

8.4.1

8.04

The Restoration Team introduced themselves. Mark Broderson presented the status of settlement funds to date. Marty Rutherford outlined the history and role of public participation in developing restoration programs and projects. John Strand and Bob Loeffler presented the current status and general schedule for the overall Restoration Plan (see Volume II, Tab II). The draft Restoration Plan is due this winter.

Ken Rice discussed the requirements for National Environmental Policy Act (NEPA) compliance for the Restoration Plan. A draft environmental impact statement is being prepared by a contractor, Walcoff & Associates, and is due in February. A scoping meeting is set for Anchorage on November 4. Some individual projects may need additional environmental compliance actions. Mr. Rice also presented a status report (Volume II, Tab V) on the analysis of threatened habitat that may need protection via the acquisition of rights or title, or the pursuit of other protection strategies. Habitat protection is a significant portion of the 1993 budget.

Byron Morris outlined the upcoming symposium to present oil spill damage assessment information. This is scheduled for February 2-5, 1993, in Anchorage (see brochure and Volume I, Tab VIII). Jerome Montague reported on the process to develop the 1993 work plan (see Volume II, Tab IV). Over 460 ideas were submitted from the public and agencies. These were reduced to approximately 50 projects that are contained in the 1993 Work Plan, which is out for public review prior to a December 11 meeting during which the Trustee Council will approve projects for 1993.

Each of the Public Advisory Group members in attendance offered a brief statement or asked questions of the staff and Restoration Team.

**PUBLIC COMMENT:** Public comment was presented by Arliss Sturgulewski supporting the establishment of an Exxon Valdez marine sciences endowment. Charles McKee presented his views on restoration. The meeting was adjourned at 5:00 pm.

H. ACTION ITEMS: None.

I. NEXT MEETING: December 2, 1992 at 9:30 a.m.

J. ATTACHMENTS:

1. Agenda for next meeting.
2. Handouts from the meeting for those not in attendance.

K. CERTIFICATION:

RECEIVED  
Anchorage, AK  
JAN 03 1993  
EXXON VALDEZ OIL SPILL  
TRUSTEE COUNCIL  
ADMINISTRATIVE RECORD

Deaf Z. Huts Designated Exec. Officer  
PAG Chairperson

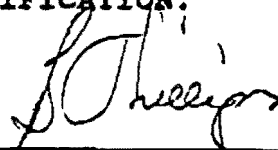
12-2-92  
Date

- h. Exxon Valdez oil spill symposium brochure (vol. I tab VIII.C)
- i. Valdez Charter Boat Assoc. letter (vol. I tab X)
- j. Cordova District Fishermen United letter (vol. I tab X)

7. Handouts at the meeting not attached:

- a. Restoration Team administrative record of 1993 project decisions
- b. Look-up tables for 1993 projects
- c. Public comments on 1993 projects
- d. Agreement and Consent Decree: Alyeska case
- e. Options for Identifying and Protecting Strategic Fish and Wildlife Habitats and Recreation Sites a handbook by The Nature Conservancy.

K. CERTIFICATION:

  
\_\_\_\_\_  
PAC Chairperson

1-6-93  
Date

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PUBLIC PARTICIPATION WORK GROUP  
JUNE 25, 1992  
8:30 a.m.

**Attendees:**

Ken Rice  
LJ Evans  
Barbara Iseah  
Sandy Rabinowitch  
Marty Rutherford  
Tim Steele  
Peg Kehrer

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The following agenda items were continued from the June 23, meeting:

**OPERATING PROCEDURES**

14. **Financial Procedures** - one basic question is will ex-officio and officio members be reimbursed for travel; Ken stated that ex-officio members could pay for their own travel and per diem; Sandy raised the question of whether there will be a need for federal representation since the ex-officio members represent the state; Pam's suggested wording was accepted regarding reimbursement; Tim suggested lowering the cost of expenditures to \$100 per month per member; it was decided that \$150 is a more reasonable amount; regarding Pam's suggestion of receipts and justification for expenditures, Tim suggested using normal governmental processes which require receipts; the following statement was added: normal federal reimbursement procedures and requirements will be followed; Pam's statement regarding review by the Administrative Director of submittals will be added.
15. **Additional Operating Procedures** - the Trustee Council has made a policy decision that these procedures are in draft until the PAG is operating and can review the operating procedures.

The Trustee Council will be provided an information copy of the changes made, possibly at the August meeting; Tim will provide Marty with the revised procedures as soon as possible for review by the Financial Committee.

**FEDERAL AND STATE ETHICS LAWS**

The Trustee Council asked the Restoration Team to review the state and federal ethics laws to determine if they: a) do apply or b) should apply; Ken was told to talk with Regina Sleater for an interpretation but has received no response; Marty provided copies of the state ethics laws; Ken stated he would be reluctant for this group to deal with these issues until legal comment is received;

Ken will contact Maria Lisowski for more information; Peg added that the ethics question should be clear at the beginning; Marty will contact Maria and Craig O'Connor to see if they want to be involved with Regina and Alex Swiderski in reviewing the ethics laws; a minimum of one state and one federal opinion will be requested; Tim stated that Regina usually comes back with a very restrictive interpretation, and he is nagged by the fact that by definition the PAG has a conflict of interest; the state's ethics laws do not preclude this; Tim stated that this is an advisory board and not a decision-making board; Ken stated that this could give the illusion that this group has more ability to influence the Trustee Council than they actually have; Marty stated that since this is not a decisional body, the code of ethics may not apply; Barbara will obtain a copy of the federal ethics laws and provide copies to each Public Participation Work Group member.

#### **PUBLIC INFORMATION**

Peg would like to look at public information and writing a proposal for planning public information; many comments have been received regarding the need for understandable information about this process and overall restoration; Tim argued that the process has not been defined; Sandy suggested setting up a working meeting to discuss what could be done to better inform the public; Ken suggested that the experts can put together the elements of a public involvement strategy, which could be brought back to the group for discussion; LJ and Peg were tasked as a working subgroup to 1) identify the elements of an effective public information strategy and 2) put together some reading materials prior to the next meeting.

