

March 1988

PARKS AND RECREATION

Interior Did Not Comply With Legal Requirements for the Outdoors Commission



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541670



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-227293

March 25, 1988

The Honorable Don Young
Ranking Minority Member
Committee on Interior and Insular Affairs
House of Representatives

The Honorable Ron Marlenee
Ranking Minority Member
Subcommittee on National Parks and
Public Lands
Committee on Interior and Insular Affairs
House of Representatives

As requested in your January 23, 1987, letter and in subsequent discussions with your office, this report addresses 10 questions concerning the operations of the President's Commission on Americans Outdoors (Commission). These questions generally pertain to compliance with the Federal Advisory Committee Act (FACA) (5 U.S.C., app. I), and the process and procedures that the Commission used to accomplish its mission.

In January 1985, the President established the Commission by Executive Order to review existing public and private outdoor recreation policies, programs, and opportunities and to make recommendations to him on the nation's expected future recreational needs. The President made the Commission subject to FACA, an act that prescribes certain administrative requirements which are designed to assure that advisory committee activities are visible to the Congress and the public, and assigned responsibility for these requirements and other support services to the Secretary of the Interior.

In summary, we found that Interior did not comply with a number of administrative requirements for advisory committees as prescribed in FACA. Specifically, Interior did not assure that (1) advance notices for meetings were published in the Federal Register, (2) required procedures for closing meetings to the public were followed, (3) detailed minutes for meetings were maintained, and (4) each of the Commission's meetings were attended by a designated federal official. The major reason for Interior's noncompliance with these requirements was a lack of internal controls to assure that (1) appropriate agency and commission personnel were aware of the law's requirements and (2) proper oversight responsibilities were exercised by agency officials. Despite these shortcomings, our review of Commission and Interior records show that,

a committee management officer to oversee and manage the Commission.

Scope and Methodology

To determine Interior's compliance with FACA and to document the Commission's process and procedures, we examined FACA, GSA's implementing regulations, and Interior's departmental manual on advisory committees, and reviewed Commission and Interior records. During our review we looked at the adequacy of internal controls in place to assure compliance with FACA requirements. Our review did not include a financial audit of Commission funds. We also interviewed responsible Interior officials, the Chairman of the Commission, the Commissioners who were in charge of each of the three Commission working groups, Commission staff, and GSA officials.

We conducted our review between March and November 1987 in accordance with generally accepted government auditing standards.

Interior Did Not Assure That FACA Requirements Were Met

Interior did not assure that the Commission followed FACA administrative requirements. Specifically:

- FACA regulations require that a notice be published in the Federal Register 15 days in advance of an advisory committee meeting. Such advance notice was published for only 18 of the 60 meetings subject to FACA. However, only 10 of these 18 had notices published in accordance with the prescribed 15-day requirement. (See app. I, question 1.)
- FACA provides that advisory committee meetings should be open to the public but allows for closure of such meetings if certain procedures are followed. Twenty-five of the 60 meetings were open to the public while 34 were not.³ Proper procedures for closing meetings to the public and press were not followed for any of the 34 closed meetings. (See app. I, question 2.)
- FACA requires that detailed minutes be kept of all meetings and that the accuracy of the minutes be certified by the advisory committee chairman. Such documentation was kept for only 27 of the 60 meetings, and none of them were certified as required. (See app. I, question 3.)
- FACA requires that a full-time government employee be designated the federal official for each advisory committee and that this individual attend all advisory committee meetings. While such an individual was

³We were unable to determine, from available records, if one of the meetings was open or closed to the public and press

oversight and controls to assure compliance with FACA requirements did not exist.

Commission Officials Not Aware of Delegated Responsibilities

The Commission's Executive Director told us that he was not aware that carrying out FACA administrative requirements was the responsibility of the Commission. He acknowledged that Interior's Office of the Solicitor provided the Commission with a briefing on FACA requirements during the Commission's initial meeting on September 13, 1985. While this briefing mentioned the requirements for Federal Register notices, minutes, and open meetings, it neither detailed how and when these requirements were to be followed nor charged the Commission with handling them. In fact, the record shows that the briefing dealt more with conflict of interest issues than with FACA administrative requirements.

In addition, the Executive Director told us that although he was provided a copy of the act by the Office of the Solicitor before the Commission's initial meeting, he did not familiarize himself with it since receipt of the act did not mean, to him, that the Commission was responsible for assuring compliance with the act's administrative requirements.

Further, although the Commission complied with some of FACA's administrative requirements, such as publishing Federal Register notices for some meetings and maintaining minutes for these meetings, the Executive Director told us that this was done as part of their public outreach program to notify the public, secure their input, and document the input received—not as an effort to comply with the act's administrative requirements. Similarly, the Commission's Administrative Officer, who drafted the Federal Register notices and arranged for transcript recordings at hearings, also told us that the Commission followed these procedures as a matter of good management practice. He also added that at no time did he consider himself to be the committee management officer.

Both the Executive Director and Administrative Officer told us that during the Commission's tenure, Interior officials did not contact them or make any inquiries of the Commission to determine if the administrative requirements were being carried out according to the act. It was not until a meeting with Interior's Office of the Solicitor in December 1986, to discuss allegations made by a public interest group that FACA had been violated, that the Executive Director told us he became fully aware of FACA's administrative requirements. By this time, however, according to the Executive Director, all the Commission's work had been completed except for finalizing the written report.

