

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–3

[FMR CASE 2022–01; DOCKET NO. GSA–FMR–2022–0015; SEQUENCE NO. 1]

RIN 3090–AK59

### Federal Management Regulation; Federal Advisory Committee Management

**AGENCY:** Office of Governmentwide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is issuing a final rule amending the Federal Management Regulation (FMR) to update the regulations concerning Federal Advisory Committee Management. This action is necessary to clarify FACA requirements and incorporate legislative and policy changes that have occurred since the regulation was last updated in July of 2001.

**DATES:** *Effective:* May 20, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorelei Kowalski, Director, Committee Management Secretariat, Office of Asset and Transportation Management, Office of Government-wide Policy, at 202–208–6035 or email at [loirelei.kowalski@gsa.gov](mailto:loirelei.kowalski@gsa.gov). For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FMR Case 2022–01.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Advisory Committee Act (FACA or “the Act”), as amended, 5 U.S.C. chapter 10, (codified at 5 U.S.C. 1001 *et seq.*), governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. FACA defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these committees. Advisory committees are a useful tool for “furnishing expert advice, ideas, and diverse opinions to the Federal Government,” sec. 2(a) (codified at 5 U.S.C. 1002(a)), and the Act helps to ensure that Congress and the public are kept informed regarding the number, purpose, membership, activities, and cost of advisory committees, sec. 2(b)(5) (codified at 5 U.S.C. 1002(b)(5)).

The Act not only formalized a process for establishing, operating, overseeing, and terminating these advisory bodies, it also created the Committee

Management Secretariat (“Secretariat”), a GSA Office whose task it is to provide oversight on the FACA program, work with executive branch agencies and departments regarding compliance with the Act, and report on executive branch activities under the Act. The GSA’s authority for administering FACA is contained in sec. 7(c) (codified at 5 U.S.C. 1006(c) of the Act and Executive Order (E.O.) 12024 (42 FR 61445; 3 CFR, 1977 Comp., p. 158). E.O. 12024 delegated to the Administrator of General Services almost all of “the functions vested in the President by the Federal Advisory Committee Act”. GSA’s authority includes “prescrib[ing] administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provid[ing] advice, assistance, and guidance to advisory committees to improve their performance.” The Administrator of General Services delegated all of their FACA-related responsibilities to the Secretariat. See 41 CFR 102–3.100. Executive orders and congressional revisions have clarified the application of the Act in 1993, 1997, 1998, 2010, and 2019. There have also been a number of Presidential actions that further clarified the operation of Federal advisory committees, particularly with respect to advisory committee membership.

This final rule amends the FMR to update current policy and legislative requirements; help ensure that regulations concerning Federal Advisory Committee Management are user-friendly; clarify and update key roles; increase transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; update the language regarding merger; and implement process improvements as proposed with changes published on November 2, 2023, at 88 FR 75248. It is also based on suggestions for improvement from other Federal agencies and interested parties, including public comments, which are detailed in section II.B. of this document. This final rule is intended to improve the clarity of regulations concerning management and operation of Federal advisory committees in the executive branch, which will in turn enhance the performance of advisory committees.

##### II. Discussion of the Final Rule

###### A. Summary of Significant Changes

###### Incorporating Legislative Updates

Section 102–3.40 is revised to reflect a legislative change that was made by

the Intelligence Authorization Act for Fiscal Year 2010 (Pub. L. 111–259), which states that the Director of National Intelligence may determine that, for reasons related to national security, FACA is not applicable to advisory committees of the Office of the Director of National Intelligence.

###### Removing Unnecessary Language and Information

To make regulations concerning Federal Advisory Committee Management more user-friendly—and ultimately enhance the performance of advisory committees—GSA is removing certain language and information from part 102–3. *See also* E.O. 14058 on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government (directing agency heads to identify opportunities, as appropriate and consistent with applicable law, to modify their regulations to enhance customer experience and service delivery outcomes). Appendices throughout part 102–3 are removed because that information—guidance in the form of answers to frequently asked questions—is better suited for GSA’s Federal Advisory Committee Management website ([www.gsa.gov/facal](http://www.gsa.gov/facal)), where GSA can more easily “provide advice, assistance, and guidance to advisory committees to improve their performance.” Section 7(c) (codified at 5 U.S.C. 1006(c)). GSA is removing unnecessary language throughout part 102–3 because it either does not add meaningful clarification to the implementation of the Act, is not easily understandable, or is duplicative of language included elsewhere. For example, 41 CFR 102–3.30(b) on termination currently provides requirements for terminating an advisory committee, which are essentially repeated in 41 CFR 102–3.55 on the duration of committees. GSA is also aware that the difference between “termination” and “duration” has been a source of confusion during the advisory committee chartering process. Accordingly, GSA is revising both of those sections in order to remove duplicative language and help ensure that the Act’s use of those terms is consistently applied throughout GSA’s regulations.

Similarly, GSA is removing certain language from 41 CFR 102–3.130 that is already captured in other regulations or policies governing the appointment, compensation, or reimbursement of advisory committee members, staff, experts, and consultants. For example, the Office of Personnel Management (OPM) establishes policy for

compensating Federal employees and hiring experts and consultants, and GSA need not repeat those policies in 41 CFR 102–3.130.

#### Updating Key Roles

Consistent with the agency's responsibility to "prescribe administrative guidelines and management controls applicable to advisory committees," sec. 7(c) (codified at 5 U.S.C. 1006(c)), GSA is adding two key roles at 41 CFR 102–3.25. The Act refers to a chair of each advisory committee, see sec. 10 (codified at 5 U.S.C. 1009), but does not define the contours of that role so GSA added a definition for a "chairperson." GSA is also adding a definition for a "Group Federal Officer" to capture a key role that some agencies use to support their FACA programs, as GSA believes it is helpful to formally recognize what continues to be a key role for some agencies. GSA is also clarifying the definitions and responsibilities of the following existing key roles:

- The Secretariat in 41 CFR 102–3.100 to reflect a more comprehensive description of actual Secretariat activities, update terminology, and recognize a government-wide interagency group that was created after GSA published a final rule in 2001, see Federal Advisory Committee Management, 66 FR 37727 (July 19, 2001) (hereinafter "2001 Final Rule").
- The agency head in 41 CFR 102–3.105 regarding their role with advisory committee charters and members.
- The Committee Management Officer (CMO) in 41 CFR 102–3.115 to help clarify the full scope and importance of the CMO, including acknowledgment of common actions implemented by CMOs across the executive branch in managing their agency's Federal advisory committee program.
- The Designated Federal Officer (DFO) in 41 CFR 102–3.120 to better reflect the central function of the DFO under the Act—including ensuring compliance with the Act, serving as a point of contact for members of the public, and maintaining appropriate record keeping and reporting of committee activities.

Overall, these revisions will improve the clarity of FACA-related responsibilities, which will in turn enhance the performance of advisory committees.

#### Supporting Fairly Balanced Committee Membership

The Act states that advisory committees must be "fairly balanced in terms of the points of view represented

and the functions to be performed." Section 5(b)(2), (c) (codified at 5 U.S.C. 1004(b)(2), (c)). Further, the Act's "legislative history makes clear that the fairly balanced requirement was designed to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee." *Nat'l Anti-Hunger Coal. v. Exec. Comm. of President's Priv. Sector Surv. on Cost Control*, 711 F.2d 1071, 1074 n. 2 (D.C. Cir. 1983).

While the Act itself does not provide instructions on how agencies are to attain fairly balanced committee membership, the legislative history indicates that the Act, "[i]n the interest of economy and organization," places "substantial power in [the implementing agency] to establish guidelines for advisory committees and to direct the agencies' use of them." 118 Cong. Rec. 16302 (1972) (statement of Rep. Moss) (referring to responsibilities that initially belonged to the Office of Management and Budget, which were later transferred to GSA in E.O. 12024); 118 Cong. Rec. 16305 (1972) (statement of Rep. Fascell) (referring to responsibilities that were eventually transferred to GSA and stating that the Act "is explicit and without any ambiguity as to the kind of authority [that the implementing agency] would have in making the guidelines"); and 118 Cong. Rec. 30280 (1972) (statement of Sen. Roth) (recognizing that the Act would "offer [ ] improved tools for the management of committees by [the implementing agency]").

