

**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 section 15 of the Act. 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 Institute 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 section 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 the National Academy of Sciences (NAS) or the National Academy of Public Administration (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 substan-

tially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(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 section 15 of the Act 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 section 15 of the Act; 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.

**APPENDIX A TO SUBPART E 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 E

| Key points and principles  | Section(s)                | Question(s)   | Guidance  |
|--|---------------------------|---|---|
| <p>I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.</p> | <p>102-3.185(e) .....</p> | <p>1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?</p>   | <p>A. Yes. NAS and NAPA are completely chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.</p>                         |
| <p>II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".</p>                       | <p>102-3.185(c) .....</p> | <p>1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy, by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?</p> | <p>A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.</p> |

**PART 102-4—NONDISCRIMINATION  
IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS [RESERVED]**

**PART 102-5—HOME-TO-WORK  
TRANSPORTATION**

**Subpart A—General**

Sec.

- 102-5.5 Preamble.
- 102-5.10 What does this part cover?
- 102-5.15 Who is covered by this part?
- 102-5.20 Who is not covered by this part?
- 102-5.25 What additional guidance concerning home-to-work transportation should Federal agencies issue?
- 102-5.30 What definitions apply to this part?

**Subpart B—Authorizing Home-to-Work  
Transportation**

- 102-5.35 Who is authorized home-to-work transportation?
- 102-5.40 May the agency head delegate the authority to make home-to-work determinations?
- 102-5.45 Should determinations be completed before an employee is provided with home-to-work transportation?
- 102-5.50 May determinations be made in advance for employees who respond to unusual circumstances when they arise?
- 102-5.55 How do we prepare determinations?
- 102-5.60 How long are initial determinations effective?
- 102-5.65 What procedures apply when the need for home-to-work transportation exceeds the initial period?
- 102-5.70 What considerations apply in making a determination to authorize home-to-work transportation for field work?
- 102-5.75 What circumstances do not establish a basis for authorizing home-to-work transportation for field work?
- 102-5.80 What are some examples of positions that may involve field work?
- 102-5.85 What information should our determination for field work include if positions are identified rather than named individuals?
- 102-5.90 Should an agency consider whether to base a Government passenger carrier at a Government facility near the employee's home or work rather than authorize the employee home-to-work transportation?
- 102-5.95 Is the comfort and/or convenience of an employee considered sufficient justification to authorize home-to-work transportation?
- 102-5.100 May we use home-to-work transportation for other than official purposes?

- 102-5.105 May others accompany an employee using home-to-work transportation?

**Subpart C—Documenting and Reporting  
Determinations**

- 102-5.110 Must we report our determinations outside of our agency?
- 102-5.115 When must we report our determinations?
- 102-5.120 What are our responsibilities for documenting use of home-to-work transportation?

AUTHORITY: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 31 U.S.C. 1344(e)(1).

SOURCE: 65 FR 54966, Sept. 12, 2000, unless otherwise noted.

**Subpart A—General**

**§ 102-5.5 Preamble.**

(a) The questions and associated answers in this part are regulatory in effect. Thus compliance with the written text of this part is required by all to whom it applies.

(b) The terms “we,” “I,” “our,” “you,” and “your,” when used in this part, mean you as a Federal agency, an agency head, or an employee, as appropriate.

**§ 102-5.10 What does this part cover?**

This part covers the use of Government passenger carriers to transport employees between their homes and places of work.

**§ 102-5.15 Who is covered by this part?**

This part covers Federal agency employees in the executive, judicial, and legislative branches of the Government, with the exception of employees of the Senate, House of Representatives, Architect of the Capitol, and government of the District of Columbia.

**§ 102-5.20 Who is not covered by this part?**

This part does not cover:

- (a) Employees who are on official travel (TDY); or
- (b) Employees who are on permanent change of station (PCS) travel; or
- (c) Employees who are essential for the safe and efficient performance of