Conclusions

Interior did not follow its own policies and procedures to assure compliance with FACA. The department committee management officer thought that responsibility for FACA requirements were being handled by the Commission, but Commission officials were unaware that such a transfer of responsibility had occurred. Although we believe it is reasonable for an advisory committee to handle a number of the administrative requirements, the responsibility for assuring compliance remains with the agency—a responsibility that is clearly outlined in FACA, GSA implementing regulations, and Interior's departmental manual on advisory committees. In this case, Interior did not provide adequate guidance to the Commission and did not exercise proper oversight. As a result, many of FACA's administrative requirements relating to the Commission's activities were not met.

However, because the Commission did undertake an extensive outreach program and made extensive efforts to include the public in its activities, as evidenced by the available records, compliance with all requirements may not have had a material impact on the Commission's operations and its final report and recommendations. Nevertheless, proper internal controls to assure compliance with FACA should, at a minimum, require that all transactions and other significant events involving operational and administrative roles and responsibilities be clearly documented. Further, monitoring of responsibilities, whether delegated within the agency or handled by an advisory committee, should be continuous to assure that responsibilities are properly carried out. The lack of such controls could result in a negative public impression of the Commission and bring into question the credibility of its activities.

Recommendations

In order to assure compliance with the act, applicable regulations, and departmental policies and procedures by Interior and future advisory committees, we recommend that the Secretary of the Interior:

- Provide current and future advisory committees written detailed information and guidance on FACA administrative requirements.
- Develop written internal controls that provide for adequate monitoring and assure that FACA administrative requirements are met when these responsibilities are handled by an advisory committee. Such controls should include, for example, written confirmation that detail the FACA responsibilities and to whom these responsibilities are delegated.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from its issued date. At that time, we will send copies to interested parties and make copies available to others upon request.

This work was performed under the direction of James Duffus III, Associate Director. Other major contributors are listed in appendix IV.



J. Dexter Peach
Assistant Comptroller General

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Abbreviations

FACA	Federal Advisory Committee Act
GSA	General Services Administration

Appendix I
Responses to Questions Raised by Requesters

Table I.1: Types of Commission Meetings and Applicability of FACA

Types of meetings	Number held	Subject to FACA	Federal Register notices published
Public hearings^a	16	Yes	14
Supply Committee	4	No	
Demand Committee	2	No	
New Ideas Committee	1	No	
Business meetings^a	32	Yes	4
Conference calls^a	2^b	Yes	0
Strategic planning sessions	11	No	
Roundtable discussions	4	No	
Brainstorming sessions	7	No	
Conferences/other meetings	6	No	
Field trips	14	(c)	
Working meals^a	11	Yes	0
Total	110		18
Total Meetings Subject to FACA^a	60^a		

^aBold print denotes those meetings subject to FACA.

^bWhile evidence exists that two conference calls occurred, because of inadequate documentation for one of these calls, we are unable to determine if it is subject to FACA, and therefore, this one call is not included in the total number of meetings subject to the act (See app I, question 2b)

^cAlthough field trips under appropriate circumstances may qualify as "meetings" and be subject to FACA, we excluded them from our analysis with the concurrence of the requesters because the Commission files did not contain adequate documentation for the purpose of determining their applicability to the act

Question 2B

There have been allegations that some Commission meetings were held by telephone using conference calls. Were minutes kept for these sessions? Is this appropriate for Commission meetings under FACA?

GAO Response

Commission files document that at least two telephone conference calls were held during the Commission's tenure. Detailed minutes were not kept for either of these sessions, although staff notes were maintained for one call and a list of conferees was recorded for the other.

Because of the limited documentation that is available for one of the conference calls, we were unable to determine if it is a meeting for the purposes of FACA. To make this determination, as indicated in our response to question 1, it is necessary to know whether or not the call involved Commission members as members of the full Commission or as members of a subgroup or subcommittee, and whether or not they furthered, in any way, the Commission's mandate. The limited documentation did not contain this necessary information. On the other hand, documentation for the remaining conference call indicates that it was subject to FACA.

Question 4

Was there an official appointed as the advisory committee’s designated federal official and did this official, or an authorized representative of the official, attend each official Commission meeting? If not, which meetings did not have the federal official or his designee in attendance?

GAO Response

Section 10 of FACA requires that a full-time government employee or official be designated for each advisory committee for the purpose of attending each meeting and adjourning any meeting that he determines is not in the public’s best interest. Further, this section requires that no advisory committee shall conduct any meeting in the absence of the designated federal official.

The Commission’s charter designated the Secretary of the Interior or his designee as the designated federal official. This responsibility was delegated by the Secretary to the Deputy Assistant Secretary-Fish, Wildlife, and Parks, according to the department committee management officer. The designated federal official, however, as shown in table I.4, attended only 6 of the 16 public hearings, 3 of the 32 business meetings, 2 of the working meals, and did not participate in the conference call—a total of 11 of the 60 meetings subject to FACA.

The designated federal official said that the reason he did not attend more meetings was that he interpreted his responsibility to be that of keeping the Secretary informed of the Commission’s activities, not that of assuring FACA compliance by the Commission. Consequently, he said that he attended only those meetings which he felt were necessary to keep the Secretary informed. He also pointed out that the Commission’s Deputy Executive Director briefed him periodically on Commission activities.

Table I.4: Meetings Attended by the Designated Federal Official

Type of meeting	Number held	Number of meetings designated official attended
Public hearings	16	3
Business meetings	32	6
Conference calls	1	0
Working meals	11	2
Total	60	11

Appendix I
Responses to Questions Raised by Requesters

the number of witnesses, and several other hearings required the Commission to hold separate but concurrent sessions in order to accommodate the demand to testify.