Over the past forty years, GSA has issued regulatory requirements and subregulatory guidance on how to ensure fairly balanced committee membership. Since 1983, GSA's regulations have required agencies to consider a "cross-section" of "interested" persons and groups with demonstrated professional or personal qualifications or experience to contribute to the "functions" and tasks to be performed. See Federal Advisory Committee Management, 48 FR 19324 (Apr. 28, 1983). In response to comments, that language evolved over time, before settling in 1989 on the formulation that exists in the current regulatory text: that agencies must consider "a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee," which should "include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed" by the advisory committee. See Federal Advisory Committee

Management, 54 FR 41215 (Oct. 5, 1989). Further, in 2001, GSA responded to a commenter seeking further guidance on how to achieve fairly balanced committee membership by including an Appendix that encouraged agencies to consider several factors, including (1) the advisory committee's mission; (2) the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (3) the types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (4) the need to obtain divergent points of view on the issues before the advisory committee; and (5) the relevance of State, local, or Tribal Governments to the development of the advisory committee's recommendations. See 2001 Final Rule, 66 FR 37727, 37740.

Consistent with the agency's responsibility to "prescribe administrative guidelines and management controls applicable to advisory committees, and . . . [to] provide advice, assistance, and guidance to advisory committees to improve their performance," sec. 7(c) (codified at 5 U.S.C. 1006(c))—and in an effort to help committees to actually attain fairly balanced membership—GSA has long required agencies to submit "a description of the agency's plan to attain balanced membership," 48 FR 19324 (Apr. 28, 1983). More recently, in an effort to collect more substantive information regarding an agency's plan to attain a fairly balanced membership, GSA released guidance to the FACA community in 2011 on "Preparing Membership Balance Plans" (MBPs). See [https://www.gsa.gov/cdnstatic/MembershipBalancePlanGuidance-November\\_2011.pdf](https://www.gsa.gov/cdnstatic/MembershipBalancePlanGuidance-November_2011.pdf).

GSA is now updating the regulatory language pertaining to the MBP (specifically at 41 CFR 102–3.60) to reflect GSA's longstanding guidance as described above. Furthermore, in response to feedback from agencies and consistent with recent Presidential Actions supporting diversity, equity, inclusion, and accessibility,<sup>1</sup> GSA is clarifying the procedures for submitting an MBP that helps ensure fairly balanced committee membership. This includes requiring an agency to provide

<sup>1</sup> E.O. 13985 (86 FR 7009; <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>) and E.O. 14091 (88 FR 10825; <https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>).

the Secretariat with an MBP that addresses how the agency will ensure representation of all points of view required for fairly balanced committee membership—including groups and entities potentially affected, those with relevant lived experience, and persons with demonstrated professional or personal qualifications—as well as how the agency intends to conduct broad outreach to ensure that the call for nominees reaches the interested parties and stakeholder groups likely to possess those points of view. GSA is also adding clarifying language regarding points of view agencies should consider to achieve fairly balanced membership.

By seeking out individuals for potential membership that have relevant professional and/or lived experience with topics likely to come before the advisory committee, agencies can help to ensure that those insights and experiences inform and enhance the committee's work. See Syreeta Skelton-Wilson et al., "Methods and Emerging Strategies to Engage People with Lived Experience," Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services (Dec. 20, 2021), <https://aspe.hhs.gov/sites/default/files/documents/62e7a64c60e10c47484b763aa9868f99/lived-experience-brief.pdf>. For example, by engaging individuals with relevant lived experience, "[s]ome initiatives, especially those involving legislatively mandated advisory groups or research commissions, [have] reported benefits such as an improved ability to deliver responsive services, programming, training, and technical assistance." Id. at 6. These changes will help to continue improving the quality of committee conclusions and recommendations—ultimately enhancing the performance of advisory committees.

Further, GSA is updating the rules and principles that apply to the management of advisory committees (specifically at 41 CFR 102–3.95 and 102–3.140), including (a) clarifying that adequate committee support includes access to adequate virtual meeting capabilities and access to communication modes that are more inclusive; (b) encouraging agencies to be as transparent, equitable, inclusive, accessible, and timely as possible when providing public access to committee activities and materials; and (c) fostering active engagement, participation, and expression from all committee members and any member dissenting opinions, as applicable. These changes will help improve public access to advisory committees and membership

engagement, which will in turn enhance the performance of advisory committees.

Finally, GSA is improving public access to advisory committee meetings through amendments to 41 CFR 102–3.65, 102–3.150, and 102–3.165. The Act specifies that meeting notices shall be published in the **Federal Register** and states that GSA "shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of each meeting in advance." Section 10(a)(2) (codified at 5 U.S.C. 1009(a)(2)). These revisions accordingly seek to expand public notification beyond publication in the **Federal Register** by encouraging use of agency websites and other online forums, and will improve public access and the subsequent performance of those advisory committees.

#### Updating the Language Regarding Merger

The Act instructs the Administrator of General Services to conduct an annual "review of the activities and responsibilities of each advisory committee," in part "to determine . . . whether the committee should be merged with other advisory committees." Section 7(b) (codified at 5 U.S.C. 1006(b)). Historically, merger of advisory committees has been infrequent. More recently, however, merger has become a more routine occurrence during the consultation process. Accordingly, to appropriately account for that trend, GSA is adding the term "merge" throughout part 102–3—namely, to sections that apply to actions taken by an agency in the establishment, reestablishment, renewal, operation, and termination of Federal advisory committees.

#### Implementing Process Improvements—Charters

The Act identifies certain information that must be included in the charter for each committee. See sec. 9 (codified at 5 U.S.C. 1008). Over a decade ago—consistent with the Administrator's responsibility to "provide advice, assistance, and guidance to advisory committees to improve their performance," sec. 7(c) (codified at 5 U.S.C. 1006(c))—GSA issued guidance on Preparing Federal Advisory Committee Charters, available at: [https://www.gsa.gov/cdnstatic/Preparing\\_FAC\\_Charters\\_%28F%29-110211.pdf](https://www.gsa.gov/cdnstatic/Preparing_FAC_Charters_%28F%29-110211.pdf). In addition to setting forth the requirements included in sec. 9 of the Act (codified at 5 U.S.C. 1008), the guidance also includes other information that enhances the transparency of advisory committee

operation to the public, such as information on the advisory committee's authority, formation of subcommittees, and recordkeeping. GSA is now updating the charter section at 41 CFR 102–3.75 to reflect this current guidance—ultimately with the goal of increasing transparency with respect to the operation of each advisory committee and enhancing the performance of advisory committees.

Further, GSA is revising the charter amendment process. The current regulatory process for amending charters (per the 2001 Final Rule) stipulates two separate processes for amendments—one that applies to minor changes, and the other that applies to major changes. Those processes, however, are identical except for a requirement to consult with the Secretariat as to any major changes. Although GSA's intent was to forgo the need for consultation with the Secretariat if the changes were truly minor, there has been confusion in the FACA community regarding what specifically constitutes a minor amendment. Further, this confusion has resulted in a number of agencies choosing to consult with the Secretariat on all charter amendments. Accordingly, to eliminate confusion, GSA is consolidating the charter amendment sections into a singular process in 41 CFR 102–3.80. In addition, consistent with GSA's priority of increasing transparency with respect to advisory committee activities (as explained above), GSA is requiring that agencies post notice of the amendment to the relevant advisory committee website (if one exists).

#### Implementing Process Improvements—Agency Administrative Guidelines

The Act requires each agency head to "establish uniform administrative guidelines and management controls for advisory committees established by that agency." Section 8(a) (codified at 5 U.S.C. 1007(a)). In recent years, the FACA community has inquired about appropriate content for those guidelines. In response, GSA is revising 41 CFR 102–3.125 to clarify some of the operational components that agency administrative guidelines should reflect—such as specifying the content of committee bylaws and providing instructions on how to identify, calculate, and document advisory committee costs.

#### Severability

GSA is adding a new subpart on severability at 41 CFR 102–3.190, which states that all provisions included in

part 102–3 are separate and severable from one another.

Regulations concerning Federal Advisory Committee Management do a number of things—from outlining public notification requirements to explaining the role of an agency head. Overall, each constituent element in part 102–3 operates independently to help ensure that standards and uniform procedures govern the establishment, operation, administration, and duration of advisory committees. See sec. 2(b)(4) (codified at 5 U.S.C. 1002(b)(4)).

Accordingly, if any particular provision in part 102–3 were to be stayed or invalidated by a reviewing court, the remaining provisions would continue to function effectively for advisory committees. For example, if 41 CFR 102–3.75 on charter requirements were invalidated, that would not make 41 CFR 102–3.155, which lists the requirements for facilitating an advisory committee meeting that is closed to the public, unworkable. Likewise, if 41 CFR 102–3.60(b)(3) on attaining fairly balanced membership were invalidated, that would not prevent an agency from relying on the definitions in 41 CFR 102–3.25 to understand what “committee staff” means.

Further, any cross-references that appear throughout part 102–3 are duplicative and are intended only to make the regulations more user-friendly. Invalidation of a particular provision that is cross-referenced elsewhere will not materially alter the provision that contains the cross-reference.

