Comments on Draft Recommendation
Public Engagement in Rulemaking

Submitted by Carol Ann Siciliano (EPA), Government Member
December 7, 2018

Line 10: Delete “provide agencies with” and replace with “describe” so that the sentence reads: “Other statutes, including [FACA and NRA], describe provide agencies with other means….”

Rationale: FACA doesn’t convey authority; it establishes requirements.

Line 19: Delete “The present” and replace with “This” so that the sentence begins “This The present Recommendation builds on ….”

Rationale: Clarity

Line 94: Insert “and managed” after “structured” so that the sentence fragment reads: “they can be structured and managed so that the requirements of FACA ….”

Rationale: Completeness, because agencies need to be attentive to these statutes’ requirements during the meetings themselves.

Footnote 15, page 5: Edit: “These methods would not implicate FACA as long as they are structured so that each participant provides individual advice, as opposed to the group providing collective advice. See 40 C.F.R. § 102-3.40(e). group is not collaborating to offer a set of proposals to the agency. See, e.g., Judicial Watch, Inc. v. Clinton, 76 F.3d 1232, 1233 (D.C. Cir. 1996).

Rationale: Accuracy. (1) the restrictions apply to more than sets of proposals; and (2) GSA’s regulations are a clearer source than the Judicial Watch case.

Line 137: Delete “constraints” and replace with “requirements” so that (i) reads “whether additional legal requirements, constraints, such as [FACA or the PRA], might apply.”

Rationale: More objective.

Line 153: Delete “develop and refine a proposed rule” and replace with “draft regulatory text” so that (iv) reads “develop and refine a proposed rule draft regulatory text.”
Rationale: “refine a proposed rule” indicates that a proposal has already been published, when in fact this is a pre-proposal paragraph.

**Line 201:** Insert after “meeting” the phrase “and place it in the rulemaking docket.” so that (ix) reads: “prepare a summary of the meeting and place it in the rulemaking docket.”

*Rationale:* Good practice to promote transparency.