#### **LJ's LETTERS**

Dave Gibbons gave LJ a stack of letters to develop standard replies, 100 of which have been replied to; a decision needs to be made whether these letters should be made a part of the new database tracking system; Marty stated that these letters should be a part of the electronic public record; Tim disagreed and thought that these letters should be dealt with as pre-automation correspondence and filed; Peg stated that a two line note could be used stating these letters were received prior to the automation period; Marty raised the question of what are other groups doing with pre-automation correspondence; LJ has the letters filed by subject; Tim stated that future comments will need feedback as to how they were responded to; LJ will bring a copy of these comments to Public Participation Work Group meetings in the future; Marty asked if the work group boxes are standing boxes or merely for a particular issue; it was decided that these are standing boxes; Sandy stated that comments to RPWG are dealt with as they are received and the plan is the response; Tim stated that letters should be initially screened by Dave and forwarded to the work groups for input; LJ stated that the responses to letters need to be handled at a second

level by someone making policy decisions; LJ will share these comments with the Process Work Group for some decisions on processing of comments; the Process Work Group asked LJ to write steps for this process; it was decided that the old letters will not be factored into the automation process, and LJ will give these to Peg Thompson for the Administrative Record; LJ stated that most of the letters are regarding habitat protection; Marty will review the letters on Thursday.

#### **MEETING**

The next meeting is August 10, 9:00 - 2:00, and the agenda may include PAG implementation. Meeting adjourned at 10:15.

PUBLIC PARTICIPATION WORK GROUP  
JUNE 22, 1992  
8:30 a.m.

**Attendees:**

Marty Rutherford  
Ken Rice  
Barbara Iseah  
Tim Steele  
Peg Kehrer  
Sandy Rabinowitch  
Ron Bruyere  
LJ Evans

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**PUBLIC ADVISORY GROUP OPERATING PROCEDURES:**

Marty stated that the operating procedures should tier off from the charter.

The following revisions were made to the operating procedures:

1. **Membership** - no revisions
2. **Nomination and Selection** - the sentence regarding nominations merely explains what is in the charter and is okay; the sentence regarding unanimous agreement of the Trustee Council does not appear to be inconsistent with the charter but refines it; Sandy suggested adding "the" to Department of Interior for accuracy; the sentence regarding filling unexpired terms means the entire selection process will have to be performed to replace members; the implications of this need to be discussed; the Trustee Council will recommend appointment of individuals to fill unexpired terms through an open public process; nomination and selection of individuals to fill unexpired terms will be by the same process used to establish original membership; selection of individuals to fill unexpired terms will be recommended by the Trustee Council from a list of names generated through an open public process; Tim will wordsmith the above to catch the essence.
3. **Term** - the sentence stating "members whose terms are expiring will continue to serve until a replacement is named" was previously removed as requested by Curt McVee; Ken suggested replacing the previous sentence with "members will continue to serve until reappointed or replaced at the discretion of the Trustee Council;" it was decided to replace the sentence with Ken's suggestion; the sentence referring to staggering of terms builds upon the charter and is not inconsistent and provides for continuity; the sentence regarding renomination and reappointment is important; the sentence on removal of

members for malfeasance or incompetence is consistent; the date of January 1, 2002 will be left in as the termination date of the Public Advisory Group.

4. **Duties and Work Assignments** - Mcvee stated that the operating procedures should quote the language in the charter; the PAG's duty is to advise the Trustee Council in the restoration of resources and services injured in the EVOS; the following statement from the old language will be added: "the PAG will among other things comment on proposed policies, procedures, budgets, plans, projects and actions of the restoration process and through discussion provide ideas;" the PAG will report to and be tasked by the Trustee Council and will coordinate with the Restoration Team; Marty recommended tabling the operating procedures until the next meeting and also keeping the procedures as a draft until the PAG is seated and has reviewed and signed the procedures.
5. **Quorum** - "officio" members should be replaced with voting members.
6. **Presiding Officer** - the sentence regarding the chair and vice-chair's approval by the Trustee Council is consistent and will be left as is; one year term will be added as requested.
7. **Action/Rules of Voting** - capitalization of "ex-officio" will be changed.
8. **Reporting to the Trustee Council** - the first section is okay; the sentence regarding reporting activities is appropriate; this is a stand-alone document; therefore, the above sentence should be included; Sandy suggested changing the name of this section to "Reporting Requirements" and adding another paragraph for reporting to Department of the Interior; Tim suggested adding the following second paragraph: "to ensure compliance with FACA, the PAG will provide an annual report to the Department of the Interior through the designated official."
9. **Meetings** - the issue of executive session capability was discussed; executive sessions shall be kept to a minimum and shall be used only for discussion of personnel issues and litigation or legal advice; Ken stated that in order to represent a group of people, the PAG needs to be able to go back and present information to the public; because this is a stand-alone document, the sentences regarding the public speaking at meetings is not redundant.
10. **Minutes** - the minutes shall include discussion of matters and the resolution; the last sentence should include "entered in the restoration program's administrative record;" minutes need to include copies of all meeting materials.



11. **Public Notification** - no changes
12. **Federal Designated Officer** - should add: "the Federal Designated Officer in coordination with and supported by the Administrative Director....." the second "his/her designee" should be deleted.
13. **Administrative Support** - the first sentence will be removed; the second sentence is necessary because this is a stand-alone document.
14. **Financial Procedures** - this section will be continued on Thursday.

**MEETING:**

The next Public Participation Work Group meeting is Thursday, June 25, at 8:30 to discuss the following agenda items:

Conclusion of Operating Procedures  
Federal and State Ethics Laws  
LJ's Letters

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April 10, 1992

**PAG Meeting**

Attendees: Ken Rice  
Cordell Roy  
L. J. Evans  
Tim Steele  
Ray Thompson  
William Knauer  
Peg Kehrer  
Cherri Womac

BUTCH MCDONNELL  
CHIEF OF COUNCIL  
ADMINISTRATIVE RECORD

Mr. Knauer, USFS, Subsistence Management, was referred to the PAG by Kurt McVee to speak on the Federal Advisory Committee Act (FACA). FACA was passed in 1972. When the Federal government took over land from the State, Federal councils needed to be created to replace State councils. There are four types of federal advisory committees:

- 1) Congress directs
- 2) Congress authorizes
- 3) Executive Order
- 4) Agencies request establishment

The DOI Secretary does all the appointing. Applications are accepted and forwarded to the Secretary with recommendations by the council. A Federal government employee may be appointed unless there is a conflict of interest. It is a FACA policy that membership should be balanced with regard to interests.

A major aspect of concern for the council is the "Sunshine Act" or "Openness." All meeting are open to the public. The public may submit written testimony at any meeting and if procedures permit, verbal testimony may also be given. A meeting of two or more members convened to do research or gather information does not have to be public. Council members will not receive a salary but, will be compensated for expenses, per diem and lodging.