In summary, removal of any particular provision from part 102–3 would not render the entire regulatory scheme unworkable. Thus, GSA considers each of the provisions in part 102–3 to be separate and severable from one another. In the event of a stay or invalidation of any particular provision, it is GSA’s intention that the remaining provisions shall continue in effect.

#### B. Analysis of Public Comments

The proposed rule was published in the **Federal Register** on November 2, 2023 (88 FR 75248). Comments were received from eight respondents, several of which also included positive feedback in addition to multiple comments. Three respondents expressed support for the proposed revisions to increase diversity, equity, inclusion, accessibility, and transparency in committee procedures. In particular, the respondents included positive feedback on the proposed changes to encourage broad stakeholder outreach, ensure stakeholder access to participate and contribute to Federal advisory committees, and update the regulatory

language on the MBP. Specifically, one respondent agreed with the proposed revisions in 41 CFR 102–3.60 and 102–3.65 that increase public transparency and provide additional MBP guidance. Of the comments received, there were fourteen topics within the scope of the final rule. An analysis of these public comments follows:

*Comment 1:* One commenter was concerned about removing the Appendices throughout the Part and moving the content to a website without comprehensively cross walking the information and interpretations conveyed in the Appendices in the updated rule. They felt it could weaken agency defenses in a challenge to their application of FACA procedures if the agency cited a website instead of a regulation.

*Response:* GSA disagrees. GSA included common “best practices” guidance in the 2001 Final Rule in the form of Appendices to each subpart, and intentionally separated this guidance from the regulatory text. GSA will make the content of the Appendices readily available on the GSA Federal Advisory Committee Management website. GSA understands and appreciates their utility for the management of advisory committees, but the Appendices are not an enforceable part of the regulation.

*Comment 2:* One commenter objected to the question-and-answer format of the regulation, believing it led to questions about the scope of the sections and makes searching for a subject more difficult.

*Response:* GSA disagrees. The question-and-answer format is preferred by GSA and is consistent with the format in the rest of the FMR. Further, it is considered an acceptable format for regulations by the Office of the Federal Register.

*Comment 3:* Several commenters commended GSA on proposed language surrounding outreach to diverse communities and encouraged addressing the needs of stakeholders with limited resources to further strengthen equity and public accountability. Suggestions included that GSA work with agencies to develop and launch a robust education effort to tackle awareness barriers on the Federal advisory committee process; and encourage agencies to consider offering satellite locations that may enable committee members or members of the public to participate if they cannot travel to a meeting or lack access to high-speed internet in their own homes.

*Response:* The rule outlines at a high level (with examples) what should be considered regarding committee support, language access, meeting

access, etc. Further specificity and “how to” is more appropriately addressed in the downstream agency implementation policies once the rule is in effect.

*Comment 4:* One commenter strongly supported the new language on MBPs and requested that the regulation also require that these plans be made available to the public to support the principles of transparency.

*Response:* GSA agrees and already requires the agencies to upload MBPs (if they are created) in the Charter section of the FACA database (<https://www.facadatabase.gov/FACA/s/>). GSA is formalizing this requirement by adding it to 41 CFR 102–3.60(b)(3).

*Comment 5:* One commenter recommended that advisory committees never include “stakeholders” or business interests due to a concern about stakeholder influence in agency decision-making.

*Response:* GSA disagrees. Section 5 of the Act (codified at 5 U.S.C. 1004) requires the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee. GSA interprets this statutory requirement as the basis for agencies to conduct outreach to stakeholders, which could include business interests, during the committee formation process as these groups and entities are potentially affected by the work of a Federal advisory committee or may have qualifications and experience relevant to the functions and tasks to be performed. Per sec. 2(b)(6) of the Act (codified at 5 U.S.C. 1002(b)(6)) “the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.” Therefore, per the Act, the executive branch retains the authority for decision-making.

*Comment 6:* One commenter stated that some Federal advisory committees do not post their meeting minutes, meeting handouts, and other non-exempt documentation online as they should, and Freedom of Information Act (FOIA) requests should not be necessary for accessing such information. The commenter stated the rule does not explicitly address this issue and proposed specific language for GSA to add in 41 CFR 102–3.140(b) (which addresses posting of **Federal Register** notices, agendas, and supporting materials) and 102–3.175(d) (which addresses the filing of advisory committee reports, and, where appropriate, background papers prepared by experts or consultants, with the Library of Congress). Another

commenter had a similar comment and believed GSA should require the posting of Federal advisory committee records to the FACA database in an accessible, complete, and timely manner to allow for public access and advisory committee transparency.

*Response:* GSA believes the language in the rule is very similar to and covers the commenter's suggested language for 41 CFR 102–3.140(b), except that 41 CFR 102–3.140(b) does not refer to records being exempt from disclosure under the FOIA, or include an option for posting Federal advisory committee records to the FACA database. GSA disagrees that 41 CFR 102–3.140(b) should include a reference to records being exempt from disclosure under the FOIA, since this is a given under the Act. GSA also disagrees with including a requirement to post all records a committee generates to the FACA database, since the database was not designed or intended as a repository for all Federal advisory committee records. GSA requires select documents, such as charters and MBPs, to be uploaded into the FACA database and allows agencies the option to upload meeting minutes (or provide a URL) and Federal advisory committee reports. Even if the records are not posted on a committee website, they are available to the public upon request under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b)) as soon as they are available or at the time they are provided to the advisory committee members. The first commenter above also requested that advisory committee reports be posted to the FACA database or on the agency website at 41 CFR 102–3.175(d), which addresses reporting and recordkeeping requirements, not best practices. GSA disagrees and believes 41 CFR 102–3.175(d) includes what is required: language that reports must be made publicly available through the Library of Congress. Posting on a website is a best practice and not a FACA requirement. In addition, websites are already addressed in 41 CFR 102–3.120(b), which recommends that the DFO maintain a website for their Federal advisory committee and post advisory committee reports, among other information. Posting Federal advisory committee reports to the FACA database is already an option and many agencies do.

*Comment 7:* One commenter requested GSA designate a point of contact as oversight for Federal advisory committees and suggested that if it is the CMO that this should be clearly stated in 41 CFR 102–3.115, which covers the responsibilities and functions of an agency CMO.

*Response:* GSA believes additional clarification is not needed in the rule. Section 8(b) of the Act (codified at 5 U.S.C. 1007(b)) specifies that the CMO shall “exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency.” This is an oversight role for the Federal advisory committees under the CMO's purview. Accordingly, 41 CFR 102–3.25 and 102–3.115 reiterate the requirement for the CMO to implement the provisions of sec. 8(b) of the Act (codified at 5 U.S.C. 1007(b)).

*Comment 8:* One commenter requested that the rule address how an advisory committee may obtain access to Agency records that might otherwise be withheld from the public under the FOIA, as amended, 5 U.S.C. 552.

*Response:* GSA disagrees that the rule should address this issue, because the FACA regulation cannot usurp the FOIA statute.

*Comment 9:* One commenter requested the rule require that DFOs successfully complete GSA's FACA Management Training with regular recertification in 41 CFR 102–3.120, which addresses the responsibilities and functions of a DFO.

*Response:* GSA agrees with the importance of FACA training but believes agency CMOs are in the best position to identify specific training needs for agency staff. 41 CFR 102–3.115 already specifies that part of the CMO management of their agency FACA program includes “providing training for agency staff supporting the FACA program.” GSA will revise this section to clarify that this could include GSA's government-wide training.

*Comment 10:* One commenter commended GSA for taking important steps to address accessibility barriers that prevent individuals from participating in the advisory committee process but encourages agencies to consider how best to reach impacted people who do not have access to consistent internet connections about advisory committee meetings. The commenter noted that although the addition of websites and social media to the rule expanded the avenues for announcing advisory committee meetings beyond the **Federal Register**, they suggested GSA encourage agencies to utilize traditional media, especially local radio and newspapers, that are often more accessible to underserved and underrepresented communities, especially in rural areas. They also cited the difficulties when the burden is on the public to self-identify the need for any accommodations to participate in the advisory committee process, and

asked GSA to look for ways to minimize any unnecessary burdens in the rule.

*Response:* GSA agrees that agencies should consider how to best reach stakeholders potentially impacted by the work of a Federal advisory committee. The rule, in 41 CFR 102–3.150(c), allows agencies to use their expertise and discretion to reach their relevant stakeholders. The regulation does not restrict their options and websites and social media are just examples. Regarding accommodations, agencies are already required to comply with relevant sections of the Rehabilitation Act of 1973, amended, 29 U.S.C. 794. This regulation is not intended to broaden the requirements of another law.

*Comment 11:* One commenter suggested that GSA consider compensation for missed work or other reimbursements to help address the accessibility barriers that often prevent people from traditionally underserved communities from participating in the policymaking process.

