy for the public's declining trust in government and a drop-off in civic activity seen over the last three decades.<sup>3</sup> Noting these downward trends, EPA Administrator William D. Ruckelshaus has warned that a lack of participation and trust is seriously undermining the government's ability to manage environmental risks effectively.<sup>4</sup>

In spite of the numerous calls to improve public involvement in environmental decision-making, researchers have given insufficient attention to the kinds of tools agencies can use to engage the public and how well those tools work. This paper focuses on one such tool--federal advisory committees--and the law which governs them, the Federal Advisory

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<sup>2</sup> National Research Council (NRC). 1996. *Understanding Risk: Informing Decisions in a Democratic Society* (Washington, DC: National Academy Press); Presidential/Congressional Commission on Risk Assessment and Risk Management (PCRARM). 1997. *Framework for Environmental Health Risk Management Final Report* Volume 1.

<sup>3</sup> See, for example, Putnam, Robert D. 1995. "Bowling Alone: America's Declining Social Capital," *Journal of Democracy*, vol. 6, no. 1 (January), pp. 65-78 and Slovic, Paul. 1993. "Perceived Risk, Trust, and Democracy" *Risk Analysis*, vol. 13, no. 6, pp. 675-682.

<sup>4</sup> Ruckelshaus, William D. 1996. "Trust in Government: A Prescription for Restoration," Webb Lecture, presented at the National Academy of Public Administration, Washington, D.C. (15 November).

Committee Act (FACA).<sup>5</sup> The paper describes how federal advisory committees are used as a vehicle for involving various groups outside of government in environmental decision making and evaluates how successful these committees are in achieving some of the goals of public participation. The task of evaluating advisory committees also requires a close look at FACA, because many have argued that the law, which was intended to open up government decision-making to the public, has come to be a significant barrier to public involvement.

This paper concludes that FACA, and the advisory committee system it regulates, has achieved what the Act's authors set out to do--provide government with relatively cheap and unbiased outside advice bolstered by public accountability--but that FACA has also hindered collaborative forms of public participation in certain ways.<sup>6</sup> The barriers to participation erected by the Act have been exacerbated in recent years as environmental management has increasingly focused on stakeholder-based integrated management approaches, such as ecosystem management and community based environmental protection. In short, FACA has failed to change in step with evolving notions of how to combine democratic values and environmental decision-making. The paper highlights three types of chilling effects that FACA has had on public participation: onerous procedural requirements which prevent outside groups from forming advisory committees, a fear of litigation which prevents agency personnel from engaging the public outside of FACA, and executive branch-wide policies intended to limit the number and cost of FACA-chartered advisory committees. It argues that these chilling effects have been most significant for site- and region-specific advisory committees which have increased in number in recent years.

## Outline of Paper

Section 1 provides a general background on advisory committees and FACA. It uses examples from the Environmental Protection Agency to illustrate the varied use of advisory committees in environmental decision-making.

Section 2 examines how the provisions of FACA have affected public participation in federal decision-making. It looks at two of the "chilling effects" that FACA may have on participation. The first effect concerns the barriers that FACA's procedural requirements pose for "bottom-up" efforts by citizens to participate in government decision-making. The second

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<sup>5</sup> Public Law No. 92-463 (October 6, 1972). Throughout the rest of this paper, it is assumed that "federal advisory committee" refers to FACA-chartered federal advisory committees. There are some examples of non-FACA federal advisory committees, and these exceptions are noted in the text.

<sup>6</sup> Other reviews over the last few years have also concluded that FACA is working in some respects, but that some fundamental flaws need to be addressed. See Croley, Steven P. and William F. Funk. 1997. "The Federal Advisory Committee Act and Good Government," *The Yale Journal on Regulation*, vol. 14, no. 2, pp. 451-557; Croley, Stephen P. 1996. "Practical Guidance on the Applicability of the Federal Advisory Committee Act," *Administrative Law Journal*, 10, p. 111; and General Accounting Office (GAO). 1998. *Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues*, GAO/GGD-98-147 (Washington, D.C.: U.S. General Accounting Office).

effect concerns the influence of "FACA-phobia"--a fear born of FACA-related litigation and fueled by the Act's ambiguity--on agency's decisions to engage the public in decision-making.

Section 3 examines how FACA has been used as a tool for limiting the use of federal advisory committees. Concurrent--and indeed contradictory--Clinton administration policies have encouraged agencies to increase public participation while at the same time setting limits on the cost and number of federal advisory committees. This section examines how this tension has played out in terms of participation by charting trends over the last decade in the number, membership and cost of federal advisory committees.

Section 4 examines how the trio of forces described in Sections 2 and 3--a "bottom up" chilling effect, "FACA-phobia," and administrative limits on committees--have affected one type of federal advisory committee: the site- and region-specific committees common to five agencies with environmental responsibilities. This type of advisory committee is designed to engage local stakeholders in local environmental decision-making. The examination finds that the effects of FACA vary among agencies, but at least in some, the law can seriously circumscribe the potential benefits of participation.

Section 5 takes a different look at FACA advisory committees by asking how well existing committees perform against a set of evaluative criteria. It proposes an evaluative framework which federal agencies may use as a way to assess the success of public participation efforts in general, and federal advisory committees in particular.

Section 6 concludes the paper by reviewing its "lessons learned" and outlining three recommendations for improving FACA: 1) eliminating administrative ceilings on advisory committee formation, 2) clarifying exactly what types of participatory efforts are subject to the Act, and 3) streamlining procedural requirements (through administrative or legislative channels) to make committee formation quicker and easier. The section concludes by describing a number of areas for further research.

## 1. BACKGROUND

Established in 1972 as one of the "openness in government" laws (along with the Government in the Sunshine Act, the Freedom of Information Act, and the Administrative Procedures Act), FACA was designed to counter the undue influence of special interests by balancing the membership of federal advisory committees and ensuring that committee meetings and minutes are open to the public. It was also designed explicitly to control the number and cost of FACAs. At the time of its passage, Congress believed that there were too many "inactive, meaningless, obsolete and redundant committees" but that many committees were "so powerful that they, in effect, constituted a 'fifth arm of the government' on top of the legislative, executive, judicial and regulatory or administrative branches."<sup>7</sup> FACA was

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<sup>7</sup> Cardozo, Michael H. 1981. "The Federal Advisory Committee Act in Operation," *Administrative Law Review*, vol. 33, no.1, pp. 1-62, p. 10; quoting hearings on S.1637, S.1964, and S. 2064 before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 92d Congress, 1st Sess., pt. 1, at 12 (1971).

designed to rectify that situation. Prior to the Act's passage, there were approximately 1,500 to 3,000 federal advisory committees. Because there were no registration requirements, however, it is impossible to know the exact number.<sup>8</sup> In FY 1997, this number had dropped to 963, with committees consisting of 36,586 members and serving 57 federal entities.<sup>9</sup>

The central tenets of FACA require that federal advisory committees:

- Establish a written charter that explains the mission of the committee;
- Give timely notice of committee meetings in the *Federal Register*;
- Have fair and balanced membership on the committee;
- Open committee meetings to the public, whenever possible<sup>10</sup>;
- Have the sponsoring agency prepare minutes of committee meetings;
- Provide public access to the information used by the committee;
- Grant to the federal government the authority to convene and adjourn meetings; and
- Terminate within two years unless the committee charter is renewed or otherwise provided for by statute.

Although there is great variety among the federal advisory committees that FACA governs, there are some common elements, which suggest ample opportunity for effective participation. Most advisory committees are relatively small (although when subcommittees are added, some become quite large), and most committee meetings dealing with environmental issues are open to the public. Regular meetings, fixed membership, and a discussion-based format provide opportunities for face-to-face discussion and deliberation between members over a relatively long period of time.<sup>11</sup> Members are often chosen to represent defined interests or interest groups, and membership is "balanced" among a variety of these interests.

But federal advisory committees do not comport with a model of popular grass roots participation: they are decidedly "top down" organizations. To be chartered under FACA, committees must be "established" under the authority of federal laws, by an executive agency,

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<sup>8</sup> Ibid., p. 5.

<sup>9</sup> General Services Administration (GSA). 1998. *Federal Advisory Committee Act (FACA) Database*, available at: <http://policyworks.gov/org/main/mc>

<sup>10</sup> Meetings may be closed if they involve "discussions of classified information; reviews of proprietary data submitted in support of Federal grant applications; and deliberations involving consideration of information governed by the Privacy Act." General Services Administration. 1998. *Annual Report of the President on Federal Advisory Committees, Fiscal Year 1997* (Washington, D.C.: General Services Administration), pp. 4-5.

<sup>11</sup> Committees generally exist for at least two years, at which time they are either terminated or renewed. Some committees have existed for quite some time. EPA's Science Advisory Board, for example, is in its 20th year.

or by the president.<sup>12</sup> All meetings must take place in the presence of a government official. Procedural requirements--such as publishing meeting notices in the *Federal Register*, coordinating with an agency on the publication of minutes, and even meeting in government buildings--ensure a close tie with agencies. The dissolution of committees is also at agencies' discretion.

Federal advisory committees fall into three general categories: expert, policy-level, and site- or region-specific (a fourth important type of committee, peer review committees, are not discussed in this paper). Although the boundaries between the categories are not always well-defined, general distinctions can be drawn on the basis of committees' missions and membership. The use of advisory committees at the Environmental Protection Agency over the past few years, as illustrated in Table 1, shows the useful and varied tasks of these three types of committees.

*Expert committees* are designed to provide outside technical advice on issues relevant to the function of agencies. As a source of inexpensive outside expertise, they "inject a much-needed strain of competence and critical intelligence into a regulatory system that otherwise seems all too vulnerable to the demands of politics."<sup>13</sup> At EPA, the primary expert committee is the 20-year-old Science Advisory Board, which acts as the agency's technical peer review panel. Members of expert advisory committees are typically selected for their expertise in particular disciplines, not all of them scientific. The members of EPA's Environmental Financial Advisory Board, for example, are "independent experts drawn from all levels of government...the finance, banking, and legal communities; business and industry; and national organizations."<sup>14</sup> Expert committees are not discussed further in this paper, because there are few features of them which would be considered "public participation" in the general definition of the phrase.<sup>15</sup>

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<sup>12</sup> Advisory committees are established under FACA in one of four ways: they are 1) required by statute, 2) authorized by statute, 3) established under general agency authority, or 4) established under presidential authority (generally by Executive Order). Those required by law or established by the president are considered "non-discretionary" while those authorized by law or created under agency authority are considered "discretionary."

<sup>13</sup> Jasanoff, Sheila. 1990. *The Fifth Branch: Science Advisers as Policymakers* (Cambridge, Mass.: Harvard University Press), p. 1.

<sup>14</sup> Environmental Financial Advisory Board (EFAB). 1998. Available at:  
<http://www.epa.gov/efinpage/efabmem.html>

<sup>15</sup> There are, however, interesting questions about whether lay people should play a more active role in expert committees. Jasanoff (1990) discusses at length the social construction of advice from expert advisory committees. This raises the issue of whether lay people should participate in expert committees or other "objective" policy advising roles and whether expert advice can be regarded as objective. It is certainly true that some technical issues are not entirely objective: risk assessment, for example, often requires the comparison of many different kinds of risks, and thus requires certain subjective valuations. Although important, these issues are not taken up in this paper.



**Table 1: Selected Advisory Committees at EPA**<sup>16</sup>

<b>Expert Advisory Committees</b>	
Science Advisory Board	A "technical peer review panel" that "provides such scientific advice as may be requested by the [EPA] Administrator" or relevant congressional committees.
Environmental Financial Advisory Board	A board composed of "independent experts" to "provide authoritative analysis and advice to the EPA Administrator on finance issues to assist the Agency in carrying out its environmental mandates."
<b>Policy-Level Advisory Committees</b>	
<i>Study Commission</i>	
Risk Assessment and Risk Management Commission	A commission convened to "make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws."
<i>Standing Advisory Committees</i>	
Clean Air Act Advisory Committee	A committee formed to provide EPA with advice on a variety of national air quality issues related to the implementation of the Clean Air Act Amendments of 1990.
<i>Policy Dialogue Committee</i>	
Common Sense Initiative Council	A council established to "bring together federal, state, and local government representatives, environmental and environmental justice leaders, industry representatives, and other stakeholders to examine the full range of environmental requirements affecting industry" in six sectors.
<i>Regulatory Negotiation</i>	
Small Nonroad Engine Negotiated Rulemaking Advisory Committee	A committee formed to negotiate rules on controlling emissions from small nonroad engines (less than 25 horsepower) which had been identified by EPA as significant contributors of ozone precursors and carbon monoxide in National Ambient Air Quality Standard non-attainment areas.
<b>Site-Specific Advisory Committees</b>	
Community Advisory Groups	Local committees "made up of representatives of diverse community interests" that "provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at [Superfund] sites affecting them." Although not chartered under FACA, these committees comply with the "spirit" of FACA.

*Policy-level committees* advise on the more value-laden, social dimensions of policy. These include committees established to conduct regulatory negotiations and policy dialogues, as well as study commissions and standing advisory committees. In general, policy-level committees provide substantive input from the point of view of a variety of

<sup>16</sup> Sources include:

Science Advisory Board, <http://www.epa.gov/sciencel/about.htm>;

Environmental Financial Advisory Board, <http://www.epa.gov/efinpage/efabmem.html>;

Commission on Risk Assessment and Risk Management,

[http://www.riskworld.com/Nreports/1996/risk\\_rpt/html/nr6aa028.html](http://www.riskworld.com/Nreports/1996/risk_rpt/html/nr6aa028.html);

Common Sense Initiative Council Federal Advisory Committee, *Federal Register* (November 3, 1994);

Environmental Protection Agency, *Community Advisory Groups: Partners in Decisions at Hazardous Waste Sites*, EPA 540-R-96-043.

stakeholders, act as a sounding board for the acceptability of policies, and provide some amount of democratic legitimacy to decisions. When an issue is at the "frontiers of science" in which facts are in dispute, policy-level advisory committees are often used in conjunction with expert committees to add a social dimension to the discussion.<sup>17</sup> For example, the EPA Administrator's Toxic Substance Advisory Committee (ATSAC) was chartered to advise the agency "on policy, technical and procedural matters relating to the environmental, economic, and social aspects" related to the Toxic Substances Control Act (TSCA), but to "generally defer" to the Science Advisory Board on scientific matters.<sup>18</sup> Policy-level committees may also create subcommittees to inform them about the more technical aspects of an issue.