The designated federal officer (DFO) must be a federal employee. Appointment of the DFO should be covered in the Charter. The DFO approves and/or calls the meetings, approves the agenda, attends the meetings, and if directed by the Charter or Bylaws, chairs the meetings. No committee or meeting until the Charter is filed with GSA or Library of Congress. The agency can solicit nominations without the Charter. Public solicitation is recommended. It is recommended but not required that solicitations be published in the Federal Register. Solicitations can also be noticed in newspapers or mailers.

Charter is only valid for two years maximum or date of legislation whichever is shortest. Committee must be rechartered every two years. Appointments can be longer than two years and with staggered expirations. An appointee can serve for the length of

their appointment or until someone is appointed to take their place. Appointments should be covered in the Charter.

Meeting notices should be placed a minimum of 15 days before meeting. The notice should include: name of group, date, time, place, summary of agenda, indicate whether meeting is open or closed to the public, and a TTY phone number. Notices should be given in the Federal Register and can also make use of regular media.

The meeting room should have sufficient space to accommodate the desired number of participants and be accessible to handicapped individuals. The meeting is to be held at a time convenient to the public in the meeting area.

A record of the meeting is required, whether by verbatim transcript, tape with summary of minutes or written minutes. After approval they are available to the public for the cost of copying.

The committee is required to submit an annual report to . Forms for the report are available from GSA. (President's Annual Report on Federal Advisory Committees, 1990)

Becky Mullins, FWS

Carol Atens, NPS

Dave Jurvis, NPS

Vicky Varrious, DOI, Secretary's representative re: appointments

The charter should be no more than three pages, with a standard format, not too specific, yet requires the estimated operating costs.

There is an emphasis on providing good training for committee members, so they understand their responsibilities and authorities.

L.J. discussed responses she has received regarding public meetings to take comments on the framework and workplan schedules: Kodiak, English Bay (which is now Nanwalek), Seldovia and Tetutlik. Seldovia and Tetutlik want meetings.

The workplan will include comments received at the public meetings not just from written comments.

Tim Steele asked if any meetings were being planned for "outside." No meetings are being planned at this time. He felt there should be some offered in any areas with large amount of interested parties. Which areas "outside" have large enough numbers.

The Juneau meeting is moved to May 7, 1992.

Meeting April 14, at 1:00 p.m. to discuss Operating Procedures response backlog.

The letters received by L.J. need to be summarized and coded.

1992 WORK PLAN WORKING GROUP

	<u>Phone</u>	<u>Fax</u>
· Byron Morris (NOAA)	789-6600	789-6608
· Carol Gorbics (FWS)	786-3494	786-3625
· Mark Fraker (ADF&G)	267-2136	522-3148
Jim Slocomb (ADNR)	278-8012	276-7178
Joe Sullivan (ADF&G)	267-2213	522-3148
Peg Kehrer (ADF&G)	465-4125	586-9612
Annette Untalasco (USFS)	586-8892	586-7892
Ken Rice (USFS)	278-8012	276-7178
Jerome Montague (ADF&G)	465-4125	586-9612

1993 WORK PLAN WORKING GROUP

	<u>Phone</u>	<u>Fax</u>
· Jerome Montague (ADF&G)	465-4125	586-9612
· Mark Fraker (ADF&G)	267-2136	522-3148
/ Jim Slocomb (ADNR)	278-8012	276-7178
· Peg Kehrer (ADF&G)	465-4125	586-9612
· Ken Holbrook (USFS)	271-2839	271-3992
· Byron Morris (NOAA)	789-6600	789-6608
/ Tim Steele (NOAA)	278-8012	276-7178

DOI

ADNR

ADEC

# **SUMMARY OF COMMENTS FROM COMMUNITY MEETINGS ON A PUBLIC PARTICIPATION PROCESS FOR THE EXXON/VALDEZ RESTORATION PROGRAM**

## **Public Participation, Public Advisory Group, Trust in the Restoration Process**

Most Frequent Comments:

### Trust in the Process

Comments stated that people don't trust the Trustee Council. They fear they won't trust the public process the Trustees will put in place, but feel a good public process can still make up for the rocky start. Reasons given for distrust at this point are -

Trustees are political appointees. (C)

Trustees have not released as much of the damage study results as the public feels it needs to give recommendations on restoration. (C F H V CB J)

It seems that major decisions about use of the money have been made before the public has a chance to review options. Agency reimbursements were only one of the examples given. (A F H J)

How this problem can be overcome:

The efforts so far to reach the public are, for the most part, appreciated - teleconferencing appreciated in the villages although one meeting commented that early meetings showed great disorganization. (C CB A V T S)

There needs to be a greater effort to get good advance materials out.

Travel costs are high, but spending money for TC and PAG to actually talk to communities, including smaller villages, is worth it. (A K S H T)

### PAG Relationship to the Trustee Council

A large majority of people who commented on the issue of membership of PAG member(s) on the Trustee Council said at least one representative of the PAG should be seated on the Council and be fully involved in Council decisions, but not have voting or veto power. Otherwise the PAG would have no real power. (A H C S)

Public Advisory Group access to the process - The PAG should have direct access to the Trustees and Restoration Team and its subcommittees and staff. (A C)

Seven speakers expressed some version of the following comment, which follows a on a model the Regional Citizens Advisory Committee and Alyeska have agreed upon:

If the Trustee Council does not follow a PAG recommendation, they must explain why in writing within a given time period. May also apply to questions asked of the Council. (A H V J S)

## **Public Advisory Group Composition and Selection**

Most Frequent Comments:

The Trustees should not decide who they want on the Public Advisory Group. PAG members should be selected by already existing groups or coalitions they represent. If such groups do not exist, they should be given a chance to organize just for the purpose of trying to gain consensus on who will represent them. (A H K)

A Clear Difference of Opinion on the following point:

One position - Assume groups and communities from different geographic areas can come to agreement, not that they will oppose each other. Then you have the chance of consensus. Do not "cluster" members from the various regions affected.

The other position - it is important to have small, subregional groups to develop community consensus.