*Response:* FACA is a transparency law, and it anticipated that not all interested persons would be able to attend meetings. The Act has a provision in sec. 10(b) (codified at 5 U.S.C. 1009(b)) to ensure access to Federal advisory committee materials, even if an individual is unable to attend a meeting. FACA also permits anyone to submit written comments to any advisory committee. Except as otherwise provided by law, Federal appropriations may not be used for travel and attendance of meetings by members of the public.

*Comment 12:* One commenter recommended not adopting the revisions to 41 CFR 102–3.160, which describes the activities of an advisory committee that are not subject to the notice and open meeting requirements of the Act. The commenter cited a number of concerns regarding the revisions, including that they: would bar closed meetings for preparatory work by subcommittees that includes “deliberation;” remove the phrase “to draft position papers for deliberation by the advisory committee” from the definition of “preparatory work” meetings; may decrease transparency while increasing agency administration burdens; and require certain subcommittee meetings to be open, which would lead to issues scheduling/rescheduling meetings, and constrain subcommittee activities and member participation.

*Response:* Preparatory meetings are not closed; they are not required to be open to the public. GSA's revisions were intended to clarify but not change

the policy behind the 2001 rulemaking concerning preparatory work. GSA removed “to draft position papers for deliberation by the advisory committee” because it was an example, is not required as part of the definition, and does not mean the concept does not apply. The revisions to 41 CFR 102–3.160 were not intended to require certain subcommittee meetings to be open; they were to clarify how preparatory work applies to subcommittee meetings that are open to the public. GSA revised 41 CFR 102–3.160 to clarify the misunderstanding.

*Comment 13:* One commenter requested clarification on whether a recording of a virtual meeting, without specifically posting advisory committee records, is consistent with Federal Advisory Committee Management or the Office of Management and Budget’s (OMB’s) Circular A–130.

*Response:* FACA does not preclude an agency from recording a virtual meeting, and the Act and regulation clarify what materials must be made available to the public upon request.

*Comment 14:* One commenter requested that GSA address the ability of an advisory committee to review Confidential Business Information.

*Response:* Access to Confidential Business Information is not prohibited by the Act and would be subject to provisions under the Government in the Sunshine Act.

### III. Expected Costs and Benefits

This final rule will have a cost impact on the Federal Government; however, it will not impact the private sector or State, local, or Tribal Governments, as it relates solely to agency administration and management. GSA has already incorporated a number of the changes into the consultation process that occurs between the agencies and GSA, the government-wide training for agencies and personnel involved with advisory committee work, and routine interactions regarding agency committee management programs.

GSA conducted an economic analysis of the proposed changes and determined that during the first and subsequent years after publication of the rule, there are compliance costs associated with the final rule. GSA estimates the overall total additional undiscounted cost of this final rule to be \$7,007,404 over a ten-year period. See section VI.A (providing a full breakdown of compliance costs). There are numerous benefits described throughout section I—including implementing legislative updates; helping to ensure that regulations concerning Federal Advisory Committee Management are

user-friendly; clarifying and updating key FACA roles; increasing transparency, diversity, equity, access, accessibility, and inclusion throughout advisory committee processes and procedures; updating language regarding merger; and implementing process improvements with respect to advisory committee charters and agency administrative guidelines. It is intended that overall, this final rule will improve the clarity of regulations concerning management and operation of Federal advisory committees in the executive branch, which will in turn enhance the performance of advisory committees.

### IV. Executive Orders 12866, 13563, and 14094

E.O.s 12866, 13563, and 14094 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. E.O. 14094 supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OMB’s Office of Information and Regulatory Affairs (OIRA) has designated this rule as a significant regulatory action and, therefore, it was subject to review under sec. 6(b) of E.O. 12866.

### V. Congressional Review Act

OIRA has determined that this rule is not a “major rule” under 5 U.S.C. 804(2). Title II, subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, unless excepted, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This rule is excepted from CRA reporting requirements prescribed under 5 U.S.C. 801 as it relates to agency management or personnel under 5 U.S.C. 804(3)(B).

### VI. Regulatory Flexibility Act

GSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This

final rule applies only to Federal agencies and employees.

#### A. Government Costs

GSA has determined, based on an economic model, that there are compliance costs associated with the final rule. The following section is a list of activities related to regulatory familiarization and compliance that GSA anticipates will occur. Compliance activities would take place in the FACA community and would consist of amending charters, revising guidelines, training, and outreach for diversity, equity, inclusion, access, and accessibility. These assumptions were generated based on internal GSA expertise. GSA estimates this cost by multiplying the time required to conduct the compliance activity by the estimated compensation. GSA calculates the estimated hourly compensation using OPM’s 2023 General Schedule (GS) Rest of United States Locality Pay Table and the full fringe benefit cost factor.<sup>2 3 4</sup>

##### 1. Amending Charters

GSA estimates it will take 25 government employees on average with a GS–14 step five average hourly rate of \$86.12/hour, three hours each in years 1 to 10 to amend charters with updated information from this rule. Therefore, GSA estimates the total estimated cost for this part of the final rule per year to be \$6,459 (= [25 employees] × [\$86.12/hour] × [3 hours]).

##### 2. Revising Guidelines

GSA estimates it will take 57 government employees, CMOs with a GS–15 step five average hourly rate of \$101.30/hour, four hours each in year 1 to update guidelines with updated information from this final rule. Therefore, GSA estimates the total estimated cost for this part of the final rule to be \$23,096 (= [57 employees] × [\$101.30/hour] × [4 hours]).

GSA estimates it will take 987 government employees, DFOs with a GS–12 step five average hourly rate of \$61.29/hour, 0.5 hours each in year 1 to update guidelines with updated information from this final rule. Therefore, GSA estimates the total

<sup>2</sup> OPM General Schedule (<https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule>).

<sup>3</sup> OMB Memo M–08–13, dated March 11, 2008 ([https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2008/m08-13.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2008/m08-13.pdf)).

<sup>4</sup> Fact Sheet: Computing Hourly Rates of Pay Using the 2087-Hour Divisor (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/>).

estimated cost for this part of the final rule to be \$30,247 (= [987 employees] × [\$61.29/hour] × [0.5 hours]).

3. Training

GSA estimates it will take 57 government employees, CMOs with a GS-15 step five average hourly rate of \$101.30/hour, 0.5 hours each in year 1 to deliver training related to changes with this final rule. Therefore, GSA estimates the total estimated cost for this part of the final rule to be \$2,887 (= [57 employees] × [\$101.30/hour] × [0.5 hours]).

GSA estimates it will take 1,552 government Full-Time Equivalents (FTEs) with a GS-12 step five average hourly rate of \$61.29/hour 0.5 hours each in year 1 to receive training related to changes with this final rule. Therefore, GSA estimates the total estimated cost for this part of the final rule to be \$47,561 (= [1,552 FTEs] × [\$61.29/hour] × [0.5 hours]).

4. Outreach To Support Fairly Balanced Committee Membership

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour four hours per membership slot, in years 1 to 10 to conduct additional outreach in identifying 1,050 new members that may be able to participate in new Federal advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the final rule per year to be \$306,096 (= [1,050 membership slots] × [\$72.88/hour per government employee] × [4 hours]).

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour 0.5 hours per membership slot in year 1, to conduct additional outreach in identifying 31,931 new members that may be able to participate in U.S. Department of Health and Human Services grant review Federal advisory committees—ultimately to help ensure that committee membership is fairly balanced. Therefore, GSA estimates the total estimated cost for this part of the final rule to be \$1,163,566 (= [31,931 membership slots] × [\$72.88/hour per government employee] × [0.5 hours]).

GSA estimates it will take government employees with a GS-13 step five average hourly rate of \$72.88/hour one hour per membership slot in years 1 and 2 to conduct additional outreach in identifying 17,937 new members that may be able to participate in non-grant review Federal advisory committees—ultimately to help ensure that committee membership is fairly

balanced. Therefore, GSA estimates the total estimated cost for this part of the final rule per year to be \$1,307,249 (= [17,937 membership slots] × [\$72.88/hour] × [1 hour]).

5. Total Government Costs

GSA estimates the total government costs to be \$7,007,404 for years 1 to 10. A breakdown of the total estimated government costs by year is provided in the table below.

Year	Costs
1 .....	\$2,887,160
2 .....	1,619,804
3 .....	312,555
4 .....	312,555
5 .....	312,555
6 .....	312,555
7 .....	312,555
8 .....	312,555
9 .....	312,555
10 .....	312,555
Total .....	7,007,404

B. Overall Total Additional Costs

The overall total additional undiscounted cost of this final rule is estimated to be \$7,007,404 over a ten-year period. A summary of the estimated costs calculated for a ten-year period at a 3- and 7-percent discount rate is provided in the table below. GSA did not identify any cost savings based on the impact of the final rule.