Question 7

Was it proper for the Commission to expend funds for meetings subject to FACA that were not announced in the Federal Register? Also, was it proper to expend funds for meetings subject to FACA that were not attended by the designated federal official?

GAO Response

As discussed in our responses to questions 1 through 4, a number of provisions of FACA were not met. Not publishing timely notice of all meetings in the Federal Register and not assuring the attendance of the designated federal official at all Commission meetings were two of these provisions.

Even so, the expenditure of appropriated funds to cover the expenses of the Commission for these meetings was proper. This conclusion is based on the fact that, in holding these meetings, the Commission was fulfilling its mandate to review public outdoor recreation policies, programs, and opportunities. Additionally, the Executive Order creating the Commission directed that the Secretary of the Interior “shall to the extent permitted by law, provide the Commission with such administrative services, facilities, staff, and other support services as may be necessary for the effective performance of its functions.” Therefore, the agency was authorized to pay the expenses associated with these meetings. Under these circumstances, it is not necessary for Interior to recover funds expended for meetings of the Commission which did not meet FACA’s administrative requirements.

This conclusion, however, is not intended to minimize the importance of FACA’s procedural safeguards, designed to assure that the Congress and the public are kept fully informed of advisory committees’ activities. As noted in our recommendations to the Secretary of the Interior, we emphasize the importance of assuring that FACA’s administrative requirements are met.

Appendix I
Responses to Questions Raised by Requesters

Table I.5: Combined Fiscal Years 1985, 1986, and 1987 Commission Budget and Expenditures by Class

Classification	Authorized budget	Actual expenditures
Personal services and benefits (salaries)	\$848,200	\$754,551
Personnel benefits	91,800	56,275
Travel and transportation of persons	193,000	157,591
Transportation of things	28,500	0
Rent, communications, and utilities	174,500	149,567
Printing and reproduction	251,900	139,560
Other services	190,000	131,520
Equipment	34,000	35,372
Supplies and material	27,100	27,379
Total	\$1,894,000^a	\$1,451,815

^aFigure includes \$55,000 authorized for fiscal year 1985 but not allocated by class

Process and Procedures

The Commission began its work with an organizational meeting on September 13, 1985, in Washington, D.C. At that time, the Commission formally appointed its Executive Director and established three working committees—Supply, Demand, and New Ideas—each headed by a Commissioner which reported its results to the full Commission. In addition, according to the Executive Director, during the next month or so he assembled a staff to assist the Commission and developed a work plan that was approved by the Commissioners at their second business meeting in Austin, Texas, during December 1985. This work plan divided the Commission's work into three phases—Issue Identification, Issue Analysis, and Issue Resolution.

The Issue Identification phase, which commenced officially in December 1985, involved the research portion of the Commission's activities. During this phase, the Commission initiated an extensive outreach program which gathered a massive amount of data and testimony from the public and various diverse interest groups. (See question 8a.)

The second phase, Issue Analysis, began around April 1986. During this phase, the Commission analyzed the data and testimony it had received from its initial phase, although it continued to receive input from its outreach program. The analysis and assimilation of this information by the Commission was handled through a series of staff discussion papers which were prepared at the direction of the Commissioners.

Question 9

Was the chartering process of the Commission consistent with FACA?

GAO Response

Section 9 of FACA requires that no advisory committee shall meet or take any action until its charter is filed with the Administrator of GSA, the Senate and House of Representatives standing committees having legislative jurisdiction over the advisory committee's agency, and the Library of Congress. This section also stipulates that the charter shall contain (1) the committee's official name, objectives, duties, and scope of activities; (2) the time necessary for the committee to carry out its purpose; (3) the estimated number and frequency of meetings; (4) the committee's estimated annual operating costs; and (5) its termination date. In addition, the charter is to identify the agency or official to whom the committee reports, the agency responsible for providing the necessary support for the committee, and the date the charter was filed.

The Commission's charter was filed in accordance with FACA. Specifically, on September 9, 1985, Interior filed the Commission's charter with GSA, the Senate Committee on Energy and Natural Resources, the House Committee on Interior and Insular Affairs, and the Library of Congress. The Commission did not meet or take any action until its first organizational meeting on September 13, 1985, 4 days after its charter was filed. Further, the Commission's charter contained the required information detailed above.

Comments From the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



JAN 20 1988

Mr. James Duffus III
Associate Director
Resources, Community and Economic
Development Division
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for the opportunity to comment on the proposed report entitled Parks and Recreation: Commission on Americans Outdoors Did Not Comply With Legal Requirements. In the proposed report, the General Accounting Office (GAO) found that the President's Commission on Americans Outdoors did not comply with all the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix, but overall met the FACA's requirements to disclose the nature and extent of the Commission's activities. The GAO also found that the Commission undertook an extensive outreach program and made extensive efforts to include the public in its activities, and that compliance with all the requirements of FACA may not have had a material impact on the Commission's operations and its final report and recommendations. The GAO made two recommendations in the proposed report to assure compliance in the future with the FACA.

Before commenting on the recommendations, we would like to describe the decentralized management of advisory committees within the Department of the Interior. Generally, the committee management officer for the Department is responsible for providing policy guidance with regard to the implementation of the FACA requirements and collecting information from the bureaus and offices of the Department that service advisory committees for the President's Annual Report to the Congress. Within each bureau and office that services advisory committees (e.g., the Bureau of Land Management and the National Park Service), committee management officers are designated who have day-to-day administrative responsibility for assuring compliance with the FACA requirements. All advisory committees currently advising the Secretary or a bureau or office in the Department are serviced by the advisory committee management staff of a specific bureau or office.