## **Process Suggestions Public Participation and Public Advisory Group**

Most Frequent Comments:

The PAG should not function as a filter for all information flowing between the public and the Trustees, although it should actively distribute information to the public. There should continue to be direct contact between Trustees and public, including Trustee Council meetings being held in affected communities and adequate public comment time at meetings. (S A K)

Strong comments in every community on the desirability and necessity of having both science study results and working documents of the restoration process available to the public. Catalogue the information and let everyone know where it can be obtained. Fairbanks meeting (several researchers attended) very concerned with this point. (C F H V CB J)

Scientific work should not be cut off now just to save money. Finish this work, review it and make it the primary factor in planning restoration. (F V)

There should be timely notice of meetings and distribution of relevant materials. (C H J)

Public repositories for restoration information - Designate and advertise an office or library or local contact person as the community site for restoration information . (A C K V)

Several comments that restoration process should not be moving forward now before there is public review of plans and/or completion and review of damage assessment information. In some cases, decisions seem to have been made, and then afterward the public is asked its opinion on the same decision. (A F H J)

There should be a clear record of all Trustee Council decision-making. (K H)

### **Budget and Staff**

#### **Most Frequent Comments:**

The Trustees should be willing to spend the amount of money it takes to do the job well. The PAG and public participation effort should be adequately staffed - comments ranged from one to two staff or PAG, other staff for public information functions. For comparison, the RCAC budget is \$1.5 million, and their task is somewhat similar. (H A S)



## **Need for Subgroups or Subcommittees of the PAG**

The question of how to structure the PAG to get the best and broadest representation was a common theme, although there was no unanimity on the solution.

Structures proposed included:

Each major geographic area could have a group, then these groups could select members to serve on the PAG. One rationale was that fishing interests are so different in the different regions. (K C H V)

Impacted towns and villages should have members on the PAG. Some comments specified that these be elected representatives of local government. In addition, there would be subcommittees to get input from the interest groups, e.g. fishing, subsistence, recreation. Also, the opposite was proposed - PAG members could represent interest groups and then, if more geographical representation were lacking, geographic reps could be put on subcommittees. (A V T S)

There should be coordination groups recognized within communities - to focus and define that communities concerns. Kodiak's approach could be a model. After that, they would be more ready to meet to consider other communities concerns. (K H CB)

Staff may also need to help the smaller communities write restoration proposals that have a chance of being funded (CB).

Comment on patterns to be avoided:

Don't explicitly or implicitly divide up the money between communities ahead of time or create a structure which encourages this approach. This perpetuates feeling of "pork barrel politics". (A V)

## How to Spend the Money

Note: Even though this was not the primary question these public meetings were asked to address, comments were made and noted on how restoration money should be spent.

### Immediate Actions Needed

#### Most Frequent Comments:

Pay immediate attention to the drop in availability of subsistence foods which is being reported in villages. Show existing study information to residents. Continue the studies until restoration options can be figured out because otherwise subsistence users won't have information to base restoration proposals on. And involve local people whenever possible. (T CB H)

Get going on habitat acquisition for areas that may be logged this year because public interest is high now and because some of the logging companies need to know now. (C A K H)

### More General Comments

Money spent should remain in the oil affected area. (C CB)

Concern that not enough has been or will be spent on the villagers concerns for absence of subsistence species.

Some fish or wildlife management decisions, e.g. rockfish, may have long range restoration needs - but are alternatives for short range improvements being considered as well.

Oyster mariculture needs to be better funded to succeed. (T)

Mussel beds and clams need to be reseeded. Deer, seal, crab, octopus, seaducks all are gone.

Since loss of subsistence has meant more reliance on the cash economy, then restoration should mean helping residents of the Sound train or otherwise have more opportunities for cash jobs. The economy of the Sound area will change in part because of the spill - people need help in adapting.

Create an endowment (several different purposes were mentioned). Spend just the interest from the fund. (K F H)

Do not use large portion of the money for an endowment. This is just a way to avoid putting the necessary funds into habitat acquisition. Do not fund "unnecessary scientific studies" or padding of agency budgets with settlement money. Spend as much as possible on habitat purchase. (A)

Acquire land and habitat. (A C K H)

The Trustee Council should not let some trustees "philosophical opposition" to government acquisition of private lands keep the Council from doing what is best and most cost-effective for restoration of the resource and the communities which depend on those resources. (A)

Important to get consensus in communities on what money should be spent for. Also described as "local control" or agreement with projects. Some speakers specified what they did not want it spent on, e.g. buildings, ports, agency budgets or spill prevention and cleanup. (K H)

Specific proposals in Kodiak:

Note on comments from the Kodiak meeting - At least seven specific restoration proposals were submitted at the Kodiak meeting, including a summarized list from the Borough. The Borough has established a working group to help ensure that Kodiak issues are a part of the process. So far, this appears to be a unique approach among the communities. The person presenting the Borough proposal said it was an attempt to pull something positive out of the negative spill experience.

Three state park proposals - an appraisal is needed for a Shuyak land exchange, buy native owned land for state parks, and public education center and display about archaeological resources in Shuyak and training in archaeological protection there.

Do a study of what opportunities will be lost through delay.

Need a research lab so that monitoring and related work can be done locally, instead of sent away.

Kodiak Regional Aquaculture Assoc. - much more information needed - supports salmon studies. Also supports land acquisition.

Area K Seinners - supports land acquisition, and careful prioritization of all suggestions for use of the funds.

Proposal from Kodiak College (UA, Anchorage) - fund an Environmental Learning Resource Center, a building attached to the college library.

Borough Proposals - proposes their own list of criteria to be used for project selection. (A 3 page list of projects is attached.)

Money should be spent on prevention - Kodiak is in need of response preparedness - lags far behind PWS - and is ready to work on it.

#### Homer comments:

On land acquisition: Land should be held in perpetuity; Trustees should act fairly quickly while the public's interest is high, decide now and pay over time; Trustees should look at conservation easements as cheap and effective ways of acquiring habitat. Local group ready to help. (One speaker suggested putting just \$1 million in an endowment fund to encourage land trusts in the spill area.)

Prevention and research: Spend money to get ready for next spill, on baseline data collection and on response readiness. (H K V F)

#### Proposals in Cordova:

PWSAC Resolution - The Trustee Council should make directly funded or endowment-backed funding available for cooperative salmon ecology and interaction programs by PWSAC. It should also help fund actions by PSWAC and other agencies resulting from such studies which lead to restoration, enhancement and management of the salmon resources of the Sound.

Decisionmaking for such programs should be shared with PWSAC and the information coming out of such programs should be shared with PSWAC and the public.

Habitat acquisition - buy as much as possible if it is not possible to buy whole areas, e.g. Montague Is.

Expand cooperation with the Forest Service's current study of the Sound - moratorium on all increase in industry in Sound to buy time for good evaluation of plans.

#### Comments from the Fairbanks meeting:

Note: Most of the people who signed in are connected with UAF. Some are or were involved in damage assessment studies.

Many studies are on the brink of really understanding the systems they have been studying - don't cancel studies now. Still left to be done are independent peer review and synthesis and integration of studies. Also, because past studies were strongly influenced by litigation, there may be a need for new studies to fill in the gaps in information needed for restoration. (A researcher who is not state or federal agency funded)

Why is there a rush to begin restoration studies if this is the case? The rush to land acquisition should not be at the expense of finishing the science and getting an impartial review of these studies.





