

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

SUBCHAPTER A—GENERAL

<i>Part</i>		<i>Page</i>
102-1	General [Reserved]	
102-2	Federal management regulation system	7
102-3	Federal Advisory Committee Management	11
102-4	Nondiscrimination in Federal financial assistance programs [Reserved]	
102-5	Home-to-work transportation	40
102-6—102-30	[Reserved]	

SUBCHAPTER B—PERSONAL PROPERTY

102-31	General [Reserved]	
102-32	Management of personal property [Reserved]	
102-33	Management of aircraft [Reserved]	
102-34	Motor vehicle management	45
102-35	Disposition of personal property [Reserved]	
102-36	Disposition of excess personal property	60
102-37	Donation of Surplus Personal Property	83
102-38	[Reserved]	
102-39	Replacement of personal property pursuant to the exchange/sale authority	115
102-40—102-41	[Reserved]	
102-42	Utilization, donation, and disposal of foreign gifts and decorations	119
102-43—102-70	[Reserved]	

SUBCHAPTER C—REAL PROPERTY

102-71	General	127
102-72	Delegation of authority	128
102-73	Real estate acquisition	131
102-74	Facility management	135
102-75	Real property disposal	137
102-76	Design and construction	141
102-77	Art-in-architecture	142
102-78	Historic preservation	143

41 CFR Ch. 102 (7-1-02 Edition)

<i>Part</i>		<i>Page</i>
102-79	Assignment and utilization of space	145
102-80	Safety and environmental management	148
102-81	Security	151
102-79	Assignment and utilization of space	145
102-80	Safety and environmental management	148
102-81	Security	151
102-82	Utility services	152
102-83	Centralized services in Federal buildings and complexes [Reserved]	
102-84	Annual real property inventories	152
102-85	Pricing policy for occupancy in GSA space	155
102-86—102-92	[Reserved]	
102-96—102-115	[Reserved]	

SUBCHAPTER D—TRANSPORTATION

102-116	General [Reserved]	
102-117	Transportation management	170
102-118	Transportation payment and audit	185
102-119—102-140	[Reserved]	

SUBCHAPTER E—TRAVEL MANAGEMENT

102-141	General [Reserved]	
102-142—102-170	[Reserved]	

SUBCHAPTER F—TELECOMMUNICATIONS

102-171	General [Reserved]	
102-172	Telecommunications management policy [Reserved]	
102-173—102-190	[Reserved]	

SUBCHAPTER G—ADMINISTRATIVE PROGRAMS

102-191	General [Reserved]	
102-192	Mail management	212
102-193	Creation, maintenance, and use of records	221
102-194	Standard and optional forms management program	223
102-195	Interagency reports management program	225
102-196	Federal facility ridesharing [Reserved]	
102-197—102-220	[Reserved]	

SUBCHAPTER H—SUBCHAPTER Z [RESERVED]

SUBCHAPTER A—GENERAL

PART 102—GENERAL [RESERVED]

PART 102-2—FEDERAL MANAGEMENT REGULATION SYSTEM

Subpart A—Regulation System

GENERAL

Sec.

- 102-2.5 What is the Federal Management Regulation (FMR)?
- 102-2.10 What is the FMR's purpose?
- 102-2.15 What is the authority for the FMR system?
- 102-2.20 Which agencies are subject to the FMR?
- 102-2.25 When are other agencies involved in developing the FMR?
- 102-2.30 Where and in what formats is the FMR published?
- 102-2.35 How is the FMR distributed?
- 102-2.40 May an agency issue implementing and supplementing regulations for the FMR?

NUMBERING

- 102-2.45 How is the FMR numbered?
- 102-2.50 How do I number my agency's implementing regulations?
- 102-2.55 How do I number my agency's supplementing regulations?

DEVIATIONS

- 102-2.60 What is a deviation from the FMR?
- 102-2.65 When may agencies deviate from the FMR?
- 102-2.70 What are individual and class deviations?
- 102-2.75 What timeframes apply to deviations?
- 102-2.80 What steps must an agency take to deviate from the FMR?
- 102-2.85 What are the reasons for writing to GSA about FMR deviations?
- 102-2.90 Where should my agency send its correspondence on an FMR deviation?
- 102-2.95 What information must agencies include in their deviation letters to GSA?
- 102-2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?
- 102-2.105 What information must agencies include in their follow-up analysis?
- 102-2.110 When must agencies provide their follow-up analysis?

NON-REGULATORY MATERIAL

- 102-2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

- 102-2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?
- 102-2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

Subpart B—Forms

- 102-2.130 Where are FMR forms prescribed?
- 102-2.135 How do agencies obtain forms prescribed by the FMR?