The first recommendation in the proposed report is that the Secretary of the Interior provide current and future advisory committees written, detailed information and guidance on the FACA administrative requirements. Written guidance already has been prepared by the committee management officer for the Department, and currently is being provided to the designated Federal officials for advisory committees by the committee management officers of the servicing bureaus and offices. A copy of the written guidance is enclosed for your information. In addition, the Department's committee management officer and the Office of the Solicitor will be reviewing the FACA chapters in the Departmental Manual and making necessary revisions to reflect the recent regulations promulgated by the General Services Administration and provide complete guidance with regard to the FACA requirements to the bureaus and offices of the Department.

See comment 1.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



January 4, 1988

MEMORANDUM

To: Bureau Committee Management Officers
From: Departmental Committee Management Officer
Subject: Advisory Committee Meetings

A handwritten signature in cursive, appearing to read "J. A. [unclear]".

In an effort to improve our knowledge of the activities of the Department's many advisory committees, effective immediately, I am asking that you compile a quarterly schedule of proposed meetings for each advisory ^{committee} that you oversee. This report should provide a 3-month advance picture of the dates, locations, topics for discussion and "open vs. closed" nature of proposed meetings for the advisory committees in your area. In addition, I'm asking that you provide me with the results of meetings in those instances where something unexpected, unusual or troublesome (in the opinion of the designated federal officer, who shall be present) should occur.

Although we compile meeting information on an annual basis for the President's report to Congress, this internal reporting requirement will enhance our knowledge of committee activities, as well as to spot areas of concern before problems develop. I believe that in large part, you can count on your regional offices to provide this information to you as it becomes available. In addition, I fully understand that there will be instances where committee meetings are called with a relatively short lead time. In those instances, amendments to your quarterly report will be in order.

If you have any questions concerning the quarterly meeting schedule, please call me at 343-4863.

BUREAU LETTERHEAD

MEMORANDUM

To: Designated Federal Officers
From: Bureau Committee Management Officer
Subject: Authorities and Responsibilities of Designated
Federal Officers

As you know, Congress provided at section 10(e) and (f) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., that each Federal Advisory Committee is to have a "designated" federal officer. Concerning the functions of the designated federal officer, the FACA and GSA's final rule, 41 CFR Part 101-6, December 2, 1987, that:

- 1) the designated federal officer, who shall be either a full-time or permanent part-time Federal employee, must approve in advance, or call the meeting of the advisory committee;
- 2) no advisory committee may conduct any meeting in the absence of the designated federal officer;
- 3) the designated federal officer is authorized, whenever he or she determines it to be in the public interest, to adjourn any advisory committee meeting;
- 4) except in the case of a Presidential advisory committee, an advisory committee may not hold any meetings without an agenda approved by the designated federal officer;
- 5) the designated federal officer chairs the meeting when so directed by the agency head.

The Department is now, in its advisory committee charters, providing specific language regarding the designated federal officer, and is also making a provision therein for a designee to attend in your place, if you are unable to attend an advisory committee meeting.

The following are GAO's comments on the Department of the Interior's letter dated January 20, 1988.

GAO Comments

1. In response to our second recommendation, Interior commented that it will ensure that any presidential advisory committees that are established and assigned to Interior for administrative assistance will be serviced by staff with expertise and experience under FACA. We believe, however, that such actions by themselves fall short of the necessary written internal controls that are needed and recommended for providing adequate monitoring and assuring that FACA administrative requirements are met. As pointed out in the report, these controls should require, at a minimum, that all transactions and other significant events involving operational and administrative roles and responsibilities be clearly documented. Further, monitoring of responsibilities, whether delegated within the agency or handled by an advisory committee, should be continuous to assure that responsibilities are properly carried out.
2. We have incorporated changes on pages 5 and 6 and where appropriate to clarify the roles and responsibilities for assuring compliance with FACA requirements.
3. This correction was made on page 7.

**Appendix III
Comments From the President's Commission
on the Americans Outdoors**

Mr. James Duffus III
Page two
January 19, 1988

We were glad to cooperate with your staff and appreciated their courteous attitude and thoroughness.

Sincerely,


Lamar Alexander

LA:sm

pc: Members and Executive Director, President's Commission on
Americans Outdoors

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The following are GAO's comments on the former Commission's Chairman's letter dated January 19, 1988.

GAO Comments

1. We agree that the lack of a definition or other guidance as to what constitutes a meeting for purposes of FACA makes it difficult for agencies and advisory committees to comply with the requirements of FACA. Neither the statute, its legislative history, nor implementing regulations define the term "meeting." Further, no court has to date attempted to define what constitutes a "meeting" for the purposes of FACA. However, one court¹ has concluded that meetings of subcommittees of an advisory committee performing staff functions and not providing advice directly to the President or federal agencies are not subject to requirements of FACA.

Accordingly, for purposes of this report, we have excluded such subcommittee gatherings from those meetings we considered to be subject to FACA. We also excluded gatherings of committee members which were in substance social.

In deciding whether to call other gatherings meetings for the purposes of FACA, we used such factors as topics discussed; the formality and setting; and whether advance notices for gatherings were given. For any gathering to have been considered a meeting, the topics discussed would, of course, have had to relate to the Commission's mandate. The absence of the other factors, however, did not necessarily disqualify a gathering from being a meeting. Given FACA's objectives of maximizing openness and public participation, a broad interpretation of "meetings" is necessary. However, for some Commission gatherings, the records which would permit a definitive determination of the application of these factors did not exist.