Policy-level committees come in a number of varieties. Regulatory negotiations and policy dialogues are designed to generate the substance of environmental decisions through consensus among various stakeholders. Study commissions are often tasked with producing one or a series of reports on a defined topic over a discrete period of time. For example, the Presidential/Congressional Commission on Risk Assessment and Risk Management recently produced a series of reports on the role of risk assessment in environmental decision-making. Standing advisory committees, on the other hand, are often written into legislation to be called upon for policy advice over an indefinite period of time. The Clean Air Act Advisory Committee, for example, advises EPA on the "potential health, environmental, and economic effects of programs" and their "potential impacts on the public, state and local governments, and the regulated community" from the point of view of a variety of stakeholders.<sup>19</sup>

While expert and policy-level advisory committees typically deal with national issues, *site- or region-specific advisory committees* deal with a defined geographic area and set of stakeholders. Many agencies with environmental responsibilities have moved toward more locally-based advisory committees in recent years. Trends in environmental management, such as ecosystem management, community-based environmental protection, and integrated watershed management, as well as attention to environmental justice issues, have all necessitated the more active involvement of local communities and interests.

At the site-specific level--although participation is still heavily weighted toward interest group representation--participants are more likely to be "closer to the people" than in policy-level committees. As committees become more site-specific, boundaries between stakeholder affiliations are also likely to be more blurred: the leader of an environmental group may also be a business or home owner in the region. One might also expect a higher level of interest among the wider public in the outcomes of the process, and therefore more widespread participation. At the site-specific level, it may be easier to locate and engage poorly funded or poorly organized groups. The potential for conflict may also be greater, as

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<sup>17</sup> Jasanoff, 1990, vii.

<sup>18</sup> Ashford, Nicholas A. 1984. "Advisory Committees in OSHA and EPA: Their Use in Regulatory Decisionmaking," *Science, Technology & Human Values*, vol. 9, no.1, pp. 72-82., at p. 75.

<sup>19</sup> Clean Air Act Advisory Committee (CAAAC). 1998. Available at: <http://134.67.104.12/html/ozpmrh/caaac.html>

the consequences of decisions may be more directly borne by those involved. In short, while national policy-level committees represent a more traditional pluralist approach to decision-making, the site- and region-specific committees approach a more direct model of democracy.

EPA's main site specific committees are Community Advisory Groups (CAGs), recently established at a handful of Superfund sites (mainly those with environmental justice concerns) in order to provide communities with more input and access to site cleanup decisions.<sup>20</sup> CAGs are not chartered under FACA (this issue is dealt with specifically in Section 4) but comply with the "spirit" of the law and serve to illustrate how such site-specific advisory committees can function. EPA envisions CAGs as "bottom up" participatory efforts--communities must organize themselves prior to being certified by EPA. The groups are explicitly local--EPA specifies that at least half of the members should be residents who live near the site with a "direct, personal interest" in it. The other half "might be made up of the medical community, local government, or real estate representatives."<sup>21</sup> The most obvious distinction between these site-specific groups and policy-level groups is that, in addition to those with an obvious conflict-of-interest (such as potentially responsible parties, remedy vendors, and lawyers involved in site-related litigation) EPA guidance says that non-local representatives of national groups, including environmental groups, should not be involved in the CAG. Instead, CAGs are intended as a "public forum for representatives of diverse community interests to present and discuss their needs and concerns related to Superfund."<sup>22</sup>

How an agency uses these three different types of advisory committees reflects the nature of its environmental management responsibilities. EPA, as a primarily standard-setting and rulemaking agency, uses FACA mainly to charter a number of Washington-based expert and policy-level advisory committees. In contrast, the Bureau of Land Management, the largest land manager in the western United States, has mostly region-specific committees.<sup>23</sup> Because FACA can have different effects on site- and region-specific committees than on policy-level committees, these significant differences in focus mean that FACA-related issues can have profoundly different effects across agencies.

While policy-level and site- and region-specific committees can provide a valuable channel for dialogue between agencies and the public, many have charged that the Federal Advisory Committee Act can stand in the way. The next two sections discuss the paradox of how a law intended to increase public access to government decision-making can become a barrier to public involvement. Section 2 discusses FACA's internal paradox--the "chilling

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<sup>20</sup> EPA's community advisory groups (CAGs) were developed in response to a report issued in April 1994. See Environmental Justice Task Force. 1994. *Environmental Justice Task Force Draft Final Report*, EPA 540-R-94-004.

<sup>21</sup> U.S. Environmental Protection Agency (EPA). 1996. "Focus on the Community Advisory Group Program" *Superfund Today* (Washington, D.C.: U.S. Environmental Protection Agency), May.

<sup>22</sup> U.S. Environmental Protection Agency (EPA). 1995. *Guidance for Community Advisory Groups at Superfund Sites*, EPA 540-K-96-001 (December), p. 3.

<sup>23</sup> General Services Administration (GSA). 1998. *Twenty-Sixth Annual Report of the President on Federal Advisory Committees: Fiscal Year 1997*.

effects" created by the Act's procedural requirements and ambiguity over its scope and balance provisions. Section 3 discusses FACA's external paradox--how executive branch efforts to limit the number and cost of advisory committees conflict with simultaneous efforts to increase public involvement in collaborative policy-making.

## **2. FACA'S INTERNAL PARADOX: "CHILLING" PUBLIC PARTICIPATION**

In a 1994 study, 54 natural resource professionals ranked FACA as the *greatest* legal barrier to ecosystem management.<sup>24</sup> This section examines how FACA may have created such a barrier to this and other forms of collaborative governance. Specifically, it discusses two "chilling effects" which FACA can have on public participation. In the first, public groups who would otherwise contribute to environmental decision-making are confronted by FACA's procedural requirements and find that they create a barrier too high to surmount. In the second, ambiguity about the law's requirements and litigation arising from (or taking advantage of) this ambiguity creates a fear among agencies of any type of public involvement with entities not chartered under FACA. Taken together, these effects draw a sharp line between FACA "haves" and FACA "have nots": while groups that become chartered under the Act enjoy access to government decision-making, those that can not surmount the law's procedural barriers are kept at arm's length because of agencies' fear of litigation. These chilling effects are particularly troubling at the local level, where participation may be more ad hoc and informal, consensus may be fragile, and problems may involve people who have very real personal interests at stake.

### **Chilling Effect: Procedural Barriers to Public Participation**

One way that FACA may introduce a chilling effect on participation is by creating procedural hurdles for establishing and operating an advisory committee. These hurdles may be so high that, from the public's viewpoint, overcoming them is simply not worth the effort. As a result, FACA can squelch the kind of grassroots or "bottom-up" participatory efforts integral to more responsive government in general and place-based environmental management efforts in particular.

One component of the barrier goes to the very heart of grass roots participation: the cost of becoming a formal partner in decision-making processes is paid by trading in a "bottom up" ethos for one which is decidedly "top-down." In establishing and running a FACA committee, all roads lead to Washington. Brendler and Crosman (1996) point out, in reference to participation in Forest Service decision-making:

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<sup>24</sup> Those interviewed included "Forest Service Regional Social Science Coordinators, General Counsels, Regional and Forest-level Ecosystem Management Coordinators, Forest Supervisors, District Rangers, BLM planners, NGOs, and private industry executives." See: Schlager, Daniel B. and Wayne A. Freimund. 1994. "Institutional and Legal Barriers to Ecosystem Management," paper presented at the "Integrating Social Science in Ecosystem Management Conference" Helen, Georgia, 12-15 December, p. 1-3.

The fact that decisions concerning advisory committees are made in Washington removes the chartering process from the local and regional levels, where many committees originate and seek to operate. Even requests for chartering that originate at Forest Service districts, must rise within a rigid bureaucratic hierarchy, increasing the delay and the risk of disapproval.<sup>25</sup>

Turning over control is not just a psychological barrier--it extends even to the participatory process because FACA gives federal agencies power to adjourn meetings, approve agendas, and approve membership. Where trust in government is already low, as is the case in many environmental contexts, ceding such power to the government may undermine the legitimacy of a participatory process from the start.

Should a group choose to seek a charter under FACA, the hurdles are significant. Approval for establishing a new advisory committee must be granted by an agency, the president, or legislation. After a new committee is approved, the chartering process can take anywhere from six months to a year. Once operating, a committee must notify its sponsoring agency of upcoming meetings for publication in the *Federal Register*, coordinate with a Designated Federal Official, and often seek approval of all changes in membership. The expended time and effort it takes to incorporate a committee often creates unrealistic expectations about the kind of impact an advisory committee can have on decision-making. Agencies are often unwilling to, or legally restricted from, meeting these expectations.

The story of the Blue Mountains Natural Resources Institute Advisory Committee (BMNRI) is a telling example of the difficulties of forming a FACA-chartered advisory committee.<sup>26</sup> Following legal challenges to President Clinton's Northwest Forest Plan on the basis of FACA violations, the Forest Service required that all non-governmental groups wishing to continue advising on Forest Service policy charter under FACA. BMNRI chose to do so. The BMNRI Advisory Committee includes representatives of county, state, federal, and tribal governments and non-government institutions and interests. Its objective is to advise the Forest Service on resource issues by conducting research, demonstrating technologies, and facilitating cooperation among various interests in the Blue Mountains of Washington and Oregon. BMNRI was "established" under FACA after being written into the Food, Agriculture, Conservation, and Trade Act of 1990 as a result of the sponsorship of Congressman Bob Smith (R-OR). The legislation was passed in 1990 and the charter approved in 1991 (although the Institute apparently did not find out about the approval until 1994). It took until 1995, however, for the Forest Service to approve BMNRI's membership, and only then--five years later--could the Institute begin giving formal advice to the Forest Service. Changes of administration, turn-over at the Forest Service, and policy changes about what

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<sup>25</sup> Brendler, Thomas and Shirl Crosman. 1995. *The Federal Advisory Committee Act: Implications for Public Involvement on the National Forests* (Santa Fe, New Mexico: The Forest Trust), p. 8.

<sup>26</sup> Much of the information on the Blue Mountains Natural Resources Institute comes from conversations with Lynn Starr of BMNRI.

constituted "balance" on committees all contributed to the delays. These issues are typical of federal policy-making, but FACA was the vehicle by which they were translated, in this case, into a five-year hurdle for bottom-up participation. Unfortunately, the consequence of not getting chartered under FACA--and avoiding the kinds of efforts and delays experienced by BMNRI--may often be losing the ability to engage in a constructive deliberative process with government agencies.

### **Chilling Effect: "FACA-phobia"**

While FACA's procedural requirements may chill participation by raising barriers to members of the public who might otherwise participate, the Act's ambiguity gives rise to the second form of chilling effect--in this case, on the part of agencies. Dubbed by one observer as "FACA-phobia," the effect arises when agencies choose not to interact with interest groups in ad hoc meetings out of confusion over what FACA requires and a subsequent fear of being sued for violating the law.<sup>27</sup> The fear may be well founded. A number of lawsuits described in the remainder of this section have charged that agencies have violated some aspects of FACA, mainly by neglecting to charter committees which should have been governed by the Act.

The result of FACA-phobia is a wariness, on the part of agencies and their personnel, about engaging the public in any forum not chartered under FACA. A 1995 report issued by the Interagency Ecosystem Management Task Force (IEMTF), an interagency group of senior level federal agency officials established in 1993, recognized this phenomenon. It stated that "many federal agency personnel believe that the Act restricts virtually all contacts with nonfederal entities, and are fearful that any such contacts will subject them to legal action."<sup>28</sup> This fear can cause government agencies to pull out of participatory processes or avoid them in the first place. The former can be particularly damaging when agencies remove themselves from a collaborative effort, disrupting what is already often a fragile process. As the sponsor of one locally-based collaborative process on forest issues said: "Its been very difficult not having the representatives who manage 70 percent of our watershed at the table."<sup>29</sup> FACA-phobia may also be a convenient excuse: some environmentalists charge that agencies often refuse to listen or meet with them on the grounds that to do so would be in violation of FACA.

FACA-phobia arises in large part because of ambiguities in the Act that have not been resolved either through GSA's regulations or through judicial interpretation. Agencies and their personnel are left with considerable uncertainty about when to invoke FACA, and if they don't, whether they are violating it. The problem has been catalyzed by a number of lawsuits

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<sup>27</sup> Brendler, Thomas. 1996. "The Federal Advisory Committee Act: What You Need to Know," *The Chronicle of Community*, vol. 1, no.1, pp. 44-47, at p. 46.

<sup>28</sup> Interagency Ecosystem Management Task Force (IEMTF). 1995. *The Ecosystem Approach: Health Ecosystems and Sustainable Economics*, Vols.I-III (Washington, D.C.: IEMTF), Vol.1, p. 34.

<sup>29</sup> Durbin, Kathie. 1994. "The progress of freewheeling consensus jeopardized as feds pull back," *High Country News*, vol. 26, no. 19 (October 17).

which allege that agencies have violated the Act. The General Accounting Office (GAO) recently surveyed federal agencies about the extent to which FACA has in fact "chilled" their public participation efforts, and in what ways. Six out of the 19 agencies surveyed reported that their agency had "decided not to receive or solicit input from public task forces, public working groups, or public forums, or other outside parties . . . because of the possibility of future litigation over compliance with FACA."<sup>30</sup> The GAO study also reported that eight out of the 19 agencies responded that the possibility of FACA-related litigation "inhibited their getting input from parties outside of FACA to some, a moderate, or a very great extent." Six agencies were able to cite specific instances between fiscal years 1995 and 1997 when they decided not to "solicit or receive outside input" because they feared FACA-related litigation.<sup>31</sup>

The main culprits of FACA-phobia are FACA's scope and balance provisions. *Scope* deals with what type of participation falls under FACA. *Balance* deals with the extent to which various interests are fairly represented on a committee and whether any conflicts-of-interest exist. In fact, of the thirteen lawsuits reported in the GAO survey mentioned above, nine dealt with scope issues (i.e., whether the committee was subject to FACA), and two with issues of balance. These issues of scope and balance are discussed separately below.

