



Date: August 16, 2004

To: See Addressees

From: Director, Office of Federal Advisory Committee Policy, OD, NIH

Subject: OFACP Policy Announcement 2004-01: Social Gatherings of NIH Federal Advisory Committees

**Background:** The Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. Appendix 2, sets forth requirements for meetings of Federal advisory committees, but does not define the term Ameeting. However, the Federal Advisory Committee Management Final Rule, 41 CFR Part 102-3, ' 102-3.25, defines committee meeting as, Any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations. @

Section 102-3.160 of the Final Rule further defines meetings and activities of advisory committees that are excluded from the procedural requirements of the FACA, including the public notice and open meeting requirements. They are:

*(a) Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

*(b) Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency. @

This policy provides clarification on activities that are permitted at social gatherings of NIH Federal advisory committees that may be excluded from the procedural requirements of the FACA.

**Policy Statement:** Gatherings of advisory committee members for preparatory work, administrative work, or for strictly social purposes are exempt from the open meeting and public notice requirements of the FACA. (41 CFR ' 102-3.160) Federal officials may attend social gatherings with committee members, but not for the purpose of meeting to discuss committee business. Deliberations begun at a public committee meeting may not be continued at a private gathering of advisory committee members. Federal officials present at social gatherings of advisory committee members must avoid any discussions

among the members that are likely to be perceived as committee deliberations on issues before it or on which Federal officials are seeking advice.

A dinner meeting of an advisory committee to honor members whose terms are expiring, or to introduce new members of the committee, is not held for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations. The fact that Federal officials may be present at such a social gathering does not change this analysis. The gathering is not arranged for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations. (41 CFR ' 102-3.25)

**Discussion:** Gatherings of advisory committee members for social occasions do not fall within either of the preparatory or administrative functions described above because the gathering is not convened *solely* for these purposes.

Agencies should avoid arranging dinner or luncheon gatherings of committee members if one purpose of the gathering is to discuss specific issues that the committee is considering, or on which the Federal officials are seeking advice. This would seem to be a gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations. (41 CFR ' 102-3.25) Such a gathering might appear that the advisory committee is providing advice directly to Federal officials who are present, without providing an opportunity for public participation. This would trigger an advisory committee meeting and recordkeeping procedures found in the FACA and in 41 CFR Part 102-3.

Similarly, if committee members attending a social dinner, or other informal gathering arranged by an agency, seek to continue a general discussion begun at the public meeting, the gathering may become a meeting for deliberating substantive matters, even though it was not arranged for that purpose. Federal officials present at these kinds of social gatherings should remind committee members that any discussion of issues must be held only at public meetings.

Based on the foregoing discussion, the following guidance is provided:

1. Gatherings of committee members for preparatory work, administrative work, or for strictly social purposes are exempt from the open meeting and public notice requirements of the FACA.
2. Committee members should be cautioned not to continue deliberations begun at a public committee meeting at a private gathering of committee members.
3. Federal officials may attend social meetings of committee members, but not for the purpose of meeting to discuss committee business.
4. Federal officials present at social gatherings of committee members must avoid any general

discussions among the members that are likely to be perceived as committee deliberations on issues before it or on which Federal officials are seeking advice.

Generally, appropriated funds may not be used for personal expenses, including food. Pursuant to 5 U.S.C. ' 5702, Federal employees [including advisory committee members] are entitled to a per diem allowance for meals and lodging for each day they are in travel status. Committee members must use their per diem allowance to pay for food at social gatherings. However, in accordance with various statutes and Comptroller General Decisions, Federal employees [including advisory committee members] may receive light refreshments during morning and afternoon meeting breaks. The costs for light refreshments should be minimal and the sorts of light refreshments procured must meet the definition provided in NIH Manual Chapter 1160-1 AEntertainment.@

Issues related to this policy should be referred to the Office of Federal Advisory Committee Policy (OFACP), (301) 496-2123.

/s/  
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