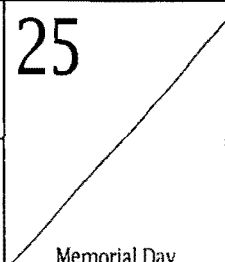

## RRCG PUBLIC PARTICIPATION PUBLIC MEETING SCHEDULE

- Homer** 7 p.m., Monday, May 4  
City Council Chambers  
Contact: Mary Shannon, City Clerk 235-3130
- Kodiak** 7 p.m. Tuesday, May 5  
Borough Assembly Chambers  
Contact: Donna Smith, Borough Clerk 486-5736, FAX 486-2886  
Note: broadcast via KMXT
- Valdez** 7 p.m. Monday, May 11  
City Council Chambers  
Contact: Dave Janka, PWSCA 835-2799, FAX 835-8083  
Location Contact: Sherry Caples, City clerk, 835-4313
- Tatitlek** Contact: Gary Kompkoff, IRA Council 325-2311, FAX 315-2298  
Anytime OK, they'll make it fit - could do same day as VDZ
- Seward** 7 p.m. Wednesday, May 13  
Kenai Fjords Visitors Center  
Contact: Anne Castellina 224-3175 FAX 224-7100
- Whittier** 5 p.m., Thursday, May 14  
Contact: Linda Hyce or Kelly Carlisle, Mayor 472-2327  
FAX 472-2343 (train schedules 6 daily starting May 10, last one to  
Portage at 9 p.m. RCAC full meeting scheduled in Whittier on 5/14)
- Cordova** Council Chambers, Cordova Public Library 7 PM, May 19  
Contact: Library staff, 424-6667 after 1 p.m.  
L use city fax # 424-6000
- Juneau** Briefing for legislators/aides  
Contact: Terence O'Malley 465-4968  
Note: Send invitations to state legislators
- Anchorage** Date? Time?  
At Restoration Offices, 645 G St.

Fairbanks Date? Time

Tim Thompson is one of the nation's best known travel photographers. His photographs have appeared in *National Geographic*, *Modern Photography*, *Time*, *Oceans*, and *Travel and Leisure* magazines. He was named photographer of the year in 1986 by the Society of American Travel Writers.

# May

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
April 1992 S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	June 1992 S M T W T F S 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	28	29	30		 New
3	4 <i>7:00 PM Home</i>	5 <i>7:00 PM Kodak</i>	6	7	8 May Day	9  1st
10 Mother's Day	11 <i>7 PM - City Journal VDE Chambers</i>	12	13 <i>7 PM Seward</i>	14 <i>Whitaker 5 PM</i>	15	16  Full  Armed Forces Day
17	18 Victoria Day (Canada)	19 <i>7 PM Cordova</i>	20	21	22	23
24  4th	25 	26	27	28	29	30
31  New Memorial Day						

Federal Advisory Committee Act -- HIGHLIGHTS of 41 CFR Part 101-6

(SUMMARY ONLY, OF CRITICAL PROVISIONS - - READ THE REGS)

101-6.1001 Scope

101-6.1002 Policy

- - Membership shall be balanced in terms of points of view represented and the functions to be performed.
- - Meetings shall be open to the public except where closed under criteria established per Government in the Sunshine Act.

101-6.1003 Definitions

101-6.1004 Examples of advisory meetings or groups NOT covered by the Act or this subpart

- - (a) Any committee composed wholly of full-time officers or employees of the Federal Government.
- - (h) Any meeting initiated ... for the purpose of obtaining advice or recommendations from one individual.
- - (i) Any meeting initiated by a Federal official with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations.
- - (j) Any meeting initiated by a group ... for the purpose of expressing the group's view, provided that the Federal official does not use the group recurrently as a preferred source of advice or recommendations.
- - (k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee.
- - (l) Any meeting with a group initiated by a Federal official for the purpose of exchanging facts or information.



101-6.1005 Authorities for establishment of advisory committees

101-6.1006 (Reserved)

101-6.1007 Agency procedures for establishing advisory committees

- - Contains requirement to send proposed charter and cover letter with specific types of justification information to GSA, and further process.

- - Subcommittees that do not function independently of full committee need not be separately chartered. However, they are subject to all other requirements of the Act. Subcommittees must be chartered if they function independently of full committee, such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

101-6.1008 The role of GSA

101-6.1009 Responsibilities of any agency head

- - (g) shall ensure the appointment of a Designated Federal Officer for each advisory committee and its subcommittees.

- - (h) shall ensure the opportunity for reasonable public participation in advisory committee meetings.

101-6.1010 (Reserved)

101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

101-6.1012 (Reserved)

101-6.1013 Charter filing requirements

- - No advisory committee may operate, meet, or take any action until its charter has been filed.

- - Gives locations where charters must be filed.

101-6.1014 (Reserved)

101-6.1015 Advisory committee information which must be published in the Federal Register

- - After consulting with GSA on proposed establishments and reestablishments, notices shall appear in the Register at least 15 calendar days before the charter is filed, unless GSA approves less than 15 days. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

- - For committee meetings, notice must be published at least 15 calendar days prior to the meeting. Must include:

- • the exact name of the advisory committee as chartered;
- • the time, date, place and purpose of meeting;
- • a summary of the agenda; and
- • a statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions in Gov't in the Sunshine Act.

101-6.1016 (Reserved)

101-6.1017 Responsibilities of the agency Committee Management Officer

101-6.1018 (Reserved)

101-6.1019 Duties of the Designated Federal Officer

- - (a) Must approve or call the meeting of the advisory committee.
- - (b) Must approve the agenda.
- - (c) Must attend the meetings.
- - (d) Shall adjourn the meeting when such adjournment is in the public interest.
- - (e) Chairs the meeting when so directed by agency head.

101-6.1020 (Reserved)

101-6.1021 Public participation in advisory committee meetings

- - The agency head shall ensure that each meeting is held at a reasonable time and in a place reasonably accessible to the public; that the meeting room size is sufficient to accommodate advisory committee members, agency staff and interested members of the public; that any member of the public is permitted to file a written statement with the advisory committee; and that any member of the public may speak at the meeting if the agency's guidelines so permit.

101-6.1022 (Reserved)

101-6.1023 Procedures for closing an advisory committee meeting

- - Committee must submit a request to agency head with sufficient time to do review and determination prior to meeting notice.