#### Scope: What kind of participation is governed by FACA?

FACA legislative language defines an advisory committee subject to its provisions as follows:

"any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee") which is--

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government."<sup>32</sup>

In 1987, the GSA Committee Management Secretariat issued a Final Rule on Federal Advisory Committee Management which sought to clarify the legislative language and provide agencies with guidance regarding what types of activities are subject to the Act.<sup>33</sup> Subsequent judicial interpretation has, in some cases, clarified the type of participatory

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<sup>30</sup> GAO, 1998, p. 59.

<sup>31</sup> Ibid., p. 16.

<sup>32</sup> 5 U.S.C. App. II Section 3(2) cited in Croley and Funk, 1997, p. 472.

<sup>33</sup> 41 CFR Part 101-6.

activities to which FACA applies. However, judicial interpretation has also confused the issue, because courts have generally not deferred to GSA's interpretation of the Act.<sup>34</sup> Agencies are left with no clear line between which kinds of participatory efforts are subject to FACA and which are not.

Much of the debate over FACA's scope rests on the interpretation of the words "established" and "utilized" in legislative language. While a common interpretation of the word "utilized" might conclude that FACA applies to any group from which the President or a federal agency receives advice concerning a particular policy, the courts have found otherwise. In *Public Citizen vs. U.S.*, a case involving the President's reliance upon the American Bar Association's (ABA) Standing Committee on Federal Judiciary--and the only Supreme Court FACA case--the court stated:

"Utilize" is a woolly verb, its contours left undefined by the statute itself. Read unqualifiedly, it would extend FACA's requirements to any group of two or more persons, or at least any formal organization from which the President or an executive agency seeks advice. We are convinced that Congress did not intend that result. A nodding acquaintance with FACA's purpose . . . reveals that it cannot have been Congress's intention, for example, to require the filing of a charter, the presence of a controlling federal official, and detailed minutes any time the President seeks the views of the National Association for the Advancement of Colored People (NAACP) before nominating Commissioners to the Equal Employment Opportunity Commission.<sup>35</sup>

In short, any strictly literal interpretation of FACA's definition of an advisory committee straightjackets even the most commonplace government dealings. The court based its argument on the fact that applying FACA to the president's consultation with the ABA would be an infringement of the President's power to nominate federal judges, and thus a violation of the Constitution's separation of powers doctrine.

Responding to GSA regulations and subsequent court cases, agencies most consistently use four criteria--taken together--to determine whether an outside group might qualify as an advisory committee under FACA. These are:

- Whether the agency is receiving advice and recommendations rather than simply exchanging facts and information

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<sup>34</sup> The courts have not given GSA regulations much deference because, 1) of a general lack of deference to regulations developed by one agency (GSA) for a statute that governs all agencies, 2) the fact that the regulations were promulgated many years after the act was passed, and 3) the fact that they were not promulgated as a result of explicit statutory authority. See Croley, 1996, p. 124.

<sup>35</sup> 491 U.S. at 452-53 cited in Croley and Funk, 1997, p. 469.



- Whether the agency is receiving advice and recommendations from a *group* (sometimes interpreted as consensus advice) or from a collection of *individuals* giving independent advice and recommendations,
- Whether the agency is exerting strict agency management and control over a group that is giving it advice and recommendations, and
- Whether the agency meets with a group repeatedly and regularly rather than occasionally and on an ad hoc basis.

These criteria still leave substantial room for interpretation. And agencies are continually forced to make these interpretations because many of the desirable features of public involvement--such as group discussion, consensus, and responsiveness to public recommendations--push agencies up against (or over) the threshold of FACA applicability. Some agency personnel may be guilty of excessive FACA-phobia when avoiding participatory efforts that don't approach this threshold. In these cases, clarity of agency policy is in order. However, in many cases agencies probably *are* near this threshold, and FACA-phobia is probably an appropriate response. In these cases, the underlying problem goes back to the ambiguity of the GSA regulations and even the law itself in explicitly stating where that threshold is. In order to avoid both types of FACA-phobia--that which is excessive and that which is probably justified--the criteria for determining what types of groups are subject to FACA need to be made more clear. This issue is taken up again in the recommendations discussed in Section 6.

Agencies might take some solace in the fact that FACA does not prescribe remedies for violation of its scope provisions. With only one exception, federal courts have allowed agencies to make use of material developed in violation of this aspect of FACA, arguing that to order agencies to abandon fact-finding reports and/or recommendations that have already been completed would be excessive. For example, in a case in which the California Forestry Association sought to prevent the United States Forest Service from relying on a report that was developed in violation of FACA, the court argued that "the preparation of the report has already consumed millions of dollars. If the Forest Service needs a scientific evaluation of the Sierra Nevada for its own use, an injunction prohibiting its use of the SNEP study would require it to commission another (presumably duplicative) study of the Sierra Nevada."<sup>36</sup>

In *Alabama-Tombigbee Rivers Coalition v. Fish and Wildlife Service*, however, the judge did prevent the government from using a report prepared in violation of FACA.<sup>37</sup> This one exception provides illuminating insights into the fine line agencies must walk in deciding whether to invoke FACA when soliciting advice. The case concerned a report prepared by a scientific advisory committee that was formed after the U.S. Fish and Wildlife Service (FWS) published a proposed rule to list the Alabama Sturgeon as an endangered species. The

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<sup>36</sup> *California Forestry Association v. United States Forest Service*, 102 F.3d 609, 614 D.C. Cir. 1996.

<sup>37</sup> *Alabama-Tombigbee Rivers Coalition v. Fish and Wildlife Service*, 26 F.3d 1103 (11th Cir. 1994).

advisory committee, which was charged with assessing the current status of the species, consisted of four non-governmental scientists appointed by FWS. Originally, FWS had intended the scientists to provide individual evaluations and recommendations, thereby exempting the committee from FACA. However, shortly before the committee was convened, FWS "substantially changed the structure of the 'panel.' The modified structure . . . was for the scientists to meet and compile a single collective report."<sup>38</sup> A few days before the report's planned release, the Alabama-Tombigbee Rivers Coalition (a group of thirty-four businesses and organizations operating in Alabama and Mississippi) filed a complaint seeking a temporary restraining order and a permanent injunction against the release, use of, or reliance upon the report on the grounds that FWS had violated FACA's fair balance and openness provisions. The court ruled that the cooperation of the scientists in generating a single report (rather than individual recommendations) pushed the committee over the FACA threshold and ruled that FWS had in fact violated the Act. Moreover, the court granted the injunction, stating that "to allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of [FACA]." Furthermore, it found "injunctive relief *as the only vehicle that carries the sufficient remedial effect* to ensure future compliance with FACA's clear requirements" [emphasis added].<sup>39</sup>

Balance: Who should participate? Who shouldn't?

The second, although probably less significant, component of FACA-phobia has to do with ambiguity about how to "balance" an advisory committee. Introducing balance into advisory committees has actually been one of FACA's great successes. Prior to the law's passage, at least 105 of the 155 members of the National Petroleum Council, a government advisory committee, were directly involved in the oil industry.<sup>40</sup> Today, this would be a clear violation of FACA's requirement that advisory committees be "fairly balanced in terms of the points of view represented and functions to be performed."<sup>41</sup>

Yet determining whether a committee is in compliance with FACA's balance provision is not a straightforward process. FACA itself contains no specific guidelines regarding balance. GSA regulations largely leave to individual agencies the responsibility for interpreting what constitutes balance. The agencies are simply required to submit to GSA, along with the committee charter, an explanation about how they plan to balance the committee and to publish such a plan in the Federal Register. The general consensus in the legal literature is that the criteria for balance should vary according to the subject matter of the committee. Thus, "where the issues are broad and policy-oriented, advisory committees

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<sup>38</sup> Ibid., p. 1105.

<sup>39</sup> Ibid., p. 1105.

<sup>40</sup> Gage, Kit and Samuel S. Epstein. 1977. "The Federal Advisory Committee System: An Assessment," *Environmental Law Reporter*, p. 50005, footnote 36.

<sup>41</sup> Public Law 92-463, Sec. 5(b)(2)

should also be broadly representative, along technical, social, and political dimensions. By contrast, where the issues are more technical . . . FACA may be satisfied by an adequate representation of relevant scientific viewpoints."<sup>42</sup>

Many agencies have their own policies for how they will achieve balance.<sup>43</sup> For example, a DOE memo regarding committee membership states that, in addition to complying with FACA's guidelines, "consideration shall also be given to such interests as the geographic regions of the country; minority groups; women's organizations; public and private academic institutions, including Black Colleges and Universities; physically challenged individuals and groups; and the public at large."<sup>44</sup> In general, the courts have not interfered with agency discretion in determining whether a committee is appropriately balanced, mainly because they have been unable or reluctant to identify an objective measure of what constitutes fair balance.<sup>45</sup>

Some analysts have noted, however, the potential controversy between FACA's balance requirements and conflict-of-interest law. Nuskiewicz (1992), for example, has argued that FACA's fair balance requirements *require* the participation of "not only those who are to be regulated, but also those who would be benefited."<sup>46</sup> In *National Anti-Hunger Coalition v Executive Committee*, Judge Gerhard Gesell took a similar position.<sup>47</sup> Regarding the Grace Commission--which was established in order to make recommendations about a federal food-stamp program--he ruled that the commission had violated FACA's balanced membership requirement because it did not include someone who would be directly affected by the program, namely a food stamp recipient.<sup>48</sup> Judge Gesell's argument implies that FACA's balance provisions can only be satisfied through *direct* participation, and not through representation of those interests, through, for example, a low-income advocacy group.

Such an interpretation of FACA's balance requirements poses some serious problems with respect to conflict-of-interest law. The United States Code makes it a criminal offense to:

participate personally and substantially as a Government officer or employee [including a special Government employee], through decision, . . . recommendation, the rendering of advice, investigation, or otherwise, . . . [in any] particular matter in which, to his knowledge, he, his spouse, minor child, general partner, . . . or organization . . . has a financial interest.<sup>49</sup>

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<sup>42</sup> Jasanoff, 1990, p. 47.

<sup>43</sup> Croley and Funk, 1997, p. 501.

<sup>44</sup> U.S. Department of Energy (DOE). 1996. M 510.1-1, IV-2, (30 September).

<sup>45</sup> Croley and Funk, 1997, p. 518.

<sup>46</sup> Nuskiewicz, 1992, p. 968.

<sup>47</sup> *National Anti-Hunger Coalition v Executive Committee*, 557 F. Supp 524, D.D.C. 1983.

<sup>48</sup> Nuskiewicz, 1992, p. 969.

<sup>49</sup> 18 U.S.C., Section 208, Supp. I 1989 quoted in Nuskiewicz, 1992, p. 960

From a legal standpoint, therefore, the question of whether a FACA member with a financial interest in the committee's charge is violating conflict-of-interest law rests on the question of whether or not he or she is considered to be a special government employee. This, in turn, depends on whether the member was selected in an individual or a representative capacity. If an individual is selected to serve in an independent capacity based on his or her individual qualifications, then she or he is considered to be a special government employee, and is required to submit either confidential financial disclosure statements or public financial reports.<sup>50</sup> By contrast, if an individual is selected as a representative of a group, then she or he is not considered a special government employee and therefore not subject to conflict-of-interest law. There is no simple answer to whether FACA members serve in an individual or representative capacity. In some instances, particularly in the case of scientific/technical committees, members are selected for their individual expertise. However, in the case of federal advisory committees dealing with policy issues, such as EPA's National Environmental Justice Advisory Council, members are more likely to be selected as representatives of particular interests.

In general, issues of balance have been less of an issue in litigation than issues of scope, and so contribute less to FACA-phobia. If deemed desirable, however, reforming the balance requirements would require that GSA establish regulations which specify certain criteria for establishing and measuring balance. In fact, GSA's 1997 Advanced Notice of Proposed Rulemaking calls for a review of "elements of 'balance' for committee membership." This would give agencies a consistent guide for their own procedures and the courts an objective measure for making rulings. However, just as the courts have had difficulty in identifying an objective criteria for balance, it is difficult to think of what kind of balance criteria would be applicable to all committees potentially subject to FACA.

## Conclusion

While the chilling effects discussed in this section all revolve around FACA implementation--whether groups choose to pursue a charter, whether agency personnel choose to engage groups outside of FACA, or whether the right interests are represented on a committee--the origins of these chilling effects can be traced to problems in the Act and its regulations. In the case of FACA-phobia, the threat of litigation and subsequent judicial interpretation of the Act also plays a large role. While these are not arguments for eliminating FACA, they are certainly arguments for revising some aspects of it (a topic we return to in Section 6).

One other major barrier to public involvement related to FACA does not derive from the law or its regulations, but from executive branch-wide policies meant to limit the number of advisory committees. Efforts by the Clinton Administration to control the number and costs of advisory committees have come up against a countervailing effort to make federal policy-making more participatory. The next section examines how these competing trends

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<sup>50</sup> Nuszkievicz, 1992, p. 962.

have played out in the government as a whole, and in three agencies with environmental responsibilities.

### **3. FACA'S EXTERNAL PARADOX: INCREASING COLLABORATION WHILE ELIMINATING COMMITTEES**

Because they are often taken to be unnecessary or wasteful, advisory committees have long been a popular item on the budgetary chopping block. In fact, one of FACA's original goals was to reduce the number of advisory committees. While the law acknowledged that advisory committees could be a "useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government," it also explicitly stated that they should be used sparingly, stating that "new advisory committees should be established only when they are determined to be essential and their numbers should be kept to the minimum necessary."<sup>51</sup>

The law continues to be a lever for reducing the number of advisory committees. The Clinton Administration's "reinventing government" initiative included strong measures to reduce the use of advisory committees in order to lower related expenses. In particular, Executive Order (EO) 12838, signed on February 10, 1993, ordered agencies to reduce the number of discretionary committees (those "authorized" by Congress or established by agencies) by one-third. New discretionary committees that exceeded an agency's ceiling, as established by the Executive Order, were subject to review and approval by the Director of the Office of Management and Budget. In order to ensure that agencies reduced the costs, as well as the *number* of committees, Vice-President Gore also issued a memorandum on June 28, 1994 in which he directed agencies to lower their advisory committee expenditures by at least 5 percent. While this may seem like a fairly modest goal, it is a tall order given that total federal advisory committee expenditures have *risen* almost every year since 1985.