Subpart C—Plain Language Regulatory Style

- 102-2.140 What elements of plain language appear in the FMR?
- 102-2.145 To what do pronouns refer when used in the FMR?

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 64 FR 39085, July 21, 1999, unless otherwise noted.

Subpart A—Regulation System

GENERAL

§ 102-2.5 What is the Federal Management Regulation (FMR)?

The Federal Management Regulation (FMR) is the successor regulation to the Federal Property Management Regulations (FPMR). It contains updated regulatory policies originally found in the FPMR. However, it does not contain FPMR material that described how to do business with the General Services Administration (GSA). "How to" materials on this and other subjects are available in customer service guides, handbooks, brochures and Internet websites provided by GSA. (See § 102-2.125.)

§ 102-2.10 What is the FMR's purpose?

The FMR prescribes policies concerning property management and related administrative activities. GSA issues the FMR to carry out the Administrator of General Services' functional responsibilities, as established by statutes, Executive orders, Presidential memoranda, Circulars and bulletins issued by the Office of Management and Budget (OMB), and other policy directives.

§ 102-2.15

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-2.15 What is the authority for the FMR system?

The Administrator of General Services prescribes and issues the FMR under the authority of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 486(c), as well as other applicable Federal laws and authorities.

§ 102-2.20 Which agencies are subject to the FMR?

The FMR applies to executive agencies unless otherwise extended to Federal agencies in various parts of this chapter. The difference between the two terms is that Federal agencies include executive agencies plus establishments in the legislative or judicial branch of the Government. See paragraphs (a) and (b) of this section for the definitions of each term.

(a) *What is an executive agency?* An executive agency is any executive department or independent establishment in the executive branch of the Government, including any wholly-owned Government corporation. (See 40 U.S.C. 472(a).)

(b) *What is a Federal agency?* A Federal agency is any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under that person's direction). (See 40 U.S.C. 472(b).)

§ 102-2.25 When are other agencies involved in developing the FMR?

Normally, GSA will ask agencies to collaborate in developing parts of the FMR.

§ 102-2.30 Where and in what formats is the FMR published?

Proposed rules are published in the FEDERAL REGISTER. FMR bulletins are published in looseleaf format. FMR interim and final rules are published in the following formats—

(a) FEDERAL REGISTER under the “Rules and Regulations” section.

(b) Loose-leaf. (See §102-2.35.)

(c) Code of Federal Regulations (CFR), which is an annual codification of the general and permanent rules published in the FEDERAL REGISTER. The CFR is available on line and in a bound-volume format.

(d) Electronically on the Internet.

§ 102-2.35 How is the FMR distributed?

(a) A liaison appointed by each agency provides GSA with their agency's distribution requirements of the loose-leaf version of the FMR. Agencies must submit GSA Form 2053, Agency Consolidated Requirements for GSA Regulations and Other External Issuances, to—General Services Administration, Office of Communications (X), 1800 F Street, NW, Washington, DC 20405.

(b) Order FEDERAL REGISTER and Code of Federal Regulations copies of FMR material through your agency's authorizing officer.

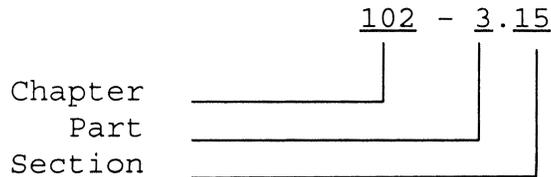
§ 102-2.40 May an agency issue implementing and supplementing regulations for the FMR?

Yes, an agency may issue implementing regulations (see §102-2.50) to expand upon related FMR material and supplementing regulations (see §102-2.55) to address subject material not covered in the FMR. The Office of the Federal Register assigns chapters in Title 41 of the Code of Federal Regulations for agency publication of implementing and supplementing regulations.

NUMBERING

§ 102-2.45 How is the FMR numbered?

(a) All FMR sections are designated by three numbers. The following example illustrates the chapter (it's always 102), part, and section designations:



(b) In the looseleaf version, the month, year, and number of FMR amendments appear at the bottom of each page.

§102-2.50 How do I number my agency's implementing regulations?

The first three-digit number represents the chapter number assigned to your agency in Title 41 of the CFR. The part and section numbers correspond to FMR material. For example, if your agency is assigned Chapter 130 in Title 41 of the CFR and you are implementing §102-2.60 of the FMR, your implementing section would be numbered §130-2.60.

§102-2.55 How do I number my agency's supplementing regulations?

Since there is no corresponding FMR material, number the supplementing material "601" or higher. For example, your agency's supplementing regulations governing special services to states might start with §130-601.5.