101-6.1024 (Reserved)

101-6.1025 Requirement for maintaining minutes of advisory committee meetings

- - Agency head must ensure meeting minutes, which must include:
  - \*\* Time, date and place
  - \*\* List of persons as follows:
    - committee members and staff
    - agency employees
    - members of public who presented oral or written statements
  - \*\* Estimated number of others present
  - \*\* Accurate description of each matter discussed and the resolution, if any, made by committee
  - \*\* Copies of each report or other document received, issued or approved by committee
- - Committee chairperson shall certify accuracy of minutes.

101-6.1026 (Reserved)

101-6.1027 Termination of advisory committees

- - Any committee shall terminate not more than two years after established/reestablished/renewed, unless its duration is otherwise provided for by law, the agency head renews it prior to

end of two-year period, or the agency head terminates it before that time by revoking or abolishing its establishment authority.

101-6.1028 (Reserved)

101-6.1029 Renewal and rechartering of advisory committees

- - Advisory committees directed by law (and whose duration extends beyond two years) require rechartering (by filing new charter) every two years. If new charter is not filed, the committee is not terminated, but may not meet or take any action.
- - Legislatively-directed committees which would terminate, may be reestablished by the agency if they go through the chartering process.
- - Advisory committees authorized by law or established/used by an agency may be renewed, provided that the agency submits justification and proposed new charter to GSA between 30 and 60 days before the committee terminates.

101-6.1030 (Reserved)

101-6.1031 Amendments to advisory committee charters

- - Has distinctly different processes for (a) committees specifically directed or authorized by law or established by the President, as opposed to (b) committees established or used by an agency.

101-6.1032 (Reserved)

101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants

- - Agency head not required, but may compensate advisory board members. May pay committee staff no more than GS-15 salary, unless determined higher by agency head. Staff members who are Federal employees must serve with knowledge of Designated Federal Officer and approval of their supervisor. (NOTE: It is Departmental policy not to pay advisory board members, nor to have paid committee staff unless there are exceptional circumstances.)

- - Pay for consultants to committee shall be fixed with consideration of significance, scope and complexity of work. (NOTE: It is Departmental policy not to pay for consultants to advisory committees.)

- - "(d) In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation."

- - Blind/deaf/handicapped members may be provided services by a personal assistant.

101-6.1034 (Reserved)

101-6.1035 Reports required for advisory committees

- - Agencies file annual report on fiscal year basis. Advisory committees holding closed meetings must issue reports at least annually.

**Basic Information for Members**

**Department of the Interior Advisory Committees**

BASIC INFORMATION FOR MEMBERS OF  
DEPARTMENT OF THE INTERIOR ADVISORY COMMITTEES

I. ADVISORY COMMITTEE

An advisory committee is any:

- (1) committee, board, commission, council, conference, panel, task force, or
- (2) other similar group, or
- (3) any subcommittee, or
- (4) other subgroup,

which is established for the purpose of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. The function of an advisory committee is solely that of giving advice unless otherwise provided by law.

Advisory committees may be established in one of four ways:

- (1) by law where the Congress specifically directs the President or an agency to establish it; or
- (2) by law where the Congress authorizes it but does not direct the President or an agency to establish it. The responsible agency head will follow the procedures set forth in 41 C.F.R. §101-6.1007 when establishing the committee; or
- (3) by the President by Executive Order; or
- (4) by an agency under general agency authority set forth in 5 U.S.C. or under other general agency authorizing law. The agency head will follow the procedures set forth in 41 C.F.R. §101-6.1007 when establishing the committee.

## II. COMMITTEE MEMBER

A committee member is "an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations." 41 CFR §101-6.1003.

### A. CONFLICT OF INTEREST REQUIREMENTS

In determining whether Federal conflict-of-interest laws apply to members of advisory committees, the Office of Government Ethics distinguishes between:

1. those advisers who are selected as committee members because of their individual qualifications and are thus deemed to be **special government employees**, and
2. those who were selected as **representatives** of nongovernmental groups or organizations (or in some cases, as independent contractors).

Special government employees are subject to the conflict-of-interest laws and financial filing requirements. The most significant of these laws for advisory committee members is Section 208 of Title 18, United States Code, which makes it a criminal offense to participate "personally and substantially" as a government employee "through decision, . . . recommendation, the rendering of advice, investigation, or otherwise, in . . . [any] particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest." The statute specifies that an individual who violates this section shall be imprisoned or fined or both. In addition, the individual may be assessed a civil penalty of not more than \$50,000 for each violation. However, the Secretary may waive the application of this provision to advisory committee members who are special government employees if the Secretary "certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the financial interest involved." 18 U.S.C. §208(b)(3).

§ 203  
§ 205



## **B. COMPENSATION**

1. Compensation is rarely payable for service on advisory committees. However, under 5 U.S.C. § 5703 and other statutes, authority does exist for paying travel expenses of **members of the public** serving as advisory committee members.
2. **Federal Government employees** serving as members of advisory committees will not receive any additional compensation for such committee service over and above their regular compensation as employees. They are also eligible for payment of travel expenses under appropriate authority.

## **III. DESIGNATED FEDERAL OFFICER**

The agency head shall designate a Federal officer or a full-time/permanent part-time employee to be the Designated Federal Officer for each advisory committee and its subcommittees.

The Designated Federal Officer:

1. Must approve or call the meeting of the advisory committee before a meeting may take place;
2. Must approve the agenda;
3. Must attend the meetings;
4. Shall adjourn the meetings when such adjournment is in the public interest; and
5. Chairs the meeting when so directed by the agency head.

## **IV. ADVISORY COMMITTEE MEETINGS**

### **A. Charter**

No advisory committee shall meet or take any action until an advisory committee charter is filed with (1) the General Services Administration and the Library of Congress, in the case of a Presidential advisory committee, or (2) for other advisory committees, the Library of Congress, the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the Department, and the General Services Administration.

## B. Notice

In accordance with 41 CFR §101-6.1015(b), the Department shall publish at least 15 calendar days prior to an advisory committee meeting a notice<sup>1</sup> in the Federal Register,<sup>2</sup> which includes:

1. The exact name of the advisory committee as chartered;
2. The time, date, place, and purpose of the meeting;
3. A summary of the agenda; and
4. A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552b) as the basis for closure.

IN EXCEPTIONAL CIRCUMSTANCES, the agency may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the Federal Register.