At the same time that the Clinton Administration has asked agencies to reduce their use of advisory committees, it has advocated that agencies broaden collaborative efforts in regulatory decision-making and experiment with consensus building techniques. Paradoxically, advisory committees are the principal mechanisms by which such collaborative efforts would take place.<sup>52</sup> Encouraged to increase collaboration on the one hand, and forced to reduce the number of advisory committees on the other, agencies are caught in a dilemma between opposing policy directives. Often their choice is to either avoid public participation altogether or utilize alternative forms of public involvement which do not trigger FACA.

This section describes the impacts of these competing policy trends by examining the change in the use, cost, and membership of advisory committees over the past decade. It looks at government-wide aggregate data and at data for three agencies with significant environmental responsibilities--EPA, DOE, and DOI--to see which of the two competing policy directives has had the upper hand in determining how participatory government will be.

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<sup>51</sup> Public Law 92-463, Section 2(b)(2).

<sup>52</sup> Croley, 1996, p. 114.

## Government-wide Trends

Aggregate data indicate that, although the number of committees has gone down since 1993, costs have not (see Figures 1 and 2). The number of advisory committee members and meetings have also continued to rise. Between 1985 and 1992, the number of advisory committees rose gradually, from 926 to 1,141. Since then, their number has declined until a small rise in 1997. During the same period, the number of members serving on advisory committees has generally risen. In 1997, while committees were down to 963 from 1,141 in 1992, membership had climbed from around 29,000 to a record high of 36,586 over the same period.<sup>53</sup> This increase in the number of committee members is partly due to a proliferation of subcommittees. Rather than creating entirely new committees with their own charters, agencies often seek to avoid administrative hassle by creating subcommittees of existing committees. While the *members* of subcommittees are included among GSA's record of total members, the subcommittees are not counted as separate committees. Committee mergers also reduce the number of individual advisory committees without reducing the total number of members.

Along with the number of committee members, costs have also risen. The federal government spent \$169 million on advisory committees during fiscal year 1997, compared to approximately \$110 million in 1985.<sup>54</sup> In real terms, committee costs in 1997 had risen 54 percent from 1985 and 23 percent since 1994. In the face of the Clinton Administration's goal of *reducing* FACA expenditures by 5 percent, this increase is quite large.

## Environmental Protection Agency

At the end of FY 1997, EPA had 27 committees, a large increase from 1985, when it had seven, but only a small increase since 1993, when it had 25 (see Appendix B). As indicated in Figure 3, the number of members serving on EPA's advisory committees nearly doubled from 1993 to 1997. Since agencies must pay for travel and per diem expenses for committee members and staff, this increase in membership has resulted in a substantial increase in costs, which more than tripled since 1993 (see Figure 4).

EPA's advisory committees met over twice as frequently in FY 1995 as in FY 1994 but the number of meetings has since dropped off (see Figure 4).<sup>55</sup> The increase is mainly due to the Common Sense Initiative Council (CSIC), chartered in 1995 to develop "cleaner, cheaper, smarter" environmental management solutions. CSIC consists of one parent council (made up of 32 senior level representatives of a variety of interests ranging from small business to environmental justice) and six business sector subcommittees. Including its subcommittees, CSIC met 151 times in FY 1995 (almost half of EPA's total FACA meetings)

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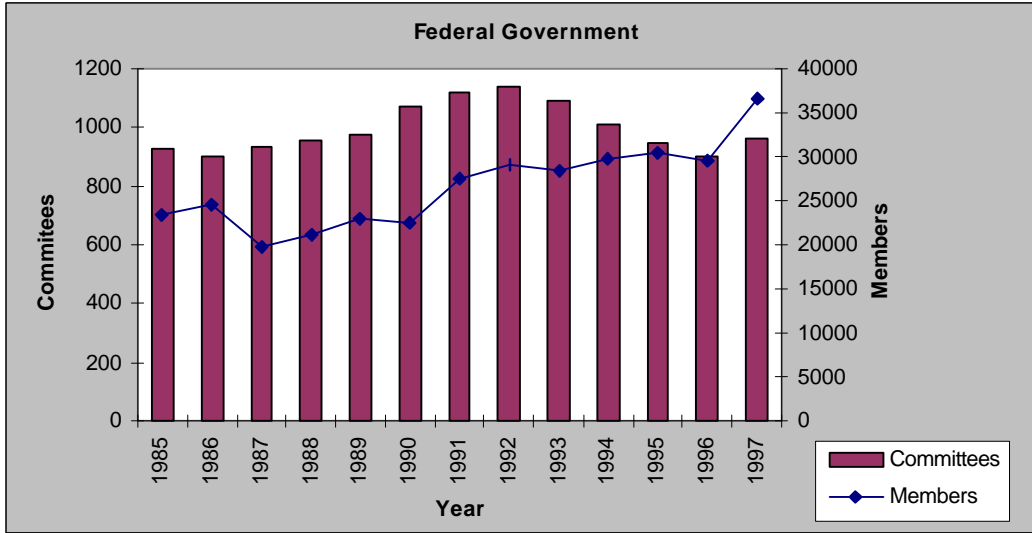
<sup>53</sup> GSA, 1998.

<sup>54</sup> Unless indicated otherwise, all expenses are provided in 1995 dollars. See Appendix A for exact figures. Costs were adjusted for inflation using the CPI-U, for all urban consumers for major expenditure classes, Table B-56, *Economic Report of the President*, February 1996.

<sup>55</sup> It should be noted that FACA meetings can be scheduled for as long as two or three days.

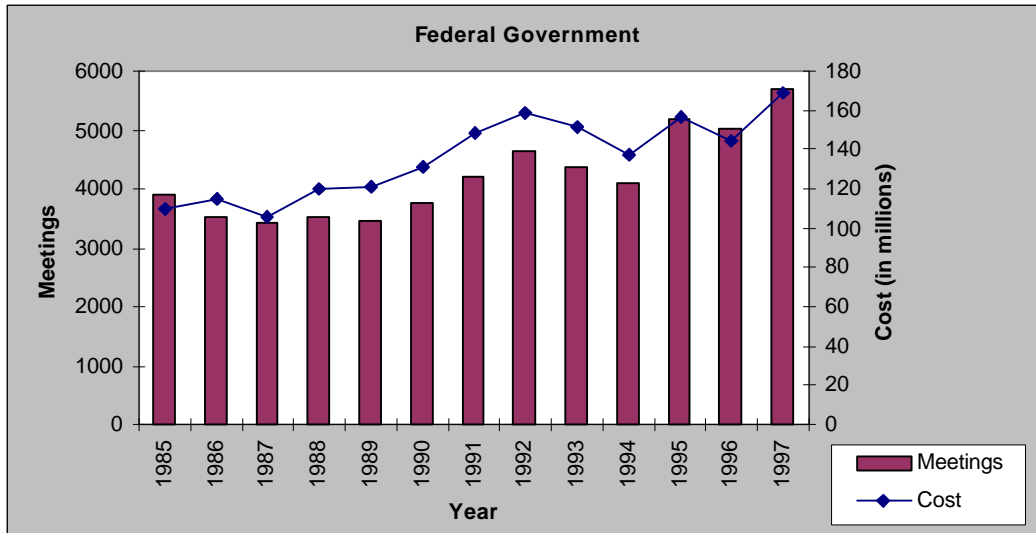
and cost the agency about \$2.8 million. The Science Advisory Board had the next highest number of meetings--a total of 41. The combined cost of these two committees constituted about 50 percent of EPA's total FACA expenditures in FY 1995.

**Figure 1. Total Federal Advisory Committees and Membership, 1985-1997**



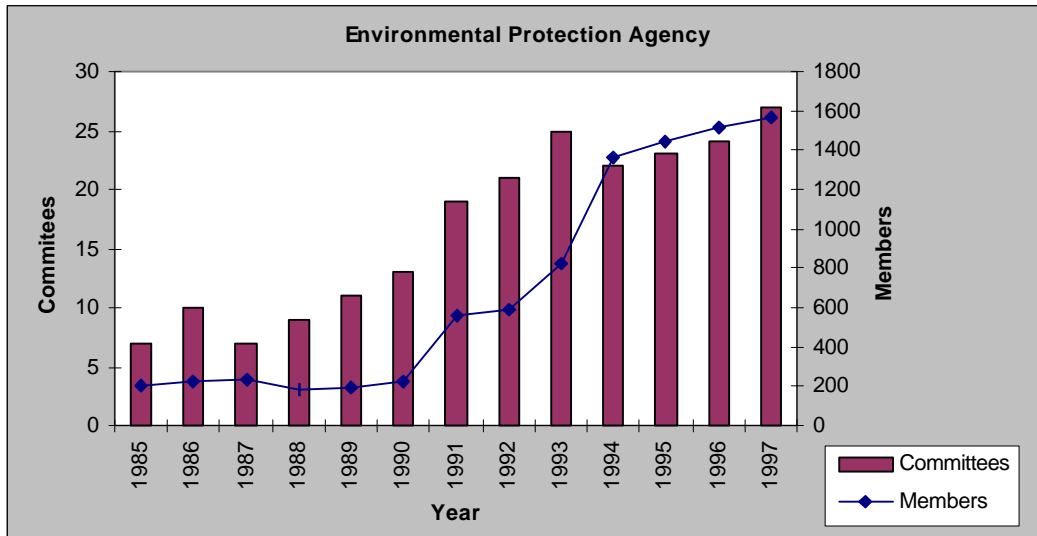
Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 -FY 1997

**Figure 2. Total Federal Advisory Committee Meetings and Cost, 1985-1997**



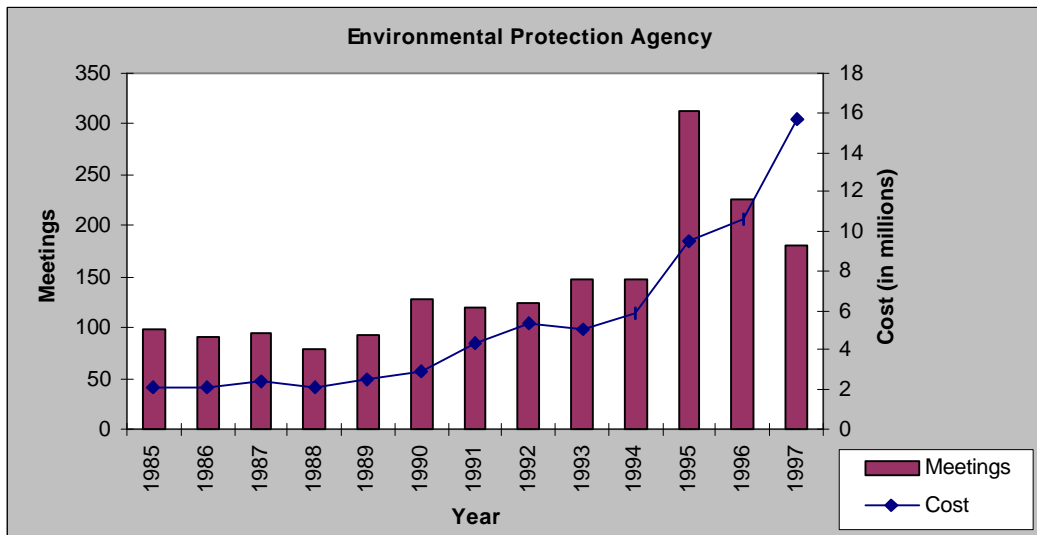
Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**Figure 3. EPA Advisory Committees and Membership, 1985-1997**



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**Figure 4. EPA Federal Advisory Committee Meetings and Costs, 1985-1997**



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997



## Department of Energy

As indicated by Figure 5, the number of DOE advisory committees has also grown since 1993. DOE had a total of 22 advisory committees in existence at the end of FY 1997 in comparison to 17 in 1993 (see Appendix C). Membership has grown as well. In 1997, DOE's advisory committees had a total of 808 members, a 25 percent rise over 1993's 645 members.

As indicated in Figure 6, FY 1996 set a record for the number of meetings held, while 1995 set a record for costs associated with DOE's advisory committees. Similar to the Common Sense Initiative Council at EPA, one of DOE's committees, the Environmental Management Site-Specific Advisory Board (SSAB), held the majority of the agency's meetings. (Actually, it is more proper to say that the SSAB's 12 subcommittees--one for each major DOE clean-up site--account for the majority of DOE committee meetings. The SSAB central committee rarely meets as a whole.)

## Department of Interior

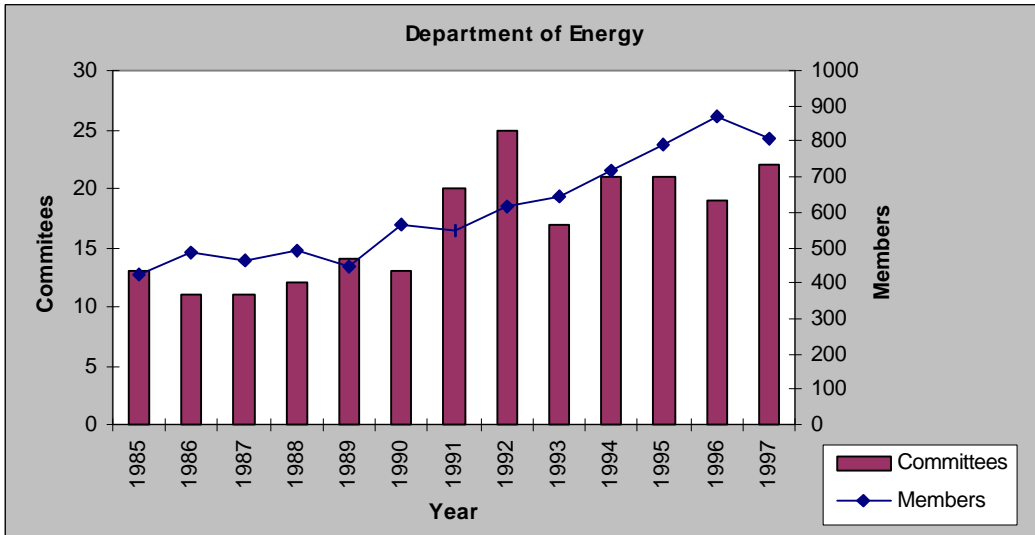
As indicated by Figure 7, DOI's committees reached a peak of 186 in 1993, and then declined, largely as a result of mergers, to 110 by the end of FY 1997 (see Appendix D). In contrast to DOE and EPA, committee membership at DOI has in fact *decreased* since 1993. While 1,779 committee members served in 1993, only 1,428 served during 1997. These trends can mainly be explained by the Bureau of Land Management's consolidation, in 1995, of 83 District Advisory Councils and District Grazing Advisory Boards into 23 Resource Advisory Councils covering the same geographic regions. Although each newly-formed committee met only a few times in 1995, by 1996 many met over six times during the year, leading to a rebound in the number of meetings, number of members, and cost.

