

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, 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, and termination of advisory committees. These procedures include 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 the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);
- (b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);
- (c) *Authorized by statute.* By law where the 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 general 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;
 - (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 committee not later than two years after its date of establishment in accordance with § 102-3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102-3.30(b), 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, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102-3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment 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;
- (2) *Lack of duplication of resources.* An explanation stating why the advisory