## C. Public Participation

Each advisory committee meeting is to be open to the public unless all or part of the meeting is closed in accordance with the Government in the Sunshine Act (5 U.S.C. §552b). See E., below. The agency head shall ensure that:

1. Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;
2. The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff and interested members of the public;

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<sup>1</sup>Internal Bureau requirements may establish a longer notice period. See for example, 43 C.F.R. § 1734.4-2(a).

<sup>2</sup>Normally, the Office of the Federal Register requires four days to process Federal Register documents. Therefore, meeting notices must be received at least 19 days prior to the meeting.

3. Any member of the public is permitted to file a written statement with the advisory committee.

#### **D. Minutes**

The agency head shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

1. Time, date and place;
2. A list of the following persons who were present:
  - a. Advisory committee members and staff;
  - b. Agency employees; and
  - c. Members of the public who presented oral or written statements;
3. An estimated number of other members of the public present;
4. An accurate description of each matter discussed and the resolution, if any, made by the committee on such matter; and
5. Copies of each report or other document received, issued or approved by the committee.

The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

#### **E. Closed Advisory Committee Meetings**

##### **1. Procedures**

- a. Assistant Secretaries are authorized to make written determinations under section 10(d) of the Federal Advisory Committee Act (FACA) as to whether to close to the public all or a portion of the meeting. This authority may be redelegated to heads of bureaus and other Departmental Offices. See 205 DM 16.1.

- b. A request to close all or part of an advisory committee meeting must cite the specific provisions of the Government in the Sunshine Act (5 U.S.C. §552b) that would justify the closure. The request will provide the official responsible for the decision sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by 41 C.F.R. §101-6.1015(b).
- c. If the responsible official agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the FACA, the official will issue a written determination that all or part of the meeting will be closed. The written determination must contain the reasons for the determination, including which provision(s) of the Government in the Sunshine Act permits the closure.
- d. The Office of the Solicitor must review and approve all requests for closed meetings prior to final determination.
- e. Advisory committee members should assume that all advisory committee meetings are open to the public unless advised specifically to the contrary by the Department.

Date prepared: January 25, 1990.

## APPENDIX 2

### FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, 42 F.R. 56101, 91 Stat. 1634; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040; Pub.L. 97-375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.

- |   |   |
|---|---|
| <p>Sec.</p> <ol style="list-style-type: none"><li>1. Short title.</li><li>2. Findings and purpose.</li><li>3. Definitions.</li><li>4. Applicability; restrictions.</li><li>5. Responsibilities of Congressional committees: review; guidelines.</li><li>6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion.</li><li>7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations.</li></ol> | <p>Sec.</p> <ol style="list-style-type: none"><li>8. Responsibilities of agency heads: Advisory Committee Management Officer, designation.</li><li>9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy.</li><li>10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance.</li><li>11. Availability of transcripts; "agency proceeding".</li><li>12. Fiscal and administrative provisions; record-keeping; audit; agency support services.</li><li>13. Responsibilities of Library of Congress; reports and background papers; depository.</li><li>14. Termination of advisory committees; renewal; continuation.</li><li>15. Effective date.</li></ol> |
|---|---|

#### Law Review Commentaries

Advisers and secrets: The role of agency confidentiality in the Federal Advisory Committee Act. James T. O'Reilly, 13 N.Ky.L.Rev. 27 (1986).

#### § 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

#### Cross References

Pacific Salmon Commission, this Act not applicable to consultations by Commissioners and Panel members, see section 3632(h) of Title 16, Conservation.

for the Humanities be made available to the public by subgroup, but does not require that such disclosure occur until after the particular subgroup's work has been completed. 1980 (Counsel-Inf. Op.) 4B Op.O.L.C. 743.

#### Notes of Decisions

##### 1. Disclosure of membership

This Act requires that the names of members of the Humanities Panel of the National Endowment

##### § 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(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.

### EXECUTIVE ORDERS

#### EXECUTIVE ORDER NO. 11686

Ex.Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, set out as a note under this section, which related to committee management, was superseded

by Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, set out as a note under this section.

#### EXECUTIVE ORDER NO. 11769

Ex.Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, formerly set out as a note under this section, which related to committee management, was re-

voked by Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12024

Dec. 1, 1977, 42 F.R. 61445

#### TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) [this Appendix], Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [section 581c of Title 31, Money and Finance], and Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix II of this title], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977 [set out in Appendix II of this title], it is hereby ordered as follows:

**Section 1.** The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix II of this title], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C.App. I) [this Appendix], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

**Sec. 2.** There is hereby delegated to the Administrator of General Services all the functions

vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6(c) of that Act [section 6(c) of this Appendix] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

**Sec. 3.** The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

**Sec. 4.** Executive Order No. 11769 of February 21, 1974 is hereby revoked.

**Sec. 5.** Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

**Sec. 6.** This Order shall be effective November 20, 1977.

JIMMY CARTER

### § 3. Definitions

For the purpose of this Act—

(1) The term "Administrator" means the Administrator of General Services.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term

## FEDERAL ADVISORY COMMITTEE ACT

§ 3

Note 2

excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of Title 5.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

### Historical and Statutory Notes

**Commission on Government Procurement.** The Commission on Government Procurement, referred to in par. (2)(ii), terminated Apr. 30, 1973, pursuant to Pub.L. 91-129, set out as a note under section 251 of Title 41, Public Contracts.

**Transfer of Functions.** "Administrator" means Administrator of General Services" was substituted for "Director" means Director of the Office of Management and Budget" in par. (1), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

### Notes of Decisions

#### Advisory committee 2

##### Agency 4

##### Exemptions 5

##### Purpose 1

##### Standing to sue 3

#### 1. Purpose

Purpose of Federal Advisory Committee Act is to control advisory committee process and to open to public scrutiny manner in which government agencies obtain advice from private individuals and groups. *Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary*, D.D.C.1986, 648 F.Supp. 1353.

This Appendix was intended to apply to committees created by agencies and to those not originally created by agencies but subsequently used by them as advisory committees. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Purpose of this Appendix is to eliminate useless advisory committees, strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving. *Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App. D.C. 280.

This Appendix was not intended to apply to all amorphous, ad hoc group meetings; only groups having some sort of established structure and defined purpose constitute "advisory committees"

within meaning of this Appendix. *Nader v. Barroody*, D.C.D.C.1975, 396 F.Supp. 1231.

In enacting this Appendix, Congress was concerned with formally organized advisory committees which President or an executive department or official directed to make recommendations on identified governmental policy for which specific advice was sought. *Id.*

#### 2. Advisory committee

Federal Advisory Committee Act did not apply to Justice Department's solicitation of views of ABA's Standing Committee on the Federal Judiciary on prospective judicial nominees; committee was not "advisory committee" within meaning of Act, as it was not "utilized" within meaning of statute by President or Department of Justice in connection with those evaluations. *Public Citizen v. U.S. Dept. of Justice*, Dist.Col.1989, 109 S.Ct. 2558, 105 L.Ed.2d 377.