DEVIATIONS

§102-2.60 What is a deviation from the FMR?

A deviation from the FMR is an agency action or policy that is inconsistent with the regulation. (The deviation policy for the FPMR is in 41 CFR part 101-1.)

§102-2.65 When may agencies deviate from the FMR?

Because, it consists primarily of set policies and mandatory requirements, deviation from the FMR should occur infrequently. However, to address unique circumstances or to test the effectiveness of potential policy changes, agencies may be able to deviate from the FMR after following the steps described in §102-2.80.

§102-2.70 What are individual and class deviations?

An individual deviation is intended to affect only one action. A class deviation is intended to affect more than one action (e.g., multiple actions, the actions of more than one agency, or individual agency actions that are expected to recur).

§102-2.75 What timeframes apply to deviations?

Timeframes vary based on the nature of the deviation. However, deviations cannot be open-ended. When consulting with GSA about using an individual or class deviation, you must set a timeframe for the deviation's duration.

§102-2.80 What steps must an agency take to deviate from the FMR?

(a) Consult informally with appropriate GSA program personnel to learn more about how your agency can work within the FMR's requirements instead of deviating from them. The consultation process may also highlight reasons why an agency would not be permitted to deviate from the FMR; e.g., statutory constraints.

(b) Formally request a deviation, if consultations indicate that your agency needs one. The head of your agency or a designated official should write to GSA's Regulatory Secretariat to the attention of a GSA official in the program office that is likely to consider the deviation. (See the FMR bulletin that lists contacts in GSA's program offices and §102-2.90.) The written request must fully explain the reasons for the deviation, including the benefits that the agency expects to achieve.

§102-2.85 What are the reasons for writing to GSA about FMR deviations?

The reasons for writing are to:

§ 102-2.90

(a) Explain your agency's rationale for the deviation. Before it can adequately comment on a potential deviation from the FMR, GSA must know why it is needed. GSA will compare your need against the applicable policies and regulations.

(b) Obtain clarification from GSA as to whether statutes, Executive orders, or other controlling policies, which may not be evident in the regulation, preclude deviating from the FMR for the reasons stated.

(c) Establish a timeframe for using a deviation.

(d) Identify potential changes to the FMR.

(e) Identify the benefits and other results that the agency expects to achieve.

§ 102-2.90 Where should my agency send its correspondence on an FMR deviation?

Send correspondence to: General Services Administration, Regulatory Secretariat (MVRs), Office of Governmentwide Policy, 1800 F Street, NW, Washington, DC 20405.

§ 102-2.95 What information must agencies include in their deviation letters to GSA?

Agencies must include:

(a) The title and citation of the FMR provision from which the agency wishes to deviate;

(b) The name and telephone number of an agency contact who can discuss the reason for the deviation;

(c) The reason for the deviation;

(d) A statement about the expected benefits of using the deviation (to the extent possible, expected benefits should be stated in measurable terms);

(e) A statement about possible use of the deviation in other agencies or Governmentwide; and

(f) The duration of the deviation.

§ 102-2.100 Must agencies provide GSA with a follow-up analysis of their experience in deviating from the FMR?

Yes, agencies that deviate from the FMR must also write to the relevant GSA program office at the Regulatory Secretariat's address (see § 102-2.90) to describe their experiences in using a deviation.

41 CFR Ch. 102 (7-1-02 Edition)

§ 102-2.105 What information must agencies include in their follow-up analysis?

In your follow-up analysis, provide information that may include, but should not be limited to, specific actions taken or not taken as a result of the deviation, outcomes, impacts, anticipated versus actual results, and the advantages and disadvantages of taking an alternative course of action.

§ 102-2.110 When must agencies provide their follow-up letters?

(a) For an individual deviation, once the action is complete.

(b) For a class deviation, at the end of each twelve-month period from the time you first took the deviation and at the end of the deviation period.

NON-REGULATORY MATERIAL

§ 102-2.115 What kinds of non-regulatory material does GSA publish outside of the FMR?

As GSA converts the FPMR to the FMR, non-regulatory materials in the FPMR, such as guidance, procedures, standards, and information, that describe how to do business with GSA, will become available in separate documents. These documents may include customer service guides, handbooks, brochures, Internet websites, and FMR bulletins. GSA will eliminate non-regulatory material that is no longer needed.

§ 102-2.120 How do I know whom to contact to discuss the regulatory requirements of programs addressed in the FMR?

Periodically, GSA will issue for your reference an FMR bulletin that lists program contacts with whom agencies can discuss regulatory requirements. At a minimum, the list will contain organization names and telephone numbers for each program addressed in the FMR.