In any event, GSA and responsible agency heads have the responsibility under FACA and its implementing regulations to issue such guidelines as may be necessary for the operation of advisory committees. GSA's regulations, in effect during the Commission's tenure, provided some guidance on what GSA considered not to be a meeting; it did not define what a meeting is for purposes of FACA. GSA has since revised these regulations, effective January 4, 1988, that further elaborate on what it considers not to be a meeting.

¹National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Controls, 557 F. Supp. 524 (D.D.C. 1983), aff'd, 711 F.2d 1071 (D.C. Cir. 1983).

Comments From the President's Commission on the Americans Outdoors

Note: GAO comments supplementing those in the report text appear at the end of this appendix

BELMONT
COLLEGE
NASHVILLE

January 19, 1988

THE LEADERSHIP
INSTITUTE
of
The Jack C. Massey
Graduate School
of Business

Lamar Alexander
Chairman

Mr. James Duffus
Associate Director
United States General
Accounting Office
441 G - G St., N.W.
Room 4901
Washington, DC 20548

Dear Mr. Duffus,

Thank you for sending a copy of the GAO report on the President's Commission on Americans Outdoors.

I am glad that you found that the Commission "made numerous efforts to include the public in its activities during all phases of its work and that it maintained records which accounted for its activities." (Page 10.)

It is unfortunate that you also found that the Interior Department did not help the Commission staff comply with some of the requirements of the Federal Advisory Committee Act. I know the Commission members and staff certainly did our best to keep our business public, holding and attending hearings all over America so that citizens could give us their thoughts and know what we were doing.

After looking over your report, I have a suggestion that might help in the future. The biggest culprit here may be the definition of the word "meeting." I did not ever imagine that a "meeting" could be a lunch among a few of the Commission members where no decisions were reached or a staff working session which some Commission members briefly attended.

If such an unusual definition of "meeting" is what Congress really intended, then perhaps GAO officials could visit Commissions like ours when they begin and say that. That would save time and money and avoid embarrassing citizens like those on our Commission who gave hours of time to help the country and thought they were "meeting" just as the President and Congress wanted.

1900 Belmont Boulevard
NASHVILLE, TN 37212-3757
(615) 385-6459

Now on p 6.

See comment 1.

**Appendix II
Comments From the Department of
the Interior**

If you have any questions concerning your functions or the scope of your authority please contact me at -----; Mrs. Stacy Adagio, the Department's Committee Management Officer, at 343-4863; or the Division of General Law of the Office of the Solicitor, at 343-5216.

Committee Management Officer



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



January 4, 1988

MEMORANDUM TO ADVISORY COMMITTEE MANAGEMENT OFFICERS

FROM STACY ADAGIO

In recent months there has been some discussion that the Designated Federal Officers (DFO) for each of our advisory committees may not be aware of the full extent of their duties in that capacity. In order to ensure that they are fully aware of their duties as such, please reproduce the attached memo on your Bureau letterhead and assure that the DFO for each of your advisory committees receives a copy immediately.

Should the DFO for any of your advisory committees change, I expect you to be responsible for this information reaching the new DFO immediately, as well as notifying me of the change.

I have also attached a copy of the Federal Advisory Committee Act. It should now become standard procedure for each DFO, as well as all committee members, to receive a copy of and be familiar with this law. I will count on you to distribute these materials to those individuals.

Attachments

Appendix II
Comments From the Department of
the Interior

2.

See comment 2.

The second recommendation is that the Secretary of the Interior assure that the FACA requirements are met when the FACA responsibilities are delegated to an advisory committee. As noted above, it is the usual practice within the Department to have advisory committee management staff within a bureau or office ensure compliance with FACA, and all the Department's advisory committees currently are serviced by a specific bureau or office. The President's Commission for Americans Outdoors was unusual for the Department in that it did not advise the Secretary or a bureau or office within the Department but was established by Executive Order to advise the President directly. Given the independent nature of the Commission and also the Commission's high level of importance, officials serving the Assistant Secretaries for Fish and Wildlife and Parks, and Policy, Budget and Administration were requested to provide liaison and administrative support to the Commission. The Department at present does not anticipate being assigned administrative responsibilities for other Presidential advisory committees, but will ensure that any Presidential advisory committees that are established and assigned to Interior for administrative assistance will be serviced by staff with expertise and experience under the FACA.

There are two minor factual corrections that should be made to the proposed report. Although initially there was a Staff Assistant to the Under Secretary who assisted in the organization of the Commission, including compliance with the FACA, the individual was not appointed by the Secretary as committee management officer for the Commission as stated on pages 3-4 of the proposed report. The individual who later became and still serves as the Department's committee management officer for policy guidance also was not appointed as the committee management officer for the Commission, and presumed from the annual report she received that the FACA requirements were being observed by the Commission staff.

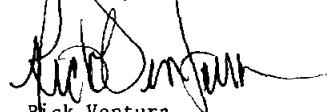
See comment 3.
Now on p. 6.

In addition, the report incorrectly states on page 8 that the designated Federal official for the Commission was present at a December 1986 meeting between Commission staff and attorneys in the Office of the Solicitor. Attorneys from the Office of the Solicitor did meet with the designated Federal official late in January 1987.

We appreciate the opportunity to review and comment on the proposed report.

Any questions concerning this letter may be directed to Deborah Ryan Howard in the Office of the Solicitor (343-5216).

Sincerely,



Rick Ventura
Assistant Secretary - Policy,
Budget and Administration

Enclosure

Question 10

What was the immediate prior employment experience of the staff before joining the Commission?

GAO Response

The Commission staff consisted of 33 individuals—23 from the federal government, 8 from the private sector, and 2 from state government. Their experience before joining the Commission can be categorized into eight areas as shown in table I.6.

Table I.6: Number of Commission Staff by Area of Prior Employment Experience

Area of experience	Number of staff
Legal profession	3
Natural resource management	14
Biologist	3
Office administration	1
Public affairs	2
Computer specialist	1
Secretarial	4
Other	5
Total	33

In August 1986, the Commission began its Issue Resolution phase which involved drafting the report and finalizing its recommendations. According to Commission staff, this phase consisted of the Commissioners and staff reviewing and revising the discussion papers that had been prepared during the previous phase--an effort that eventually led to the Commission's final report. The report recommendations, they told us, were also formulated during this phase and were based on ideas and suggestions the Commission had received throughout its existence.

Question 8A

The Commission used an outreach program to gather data and acquire input on recreational issues from both the public and private sectors. How was the data gathered through the outreach program utilized by the Commission?

GAO Response

The Commission's outreach program was extensive, including (1) literature searches on recreational issues, (2) strategic planning sessions to identify societal trends and their impact on recreation, (3) assessments by states of their recreational needs, (4) case studies involving examples of solution-oriented analyses for major recreational problems, (5) public hearings, (6) concept papers outlining recreational ideas, and (7) option papers written to address specific recreational questions raised by the public. Over a thousand individuals from all sectors participated in these efforts.

In order to handle the large volume of data received through the outreach program, the Commission summarized and recorded the information by preparing computerized abstracts. These abstracts, filed by topic area, allowed the Commission and staff to obtain an overview of the type of information being submitted and the amount of support various recreational issues were receiving from throughout the country. Then, using the data received through its outreach program, the staff prepared discussion papers on the various recreation issues which were reviewed, discussed, and revised by both the Commissioners and staff. This process of refining and fine-tuning the discussion papers eventually led to the Commission's final report and recommendations, according to staff.

Question 8

Did the Commission keep records that disclose the nature and extent of their activities? Describe and explain the process and procedures that the Commission used to carry out its mission from formation to completion of its final report.

GAO Response

Recordkeeping

Section 12 of FACA requires each agency to maintain records that detail the nature and extent of its activities and disclose the disposition of any funds which may be at the disposal of an advisory committee. In this case, the Commission and Interior maintained records that overall disclose the nature and extent of their activities, including financial records.

Specifically, the records and files documenting the Commission's activities include approximately 60 boxes of documents and over 200 computer disks and tapes. These records are organized by acquisition number and are broken out by description of records, such as transcripts, hearings, testimony, and concept papers.

Similarly, the financial records for the Commission that were maintained by Interior's Division of Fiscal Services disclose the disposition of funds used by the Commission. Although we did not conduct a financial audit of Commission expenditures, the records show that Interior established and maintained a separate account for Commission financial activities and categorized each transaction according to established governmentwide accounting standards. Table I.5 details the Commission's authorized budget and expenditures.

Question 6

Does the Commission's draft report specifically apply cost estimates or cost savings to the Commission's recommendations as requested by the President?

GAO Response

The Executive Order which established the Commission required the Commission to assess the budgetary and regulatory cost increase or cost savings associated with its recommendations. Even though the Commission's report contains over 100 recommendations, only one has a cost assessment—the establishment of a dedicated trust fund totaling \$1 billion annually to help pay for federal, state, and local acquisition, facility development, and rehabilitation of recreational sites.

Commission staff told us that it was impossible in the short time of the review to apply cost estimates or savings to each of the recommendations. The Commission's report makes a similar statement and further acknowledges that such estimates are probably incalculable given the growing demand and increasing expectations of recreation activities and opportunities. The report also notes that while the exact figure of what is needed for outdoor recreation is not known, the amount is "tremendous."

Question 5

How did the Commission go about selecting sites and locations for Commission meetings and those who provided testimony or input at such meetings?

GAO Response

The Commission staff, in consultation with the Commissioners, developed a list of potential hearing and business meeting sites and dates. This list was discussed and approved during the Commission's second public business meeting which was held in Austin, Texas, on December 13, 1985. According to the Commission's Executive Director, the sites were selected to achieve a geographic balance throughout the country while assuring accessibility for potential witnesses and covering the variety of outdoor recreational activities that exist. In addition, the Commission held a number of working meal sessions which were, according to the Executive Director, scheduled as the need arose in conjunction with either the business meetings or public hearings.

While participation in Commission business meetings and working meal sessions was usually limited to Commission staff reporting on the status of the various outreach programs (see question 8a), witnesses for the hearings were acquired through four principal sources. These included:

- responses to Federal Register notices and press releases which announced the Commission hearings and business meetings,
- suggestions from staff and Commissioners,
- responses to notices or announcements placed in magazines and journals, and
- individuals who appeared on the day of the hearing and wished to testify.

According to Commission staff and Commissioners, the Commission attempted to accommodate all who wished to testify. For those who were unable to attend and participate in the hearings, the Commission encouraged them to submit written statements or comments. Further, Commission staff and several Commissioners told us that they were not aware of any individuals who were turned away or not permitted to testify.

Commission files further support that the Commission received input from a large number of individuals with diverse interests. In fact, a number of Commission hearings ran over the allotted time because of

Question 3

Were detailed minutes kept for all meetings, including strategic planning sessions, and are those minutes available to the public? If not, which meetings were not properly documented?