## Discussion

Based on this data, what can we say about the trends in participation through advisory committees? Aggregate data--as well as some agency level data--show a reduction in committees; but, the number of members, the number of meetings, and costs have mostly risen since 1993. As discussed above, these trends can largely be explained by the proliferation of subcommittees and the intensive use of committees for major policy initiatives, such as EPA's Common Sense Initiative and DOE's SSABs. All of these data suggest that, at least in terms of person-hours spent on participation--the efforts to limit the number of advisory committees have not led to much of a reduction in existing levels of participation through advisory committees.

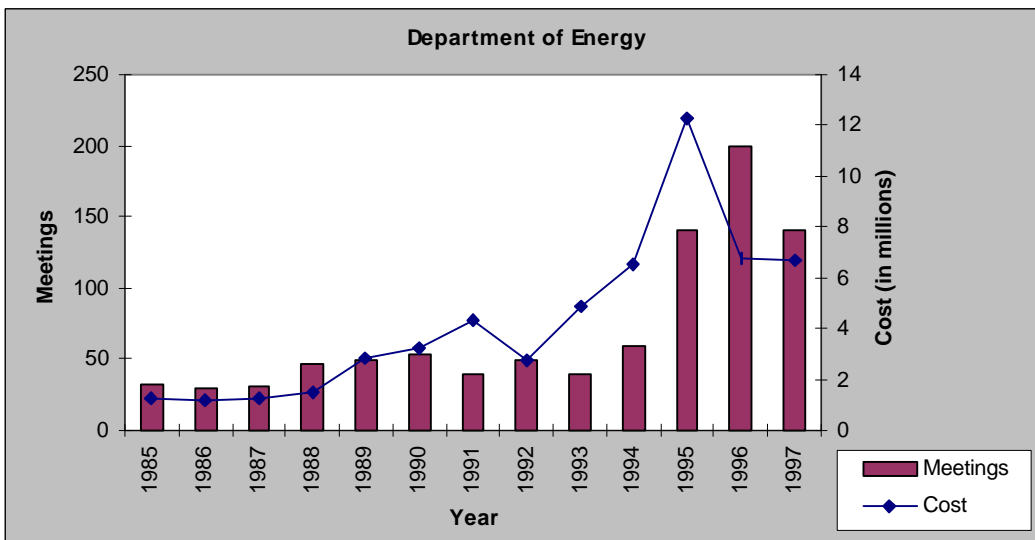
One important question that these data do not answer, however, is the extent to which the ceilings placed on advisory committees have quashed participatory efforts--particularly those with lower profiles than the Common Sense Initiative or the SSABs--before they began. Anecdotal evidence, at least, suggests that agency personnel are under pressure not to increase the number of advisory committees, making participation a much more constraint-driven process.

**Figure 5. DOE Advisory Committees and Membership, 1985-1997**



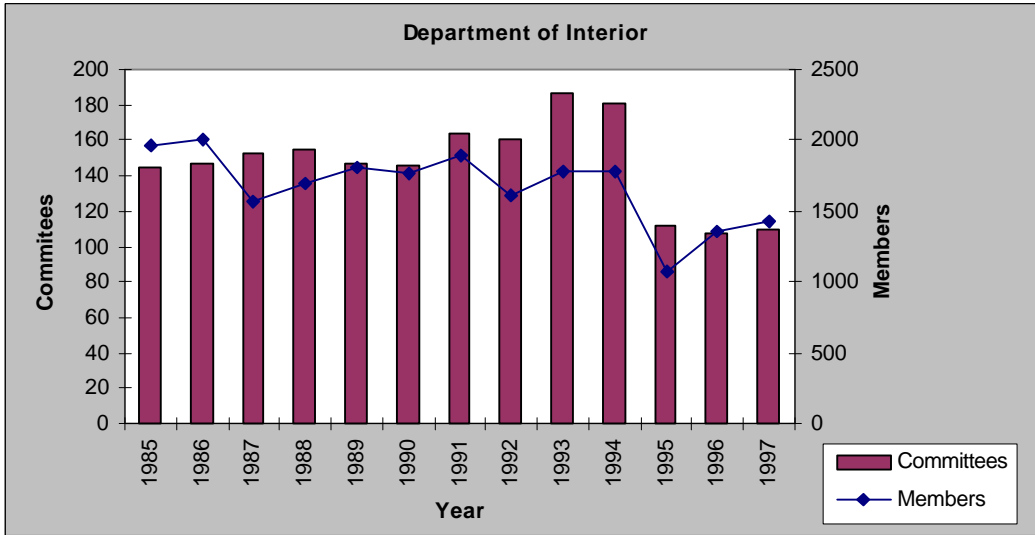
Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**Figure 6. DOE Advisory Committee Meetings and Costs, 1985-1997**



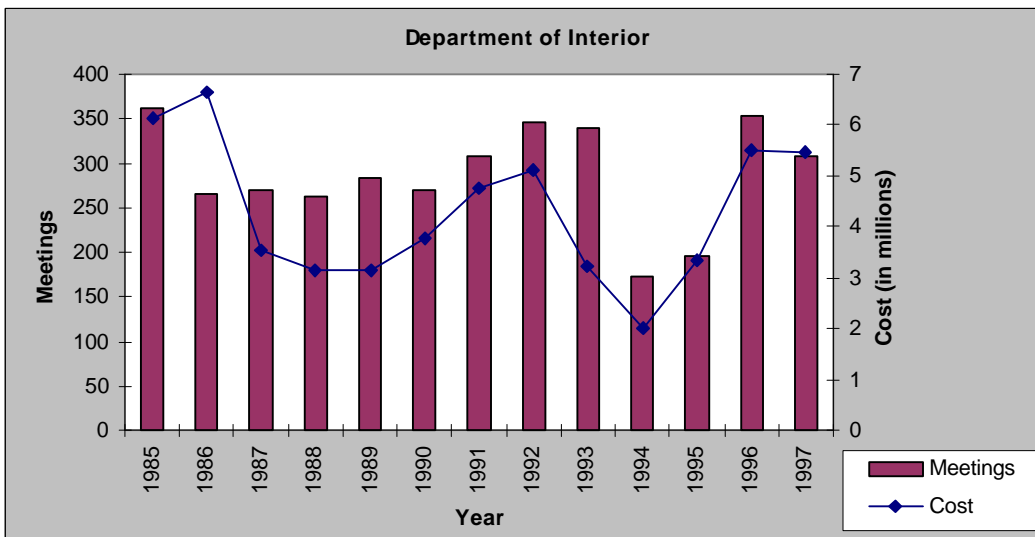
Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**Figure 7. DOI Advisory Committees and Membership, 1985-1997**



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**Figure 8. DOI Advisory Committee Meetings and Cost, 1985-1997**



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1995

Although useful stakeholder committees have not been eliminated, personnel know that they can not add more. They are left to choose among 1) creating subcommittees of existing FACA committees, 2) limiting the advice-giving or consensual mission of advisory committees (thereby avoiding a FACA trigger) or 3) avoiding participation altogether. In a recent study by the General Accounting Office (GAO), 7 out of 19 federal agencies reported that the committee ceilings had deterred them from establishing any new discretionary committees.<sup>56</sup> Three of those seven agencies are among those considered in this paper: EPA, DOE, and USDA (under which the Forest Service operates).

This potential pre-emptive strike on participation created by the administration's policy to reduce the number of advisory committees exacerbates the "chilling effects" discussed in Section 2. Approval from OMB adds one more procedural hurdle that groups must jump before becoming an advisory committee. Perhaps more importantly, because the advisory committee ceiling encourages agencies to err on the side of creating too few committees, "FACA-phobia" will ensure that non-FACA participation steers clear of consensus, group deliberation, and the development of recommendations. One way to see how these various forces have affected public participation in government decision-making is to look at recent efforts across a number of agencies to institute site- and region- specific advisory boards.

#### **4. THE EFFECT OF FACA ON SITE-SPECIFIC COMMITTEES AT FIVE AGENCIES**

All agencies with environmental responsibilities have seen recent attention to site- or region- specific advisory committees. EPA, DOE, and DOD have all instituted site-specific advisory boards at contaminated or potentially contaminated sites under their jurisdictions. The Bureau of Land Management (in the Department of Interior) and the Forest Service (in the Department of Agriculture) have made efforts to utilize regional advisory boards to assist in land and forest management decisions. All of these initiatives represent recent and mostly innovative policy approaches.

Yet site- and region- specific committees are also those most vulnerable to the committee limits and to FACA's other chilling effects. They are numerous, threatening agencies' ceilings. Issues may not carry enough political clout for agencies to "use up" one of their committee slots or to risk the threat of lawsuits by operating without FACA's sanction. The Act's procedural requirements make it difficult for local groups to get chartered and provide timely advice. Unfortunately, it is also in this arena where avoiding FACA by circumscribing participation may have the most devastating effect on trust and perceptions of agency legitimacy.

How different agencies have dealt with FACA in creating these committees helps reveal the extent to which FACA creates a barrier to participation. It also provides insights about how different agencies feel the forces of committee ceilings and FACA-phobia. It is useful to group the discussion around two sets of comparisons--EPA, DOE, and DOD on the one hand--and the Bureau of Land Management and the Forest Service on the other.

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<sup>56</sup> GAO, 1998, p. 43

In the first comparison group, DOE is perhaps the most uninteresting case with respect to FACA, mainly because its twelve site-specific advisory boards (SSABs) are FACA-chartered.<sup>57</sup> Rather than threaten the administration's ceiling, however, DOE made the decision to charter its SSABs, not as separate advisory committees, but under one charter. In this way, they get twelve committees, but only have to claim one--the Environmental Management Site Specific Advisory Board. Not incidentally, this one committee accounted for 151 out of 199 advisory committee meetings, and nearly 40 percent of total advisory committee costs at the agency, in 1996.<sup>58</sup>

Like DOE, DOD has formed approximately 200 Restoration Advisory Boards (RABs) at its closing and operating bases around the country. Unlike DOE, however, DOD has not chartered these committees under FACA. Chartering so many RABs under FACA was simply impractical--it would blow through the ceiling on advisory committees and create huge procedural commitments on the part of the agency. DOD's resolution has been to avoid chartering under FACA by complying with the "spirit" of the Act--in terms of requirements such as openness and balance. In order to avoid triggering FACA, or bringing on litigation charging as much, DOD pays close attention to the criteria which trigger FACA mentioned in Section 2. (These are: 1) seeking facts and information rather than advice and recommendations, 2) seeking individual advice rather than group consensus, 3) avoiding strict agency management and control, and 4) avoiding repeated meetings). In particular, as long as DOD seeks individual rather than consensus advice, the agency feels its actions do not violate FACA. It is a fine line: according to one employee, if everyone on a committee starts to say the same thing, DOD can listen--the department just can't make any effort to seek consensus among members.<sup>59</sup>

In taking this approach, DOD was following the guidance of the Federal Facilities Environmental Restoration Dialogue Committee (FFER). This committee was formed in 1992 by EPA to develop recommendations for increasing public involvement in environmental cleanup decisions at federal facilities. In its 1993 Interim Report, FFER recommended that agencies use citizen advisory boards in order to obtain input from stakeholders affected by contaminated sites. FFER recommended that the boards adhere to the spirit of FACA (that committees be balanced, hold open meetings, and provide public notice), but advised *against* chartering them under FACA in order to avoid its administrative requirements. It stated that "many of the administrative provisions in both the FACA statutory language and its implementing regulations are burdensome at best and intrusive in many cases."<sup>60</sup>

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<sup>57</sup> U.S. Environmental Protection Agency (EPA). 1996. "Federal Facilities Environmental Restoration Dialogue Committee (FFER), Consensus Principles and Recommendations for Improving Federal Facilities Cleanup" (April), p. 47.

<sup>58</sup> GSA, 1998, pp. 7&21.

<sup>59</sup> Conversation with Marilyn Null, Air Force (March 25, 1998).

<sup>60</sup> EPA, 1996, FFER Report, p. 54

In following FFER's advice, DOD's efforts to avoid FACA have limited many of the most potentially beneficial aspects of public involvement. In particular, they have hampered opportunities for reducing conflict and generating more satisfying decisions through deliberation and consensus-seeking. To the extent that they can consider the output of advisory committees only as advice, they also risk making participation a cursory, therapeutic exercise--alienating those who have taken the time to be involved. Some committee members have complained that the restrictions on seeking advice undermine the credibility of the process--it is easier to ignore a bunch of individual voices than to ignore a committee speaking as one.

EPA has taken an approach similar to DOD in complying with the "spirit" of FACA but deciding not to charter its community advisory groups (CAGs) under the law. In justifying this decision to the General Services Administration, EPA stated:

We believe community-based groups working together to solve local environmental problems should not be subject to FACA. Requiring such groups to be chartered under FACA or burdened with FACA regulations could be a disincentive to forming such a group.<sup>61</sup>

EPA avoids triggering FACA by keeping CAG formation and operation at arms length. They explicitly do not set up committees, fund them, or run them. Instead, the agency simply encourages their formation and supports their work. According to EPA guidance, "EPA will not establish or control CAGs; however, the Agency will assist interested communities in CAG activities."<sup>62</sup> While less concerned about consensus than DOD, EPA similarly avoids the kind of interactions which might trigger FACA--in this case stressing that it is seeking "facts and information" rather than "advice and recommendations" and seeking "individual" rather than "group" views:

EPA anticipates that the CAGs will serve primarily as a means to foster interaction among interested members of an affected community, to exchange *facts and information*, and to express *individual views* of CAG participants while attempting to provide, if possible, consensus recommendations from the CAG to EPA. . . . Since the CAG, by definition, is intended to be representative of the affected community, the regulatory agencies will give substantial weight to the preferences expressed by CAG members.<sup>63</sup> [emphasis added]

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<sup>61</sup> Wells, Suzanne. 1997. Director, Community Involvement and Outreach Center, U.S. Environmental Protection Agency. Letter to Committee Management Secretariat, General Services Administration, on FACA Regulations (July 14).

