

September 26, 2008

To: EPA Designated Federal Officers

From: Timothy Sherer  
Program Manager, EPA Federal Advisory Committees  
Office of Cooperative Environmental Management

Subject: EPA Policy Regarding Representative Federal Advisory Committee Members Meeting with Members of Congress or their Staff

EPA recognizes that private citizens who volunteer their time to participate as representative members of a federal advisory committee (FAC) provide a valuable and important public service in assisting EPA to protect human health and the environment. For this reason, EPA believes that it is important to maintain public confidence in the credibility and integrity of EPA's FACs. EPA wants to ensure that meetings between individual FAC members and congressional members or staff do not create a perception that the member is inappropriately lobbying Congress.

EPA is revising its prior policy on FAC members meeting with congressional members. This prior policy is contained in a memorandum dated March 1998 from the Office of General Counsel to EPA FAC members entitled, "Legal Requirements for Representative Members of EPA Advisory Committees." EPA is revising this policy to provide FAC members with more flexibility in meeting with congressional members or their staff, while ensuring that such meetings do not create the appearance of impropriety. EPA's revised policy is that a FAC member may meet with Congress and avoid the appearance of impropriety providing the FAC member follows the guidance below.

Thus, EPA is revising the policy to read as follows:

The only "official" function of a federal advisory committee is to provide advice and assistance to EPA. Therefore, FAC members should not lobby Congress in their capacity as advisory committee members. When communicating with Congress (whether the communication is oral or written), FAC members should not represent that they are speaking on behalf of or as a member of the committee. Of course, this in no way restricts advisory committee members from communicating with Congress on any matter (including those that concern EPA) in their personal capacities without reference to their affiliation with the advisory committee. Under applicable law, EPA employees may not direct or encourage FAC members to contact Congress concerning pending legislation. In addition, applicable law prohibits advisory committee funds or official advisory committee meetings from being used to develop a strategy for lobbying Congress.

To avoid the appearance of impropriety, EPA policy is that representative members may meet with congressional members or their staff on days they are in Washington, D.C., for a FAC meeting, providing:

1. The member is on personal time (that is, the meeting with congressional members or their staff occurs outside of the time the committee is meeting, such as the day before the meeting, the day after the meeting, or the day of the meeting after the meeting is over for the day);
2. The member meets with Congress in his/her personal capacity (that is, not as a member of the FAC);
3. The subjects discussed do not include work the FAC is doing; and
4. If the member is on invitational travel, the member notifies the DFO in advance of the meeting.

This policy does not apply to a request from a congressional committee to one or more FAC members to testify during a hearing regarding the work of the FAC. For example, in recent years, the chair of the Science Advisory Board (SAB) has been asked to testify annually on the SAB's review of EPA's research budget. This policy does not apply to such hearings or to meetings with congressional members or their staff where EPA has received a request from the congressional committee, member, or their staff for the FAC member(s) to testify on or attend a meeting regarding a matter before the committee and EPA has requested that the FAC member(s) attend the meeting.

Contact Tim Sherer (202 564 -6486) or Marilyn Kuray (202 564-3449) if you have questions.