GAO Response

Section 10 of FACA requires that detailed minutes be kept of each meeting and that the accuracy of all minutes be certified by the chairman of the advisory committee. This section also requires that minutes contain a record of attendance, a complete and accurate description of the subjects discussed, and copies of all reports received, issued, or approved by the advisory committee.

As shown in table I.3, of the 60 meetings subject to FACA, the Commission maintained detailed minutes for 27 of them. None of these minutes, however, were certified by the Commission's Chairman, as required. Yet, for the most part, the minutes contained the required information and, according to the Commission's Executive Director, were available to the public during the Commission's tenure. And, after the Commission disbanded in January 1987, the records, including minutes, were transferred to Interior Headquarters in Washington, D.C., where they have been available to the public.³

Strategic planning sessions, on the other hand, as noted in question 2a, are not meetings for the purposes of FACA. Consequently, detailed minutes were not required, even though minutes for these sessions were maintained and published in an appendix to the Commission's final report.

Table I.3: Commission Meetings for Which Minutes Were Maintained

Type of meeting	Number held	Number with detailed minutes
Public hearings	16	15
Business meetings	32	12
Conference calls	1	0
Working meals	11	0
Total	60	27

³Upon completion of our review, an Interior official has advised us that these records will be transferred to the National Archives and Records Administration in Washington, D.C.

Question 2

Were all meetings open to the public and press as required by law? If not, which meetings were closed?

GAO Response

Section 10 of FACA requires that advisory committee meetings be open to the public but allows for closure of such meetings if certain procedures are followed. To close a meeting, GSA regulations require an authorized advisory committee representative to request such closure from the agency head 30 days in advance and cite the specific reasons that justify closure. If approved, the agency head is required to publish a notice of the closure in the Federal Register. In the case of the Commission, as shown in table I.2, 25 of the 60 meetings subject to FACA were open to the public while 34 (see note a below) were not. Moreover, proper procedures for closing meetings to the public and press were not followed for any of the 34 closed meetings.

Table I.2: Commission Meetings Open to the Public and Press

Type of meeting	Number held	Number of meetings	
		Open	Closed
Public hearings	16	16	0
Business meetings	32	9	23
Conference calls	1	0	1
Working meals	11	0	10 ^a
Total	60	25	34

^aThis figure does not include one meeting for which we were unable to determine, from available records, if it was open or closed to the public and press

Question 2A

The Commission held a number of strategic planning sessions. Was the public excluded from these sessions?

GAO Response

The Commission staff conducted 11 strategic planning sessions; none of which were open to the general public. These sessions were held throughout the country to determine major societal trends and their impact on recreation and outdoor opportunities. However, because the staff operated these sessions as subgroups of the Commission and reported their results to the full Commission, they were not meetings for the purposes of FACA.² As such, strategic planning sessions did not have to include the public.

²Subcommittees and subgroups of the Commission were not subject to the act since none of them reported directly to the President but to the full Commission. For further details on what constitutes a meeting under FACA, see GAO comment 1 in appendix III.

Responses to Questions Raised by Requesters

Question 1

Did the Commission properly publish notices of all Commission meetings in the Federal Register? If not, which meetings were not properly announced?

GAO Response

FACA regulations require that a notice be published in the Federal Register 15 days in advance of an advisory committee meeting. Each notice is required to contain (1) the exact title of the advisory committee as shown in the charter; (2) the time, date, place, and purpose of the meeting; (3) a summary agenda; and (4) a statement as to whether all or part of the meeting is open or closed to the public.

As indicated in table I.1, the Commission held a total of 110 meetings, 60 of which qualify as meetings for purposes of FACA.¹ Of the 60 meetings, a notice was published in the Federal Register for only 18 of them. Further, of these 18, only 10 had notices published in accordance with the prescribed 15-day requirement. All 18 notices published in the Federal Register contained the required information.

¹For a detailed discussion on what constitutes a "meeting" subject to FACA, see GAO comment 1 in appendix III.

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Agency and Commission Comments

We obtained comments on a draft of this report from the Department of the Interior and the Commission's former Chairman. Interior generally agreed with our findings and recommendations. While Interior has taken action to implement the first recommendation, it is not clear what action it plans to take on the second recommendation. Specifically, with regard to the second recommendation, Interior commented that in the future it will ensure that any presidential advisory committees that are established and assigned to Interior for administrative assistance will be serviced by staff with expertise and experience under FACA. Such actions alone, however, fall short of developing the written internal controls necessary to provide adequate guidance and monitoring for assuring compliance with FACA. GAO believes that these internal controls should be developed.

The Commission's former Chairman also responded to a draft of this report. He indicated that a major problem for the Commission was a lack of specific guidance as to what constitutes a "meeting" under FACA. He indicated that without such guidance, it was impossible to know that informal gatherings, where no decisions were reached, could have been subject to FACA's administrative requirements as "meetings." Recent GSA regulations promulgated in December 1987 should help clarify the problem by providing guidelines on what is not considered a meeting for the purposes of FACA. Furthermore, implementation of our recommendations would make advisory committees aware of such revisions and would help assure that they are observed. The text of Interior's and the former Commission Chairman's comments on a draft of this report and GAO's detailed responses to each are included in appendixes II and III, respectively.

Designated Federal Official Not Aware of Position Responsibilities

Similar to the Executive Director's and the Administrative Officer's position, the Interior official who was designated to attend each advisory committee meeting maintained that he did not know what his responsibilities were until a January 1987 meeting with the Solicitor's Office. Although the designated federal official had been appointed to this position informally by the Secretary of the Interior when the Commission was formed, he interpreted his responsibility to be that of keeping the Secretary informed of Commission activities, not that of monitoring FACA compliance by the Commission. Further, he told us that at no time did either Interior's department committee management officer or the Solicitor's Office provide him with any information or guidance, either written or verbal, to indicate otherwise—a situation confirmed by the department committee management officer and Interior's Acting Associate Solicitor. And, since the Commission's Deputy Executive Director provided him with periodic briefings on the Commission's activities, he told us that he attended only those meetings which he felt were necessary to keep the Secretary informed of Commission activities and progress. However, based on hindsight, he said that both the Commission and he would have been better served with proper advice and guidance on FACA requirements. (See app. I, question 4.)

Commission Records Disclose the Nature and Extent of Its Activities

Despite the fact that Interior did not comply with numerous FACA requirements, the Commission maintained extensive records which overall disclose the nature and extent of its activities and disposition of funds. Section 12 of FACA requires that each agency shall maintain records that disclose the nature and extent of an advisory committee's activities and the disposition of any funds that may be at the disposal of an advisory committee. The Commission's records consist of approximately 60 boxes of files and over 200 computer disks and tapes of information which detail, at length, the Commission's activities and the process and procedures it followed from its inception until it completed its work. Our analysis of these records show that the Commission made numerous efforts to include the public in its activities during all phases of its work and that it maintained records which accounted for its activities.

In addition, although we did not audit the financial records, our review of Interior's records indicate that they disclose the disposition of all funds at the disposal of the Commission. During the Commission's tenure, its total authorized budget was approximately \$1.9 million with expenditures totaling approximately \$1.5 million. (See app. I, questions 8 and 8a.)

designated, he did not attend 49 of the 60 meetings subject to FACA. (See app. I, question 4.)

Interior's noncompliance with FACA can be attributed to the fact that it did not follow established policies and procedures as contained in its departmental manual on advisory committees. The departmental manual requires the establishment of written internal controls for the management of advisory committees. Such controls should be designed, among other things, to assure that staff responsibilities are clearly assigned and documented and that supervision is adequate to assure that such responsibilities are carried out.¹

Within Interior, a departmentwide committee management officer, located within the Office of the Secretary, is responsible for providing guidance on implementing FACA requirements to the individual bureaus and offices. In turn, the bureau and office level committee management officer, to whom a particular advisory committee is assigned, is normally responsible for handling the day-to-day administrative responsibilities for assuring compliance with FACA requirements.

In the case of the Commission, however, the administrative responsibilities for assuring compliance with FACA were not assigned to a bureau or office; rather, they remained within the Office of the Secretary. The Secretary did not designate a committee management officer within this Office to handle the day-to-day administrative responsibilities under FACA. Therefore, the Office did not have a committee management officer to oversee and manage the Commission. Even so, the department committee management officer told us that she assumed the necessary controls were in place. Specifically, she told us that she thought the responsibility for carrying out FACA administrative requirements were being handled by the Commission's Executive Director and the Administrative Officer. Further, she believed that the designated federal official was responsible for monitoring the Commission's compliance with FACA's requirements. However, as demonstrated below, these Commission officials told us that they were not aware that FACA's administrative requirements had been transferred to them nor did the designated federal official know that he was responsible for monitoring the Commission's compliance with FACA's requirements. Because of this confusion, proper

¹Internal controls that federal agencies are required to follow are set forth in GAO's Standards for Internal Controls in the Federal Government, published in 1983 pursuant to the Federal Manager's Financial Integrity Act of 1982.

overall, they met FACA's requirements to disclose the nature and extent of the Commission's activities. Details on the results of our review for the 10 specific questions are in appendix I.

Background

The President established the Commission by Executive Order 12503 on January 28, 1985. The Commission consisted of 15 members who were appointed by the President and represented a broad and balanced spectrum of interest and knowledge regarding recreation. In December 1986, the Commission finalized its report which contains over 100 recommendations to the President on the nation's expected future recreational needs.

The President, through the Executive Order, assigned responsibility for supporting the Commission to the Secretary of the Interior, which included providing personnel, budget, fiscal, payroll, and financial management services. In turn, this responsibility was delegated, in writing, to the Assistant Secretary-Policy, Budget and Administration.

Responsibility for the Commission's compliance with FACA requirements was also assigned by the President to the Secretary of the Interior. These requirements included (1) publishing advance notice of meetings in the Federal Register; (2) holding meetings that were open to the public;¹ (3) maintaining detailed minutes of meetings; (4) designating a federal official to attend each meeting; and (5) maintaining records that disclose the nature and extent of each advisory committee's activities, including financial records. While FACA requires that a federal official be designated for each advisory committee to attend each of its meetings, the implementing regulations² require such designation be made by the head of the cognizant agency—in this case the Secretary of the Interior. Further, FACA requires that the agency head appoint a committee management officer. This officer is responsible for assuring compliance with the remaining FACA requirements, its implementing regulations, and Interior's departmental manual. For the Commission, the Secretary appointed the Deputy Assistant Secretary-Fish, Wildlife, and Parks as the designated federal official. The Secretary did not, however, appoint

¹While section 10 of FACA requires that each advisory committee meeting be open to the public, this section also allows such meetings to be closed in accordance with subsection (c) of section 552b of title 5, United States Code (Government in the Sunshine Act), if certain procedures are followed.

²General Services Administration (GSA) is responsible for developing and issuing the federal regulations to implement FACA governmentwide.