<sup>62</sup> EPA, 1995, p. 2.

<sup>63</sup> EPA, 1995, pp. 2 & 15.

Of all of the five agencies discussed here, EPA appears to be the most comfortable operating outside of FACA (i.e., it is the least subject to FACA-phobia), while not also circumscribing the influence of these committees on decision-making. The tension inherent in this approach however, is summed up by one EPA employee:

It appears that unless an advisory committee is chartered under FACA, members can't provide consensus advice to the agency. This restriction forces us to act out a charade whereby we claim that local committee members are providing 'individual advice' instead of reaching consensus despite the fact that the real value of these committees' recommendations is precisely that they do represent a broad based consensus view. Citizens have no patience with this sort of sophism.<sup>64</sup>

It is clear that even at EPA, if efforts to engage local communities are working, it is *in spite of FACA*, not because of it. It may well be that the most effective public participation efforts at the agency are violations of the law.

The second comparison group is the Bureau of Land Management (BLM) and the Forest Service. In this case, it is BLM that is the less interesting case with regard to FACA. As mentioned above, BLM has established 23 regional Resource Advisory Councils (RACs) for region-specific advice and has chartered them all individually under FACA. Chartering under FACA appears to give BLM some flexibility in the extent to which it can rely on RACs for advice. In the words of Secretary of Interior Bruce Babbitt, RACs are intended to "advise . . . on a variety of land management issues" and have "helped establish a model for collaborative management of the public lands."<sup>65</sup>

The Forest Service has also recently established a number of region-specific advisory committees, but at the same time, it has cut off active participation in a number of non-governmental collaborative efforts. There is irony in this. Much attention to FACA's impact on participation arose from events surrounding the development of the Clinton administration's Northwest Forest Management Plan--an effort which, in its rhetoric at least, embraced grass roots collaborative processes as a vision of the future for federal forest management. In 1993, Secretary of the Interior Bruce Babbitt even visited one grass roots consensus group--the Applegate Partnership in Southwestern Oregon--proclaiming "I may be a witness today to a very important beginning. It's important to know there are a few places on this battlefield where people have put down their weapons and started talking to each other."<sup>66</sup>

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<sup>64</sup> Pennock, Sonya S. 1997. Environmental Protection Agency, Region VII. Memorandum to Committee Management Secretariat, General Services Administration regarding FACA Regulations (July 10), p. 1.

<sup>65</sup> Bureau of Land Management (BLM). 1997. "Secretary Babbitt Announces BLM Resource Advisory Council Members," BLM News Release (August 20).

<sup>66</sup> Durbin, Kathie. 1994. "The progress of freewheeling consensus jeopardized as feds pull back," *High Country News*, vol. 26, no. 19 (October 17).

The Clinton administration's subsequent Northwest Forest Plan called for similar approaches throughout Northwest forests. But following lawsuits charging that the Forest Plan had violated FACA (for reasons unrelated to these consensus groups) the Forest Service pulled out of involvement in most of these local participatory efforts.<sup>67</sup> Consensus groups were given the option to charter under FACA or members could participate in 12 region-specific subcommittees (known as "PACs") set up under the FACA-chartered Advisory Committee to the Provincial Interagency Executive Committee.

Most consensus groups have subsequently not chartered under FACA and many stakeholders expressed--at least initially--reluctance to participate in the Forest Service's FACA committees.<sup>68</sup> As these FACA committees reach their five year mark, they have reportedly been successful in bringing together a variety of stakeholders to work toward implementing the Northwest Forest Plan. At the same time, the Forest Service has shifted its collaborative activities away from non-governmental efforts, such as the Applegate Partnership. The Forest Service is still involved with the Applegate Partnership, for example, but its role has shifted from "participant" to "guest." Forest Service personnel still maintain personal and informal relationships with Applegate Partnership participants and can attend some meetings to share information. The Forest Service's interpretation of FACA, however, restricts personnel from attending all of these meetings or explicitly acting on recommendations.<sup>69</sup>

The Forest Service practices a similar policy of not going to the same people over and over again for advice outside of FACA-chartered advisory committees. As one Forest Service employee states, if the number of people the agency consults with on a particular program or project starts to narrow way down, it may be a sign that outreach efforts are inadequate and/or FACA requirements are being violated.<sup>70</sup> This statement echoes a 1995 policy memo from former Forest Service Chief Jack Ward Thomas to all Forest Service employees, stating that personnel can meet with non-governmental groups, "to hear their opinions, views, and advice; however, no group can become a preferred source of advice for the agency without sparking FACA concerns." The memo goes on to suggest the Forest Service's acute sensitivity to FACA-related litigation: "Remember too, that public perception is everything. If people observe you holding repeated private meetings with the same group, they may feel excluded and assume that FACA committee-formation requirements are being violated."<sup>71</sup> In short,

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<sup>67</sup> The lawsuit was the previously cited *Northwest Forest Resources Council v. Espy* in which the Forest Service was charged with violating the law by inappropriately excluding the public from access to a scientific panel engaged in research efforts supporting President Clinton's Northwest Forest Plan. The Forest Service responded to the lawsuit by halting any activities which might violate FACA, including collaborative decision-making efforts (Brendler and Crosman, 1995, 1).

<sup>68</sup> Durbin, 1994.

<sup>69</sup> Conversation with Shandra Smith, U.S. Forest Service (January 13, 1999).

<sup>70</sup> Conversation with Val Chambers, Public Involvement Program Manager, U.S. Forest Service (July 6, 1998).

<sup>71</sup> Thomas, Jack Ward. 1995. Memorandum to all Forest Service Employees on Recent Federal Advisory Committee Act Interpretations (October 2).



while the Forest Service would listen to the input of a consensus-seeking stakeholder group, they would treat it just like input from an individual attending a public hearing or public meeting.

An examination of site- and region- specific advisory committees has underlined the comment from one EPA employee cited earlier--that the process of participation has become constraint-driven. What is obvious from these cases, is that many of the barriers to participation arise from agency's efforts to *avoid* FACA. In the best case, agencies become more creative about how they charter committees: DOE chose a twelve-in-one approach in order to avoid the ceiling on committees, while BLM chose to consolidate and achieve the same goal. In the more disturbing cases, agencies have intentionally limited their receptivity to the full potential of participation. DOD has drawn the line at receiving consensual advice. EPA insists that it is only exchanging facts and information with individuals on its committees. And the Forest Service has distanced itself from the kind of bottom-up collaboration that had only recently been claimed to be the wave of the future in forest resource management.

Thus far we have argued that FACA can cause agencies to cut themselves off from the full benefits of public participation. But what are those potential benefits? The section which follows discusses the various ways in which the advisory committees that *do* exist can improve government environmental management. We move from FACA's potential for reducing participation to its potential for fostering it.

## **5. EVALUATING ADVISORY COMMITTEES AS PUBLIC PARTICIPATION MECHANISMS**

This section discusses how one can evaluate non-expert federal advisory committees as public participation mechanisms. What, for example, do government agencies hope to achieve by forming advisory committees? What are the goals against which these advisory committees might be judged and how can we ascertain whether or not those goals have been met? Before answering these questions, it is helpful to locate our discussion in the context of the literature on public participation.

Any evaluation of public participation contains, either explicitly or implicitly, a set of philosophical assumptions about how democracies should function. At one end of the spectrum are those who argue that public policy should be left to the "experts." Fiorino (1990) summarizes (but does not necessarily agree with) this position as follows: "Given the sheer complexity of the issues, the 'transcientific' nature of the factual premises, and the rapid changes in the definition of problems and their solutions, the lay public lacks the time, information, and inclination to take part in technically based problem solving."<sup>72</sup> At the other extreme are those who value greater public participation as an end in itself, regardless of its policy impact or cost. Sheila Arnstein, author of the oft-cited "A Ladder of Citizen Participation," is often associated

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<sup>72</sup> Fiorino, Daniel J. 1990. "Citizen Participation and Environmental Risk: A Survey of Institutional Mechanisms" *Science, Technology & Human Values*, vol. 15, no. 2, pp. 226-243, at p. 227.

with this position. Arnstein believes public participation should "create citizen power through a partnership with citizen authorities, if not outright citizen control."<sup>73</sup>

We fall somewhere in the middle of this debate--recognizing a legitimate role for the public in decision-making but seeing it as a necessarily shared responsibility with government. But, if we recognize that the public should be involved, although not to the extent of substituting for government, what should the goals of these advisory committees as participatory mechanisms be?

Clearly every member of an advisory committee has a set of specific goals which he or she hopes to achieve as a result of the process. More often than not, different participants' goals will conflict. But there are some goals which transcend the interests of advisory committee members themselves and generate benefits that accrue to society at large. We call these "social goals." When consistently met, they lead to a well-functioning and responsive system of environmental policy and management. Indeed, public involvement mechanisms, such as advisory committees may be necessary to meet them.

Our evaluation focuses on six of these social goals. The first goal deals with advisory committees' educational function, measuring how well they provide the public (both participants and non-participants) with sufficient knowledge to get involved in decision-making and become active partners in environmental policy and management. The second goal turns the educational table around, asking how well advisory committees educate agencies about public values and preferences. The third goal examines the extent to which advisory committees improve the quality of government decision-making by generating new policy alternatives or policy-relevant information. The fourth and fifth goals address two Herculean tasks: restoring trust in government institutions and reducing conflict among stakeholders. The sixth goal measures the cost-effectiveness of the decision-making process (rather than the result of that process). It recognizes the importance of choosing the right approach--or no approach at all--to public participation. To summarize, the evaluative goals are:

- Increase public understanding and awareness of a particular issue or policy;
- Increase agency understanding of the values, preferences and policy recommendations of potentially affected interests;
- Generate new policy alternatives or policy-relevant information;
- Increase trust in agencies;
- Reduce conflict among stakeholders; and
- Be cost-effective.

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<sup>73</sup> Lynn, Frances M. and Jack D. Kartz. 1995. "The Redemption of Citizen Advisory Committees," in *Fairness and Competence in Citizen Participation: Evaluating Models for Environmental Discourse*, by Ortwin Renn, Thomas Webler, and Peter Wiedemann (Kluwer Academic Publishers), pp. 87-101, at p. 99.

There are a number of reasons, *a priori*, to assume that advisory committees might do well in achieving these social goals. They have the potential to foster dialogue and the consequent sharing of information among a "balanced" group of stakeholders and between stakeholders and government. Because many advisory committees operate by consensus, potentially opposing interests often have the opportunity to resolve disputes. Regular interaction over time among all participants, including government, can create trust and relationships that make resolving future problems easier. In short, the process by which many advisory committees have come to do their business are processes which, if done well, educate participants, foster dialogue on values and shared interests, build trust, and reduce conflict. The sub-sections that follow describe each social goal, discuss in more detail how advisory committees might fare in achieving them, and suggest approaches to measuring each goal's achievement.

### **Goal 1. Increase Public Understanding and Awareness of a Particular Issue or Policy**

Public education is increasingly important to environmental management. Knowledge about environmental issues allows the public to carry out the role envisioned in major environmental legislation of identifying violations, applying community pressure, enforcing laws, and contributing to permitting and rulemaking. Because it is a precursor to behavioral change, education also plays an increasingly important role as environmental priorities come to focus on issues in which the collective effects of individual decisions are of principal concern. Finally, education ensures that the technical complexity of issues does not hamper the public's ability to participate in decision-making.

Advisory committees should have two educational objectives--educating participants on the committee and educating the wider public outside of the committee. The first is more easily achieved and measured. The pre-existing experience and knowledge of participants, coupled with on-going face-to-face discussions and access to technical material, is likely to provide a good learning atmosphere. In fact, in a recent General Accounting Office (GAO) survey of federal advisory committee members (a survey to which we will refer throughout this section), around 70 percent of respondents reported that they were provided "to a great or very great extent" the background material necessary to discuss and decide on issues.<sup>74</sup>

Because of their relatively small size and the limited media attention most advisory committees receive, they are less likely to achieve the second educational objective--informing a wider public. Nevertheless, education of this wider public is one of the most commonly-cited goals of public participation programs and is important to consider. Although many advisory committees are unknown to the general public, others receive extensive media attention and play an important role in shaping public opinion. Indeed, it has become quite common for presidents to form a commission under FACA as a way to demonstrate their administration's recognition of the importance of an issue. For example, President Bush's formation of the National Commission on AIDS, chaired by basketball star

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<sup>74</sup> GAO, 1998, p. 7. The data excludes those serving on peer review committees.

Magic Johnson, raised AIDS awareness and helped reduce the stigma associated with the disease. Many, if not most, advisory committees, however, labor in considerably more obscurity. In a survey of DOE's site-specific advisory board members (as well as some DOE staff, regulators, and contractors) nearly two-thirds of respondents reported that the public knew little about the role of the boards.<sup>75</sup> This is particularly unfortunate, as these committees are supposed to represent the voice of the surrounding community in DOE decision-making about the clean-up of its contaminated facilities.

Directly measuring the effect of advisory committees on the wider public's knowledge of an issue is a daunting task because so many factors influence public knowledge and opinion. Attendance at committee meetings or visits to a committee's web site are indications of public awareness. Committee meetings may be closed or partially closed to the public based on provisions of the Government in the Sunshine Act.<sup>76</sup> While only 42 percent of all federal advisory committee meetings were open to the public during FY 1997, virtually all of EPA, DOE, and DOI advisory committees were open to the public. Surveys could be used to measure the extent to which those who attended meetings (or visited web sites), felt that the committee increased their understanding of a particular issue. Measures of media contact are perhaps more significant. If newspapers report regularly on the activities of a committee, then the public is more likely to learn about the committee's findings and recommendations. This is relatively easy to measure. More difficult to assess is the quality of the information provided. Advisory committees have the potential to serve as an excellent source of unbiased information regarding a particular policy area, but this is by no means guaranteed.