Summary	Total costs
Present Value (3 percent) .....	\$6,397,981
Annualized Costs (3 percent) ...	750,039
Present Value (7 percent) .....	5,743,230
Annualized Costs (7 percent) ...	817,707

C. Analysis of Alternatives

The preferred approach is to take the process laid out in the analysis above. However, GSA has analyzed one alternative to the preferred process. As an alternative, GSA could decide not to update regulations concerning Federal Advisory Committee Management; however, that alternative would leave outdated and unclear content in the regulations, which would continue to cause confusion, impede accessibility and transparency by not encouraging the expansion of outreach and meeting access to the public, and waste government time and resources by forcing agencies to seek clarification on sections that contain unclear and unnecessary language. In light of those concerns, GSA rejects the alternative.

VII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 41 CFR Part 102-3

Advisory committees, Governmental property management.

Robin Carnahan,

Administrator of General Services.

Therefore, GSA revises 41 CFR part 102-3 to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this part cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15-102-3.20 [Reserved]
- 102-3.25 What definitions apply to this part?
- 102-3.30 What policies govern the use of advisory committees?
- 102-3.35 What policies govern the use of subcommittees?
- 102-3.40 What types of committees or groups are not covered by the Act and this part?

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, Merged, and Terminated?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What are the authorities for establishing advisory committees?
- 102-3.55 What rules apply to the duration of an advisory committee?
- 102-3.60 What procedures are required to establish, renew, reestablish, or merge a discretionary advisory committee?
- 102-3.65 What are the public notification requirements for discretionary advisory committees?
- 102-3.70 What are the charter filing requirements?
- 102-3.75 What information must be included in the charter of an advisory committee?
- 102-3.80 How are charter amendments accomplished?
- 102-3.85 [Reserved]

Subpart C—How Are Advisory Committees Managed?

- 102-3.90 What does this subpart cover and how does it apply?
- 102-3.95 What principles apply to the management of advisory committees?
- 102-3.100 What are the responsibilities and functions of GSA?
- 102-3.105 What are the responsibilities of an agency head?
- 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

- 102–3.115 What are the responsibilities and functions of an agency CMO?
- 102–3.120 What are the responsibilities and functions of a DFO?
- 102–3.125 What is required to be included in an agency’s administrative guidelines to implement an advisory committee?
- 102–3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members?

#### Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102–3.135 What does this subpart cover and how does it apply?
- 102–3.140 What policies apply to advisory committee meetings?
- 102–3.145 What policies apply to subcommittee meetings?
- 102–3.150 How are advisory committee meetings announced to the public?
- 102–3.155 How are advisory committee meetings closed to the public?
- 102–3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
- 102–3.165 How are advisory committee meetings documented?
- 102–3.170 How does an interested party obtain access to advisory committee records?
- 102–3.175 What are the reporting and recordkeeping requirements for an advisory committee?

#### Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102–3.180 What does this subpart cover and how does it apply?
- 102–3.185 What does this subpart require agencies to do?

#### Subpart F—Severability

- 102–3.190 What portions of this part are severable?

**Authority:** 40 U.S.C. 486(c); 5 U.S.C. chapter 10; and E.O. 12024, 42 FR 61445, 3 CFR, 1977 Comp., p. 158.

### PART 102–3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

#### Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

##### § 102–3.5 What does this part cover and how does it apply?

This part provides the policy framework and establishes minimum requirements that must be used by agency heads and Federal officers in applying the Federal Advisory Committee Act, as amended (FACA or “the Act”), 5 U.S.C. chapter 10, to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this part establishes the scope and applicability of the Act and

outlines specific exclusions from its coverage. This part is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, including any advisory committee or officer, member, employee, agent, or contractor of any advisory committee.

##### § 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, administration, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, recommendations, outcomes, and cost of advisory committees through reporting requirements. These requirements form the basis for implementing the Act at both the agency and Government-wide levels.

##### §§ 102–3.15–102–3.20 [Reserved]

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

The following definitions apply to this part:

*Act* means the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. chapter 10.

*Administrator* means the Administrator of General Services.

*Advisory committee* 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 the group’s advice or recommendations for the President or on issues or policies within the scope of agency responsibilities (codified at 5 U.S.C. 1001). Advisory committees are subject to the Act unless specifically exempted by the Act, or by other statutes, or not covered by this part.

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

*Agency head* means the head of an executive branch agency, department, or commission, or their designated delegate.

*Chairperson* means the advisory committee or subcommittee member who serves in this role on an advisory

committee or subcommittee by statutory requirement, or by appointment or invitation by Presidential authority or an agency’s authority.

*Committee Management Officer (CMO)* means the individual designated by the agency head to implement the provisions of sec. 8(b) of the Act (codified at 5 U.S.C. 1007(b)) and any delegated responsibilities of the agency head under the Act.

*Committee Management Secretariat (Secretariat)* means the organization established pursuant to sec. 7(a) of the Act (codified at 5 U.S.C. 1006(a)), which is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator under the Act and E.O. 12024 (3 CFR, 1977 Comp., p. 158).

*Committee meeting* means any gathering of advisory committee members (whether in person or electronically, such as using telecommunications or through a virtual platform), held with the approval of an agency, and with a Designated Federal Officer in attendance, for the purpose of deliberating on the matters upon which the advisory committee provides advice or recommendations.

*Committee member* means an individual who serves by appointment or invitation by the appointing authority 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. Committee staff serve in coordination with the Designated Federal Officer.

*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 secs. 10(e) and (f) of the Act (codified at 5 U.S.C. 1009(e) and (f)) 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.

*Group Federal Officer (GFO)* means an individual who assists the CMO in overseeing and managing a portion of the agency’s Federal advisory committee management program.



*Independent Presidential advisory committee* means any Presidential advisory committee not assigned by the Congress, or by the 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 function(s), 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 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. However, if a subcommittee makes advice or recommendations directly to a Federal officer or agency, it is no longer functioning as a subcommittee, and must: file a charter following the requirements of § 102–3.70, that includes the information required in § 102–3.75; comply with all of the requirements of this part; and will be counted as a chartered advisory committee at an agency.

*Utilized by* means a committee that is one over which the President or a Federal officer or agency exercises actual management or control of its operation, whether or not it was established by the Federal Government.

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

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

(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.

(b) *Termination.* Advisory committees terminate pursuant to § 102–3.55.

(c) *Fairly 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 (as explained further in § 102–3.60).

(d) *Open meetings.* Advisory committee meetings must be open to the public except when a meeting is closed

or partially closed in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

#### (1) *Compliance with the Rehabilitation Act of 1973, as amended.*

With the support of the sponsoring Federal department or agency, the advisory committee must provide reasonable modifications for individuals with disabilities when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the program or activity. The advisory committee must also take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, including by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the advisory committee. Examples of auxiliary aids and services include qualified interpreters and information in alternate formats, such as braille or large print. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. An advisory committee may not charge for the provision of auxiliary aids and services. An advisory committee is not required to provide an aid or service if it can demonstrate that providing that aid or service would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. Advisory committees should consider how to ensure that advisory committee members and members of the public are made aware that qualified individuals with disabilities are entitled to effective communication, including appropriate auxiliary aids and services. Advisory committees should also consider how to ensure that advisory committee members and members of the public are made aware of the option to request reasonable modifications in advance of meetings and should identify a point of contact to receive and respond to requests for reasonable modifications.

(2) *Ensuring language access and provision of language assistance services.* With the support of the sponsoring Federal department or agency, the advisory committee must ensure equal participation by individuals with limited English proficiency. This may include conducting outreach and providing

notifications in the language(s) used by the affected communities and potential or actual advisory committee members, as well as providing language assistance services, including electronic and printed written translated documents and oral interpretation services free of charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual, consistent with title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and E.O. 13166, Improving Access to Services for Persons With Limited English Proficiency, 3 CFR, 2000 Comp., p. 289.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

#### **§ 102–3.35 What policies govern the use of subcommittees?**

(a) In general, the requirements of the Act and the policies of this part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee.

(b) If a subcommittee reports directly to a Federal officer or agency, it is no longer functioning as a subcommittee. In that case, the subcommittee must be chartered as a new advisory committee, must comply with all of the requirements of this part, and will be counted as a chartered advisory committee at an agency.

(c) Unless required by statute or Presidential directive, the creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee in coordination with the DFO.

