

## Federal Management Regulation

## § 102-3.25

the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

### § 102-3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

### § 102-3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

*Act* means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

*Administrator* means the Administrator of General Services.

*Advisory committee* subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

*Agency* has the same meaning as in 5 U.S.C. 551(1).

*Committee Management Officer* ("CMO"), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

*Committee Management Secretariat* ("Secretariat"), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

*Committee meeting* means 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.

*Committee member* means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

*Committee staff* means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

*Designated Federal Officer* ("DFO"), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

*Discretionary advisory committee* means any advisory committee that is

established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

*Independent Presidential advisory committee* means any Presidential advisory committee not assigned by the Congress in law, or by President or the President's delegate, to an agency for administrative and other support.

*Non-discretionary advisory committee* means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

*Presidential advisory committee* means any advisory committee authorized by the Congress or directed by the President to advise the President.

*Subcommittee* means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

*Utilized* for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

**§ 102-3.30 What policies govern the use of advisory committees?**

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an ad-

visory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory