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AUTHORITY: Secs. 4, 6, 7, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 656, 657); 5 U.S.C. 553; Federal Advisory Committee Act (5 U.S.C. App. 2); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 3-2000 (65 FR 50017), as applicable.

SOURCE: 38 FR 28035, Oct. 11, 1973, unless otherwise noted.

### § 1912.1 Purpose and scope.

(a) This part prescribes the policies and procedures governing the composition and functions of advisory committees which have been, or may be, appointed under section 7(b) of the Act to assist the Assistant Secretary in carrying out the standards-setting duties of the Secretary of Labor under section 6 of the Act. Such committees are specifically authorized by section 7(b). The part also prescribes the policies and procedures governing the composi-

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tion and functions of the Advisory Committee on Construction Safety and Health.

(b) The policies and practices herein are intended to reflect those expressed in the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) and will be applied in a manner consistent with the Act, Office of Management and Budget Circular A-63, "Committee Management", and the Department of Labor's general rules under that Act which are published in part 15 of this title.

### ORGANIZATIONAL MATTERS

### § 1912.2 Types of standards advisory committees.

The Assistant Secretary establishes two types of advisory committees under section 7(b) of the Act to assist him in his standards-setting duties. These are:

- (a) Continuing committees which have been, or may be established from time to time, to assist in the development of standards in areas where there is frequent rulemaking and the use of ad hoc committees is impractical; and
- (b) Ad hoc committees which are established to render advice in particular rulemaking proceedings.

### § 1912.3 Advisory Committee on Construction Safety and Health.

(a) This part applies to the Advisory Committee on Construction Safety and Health which has been established under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333), commonly known as the Construction Safety Act. The aforesaid section 107 requires the Secretary of Labor to seek the advice of the Advisory Committee in formulating construction standards thereunder. The standards which have been issued under section 107 are published in part 1926 of this chapter. In view of the far-reaching coverage of the Construction Safety Act, the myriad of standards which may be issued thereunder, and the fact that the Construction Safety Act would also apply to much of the work which is covered by the Williams-Steiger Occupational Safety and Health Act of 1970, whenever occupational safety or health standards for

construction activities are proposed, the Assistant Secretary shall consult the Advisory Committee. The composition of the Advisory Committee is consistent with that of advisory committees which may be appointed under section 7(b) of the Act. See paragraph (c) of this section. An additional advisory committee will not normally be established under section 7(b) of the Act, unless the issue or issues involved include, but extend beyond construction activity. See §1912.4 concerning the general policy against duplication of activity by advisory committees.

(b) The Advisory Committee is a continuing advisory body. It is composed of 15 members appointed by the Assistant Secretary, one of whom is appointed by him as Chairman. The composition of the Advisory Committee is as follows:

(1) One member who is a designee of the Secretary of Health, Education, and Welfare;

(2) Five members who are qualified by experience and affiliation to present the viewpoint of the employers involved, and five members who are similarly qualified to present the viewpoint of the employees involved;

(3) Two representatives of State safety and health agencies; and

(4) Two members who are qualified by knowledge and experience to make a useful contribution to the work of the Committee.

(c) As originally constituted, the Advisory Committee was composed of nine members. However, pursuant to section 105 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 331), it has been found necessary and proper in the public interest and in order to prevent possible injustice, to vary the composition of the Advisory Committee:

(1) By having its membership and representation conform to the provisions of section 7(b) of the Williams-Steiger Occupational Safety and Health Act, and

(2) By increasing its membership to 15 members as permitted under the aforementioned section 7(b).

Greater membership and greater representation serve the public interest and avoids possible injustice by permitting for the most part the use of

one advisory committee, rather than possibly several advisory committees, in situations where both the Contract Work Hours and Safety Standards Act and the Williams-Steiger Occupational Safety and Health Act may be expected to apply to construction activity and by affording a greater opportunity for representation on the Advisory Committee within the construction industry.

(d) See paragraph (c) of §1912.5 regarding the general policy role of the Advisory Committee.

(e) Except as provided in paragraphs (f) through (j) of this section, each member of the Advisory Committee shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

(f) The designee of the Secretary of Health, Education, and Welfare shall have no fixed term.

(g) To provide for continuity in the membership of the Committee, the terms of the members may be appropriately staggered.

(h) Members may be appointed to successive terms.

(i) A member who is otherwise qualified may continue to serve until a successor is appointed.

(j) There shall be filed on behalf of the Advisory Committee on Construction Safety and Health, an advisory committee established by the Construction Safety Act, a charter in accordance with section 9(c) of the Federal Advisory Committee Act upon the expiration of each successive 2-year period following the date of enactment of the Construction Safety Act (i.e., August 9, 1969).

[38 FR 28035, Oct. 11, 1973, as amended at 67 FR 659, Jan. 7, 2002]

#### § 1912.4 Avoidance of duplication.

No standards advisory committee shall be created if its duties are being, or could be, performed by an existing

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advisory committee established under section 7(b) of the Act.

### § 1912.5 National Advisory Committee on Occupational Safety and Health.

(a) Section 7(a) of the Act established a National Advisory Committee on Occupational Safety and Health. The Committee is to advise, consult with, and make recommendations to the Secretary and the Secretary of Health, Education, and Welfare on matters relating to general administration of the Act.

(b) Advisory committees appointed under section 7(b) of the Act, which are the subject of this part, have a more limited role. Such advisory committees are concerned exclusively with assisting the Assistant Secretary in his standards-setting functions under section 6 of the Act.

(c) On the other hand, the Advisory Committee on Construction Safety and Health, established under the Construction Safety Act, provides assistance in both the setting of standards thereunder and policy matters arising in the administration of the Construction Safety Act. To the extent that the Advisory Committee on Construction Safety and Health renders advice to the Assistant Secretary on general policy matters, its activities should be coordinated with those of the National Advisory Committee on Occupational Safety and Health.

### § 1912.6 Conflict of interest.

No members of any advisory committee other than members representing employers or employees shall have an economic interest in any proposed rule.

### § 1912.7 Reports.

The Assistant Secretary shall prepare, or cause to be prepared, for the Department of Labor's Committee Management Officer reports describing the committee's membership, functions, and actions as may be necessary for the performance of the duties of the Committee Management officer.

### § 1912.8 Committee charters.

(a) *Filing.* No advisory committee shall take any action or conduct any business subsequent to January 5, 1973,

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until a committee charter has been filed with the Secretary of Labor, the standing committees of the Congress having legislative jurisdiction of the Department of Labor and the Library of Congress.

(b) *Committee charter information.* Each Advisory committee charter shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and scope of activity; i.e., the standard or standards to be developed;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The agency to whom the advisory committee reports (i.e., the Assistant Secretary);

(5) The agency responsible for providing support (i.e., the Occupational Safety and Health Administration);

(6) Description of the committee's duties;

(7) The estimated number and frequency of committee meetings;

(8) The estimated annual operating costs in dollars and man-years;

(9) The committee's termination date or other fixed period of termination, if less than 2 years (see § 1912.3(j) concerning the Advisory Committee on Construction Safety and Health); and

(10) The date the charter is filed with the Department of Labor's Committee Management Officer.

(c) *Applicability of this section to subgroups* The applicability of this section to subgroups of an advisory committee depends upon the nature of the subgroup. With regard to formal subgroups, such as a formal subcommittee of an advisory committee, the requisite information should be set forth either in the charter of the parent committee or in a separate charter. Informal subgroups of an advisory committee, particularly those temporary in nature, need not be reflected expressly in a charter.

(d) The Assistant Secretary shall file each charter with the Department's Committee Management Officer.

### § 1912.9 Representation on section 7(b) committees.

(a) Any advisory committee appointed by the Assistant Secretary

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under section 7(b) of the Act shall contain the following:

(1) At least one member who is a designee of the Secretary of Health, Education, and Welfare;

(2) At least one member who is qualified by experience and affiliation to present the viewpoint of the employers involved, and at least one member who is similarly qualified to present the viewpoint of the employees involved. There shall be an equal number of representatives of employers and employees involved; and

(3) At least one representative of State health and safety agencies.

(b) The advisory committee may include such other persons as the Assistant Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of the committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health and one or more persons of nationally recognized standards-producing organizations, but the number of persons so appointed shall not exceed the number of persons appointed as representatives of Federal and State agencies.

(c) Each committee shall consist of not more than 15 members.

(d) The representation in the Advisory Committee on Construction Safety and Health is described in § 1912.3.

### § 1912.10 Terms of continuing committee members.

(a) Each member of a continuing committee established under section 7(b) of the Act, other than those appointed to a committee when it is formed initially shall serve for a period of 2 years. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint for the remainder of the unexpired term a new member who shall represent the same interest as his or her predecessor.