#### **§ 102–3.40 What types of committees or groups are not covered by the Act and this part?**

In addition to the committees created by the National Academy of Sciences, Engineering, and Medicine and the National Academy of Public Administration (except as covered by subpart E of this part), the Central Intelligence Agency, and the Federal Reserve, the following are examples of committees or groups that are not covered by the Act or this part:

(a) Any advisory committee established or utilized by the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee

cannot comply with the requirements of the Act;

(b) Committees specifically exempted by statute;

(c) Committees created by non-Federal entities and not actually managed or controlled by the executive branch;

(d) Groups assembled where attendees provide individual advice to a Federal official(s);

(e) Groups assembled to exchange facts or information with a Federal official(s);

(f) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and Tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. The purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on sec. 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), and OMB Memorandum M-95-20, dated September 21, 1995, available on the Committee Management Secretariat website);

(g) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(h) Local civic groups whose primary function is that of rendering a public service with respect to a Federal program;

(i) Groups established to advise State or local officials;

(j) Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature; and

(k) Any committee established, created, managed, and staffed by the government of a foreign country; or any committee created, managed, and staffed by an executive branch agency to advise or make recommendations to a government official, government group, or government agency of a foreign country.

### **Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, Merged, and Terminated?**

#### **§ 102-3.45 What does this subpart cover and how does it apply?**

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, merger, and termination of advisory committees. These procedures include, but are not limited to, consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

#### **§ 102-3.50 What are the authorities for establishing advisory committees?**

FACA identifies four sources of authority for establishing an advisory committee:

(a) *Required by statute.* By law where Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (non-discretionary);

(b) *Presidential authority.* By E.O. of the President or other Presidential directive (non-discretionary);

(c) *Authorized by statute.* By law where Congress authorizes, but does not direct the President or an agency to establish it (discretionary); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other agency-authorizing statutes (discretionary).

#### **§ 102-3.55 What rules apply to the duration of an advisory committee?**

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration or termination, either stated in or implied by operation of the statute;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the advisory committee not later

than two years after its date of establishment, renewal, or reestablishment in accordance with § 102-3.60. If the President or an agency needs an advisory committee that was terminated, it can be reestablished in accordance with § 102-3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

#### **§ 102-3.60 What procedures are required to establish, renew, reestablish, or merge a discretionary advisory committee?**

(a) *Consultation with the Secretariat.* To establish, renew, reestablish, or merge a discretionary advisory committee, the agency head must first consult with the Secretariat. As part of this consultation, agency heads should provide the Secretariat with a full understanding of the background and purpose behind the advisory committee, and the Secretariat should share its knowledge and experience with the agency.

(b) *Include required information in the consultation with the Secretariat.* Consultations covering the establishment, renewal, reestablishment, or merger of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest or why it is necessary to merge one or more advisory committees;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing or other methods of public engagement; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership, as appropriate based on the nature and functions of the advisory committee, as documented through the agency's Membership Balance Plan (MBP). The MBP must be uploaded to the FACA database when the agency files the Federal advisory committee charter with the Secretariat.

(i) *Points of view required.* During the formation of the advisory committee membership and as membership vacancies occur, agencies should ensure that they fully consider and understand the potential implications or anticipated impacts of the advisory committee's potential recommendations. This includes consideration of the groups and entities potentially affected or interested in such recommendations, as

appropriate based on the nature and functions of the advisory committee, so that the agency can make informed decisions on the areas of expertise or perspectives (including relevant lived experience) that would advance the work of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed by the committee. The MBP shall describe the agency's conclusions regarding the points of view that would promote fairly balanced committee membership.

(ii) *Outreach.* Having identified the points of view that would promote a fairly balanced advisory committee membership, agencies should conduct broad outreach, using a variety of means and methods, to ensure that the call for nominees reaches the interested parties and stakeholder groups likely to possess those points of view. Agencies should further ensure outreach to underserved communities, as appropriate to the nature and functions of the advisory committee. The MBP shall describe the agency's intended outreach efforts to accomplish these goals.

(iii) *Selection.* In the selection of members for the advisory committee and as membership vacancies occur, agencies shall ensure representation of persons with the points of view identified pursuant to this section that would promote a fairly balanced advisory committee membership. The MBP shall describe the agency's intended selection criteria and approach.

**§ 102–3.65 What are the public notification requirements for discretionary advisory committees?**

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, reestablished, or a new discretionary committee is established as the result of a merger of existing committees. The notices should be written in plain language and should not assume that the public has background knowledge or familiarity with an agency or the advisory committee. The agency is also strongly encouraged to make the notice available electronically in the languages represented by the affected communities on the agency's advisory committee website, if one exists, as well as use additional notification methods (such as an agency's social media accounts) to reach advisory committee stakeholders (such as professional trade or membership groups, civic groups,

community-based organizations, ethnic media, representatives of affected stakeholder groups, and colleges and universities). Electronic notices must meet the requirements of title VI and E.O. 13166, as well as obligations under relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102–3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established (including due to a merger), renewed, or reestablished. When establishing a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of advisory committee establishment (including due to a merger) and reestablishment must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency in exceptional circumstances (such as a national emergency or natural disaster). This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

**§ 102–3.70 What are the charter filing requirements?**

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To amend a charter, or establish (including due to a merger), renew, or reestablish a discretionary advisory committee, a charter must be filed with:

- (1) The agency head;
- (2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;
- (3) The Library of Congress; and
- (4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except that the date of establishment, renewal, or reestablishment for a

Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and be chartered as a new advisory committee as they are no longer functioning as a subcommittee.

**§ 102–3.75 What information must be included in the charter of an advisory committee?**

An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. The charter must contain the following information:

- (a) The advisory committee's official designation (official name);
- (b) The legal authority that permits the advisory committee to be established;
- (c) The objectives and the scope of the advisory committee's activities;
- (d) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;
- (e) The agency or Federal officer to whom the advisory committee submits its recommendations;
- (f) The agency responsible for providing the necessary support to the advisory committee, including the name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of sec. 6(b) of the Act (codified at 5 U.S.C. 1005(b)), if appropriate;
- (g) The estimated annual costs to operate the advisory committee in dollars and person years (full time equivalents or FTE);
- (h) The role of the DFO;
- (i) The estimated number and frequency of the advisory committee's meetings;
- (j) The period of time necessary to carry out the advisory committee's purpose(s);
- (k) The planned termination date, if less than two years from the date of establishment of the advisory committee;
- (l) The estimated number of advisory committee members, the expertise or experience required, and the anticipated advisory committee member designations;
- (m) Whether subcommittees may be created, by whom, and how they operate under the chartered advisory committee;
- (n) The relevant recordkeeping disposition schedule(s); and
- (o) The date the charter is filed in accordance with § 102–3.70.

### § 102–3.80 How are charter amendments accomplished?

The agency head is responsible for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102–3.60. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee, as stated in paragraphs (a) through (c) of this section:

(a) *Non-discretionary advisory committees.* The agency head must ensure that any changes made to current charters are consistent with the relevant authority. When Congress by law, or the President by Presidential directive (e.g., E.O.), changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Presidential directive (e.g., E.O.); file the amended charter as specified in § 102–3.70; and notify the public as specified in paragraph (c) of this section.

(b) *Discretionary advisory committees.* The charter of a discretionary advisory committee must be amended when an agency head determines that provisions of a filed charter are inaccurate, specific provisions have changed or become obsolete with the passing of time, or advisory committees need to be merged. Amendments could also include changing the name of the advisory committee, advisory committee authority, number of members, estimated number or frequency of meetings, objectives and scope, duties, and estimated costs. The agency must amend the charter language as necessary and the agency must:

(1) First consult with the Secretariat and explain the purpose of the changes and why they are necessary. The Secretariat will notify the agency when the consultation process is complete.

(2) Upon receiving notice from the Secretariat that the consultation is complete, file the amended charter as specified in § 102–3.70, and notify the public as specified in paragraph (c) of this section.

(c) *Public notification of charter amendments.* Agencies must post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the agency must publish a notice of amendment in the **Federal Register**. **Federal Register** notice publishing and website posting of charter amendments may be performed concurrently with the filing of the

charter. The publishing requirement in the **Federal Register** does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

### § 102–3.85 [Reserved]

### Subpart C—How Are Advisory Committees Managed?

#### § 102–3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the U.S. General Services Administration (GSA), the agency head, the CMO, and the DFO under the Act.

#### § 102–3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support and access.* Before establishing an advisory committee, agencies should identify requirements and ensure that adequate resources are available to support anticipated activities. Considerations related to support could include work and meeting space, necessary technology, supplies and equipment (e.g., adequate virtual meeting capabilities), Federal staff support, access to key decisionmakers, and member access to meetings (e.g., travel reimbursement). These considerations should also include support for access to communication modes that are inclusive of individuals with limited English proficiency or individuals with disabilities (e.g., adequate virtual meeting capabilities). These considerations should also include whether there are physical barriers to attending in-person meetings.