## **Goal 2. Increase Agency's Understanding of the Values, Preferences and Policy Recommendations of Potentially Affected Interests**

Two recent reports on risk decision-making, one by the National Research Council and the other by the Presidential/Congressional Commission on Risk Assessment and Risk Management, emphasized the need for incorporating public values along with technical considerations into environmental policymaking.<sup>77</sup> The NRC report, in particular, called for an "analytic-deliberative" process whereby technical material is brought to decisions, but its meaning and significance for the decision at hand is determined through deliberations among stakeholders. By providing an opportunity for stakeholders to express their concerns, advisory committees may be a particularly good forum for this analytic-deliberative process. In the DOE survey of SSAB members mentioned above, over three quarters of those surveyed felt that the advisory boards "established processes and procedures for effective exchange of

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<sup>75</sup> Department of Energy. 1997. *Site-Specific Advisory Board Initiative, 1997 Evaluation Survey Results: Volume I, Summary Report* (Washington, D.C.: U.S. Department of Energy), September, p. 25.

<sup>76</sup> Public Law 94-409.

<sup>77</sup> NRC, 1996 and PCRARM, 1997.

information" and that they facilitated "effective exchange of viewpoints on site issues."<sup>78</sup> In the GAO study of advisory committee members, an even higher number felt the advice and recommendations that came out of committee deliberations were considered by the agency.<sup>79</sup>

One worry is that the small size of committees may limit their ability to represent the diversity of stakeholders in a particular policy area. While FACA requires that committees be "balanced," there is always the risk that an important stakeholder will be excluded (either intentionally or unintentionally), particularly because participants are selected by the federal agency. Here again, the GAO report provides some assurance--85 percent of respondents agreed that their committees included "a representative cross-section of those directly interested in and affected by the issues discussed by the committee," and an even greater number felt the committees were adequately balanced between such interests.<sup>80</sup>

Interviews and surveys of members of the advisory committee, the agency, and other interested parties could be used to establish whether an advisory committee has increased the agency's awareness of the values, preferences, and policy recommendations of stakeholders. The subject of committee meetings (all of which are recorded in meeting minutes housed in the Library of Congress) may reveal whether committee members raised issues which the agency would have been likely to overlook or ignore.

### **Goal 3. Generate New Policy Alternatives or Policy-Relevant Information**

Not only are advisory committee members a source of values, assumptions, and preferences, but a source of facts and innovative alternatives. For some types of committees, such as those conducting regulatory negotiations or policy dialogues, their substantive output is an agreement among all parties. Even if such agreements are not binding, members typically recognize them as superior to the decisions that would have been made without the input of the committee. For example, DOE credits the decisions about site-cleanup made by the Site-Specific Advisory Board at its Fernald, Ohio facilities with saving the government (and taxpayers) \$2 billion.<sup>81</sup>

Where agreement on a course of action is not the aim of a committee (or a course of action can not be agreed upon), members can also provide valuable substantive information that can improve agency decision-making by bringing in outside perspectives. Assuming that agencies comply with FACA's balance provisions, the reports and recommendations that result from advisory committees should reflect a diverse array of perspectives.

Although establishing a baseline with which to compare the work of a committee can be difficult, a survey of participants, agency officials and experts in the field could help to

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<sup>78</sup> DOE, 1997, p. 11.

<sup>79</sup> GAO, 1998, p. 8

<sup>80</sup> *Ibid.*, p. 7

<sup>81</sup> Applegate, John S. 1998. "The Innovative Use of the Federal Advisory Committee Act to Improve Public Participation in Agency Decisions" Statement before the Subcommittee on Government Management, Committee on Government Reform and Oversight, United States House of Representatives (July 14, 1998).

establish a basis for comparing the committee's recommendations and reports with the policy alternatives or information that existed prior to the establishment of the committee. One could also research the legislative and rulemaking history of the issue to determine whether the committee's findings and recommendations were innovative.

#### **Goal 4. Increase Trust in Agency**

One of the most important goals of public participation is to build trust. The percentage of Americans reporting that they trust the government has dropped by roughly half from the time of the Kennedy Administration to today.<sup>82</sup> The precipitous drop in trust may represent a healthy public skepticism in the wake of scandals and mismanagement, but it is also symptomatic of what some claim to be a general decline in the norms of civil society.<sup>83</sup> As "social capital" decreases, the ability to resolve environmental issues is seriously circumscribed. A number of analyses of public trust suggest that it is far easier to lose than to regain. However, one of the most effective ways to regain public trust may be to involve and empower the public in decision making.<sup>84</sup> Trust is established, not solely by delivering a desirable outcome, but also by ensuring that decisions are the result of a fair process.<sup>85</sup>

When evaluating public participation according to how it affects trust in the sponsoring agency, it is important to distinguish between internal trust (from the perspective of participants) and external trust (from the perspective of the general public or non-participants). This is especially true in the case of advisory committees since they are often viewed with skepticism by non-participants. FACA's balance and openness provisions help to promote external trust by ensuring that interested parties are able to gain access to the discussions and/or material on which an advisory committees' policy recommendations are based. The criteria discussed in Goal 1, concerning increased public understanding and awareness, serve as good indicators of whether or not a committee is likely to increase external trust.

This is not meant to imply that there is no relationship between internal and external trust. Internal trust is created within the committee, but its reach can extend far beyond the confines of that particular committee. Most participants in non-technical advisory committees serve as representatives of particular stakeholder interests. These individuals are likely to share their experiences on the committee with their respective organizations. To the extent that there is communication between participants and non-participants, the factors which affect internal trust may also affect external trust.

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<sup>82</sup> Pew Research Center (PRC). 1998. *Deconstructing Trust: How Americans View Government*. Available at: <http://www.people-press.org/trustrpt.html>

<sup>83</sup> Putnam, 1995.

<sup>84</sup> Schneider, Mark, Paul Teske and Melissa Marschall. 1997. "Institutional Arrangements and the Creation of Social Capital: The Effects of Public School Choice" *American Political Science Review*, vol. 91, no. 1, pp. 82-93; and Slovic, 1993.

<sup>85</sup> For a good discussion of the importance of process in building trust, see: Kim, W. Chan and Renée Mauborgne. 1997. "Fair Process: Managing in the Knowledge Economy," *Harvard Business Review* (July-August), pp. 65-75.

Internal trust depends on many factors, including the amount of resources and time allotted for the committee, seniority and authority of personnel involved, and the internal dynamics of the committee. Surveys of past and present participants could be used to explore how advisory committees affect participants' sense of trust in the sponsoring agency. In its evaluation of Site-Specific Advisory Boards, DOE asked exactly this question. The answers were not particularly reassuring--less than half of the respondents felt that the advisory board process had "contributed to trust and confidence in DOE."<sup>86</sup>

In addition to direct questions about trust, there are four criteria which may help agencies evaluate whether or not their practices are likely to promote or erode trust:

First, does the process give participants the freedom to define issues, question technical experts, dispute evidence and shape the agenda? This criterion relates to the issue of power. If committee members are given few opportunities to shape or challenge the general direction of a conversation, they are likely to become resentful and distrustful of the agency. This is particularly true if they are members of groups that have had an adversarial relationship with the agency in the past.

Second, do participants feel that the agency is allocating sufficient resources to the committee, including resources for education and preparation on factual and analytical issues? This criterion is particularly relevant in the case of environmental policy when citizen advisory groups are often asked to express their preferences about various scientific or technical alternatives. When agencies consider cutting advisory-committee related expenditures, they must recognize that such changes have the potential to seriously erode participants' trust in the agency. A 1996 audit report issued by the EPA Inspector General recommends cutting back on contract support and "lowering the grade level or reducing the number of personnel involved in committee operations."<sup>87</sup> It also recommends "reducing the number of committee meetings, teleconferencing, and holding meetings in government space." Such changes could negatively affect participants' trust and should therefore be weighed against the agency's overall goals related to public participation.

Third, are participants dealing with administrative officials who can exercise decision authority or with staff who can only represent those decision makers? This criterion relates to the priority that agencies place on advisory committees. If agencies assign junior staff who lack any decision-making authority to advisory committees, they risk angering committee members who may feel that the agency doesn't take them seriously enough.

Fourth, if recommendations are not adopted, does the agency provide an explanation? This criterion relates to whether the agency holds itself accountable to participants. Inviting people to participate in a public participation process and then rejecting their recommendation without providing an explanation is guaranteed to destroy trust. Currently, FACA does not

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<sup>86</sup> DOE, 1997, p. 25

<sup>87</sup> U.S. Environmental Protection Agency (EPA). 1996. "EPA's Advisory Committees' Costs Increase," Audit Report No. E1XMF5-13-0071-6100147, (29 March)

contain any provisions requiring agencies to issue a formal explanation as to why a recommendation was rejected or ignored.

At least two of these issues may help explain why less than half of the respondents to DOE's survey felt that the SSAB process had built trust, as cited above. Only 26 percent of respondents agreed or strongly agreed with the statement that "DOE [headquarters] provides sufficient support to the SSABs." And, only 15 percent of respondents agreed or strongly agreed with the statement that "DOE [headquarters] gives careful consideration to SSAB advice in its decisions."<sup>88</sup> On a more optimistic note, the GAO survey of a broader selection of advisory committee members found that 84 percent of respondents felt that their advice and recommendations were being considered by relevant agencies.<sup>89</sup>

### **Goal 5. Reduce Conflict Among Stakeholders**

The environmental regulatory system in the U.S. was born of conflict between environmental and industrial interests. It is not surprising that conflict has persisted as the system has matured. Yet many have recognized that much money and energy have been consumed by court battles while environmental problems remain unresolved. Support for decision-making which stresses cooperation over conflict has risen in visibility as a result.

Advisory committees are a good forum in which conflict can be resolved through techniques of dispute resolution, consensus building, mediation, and negotiation. Groups with opposing interests have the opportunity to learn about each other's underlying interests and, in the best case scenario, find opportunities for agreement. The familiarity and cooperation that can arise from this interaction may help resolve future conflicts, as well as current ones, by improving relationships or leading to institutions which can resolve future disputes.

Measuring achievement of the conflict reduction goal entails answering the question: have the relationships between stakeholders improved since the formation of the committee? The answer is not obvious: depending on the internal dynamics of the committee, face-to-face meetings could either reduce or exacerbate existing conflict. Surveys of and interviews with participants could be used to assess a committee's success in reducing conflict. Additionally, one might investigate objective measures, such as the degree to which litigation occurred between parties after the advisory committee's termination or whether committee members created subsequent organizations or agreements for dealing with emerging controversial issues. In a study of regulatory negotiations, for example, Coglianesi (1997) measured conflict reduction by looking at whether these negotiations reduced litigation (in the form of judicial challenges to agency rules). Introducing a note of caution into the ability of regulatory negotiations, at least, to reduce conflict, he concludes: "As a means of reducing litigation, negotiated rulemaking has yet to show any demonstrable success."<sup>90</sup>

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<sup>88</sup> DOE, 1997, p. 28

<sup>89</sup> GAO, 1998, p. 8.

<sup>90</sup> Coglianesi, Cary. 1997. "Assessing Consensus: The Promise and Performance of Negotiated Rulemaking," *Duke Law Journal*, vol. 46, no. 6, p. 1309.



## Goal 6. Cost-Effectiveness

Even the most ardent public participation advocate is likely to agree with the statement that, "as more emphasis is placed on public participation. . . less emphasis can be placed on the efficiency of a decision process."<sup>91</sup> In 1997, the 963 existing advisory committees cost the government \$178 million, nearly half of which was the compensation for federal employees to assist and monitor advisory committee activities.<sup>92</sup> Like any other government program, advisory committees should be evaluated for their cost-effectiveness. What impact do advisory committees have on the cost of decision-making? Do they lead agencies to delay decisions as they await the findings of committees? Is the input that advisory committees provide worth the expense in both accounting and opportunity costs? Could the input have been obtained through more efficient means?

In order to answer such questions, it is necessary to define the "deliverables" of advisory committees, i.e., what we expect to gain as a result of the committee. As is always the case with any type of benefit-cost analysis, there is a tendency to overemphasize measurable outcomes at the expense of less tangible ones. Efforts must therefore be made to ensure that the outcomes that are most valued--such as those represented by Goals 1 through 5, above--are incorporated into the analysis.

## 6. CONCLUSION

This paper has examined non-expert federal advisory committees and the law which governs them. The influences that FACA has had on public participation through advisory committees are too complex to simply say the law does or does not work. It is more accurate to say that FACA has been successful in doing what it set out to do, but it has failed to change in step with an evolving environmental regulatory system. The law has succeeded in the laudable goals of increasing fairness and accountability but has become a barrier to other laudable goals which have become increasingly important over time.

We start with the accomplishments. FACA has clearly been successful in limiting the undue influence of special interests in committees that advise the government. It has also made the operations of these committees more transparent and accountable to non-members. The committees created under the act are unique institutions that allow government to obtain a more in-depth understanding of its stakeholders' concerns and preferences than is available through other means.

In ideal circumstances advisory committees can accomplish all of the goals we laid out in Section 5. They can educate members and provide a vehicle for educating the wider public. They can provide an opportunity to observe and participate in the articulation of values,

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<sup>91</sup> Vari, Anna. 1995. "Citizens' Advisory Committee as a Model for Public Participation: A Multiple-Criteria Evaluation," in Ortwin Renn, Thomas Webler, and Peter Wiedemann, *Fairness and Competence in Citizen Participation: Evaluating Models for Environmental Discourse* (Kluwer Academic Publishers), pp. 103-115, at p. 107.

<sup>92</sup> GAO, 1998, p. 6.

preferences and policy alternatives throughout the policy development process. They can provide a forum for rebuilding trust in government and reducing conflict among stakeholders.

In many cases FACA is working as intended, and the generally positive results from GAO's survey of advisory committee members show that. But, as discussed throughout the paper, there are many ways in which FACA is not working. In these cases, it has come to fit poorly with trends and innovations in environmental policy-making. Some of these problems are directly related to the law itself, but many are secondary effects--arising from how agencies apply the law or try to get around it, or arising from policies to limit advisory committees which use FACA as a lever of control.