(b) To provide for continuity in the membership of continuing committees the initial appointments of its mem-

bers may be varied. For example, in the case of a 15-member committee, the Assistant Secretary could appoint two members representing Federal and State agencies, two members representing employers, two members representing employees, and two members representing other interests to one year terms. He could appoint two members representing Federal and State agencies, two members representing employers, two members representing employees, and one member representing other interests for two year terms. Thereafter, at the expiration of such terms, members would be appointed or reappointed for regular terms of two years. The initial appointments to committees with fewer than 15 members could be similarly varied.

[38 FR 28035, Oct. 11, 1973, as amended at 67 FR 659, Jan. 7, 2002]

### § 1912.11 Terms of ad hoc committee members.

Each member of an ad hoc advisory committee shall serve for such period as the Assistant Secretary may prescribe in his notice of appointment. Appointment of a member to the Committee for a fixed time period shall not affect the authority of the Secretary to remove, in his or her discretion, any member at any time. If a member resigns or is removed before his or her term expires, the Secretary of Labor may appoint a new member to serve for the remaining portion of the period prescribed in the notice appointing the original member of the committee.

[67 FR 659, Jan. 7, 2002]

### § 1912.12 Termination of advisory committees; renewal.

(a) Every standards advisory committee established under section 7(b) of the Act shall terminate not later than 2 years after its charter has been filed, unless its charter is renewed by appropriate action for a successive period of not more than 2 years. The procedure for renewal shall be the same as that specified in paragraph (b) of this section.

(b) Each advisory committee established under section 7(b) of the Act which is in existence on January 5, 1973, shall terminate by January 5,

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1975, unless it is renewed before the latter date. Before any advisory committee can be renewed, the Assistant Secretary must determine that such renewal is necessary, and so inform the Department of Labor's Committee Management Officer. The OMB Secretariat must be informed of this determination and the reasons for it. Such determination shall be made not more than 60 days before the scheduled date of termination. If the OMB Secretariat concurs, a new charter shall be filed renewing the advisory committee and a notice of the renewal shall be published in the FEDERAL REGISTER.

(c) Unless provided otherwise by the Assistant Secretary, the duration of a subgroup of a committee shall not be longer than that of the parent committee.

(d) No advisory committee required to file a new charter under this section shall take any action (other than the preparation and filing of charter) before the date on which the charter is filed.

### OPERATION OF ADVISORY COMMITTEES

#### § 1912.25 Call of meetings.

No advisory committee shall hold any meeting except at the call of, or with the advance approval, of the Assistant Secretary or his representative designated for this purpose. The Department of Labor's Committee Management Officer shall be promptly informed of any meeting that is called.

#### § 1912.26 Approval of agenda.

Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the Assistant Secretary or his representative designated for this purpose. No particular form for the agenda is prescribed.

#### § 1912.27 Notice of meetings.

Public notice of any meeting of an advisory committee shall be given by the officer or employee calling the meeting at least fifteen (15) days in advance of the meeting; except when it is impractical to do so, or in an emergency situation, in which event shorter advance notice may be given to the extent that any advance notice is prac-

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tical. It shall, however, be a general policy to publish notices as far in advance of the meeting as circumstances will permit. Such notice shall be given by publication in the FEDERAL REGISTER. In addition, notice may be given by such other means as press releases.

[48 FR 23185, May 24, 1983]

#### § 1912.28 Contents of notice.

(a) The notice shall give the name of the committee, and the time and place of the meeting.

(b) The notice shall describe fully or summarize adequately the agenda.

(c) The notice shall announce that the meeting is open to the public.

(d) The notice shall indicate that interested persons have an opportunity to file statements in written form with the committee. The notice may specify whether the statements are to be filed before or during the meeting.

(1) The chairman may permit oral statements before the committee by interested persons. In exercising his discretion in this regard, the chairman shall take into consideration the number of persons in attendance, the nature and extent of their proposed individual participation, the extent to which presentations would anticipate presentations which may be made in any rulemaking proceeding under section 6 of the Act subsequent to the recommendations of the committee, and the time, resources, and facilities available to the committee. When counsel is made available to the committee, the chairman shall consult counsel before making a decision on whether to permit oral statements. In his discretion, the chairman, upon consultation with counsel if made available to the committee, may allow or preclude the questioning of committee members or other participants.

(2) The person calling the meeting may provide in the notice of the meeting that summaries of any proposed oral presentations be filed in advance of the meeting, and may allow or preclude the questioning of committee members or other participants.

#### § 1912.29 Attendance by members.

Any person appointed by the Assistant Secretary to an advisory committee has a right to be present at any