(b) *Practice openness.* Agencies should seek to be as transparent, equitable, inclusive, accessible, and timely as possible when providing public access to advisory committee activities and materials. Agencies should minimize, to the extent possible, closing or partially closing meetings, and are encouraged where appropriate to open subcommittee meetings to the public. Agencies should also create public facing websites at both the agency and advisory committee level to help the public understand an agency's advisory committee program, and use additional notification methods, as appropriate, to reach advisory committee stakeholders, pursuant to sec. 10 of the Act (codified at 5 U.S.C. 1009). Such websites must be in compliance with E.O. 13166, relevant sections of the Rehabilitation Act, as

amended, 29 U.S.C. 794, and the 21st Century Integrated Digital Experience Act (IDEA). Section 3(e) of 21st Century IDEA requires any public Federal agency website created after December 2018 to be in compliance with the website standards of the Technology Transformation Services of the General Services Administration. IDEA, Public Law 115–336, 132 Stat. 5025.

(c) *Promote diversity, equity, and inclusivity.* Once the Federal advisory committee is formed, committee chairs and DFOs should foster a culture of diversity, equity, and inclusion by encouraging engagement, participation, and expression from all committee members and any members with dissenting opinions, as applicable.

(d) *Seek feedback.* Agencies should continually seek feedback from advisory committee members and the public regarding the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decision making and make this information available to the public.

#### § 102–3.100 What are the responsibilities and functions of GSA?

(a) The responsibilities of the Administrator under sec. 7 of the Act (codified at 5 U.S.C. 1006) have been delegated by the Administrator to the Committee Management Secretariat within GSA's Office of Government-wide Policy.

(b) The Secretariat carries out its responsibilities by:

(1) Engaging in consultations with agencies on the establishment, re-establishment, renewal, merger, and termination of discretionary advisory committees;

(2) Prescribing guidance applicable to advisory committees;

(3) Assisting other agencies in implementing and interpreting the Act;

(4) Conducting an annual comprehensive review of Government-wide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;

(5) Developing and providing Government-wide training regarding the Act and related statutes and principles;

(6) Supporting the Interagency Committee on Federal Advisory Committee Management and FACA Attorney Council to improve compliance with the Act;

(7) Designing and maintaining a FACA database to facilitate data collection, reporting, and use of information required by the Act;

(8) Preparing regulations on Federal advisory committees;

(9) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and

(10) Providing recommendations for transmittal by the Administrator to Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

**§ 102–3.105 What are the responsibilities of an agency head?**

When a committee is utilized by or established by an agency, the agency head must:

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Issue administrative guidelines and management controls providing the details that advisory committee staff need to implement during the creation, operation, and termination of their Federal advisory committees;

(c) Designate a CMO;

(d) Designate a DFO for each advisory committee and its subcommittees;

(e) Approve the advisory committee charters for establishments, renewals, re-establishments, or mergers;

(f) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(g) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;

(h) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;

(i) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(j) Assure that the interests and affiliations of committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics including any supplemental agency requirements, and other Federal ethics rules;

(k) Appoint or invite individuals to serve on committees, unless otherwise provided for by a specific statute or Presidential directive; and

(l) Provide the opportunity for reasonable participation, including

accessibility considerations, by the public in advisory committee activities, subject to § 102–3.140 and the agency's guidelines.

**§ 102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?**

The chairperson of an independent Presidential advisory committee must:

(a) Comply with the Act, this part, and other applicable laws and regulations;

(b) Consult with the Secretariat concerning the designation of a CMO and DFO; and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

**§ 102–3.115 What are the responsibilities and functions of an agency CMO?**

In addition to implementing the provisions of sec. 8(b) of the Act (codified at 5 U.S.C. 1007(b)), the CMO will carry out all responsibilities delegated by the agency head and manage the agency FACA program. Management includes consulting with the Secretariat on Federal advisory committees, as delegated by the agency head; tracking charter establishments, renewals, re-establishments, mergers, amendments, and terminations; coordinating the agency Annual Comprehensive Review within their agency and with the Secretariat; providing training for agency staff supporting the FACA program; working with GFOs, as appropriate, and DFOs; attending GSA Government-wide FACA training and recommending this training to agency staff, as appropriate; and attending Interagency Committee on Federal Advisory Committee Management meetings. The CMO should create and maintain an agency website to further the public's understanding of the agency's FACA program. The CMO also should ensure that secs. 10(b), 12(a), and 13 of the Act (codified at 5 U.S.C. 1009(b), 1011(a), and 1012, respectively) are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to—

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102–3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on

committee management operations and procedures; and

(d) *Closed meeting determinations.*

Agency determinations to close or partially close advisory committee meetings required by § 102–3.105(f).

**§ 102–3.120 What are the responsibilities and functions of a DFO?**

(a) The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

(1) Ensure that their committee activities comply with the Act, this part, their agency administrative procedures, and any other applicable laws and regulations;

(2) Approve or call all meetings of the advisory committee or subcommittee;

(3) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(4) Attend all advisory committee and subcommittee meetings for their duration;

(5) Fulfill the requirements under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b));

(6) Adjourn any meeting when he or she determines it to be in the public interest;

(7) Chair any meeting when so directed by the agency head;

(8) Maintain information on advisory committee activities and provide such information to the public, as applicable; and

(9) Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (e.g., FACA overview, ethics training) for efficient operation and compliance with the Act and this part.

(b) The DFO should ensure a public facing website is created and maintained (that complies with the requirements of relevant sections of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794) for each advisory committee, and include information such as: the advisory committee charter; relevant laws, regulations, and guidance; advisory committee member rosters and subcommittee member rosters, as applicable; **Federal Register** notices; meeting information (such as agendas, meeting materials, and minutes); reports and recommendations; and any other information that would increase the transparency and public understanding of advisory committee functions and activities and assist in fulfilling the requirements under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

**§ 102–3.125 What is required to be included in an agency’s administrative guidelines to implement an advisory committee?**

An agency’s administrative guidelines provide the details that advisory committee staff need to implement FACA requirements during the creation, operation, and termination of their advisory committees.

(a) *Advisory committee bylaws.* Advisory committee bylaws should be developed by the agency, with advisory committee input and buy-in. Agency guidelines should specify the content of bylaws and ensure that they provide clear operating procedures for advisory committee meetings, other committee activities, and the relationship between committee members, the DFO, and agency staff.

(b) *Advisory committee costs.* Agency guidelines must:

- (1) Provide instructions on how to identify, calculate, and fully document advisory committee costs; and
- (2) Ensure agency committee cost records match the data reported to Congress and the public through the FACA database.

**§ 102–3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members?**

In developing guidelines to implement the Act, this part, and other applicable laws and regulations at the agency level, agency heads should address the following issues:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority. Agency heads are encouraged to set member term limits, where possible, so that agencies continually ensure the committee is fairly balanced throughout the life of the advisory committee.

(b) *Compensation of advisory committee members.* Agencies are not required to pay and are not prohibited from paying their advisory committee members, unless required to or prohibited from doing so by statute or Presidential authority. In determining the rate of compensation (per § 102–3.105(h)) the agency head may establish appropriate rates of pay (including any applicable locality pay authorized by the President’s Pay Agent under 5 U.S.C. 5304(h)) not to exceed the rate for level IV of the Executive Schedule

under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(c) *Other compensation considerations.* In establishing rates of pay for advisory committee members, the agency must comply with any applicable statutes, E.O.s, regulations, and administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members, an agency must give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required for the work involved.

(d) *Federal employees assigned to an advisory committee.* Federal employees serving as either an advisory committee member or as a staff person remain covered during the assignment by the compensation system of their employing agency. Federal employees serving as an advisory committee member or as a staff person must first obtain both the approval of their direct supervisor and the respective committee’s DFO prior to serving in either capacity.

(e) *Other appointment considerations.* Any advisory committee staff person who is not a current Federal employee must be appointed in accordance with applicable agency procedures, in consultation with the DFO, and, as appropriate, the members of the advisory committee involved.

(f) *Travel expenses.* Advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem, per the rates established for employees by the Administrator of General Services at 5 U.S.C. 5702.

(g) *Services for advisory committee members with disabilities.* While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant as those that may be provided to employees per 5 U.S.C. 3102. Additional accommodations should be discussed in order to maximize accessibility, including technology, per relevant sections of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.

**Subpart D—Advisory Committee Meeting and Recordkeeping Procedures**

**§ 102–3.135 What does this subpart cover and how does it apply?**

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

**§ 102–3.140 What policies apply to advisory committee meetings?**

(a) The agency head for a discretionary or non-discretionary advisory committee established or utilized by that agency, or the chairperson for an independent Presidential advisory committee, must ensure that:

(1) Each advisory committee meeting is held at a reasonable time and in a manner or place accessible to the public and includes consideration of affected communities, as appropriate, as well as facilities or technology that are readily accessible to and usable by persons with disabilities, consistent with the requirements set forth in relevant sections of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(2) The physical meeting room is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public. If electronic forums are used, agencies should opt for technology features that are compliant with relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794, accommodate advisory committee members, advisory committee or agency staff, and allow for maximum participation by members of the public, as appropriate;

(3) Any member of the public is permitted to file a written statement with the advisory committee, whether or not the statement is related to a specific meeting;

(4) Any member of the public may speak to or otherwise address the advisory committee if the agency’s guidelines so permit; and

(5) Any advisory committee meeting conducted in whole or part through any electronic medium (such as a teleconference or through a virtual platform) meets the requirements of this subpart.