§ 102-2.125 What source of information can my agency use to identify materials that describe how to do business with GSA?

The FMR establishes policy; it does not specify procedures for the acquisition of GSA services. However, as a service to users during the transition

from the FPMR to the FMR and as needed thereafter, GSA will issue FMR bulletins to identify where to find information on how to do business with GSA. References include customer service guides, handbooks, brochures, Internet websites, etc.

Subpart B—Forms

§ 102-2.130 Where are FMR forms prescribed?

In any of its parts, the FMR may prescribe forms and the requirements for using them.

§ 102-2.135 How do agencies obtain forms prescribed by the FMR?

For copies of the forms prescribed by in the FMR, do any of the following:

(a) Write to us at: General Services Administration, National Forms and Publications Center (7CPN), Warehouse 4, Dock No. 1, 501 West Felix Street, Fort Worth, TX 76115.

(b) Send e-mail messages to: NFFPC@gsa-7FDepot.

(c) Visit our web site at: www.gsa.gov/forms/forms.htm.

Subpart C—Plain Language Regulatory Style

§ 102-2.140 What elements of plain language appear in the FMR?

The FMR is written in a “plain language” regulatory style. This style is easy to read and uses a question and answer format directed at the reader, active voice, shorter sentences, and, where appropriate, personal pronouns.

§ 102-2.145 To what do pronouns refer when used in the FMR?

Throughout its text, the FMR may contain pronouns such as, but not limited to, we, you, and I. When pronouns are used, each subchapter of the FMR will indicate whether they refer to the reader, an agency, GSA, or some other entity. In general, pronouns refer to who or what must perform a required action.

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 subpart cover and how does it apply?

102-3.10 What is the purpose of the Federal Advisory Committee Act?

102-3.15 Who are the intended users of this part?

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

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?

APPENDIX A TO SUBPART A OF PART 102-3—KEY POINTS AND PRINCIPLES

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, 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, or reestablish 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 minor charter amendments accomplished?

102-3.85 How are major charter amendments accomplished?

APPENDIX A TO SUBPART B OF PART 102-3—KEY POINTS AND PRINCIPLES

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?

§ 102-3.5

- 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 Committee Management Officer (CMO)?
- 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
- 102-3.125 How should agencies consider the roles of advisory committee members and staff?
- 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

APPENDIX A TO SUBPART C OF PART 102-3—KEY POINTS AND PRINCIPLES

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?

APPENDIX A TO SUBPART D OF PART 102-3—KEY POINTS AND PRINCIPLES

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?

APPENDIX A TO SUBPART E OF PART 102-3—KEY POINTS AND PRINCIPLES

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

SOURCE: At 66 FR 37733, July 19, 2001, unless otherwise noted.

41 CFR Ch. 102 (7-1-02 Edition)

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

§ 102-3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

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

FACA governs the establishment, operation, 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, and cost of advisory committees.

§ 102-3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

(1) Executive branch officials and others outside Government currently involved with an established advisory committee;

(2) Executive branch officials who seek to establish or utilize an advisory committee;

(3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and

(4) Field personnel of Federal agencies who are increasingly involved with

Federal Management Regulation

§ 102-3.25

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

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

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

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

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

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

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

§ 102-3.25 What definitions apply to this part?

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

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

Administrator means the Administrator of General Services.

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

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

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

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

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

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

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

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

Discretionary advisory committee means any advisory committee that is

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

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

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

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

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

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

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

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

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

visory committee is needed may include whether:

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

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

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

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

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

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

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

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

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

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

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

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

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

Federal Management Regulation

§ 102-3.40

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 Federal Advisory Committee Management 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 in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

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

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual

basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* 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. However, 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 section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* 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

Pt. 102-3, Subpt. A, App. A

by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under the requirements of the Act and this part.

41 CFR Ch. 102 (7-1-02 Edition)

APPENDIX A TO SUBPART A OF PART 102-3—KEY POINTS AND PRINCIPLES

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
<p>I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.</p>	<p>102-3.25, 102-3.40(d), 102-3.40(f)</p>	<ol style="list-style-type: none"> 1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners"? 	<ol style="list-style-type: none"> A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency. B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.
<p>II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.</p>	<p>102-3.25, 102-3.40(d), 102-3.40(f)</p>	<ol style="list-style-type: none"> 1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped? 	<ol style="list-style-type: none"> A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an “individual” apply only to “natural persons?”	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.” (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting “as a group” under the Act. (ii) In this respect, “individual” is not limited to “natural persons.” Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not “managed or controlled” by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform “operational” duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are “operational committees” subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the “primary” mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decision-making or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.