Although the key elements of FACA were designed to provide public access to advisory committees, the law's procedural requirements and ambiguities have had a detrimental effect on public participation in federal environmental decision-making. In many cases, it is simply too difficult to become an advisory committee. These procedural barriers have only been exacerbated by the administrative ceilings on advisory committee formation. While the current Administration expresses support for public involvement, its ceilings on FACA committees are in direct conflict with that goal. Encouraging agencies to increase public involvement, while ordering them to reduce their use of advisory committees, creates yet another obstacle for the formation of committees.

Ironically, these barriers feed on an inherent weakness in the Act--the ambiguity which inspires FACA-phobia among agencies. As it becomes more difficult to create committees, agencies are forced to choose between engaging public groups outside of FACA, thereby risking litigation, or not engaging these groups at all. The combination of FACA's chilling effects and the lever it provides for trimming the number of advisory committees have had very real effects on how agencies choose to involve the public, as was seen in Section 4's discussion of five agency's approaches to site- and region-specific committees.

It should not be surprising that FACA has had such a profound impact on public involvement. Its requirements for a formal charter, balanced membership, and open meetings were born as much out of a fear that certain "publics" had too much access and influence on policy-makers as the fear that the public at large did not have enough. It was not designed to increase participation in government *per se*, but to manage the process in a way that limited the influence of special interests. The law has therefore had profound implications for who participates, when they participate, how they participate, and what influence participation has on decision-making.

Unfortunately, FACA's barriers to public involvement are likely to fall disproportionately on site- and region- specific committees. As we suggested in Sections 2 and 3, the realities of FACA--its procedural barriers to "bottom up" participation, "FACA-phobia," and the lever it provides for limiting the proliferation of committees--means that advisory committees are most likely to be formed, and may work best, on national decisions "inside the beltway." It is in this type of high level decision-making that there is the time, resources, and political will, to leap over the many hurdles FACA creates.

In short, FACA advisory committees are more likely to represent traditional pluralist decision-making--with interest groups vying for position--than a popular democratic model akin, for example, to the New England town meeting. In a sense, FACA enshrined this pluralist model in advisory committees. Scope provisions prevent undue influence. Balance provisions ensure that all interests are involved and well-defined. And transparency provisions ensure public oversight. These requirements are highly appropriate in national decision-making, but can run afoul of bottom-up, more popular forms of democracy, where interests are less well defined, conflicts-of-interest are more likely, and ad hoc participatory efforts can not often survive the procedural rigors of FACA.

### **Recommendations**

Three recommendations follow from the analysis and conclusions presented in this paper:

First, lift the administrative ceiling on advisory committees. The administrative ceiling makes agencies err on the side of forming too few committees. Not only does this limit agencies' use of this valuable resource, it exacerbates FACA's other chilling effects on participation. It adds one more hurdle for groups to surmount in order to become a sanctioned advisory committee. It strengthens FACA-phobia by forcing agencies to limit the quality of their participatory efforts (by, for example, not allowing consensus) in order to avoid triggering the law. If agencies could be encouraged to err on the side of forming too many advisory committees rather than too few, many of the problems discussed in this paper would fade in importance. Advisory committees should be recognized for what they are--a good, relatively cheap vehicle, for getting outside advice and engaging the public.

Second, clarify GSA regulations, and possibly the Act itself, regarding what kind of interactions with the public are subject to FACA. The ambiguity about what kind of committee triggers FACA is the leading culprit in FACA-phobia. The problem is not where the line between a FACA and non-FACA committee is drawn, but that it is not drawn in a clear and consistent manner. Because courts have not always deferred to GSA regulations in determining where this line should be, a legislative fix clarifying the meaning of "established" and "utilized" in the Act itself may be necessary as well. Comprehensive analyses of FACA and its case law by Croley (1996) and Croley and Funk (1997) are a good foundation on which these efforts to clarify the reach of FACA should be built.

While FACA-phobia has its origins in law, it is a behavioral phenomenon as well. Agencies appear to have been too fearful of FACA. For a number of reasons, they can be encouraged to be more bold. Principal among these is that the punishments for violating FACA have not been that bad. Only in one case has a violation of FACA been used to enjoin the results of a FACA process. Moreover, as pointed out by Croley (1996), if agencies comply with the "spirit" of FACA--principally by being open and fair in their processes--they are less likely to find interests willing to bring suit against them on FACA grounds and more

likely to get favorable rulings by the courts if suits are brought.<sup>93</sup> While there are obvious problems with a law if agencies are encouraged to be less concerned about violating it, absent any administrative or legal changes to how FACA is applied, a less cautious approach on the part of agencies seems warranted.

Third, streamline the procedural requirements for forming and operating an advisory committee. It should be easier to form an advisory committee under FACA than current procedures allow. There are at least three approaches: 1) streamline administrative processing of procedural requirements, such as chartering and approval, 2) reduce procedural requirements for certain types of committees, in some sort of "FACA-lite" or 3) exempt certain types of committees from procedural requirements altogether. In each case, the challenge is to make FACA more flexible without losing the benefits it provides of balance, openness, and accountability. With this in mind, blanket exemptions (option 3) are probably not desirable.

Streamlining procedural requirements through administrative changes (option 1) or providing for some sort of FACA-lite through legislation (option 2) are more promising alternatives. As discussed throughout the paper, the appropriate targets for these reforms are the site- and region-specific committees to which FACA seems to do the most harm. Although the specifics of these reforms require more analysis than presented here, there are at least some important points to consider. Expediting chartering and approval procedures are two ways to streamline the committee formation process without legislative changes. More dramatic changes, through legislation, would consider 1) establishing a "drop dead" date by which advisory committees are automatically chartered, 2) devolving approval and chartering authority to lower levels of agency hierarchies, or 3) introducing a "conditional" charter under which approved committees can meet prior to chartering by agency heads. Other issues to consider are eliminating the requirement that committees publish meeting notices in the *Federal Register* (in favor of more targeted and appropriate mediums) and giving committee members, rather than agency officials, the right to adjourn meetings and approve agendas.

### **Areas For Additional Research**

This paper has built its case around a review of primary and secondary sources on FACA, analysis of data on advisory committees, discussions with agency staff, and advisory committee surveys undertaken for other studies. It raises a number of questions, and, where possible, attempts to answer them with information available in the literature. However, a number of questions can not be adequately answered with existing information, and there are a number of interesting areas which deserve additional research.

The paper has suggested in a number of places that certain aspects of FACA can "chill" participation--cutting off collaborative efforts before they begin. Unfortunately, it is very difficult to quantify the extent of the problem, because there is no way to see how much more participation would have occurred in the absence of FACA. Nevertheless, it is important to understand how many, and what kind, of participatory efforts never occurred

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<sup>93</sup> Croley, 1996, p. 176.

because of FACA's requirements or because agencies were under restrictive ceilings on committee formation. GAO, in its 1998 study, sought to address this question through surveys of personnel in agencies' headquarters. A next step should be to extend these surveys to line and field personnel who normally spend more time with the public in their day-to-day activities, asking what kind of participatory efforts they have avoided and why.

A related question deals with the significance of the various chilling effects. To the extent that FACA has limited participation, are procedural requirements, FACA-phobia, or the committee ceilings most to blame? Again a survey of agency line and field personnel could help answer these questions. Also enlightening would be a survey of non-FACA advisory committees (such as DOD's RABs and EPA's CAGs) as well as various grassroots collaborative groups (such as the Quincy Library Group) about experiences with FACA.

The recommendations discussed above also deserve further investigation. What kind of clarifications about FACA's scope provisions will head off FACA-phobia? Are new GSA regulations sufficient, or will the rigors of judicial review require changing the legislative language of the Act? Similarly, the outline of a "FACA-lite" needs further work. How could such an effort retain the balance and accountability of the Act while making agencies more accessible to collaboration?

Finally, there are a number of questions related to active federal advisory committees. What is the relationship between advisory committee recommendations and subsequent policy decisions? What do groups gain by participating in advisory committees? What voices are left out when advisory committees make policy, and with what effect? These types of questions likely require a detailed case-by-case analysis rather than the broad evaluation provided here. But they, like the other areas for further research outlined above, deserve more attention as efforts to integrate participatory democracy into environmental management increase.

**APPENDIX A**

<b>Total Federal Advisory Committees, 1985-1990</b>						
<b>Category</b>	<b>1985</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>
Committees	926	901	937	956	978	1071
Meetings	3914	3519	3430	3516	3474	3774
Percentage open to the public	52%	48%	47%	50%	52%	50%
Reports	720	666	695	996	1079	972
Members	23,381	24,600	19,837	21,236	22,960	22,391
Real cost (in millions)	\$109.84	\$114.79	\$105.83	\$119.50	\$120.99	\$131.41
Nominal cost (in millions)	\$ 77.55	\$82.58	\$78.94	\$92.63	\$98.37	\$112.31

<b>Total Federal Advisory Committees, 1991-1995</b>					
<b>Category</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
Committees	1115	1141	1088	1007	948
Meetings	4198	4645	4387	4109	5179
Percentage open to the public	49%	46%	49%	44%	47%
Reports	1035	1241	1141	1245	1023
Members	27,580	29,020	28,317	29,766	30,446
Real cost (in millions)	\$148.46	\$158.87	\$151.11	\$137.13	\$157.03
Nominal cost (in millions)	\$132.55	\$146.26	\$143.91	\$133.39	\$157.03

<b>Total Federal Advisory Committees, 1996-1997</b>		
<b>Category</b>	<b>1996</b>	<b>1997</b>
Committees	900	963
Meetings	5008	5698
Percentage open to the public	44%	42%
Reports	1060	1101
Members	29,511	36,586
Real cost (in millions)	\$144.26	\$169.05
Nominal cost (in millions)	\$148.52	\$178.03

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**APPENDIX B**

<b>EPA Federal Advisory Committees, 1985-1990</b>						
<b>Category</b>	<b>1985</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>
Committees	7	10	7	9	11	13
Total Meetings	99	90	95	78	93	127
Percentage open to the public	95%	98%	98%	96%	98%	99%
Reports	59	65	58	76	61	41
Members	206	220	238	187	194	222
Real cost (in millions)	\$2.14	\$2.17	\$2.45	\$2.13	\$2.55	\$2.98
Nominal cost (in millions)	\$1.51	\$1.56	\$1.83	\$1.65	\$2.07	\$2.54

<b>EPA Federal Advisory Committees, 1991-1995</b>					
<b>Category</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
Committees	19	21	25	22	23
Total Meetings	120	124	148	147	312
Percentage open to the public	99%	99%	99%	99%	99%
Reports	40	82	71	60	69
Members	559	589	823	1366	1445
Real cost (in millions)	\$4.34	\$5.34	\$5.10	\$5.84	\$9.46
Nominal cost (in millions)	\$3.88	\$4.91	\$4.85	\$5.68	\$9.46

<b>EPA Federal Advisory Committees, 1996-1997</b>		
<b>Category</b>	<b>1996</b>	<b>1997</b>
Committees	24	27
Total Meetings	226	181
Percentage open to the public	100%	99%
Reports	82	139
Members	1515	1564
Real cost (in millions)	\$10.63	\$15.65
Nominal cost (in millions)	\$10.94	\$16.48

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

**APPENDIX C**

<b>DOE Federal Advisory Committees, 1985-1990</b>						
<b>Category</b>	<b>1985</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>
Committees	13	11	11	12	14	13
Total Meetings	32	30	31	47	49	53
Percentage open to the public	100%	100%	100%	100%	98%	94%
Reports	18	14	14	21	25	32
Members	425	487	463	490	446	563
Real cost (in millions)	\$1.22	\$1.22	\$1.28	\$1.48	\$2.83	\$3.23
Nominal cost (in millions)	\$0.86	\$0.88	\$0.96	\$1.14	\$2.30	\$2.76

<b>DOE Federal Advisory Committees, 1991-1995</b>					
<b>Category</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
Committees	20	25	17	21	21
Total Meetings	39	49	40	59	141
Percentage open to the public	90%	100%	93%	95%	99%
Reports	24	16	24	22	94
Members	546	613	645	719	789
Real cost (in millions)	\$4.35	\$2.77	\$4.87	\$6.55	\$12.26
Nominal cost (in millions)	\$3.89	\$2.55	\$4.64	\$6.37	\$12.26

<b>DOE Federal Advisory Committees, 1996-1997</b>		
<b>Category</b>	<b>1996</b>	<b>1997</b>
Committees	19	22
Total Meetings	200	140
Percentage open to the public	99%	100%
Reports	129	139
Members	868	808
Real cost (in millions)	\$6.75	\$6.67
Nominal cost (in millions)	\$6.95	\$7.02

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997



**APPENDIX D**

<b>DOI Federal Advisory Committees, 1985-1990</b>						
<b>Category</b>	<b>1985</b>	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>
Committees	145	147	153	155	147	146
Total Meetings	361	265	270	263	283	270
Percentage open to the public	99%	100%	100%	100%	100%	99.6%
Reports	16	36	30	8	80	29
Members	1960	2010	1574	1697	1801	1761
Real cost (in millions)	\$6.15	\$6.66	\$3.54	\$3.15	\$3.15	\$3.79
Nominal cost (in millions)	\$4.34	\$4.79	\$2.64	\$2.45	\$2.56	\$3.24

<b>DOI Federal Advisory Committees, 1991-1995</b>					
<b>Category</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
Committees	164	161	186	181	112
Total Meetings	307	347	339	173	195
Percentage open to the public	100%	99%	100%	99%	100%
Reports	56	31	38	77	50
Members	1893	1609	1779	1779	1076
Real cost (in millions)	\$4.74	\$5.13	\$3.21	\$1.99	\$3.33
Nominal cost (in millions)	\$4.23	\$4.72	\$3.06	\$1.94	\$3.33

<b>DOI Federal Advisory Committees, 1991-1995</b>		
<b>Category</b>	<b>1996</b>	<b>1997</b>
Committees	107	110
Total Meetings	353	308
Percentage open to the public	100%	100%
Reports	103	61
Members	1349	1,428
Real cost (in millions)	\$5.50	\$5.47
Nominal cost (in millions)	\$5.66	\$5.76

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997