(b) The **Federal Register** notices, agendas, and supporting materials should be posted on the agency advisory committee website (if one exists) as soon as they are available or at the time they are provided to the advisory committee members.

**§ 102–3.145 What policies apply to subcommittee meetings?**

If a subcommittee provides advice or recommendations directly to a Federal officer or agency, or if its advice or recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with the requirements of this subpart.

**§ 102–3.150 How are advisory committee meetings announced to the public?**

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

- (1) The name of the advisory committee (or subcommittee, if applicable);
- (2) The time, date, physical place (and/or instructions to connect electronically), and purpose of the meeting;
- (3) Whether meeting registration is required;
- (4) A summary of the agenda, and/or topics to be discussed and instructions on how to access meeting materials;
- (5) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed in whole or in part, state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c);
- (6) Instructions for submitting written comments, and oral comments if permitted;
- (7) Instructions on how to submit a request for physical meeting or electronic meeting accommodations consistent with the requirements of E.O. 13166 and relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794; and
- (8) The name and telephone number (or email) of the DFO or other responsible agency official, or agency electronic mailbox for the committee, to contact for additional information concerning the meeting.

(b) In exceptional circumstances, such as a national emergency or natural disaster, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee

meeting notice published in the **Federal Register**.

(c) In addition to the **Federal Register**, and consistent with standard agency practice, agencies should announce meetings through additional notification methods, such as websites and social media, considering the most appropriate methods to reach committee stakeholders, and with as much advance notice as possible.

**§ 102–3.155 How are advisory committee meetings closed to the public?**

To close all or part of an advisory committee meeting, the DFO must:

- (a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justifies the closure. The request must provide the agency head or the Secretariat sufficient time (generally 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102–3.150;
- (b) *Seek General Counsel review.* The Office of the General Counsel (or equivalent legal office) of the agency or, in the case of an independent Presidential advisory committee, GSA's Office of the General Counsel, should review all requests to close meetings;
- (c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, GSA, finds that the request is consistent with the provisions of the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting will be closed; and
- (d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

**§ 102–3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?**

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

- (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 deliberation by advisory committee members in a public meeting of the advisory committee, or deliberation by subcommittee members in a public meeting of the subcommittee

(where applicable). These meetings to conduct preparatory work do not include deliberation among advisory committee or subcommittee members; 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 subcommittee (such as meeting logistics) or to receive administrative information from a Federal officer or agency (such as a briefing on ethics or FACA procedural requirements).

**§ 102–3.165 How are advisory committee meetings documented?**

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

- (1) The time, date, and place (or electronic format) of the advisory committee meeting;
  - (2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;
  - (3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and
  - (4) Copies of each report or other materials received, issued, or approved by the advisory committee at the meeting.
- (c) The DFO must ensure that minutes are certified for accuracy by the chairperson within 90 calendar days of the meeting to which they relate. Agencies should post the meeting minutes on the agency advisory committee website (if one exists) not later than 14 calendar days after the meeting minutes have been certified.

**§ 102–3.170 How does an interested party obtain access to advisory committee records?**

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act (codified at 5 U.S.C. 1009(b)) provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend

fully the work undertaken by the advisory committee. Although certain advisory committee records may be withheld under an exemption to the Freedom of Information Act (FOIA), agencies may not require members of the public or other interested parties to use FOIA procedures in order to obtain records available under sec. 10(b) of the Act (codified at 5 U.S.C. 1009(b)).

**§ 102–3.175 What are the reporting and recordkeeping requirements for an advisory committee?**

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by sec. 6(b) of the Act (codified at 5 U.S.C. 1005(b)) must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. These reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the Presidential advisory committee pursuant to § 102–3.75(f).

(b) *Annual comprehensive review of Federal advisory committees.* Per sec. 7(b) of the Act (codified at 5 U.S.C. 1006(b)), GSA is required to conduct an Annual Comprehensive Review (ACR) of the activities and responsibilities of each Federal advisory committee that was in existence during any part of a Federal fiscal year. The Secretariat initiates this review, provides guidance to the agencies and departments on how to conduct the review, and closes out the ACR when all reviews have been completed. Federal agencies are responsible for reporting data on each advisory committee, such as its purpose, performance measures, subcommittees (if applicable), meeting, membership, and cost, into the GSA FACA database. CMOs, DFOs, and other responsible agency officials, such as GFOs, enter this data for the advisory committees they are responsible for in their agency. The FACA database provides transparency to the public on the activities of Federal advisory committees Government-wide. The database is also used by Congress to perform oversight of the FACA program, and by the general public, the media, and others to stay abreast of important developments resulting from Federal advisory committee activities.

(c) *Annual report of closed or partially closed meetings.* In accordance with sec. 10(d) of the Act (codified at 5

U.S.C. 1009(d)), advisory committees holding closed or partially closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, copies of each report made by an advisory committee, including any report of closed or partially closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by sec. 13 of the Act (codified at 5 U.S.C. 1012) for public inspection and use.

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act, 44 U.S.C. chapters 21 and 29 through 33, and regulations issued by the National Archives and Records Administration (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act, 44 U.S.C. chapter 22.

**Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?**

**§ 102–3.180 What does this subpart cover and how does it apply?**

This subpart provides guidance to agencies on compliance with sec. 15 of the Act (codified at 5 U.S.C. 1014). Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart, NAS also includes the National Academy of Engineering, the National Academy of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than sec. 15 applies to any committee created by NAS or NAPA.

**§ 102–3.185 What does this subpart require agencies to do?**

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by NAS or NAPA under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of sec. 15(b) of the Act (codified at 5 U.S.C. 1014(b)); or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sec. 15(b) (1), (2), and (5) of the Act (codified at 5 U.S.C. 1014(b)(1), (2), and (5), respectively).

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of sec. 15 of the Act (codified at 5 U.S.C. 1014) that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of sec. 15 of the Act (codified at 5 U.S.C. 1014); and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures substantially have been complied with in performing the work required under the agreement.

**Subpart F—Severability**

**§ 102–3.190 What portions of this part are severable?**

All provisions of this part are separate and severable from one another. If any



provision is stayed or determined to be invalid, it is GSA's intention that the remaining provisions shall continue in effect.

[FR Doc. 2024-08215 Filed 4-17-24; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 240227-0061; RTID 0648-XD883]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 total allowable catch of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), April 16, 2024, through 1200 hours, A.l.t., June 10, 2024.

**FOR FURTHER INFORMATION CONTACT:** Abby Jahn, 907-586-7416.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

The A season allowance of the 2024 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 3,828 metric tons (mt) as established by the final 2045 and 2025 harvest specifications for groundfish in the GOA (89 FR 15484, March 4, 2024).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels using trawl gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,328 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of April 12, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: April 12, 2024.

**Everett Wayne Baxter,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2024-08272 Filed 4-16-24; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Chapter I

[Docket No. FWS-HQ-NWRS-2023-0024; FXRS1261090000-245-FF09R25000]

#### National Wildlife Refuge System Planning Policies (602 FW 1-4) for the U.S. Fish and Wildlife Service

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of final policies.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the updated planning policies, 602 FW 1-4, for the National Wildlife Refuge System (Refuge System). The purpose of the policy revisions is to update the Refuge System's refuge management by incorporating landscape conservation plans and consideration of climate change and other anthropogenic forces in refuge management.

**DATES:** The policies were effective April 1, 2024.

**ADDRESSES:** The revised planning policies are available at <https://www.fws.gov/policy-library/manuals/land-use-and-management-series/refuge-management/refuge-planning>.

**FOR FURTHER INFORMATION CONTACT:** Julie Henning, Chief, Branch of Conservation Planning and Policy, National Wildlife Refuge System, via email at [julie\\_henning@fws.gov](mailto:julie_henning@fws.gov), by telephone at (703) 358-1945, or by mail at U.S. Fish and Wildlife Service, c/o Julie Henning, 5275 Leesburg Pike, Falls Church, VA 22041-3803. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

We are announcing the availability of four updated National Wildlife Refuge System (Refuge System) planning policies. The purpose of the policy revisions is to update the Refuge System's refuge management by incorporating landscape conservation planning and design and consideration of climate change and other anthropogenic forces in refuge management. The Refuge System's authority for these policies comes from the Refuge System Administration Act