

Leon & Nat:

Dick West and I met yesterday, August 20, 2007 with Judith Means, DOC General Law Division, to seek clarification on the interpretation of several FACA rules as applied to National Sea Grant Review Panel. Dick, because of his extensive experience with FACA, both as a Designated Federal Official and as a member of three FACA committees, provided experienced insight which was most appreciated. The following are my notes from our meeting, which Dick has reviewed and with which he concurs.

1) Sub-committees –

a) The current NSGR Panel Charter (2006-08-09-09-54-56) does not address forming sub-committees which means the Panel presently has no authority to form sub-committees. This is a technicality that can be easily fixed by amending the Panel's charter to allow for the formation of sub-committees and working groups in support of the Panel's mission. The guiding principle is you can form any 'fact-finding group' as long as the group brings the facts back to the Panel for final resolution. These sub-committees or working groups cannot provide a final product for the Panel. Dick is working on a revised Charter and will address the subcommittee issue in his proposed revisions which will be discussed at the San Diego meeting.

b) Once the charter is amended to allow for the formation of sub-committees, the Panel is allowed to appoint non-Panel members to sub-committees provided that the sub-committee (or a Panel member of the sub-committee) reports sub-committee deliberations back to the full Panel and not to the federal government. After receiving and deliberating on a sub-committee report in a public meeting, the full Panel can then discuss, vote and provide consensus advice to the federal government pursuant to the sub-committee's advice and recommendations.

2) Closed meetings – Closing Panel meetings for the discussion of Sea Grant-related matters should be viewed as a rare occurrence, and then only if all clearances have been obtained in advance, including written approval by the DOC Assistant Secretary for Administration. To close a meeting at which Sea Grant-related matters are discussed requires citing specific exemption(s) in the Sunshine Act, 5 U.S.C. 552b(c). The discussion of personnel matters, federal data not yet released to the public [budget data] and sequestered legal information would be the most likely exemptions. The clearance process can take up to 90 days.

An important exception to the closed meeting rule under the Act, is the Panel can hold closed meetings at any time for preparatory or administrative work (FR/Vol. 66, No. 139, Sec. 102-3.160). The guiding principle here is these sessions cannot be used to determine advice to the federal government, Sea Grant in our particular case, but can be used to cover all aspects of the Panel's manning, operation and procedures..

3) Transmittal of Panel reports – In order for a report to be considered an official Panel report, the report must be discussed and voted on in a public meeting. A report written by a subcommittee and distributed to Panel members for comment cannot be considered a Panel report until/unless the report was discussed and voted on in a public full Panel meeting. For reports that are time-sensitive, a working draft can be made available, e. g., placed on the Panel's

web site, at the time it is produced. For the report to be considered official advice to the government, the report must be discussed and endorsed by the Panel at its next meeting, or a special Panel meeting such as a teleconference, that is open to the public. A special meeting such as a teleconference must be announced in the federal register 15 days in advance of the meeting (or teleconference).

4) Committee functions – Committee operational functions are generally not subject to FACA management rules, but rather are addressed in the Panel charter.

5) Providing food or light refreshments – Light refreshments (coffee, donuts, soft drinks, etc.) or meals cannot be provided by the government. The only options available are to, a) provide light refreshments or meals in lieu of Panel per diem or b) collect an amount from each Panel member to cover the charge of light refreshments or meals.