Group of experts assembled by private scientific organization pursuant to its contract with Food and Drug Administration (FDA) to provide counsel on food safety and quality issues was not an "advisory committee" subject to requirements of Federal Advisory Committee Act; panel was established and utilized by organization, not by FDA, and organization was private contractor that did not have quasi-public status. *Food Chemical News v. Young*, C.A.D.C.1990, 900 F.2d 328.

Determination that the American Association of State Highway and Transportation Officials is an advisory committee within the meaning of Federal Advisory Committee Act, this Appendix, when it provides input to the Federal Highway Administration with respect to proposals to require that state highway construction plans provide for minimum safety standards did not impermissibly impair the organization's freedoms of speech and association under U.S.C.A. Const. Amend. 1. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Panel of scientist-executives convened by the Secretary of the Department of Energy to study safety of a government-owned nuclear reactor in operation in state of Washington in light of nuclear disaster at a similar power station in the Soviet Union was not an "advisory committee" within meaning of the Federal Advisory Committee Act, and thus, panel's labors would be permitted to go forward as contemplated without attendance of nonprofit environmental protection organization, where panel members had not been asked to comment upon nuclear power generally or manner of its regulation, but merely to examine whether government ought to allow a single reactor to continue in operation, and panel members would work independently and report alone. *Natural Resources Defense Council, Inc. v. Herrington*, D.D.C.1986, 637 F.Supp. 116.

## § 3

### Note 2

The Commission on the Bicentennial of United States Constitution, created by Congress in 1983 to facilitate the celebration of the 200th anniversary of the Constitution is not an "advisory committee" within the meaning of the Federal Advisory Committee Act, which requires that advisory committees hold open meetings and give reasonable advance notice of meetings, where the Committee did not render advice to the federal government, but made recommendations to state, local and private entities, and was empowered to undertake itself the federal projects which it was to plan. *Public Citizen v. Commission on the Bicentennial of U.S. Constitution*, D.C.D.C.1985, 622 F.Supp. 753.

National Industries for the Severely Handicapped did not constitute an "advisory committee" as contemplated by the Federal Advisory Committee Act [Federal Advisory Committee Act, § 1 et seq., 5 U.S.C.A.App. II] since its advisory capacity to the Committee for Purchase From the Blind and Other Severely Handicapped was secondary to its operational activities. *HLI Lordship Industries, Inc. v. Committee for Purchase from the Blind & Other Severely Handicapped*, D.C.Va.1985, 615 F.Supp. 970.

Task forces cochaired by members of Executive Committee of Private Sector Survey established by the President to give advice on cost-effective management of federal programs were not subject to this Appendix, as they merely provided information and recommendations for consideration to the Committee, notwithstanding that they were intimately involved in gathering of information about federal programs and formulation of possible recommendations for consideration of the Committee. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C.1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Although Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards is an "advisory committee" subject to provisions of this appendix the Commission's Atomic Safety and Licensing Board is not an "advisory committee." *Hunt v. Nuclear Regulatory Commission*, D.C. Okl.1979, 468 F.Supp. 817, affirmed 611 F.2d 332, certiorari denied 100 S.Ct. 1084, 445 U.S. 906, 63 L.Ed.2d 322.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. *Center for Auto Safety v. Tiemann*, D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix. *Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976,

409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. *Id.*

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation. *Lombardo v. Handler*, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 531 L.Ed.2d 248.

Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. *Nader v. Baroody*, D.C.D.C.1975, 396 F.Supp. 1231.

The Native Hawaiians Study Commission was created to advise the Congress and not the President or federal agencies, and unless so utilized by the President or an agency, is not subject to the Federal Advisory Committee Act. 1982 (Council-Inf.Op.) 6 O.L.C. 39.

### 3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by virtue of Senator's position as such, had standing to complain that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 761 et seq. of Title 15. *Metcalf v. National Petroleum Council*, 1977, 553 F.2d 176, 180 U.S.App.D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix. *Nader v. Baroody*, D.C.D.C.1975, 396 F.Supp. 1231.

### 4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. *Lombardo v. Handler*, D.C.D.C.1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

### 5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix,



## FEDERAL ADVISORY COMMITTEE ACT

## § 5

as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. *Center for Auto Safety v. Tiemann*,

D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

The Congress did not intend the Federal Advisory Committee Act to apply to a body created jointly by the United States and another nation, such as the U.S.-Japan Consultative Group on Economic relations. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 321.

### § 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

### § 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require 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;
- (3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee 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;
- (4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and
- (5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

#### Code of Federal Regulations

##### Committee management regulations—

Consumer Products Safety Commission, see 16 CFR 1018.1.

Department of Agriculture, see 7 CFR 25.1.

Department of Education, see 34 CFR 11.1.

Department of Health and Human Services, see 45 CFR 11.1.

Federal Emergency Management Agency, see 44 CFR 12.1.

Marine Mammal Commission, see 50 CFR 510.1.

Nuclear Regulatory Commission, see 10 CFR 7.1.

#### Notes of Decisions

Balanced point of view 3

Orders 2

Standing to sue 1

Task forces 4

##### 1. Standing to sue

Nonprofit public interest law center, which claimed that violation of Federal Advisory Committee Act section requiring membership of advisory committees to be fairly balanced in terms of points of view represented, by the American Bar Association Standing Committee on Federal Judiciary, contributed to exclusion of center from judicial review process, pleaded sufficient injury to confer standing to bring suit seeking to enforce balanced membership requirement under Act, where center claimed that Committee consulted on regular basis with liberal public interest groups to exclusion of conservative public interest organizations and that center had been "directly affected" by lack of balance on Committee. *Washington Legal Foundation v. American Bar Ass'n Standing Committee on Federal Judiciary*, D.D.C. 1986, 648 F.Supp. 1353.

In action for declaratory and injunctive relief alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests contrary to requirements of this section and Federal Energy Administration Act provision, section 776 of Title 15, plaintiffs' allegations of injury to themselves as consumers: anticipated higher costs for petroleum products; potential environmental damage and threats to health and safety; and anticipated denial of benefits from development of alternative sources of energy, did not confer standing to sue upon plaintiffs, particularly in light of fact that there was no nexus between plaintiffs' alleged injuries and defendants' challenged action. *Metcalf v. National Petroleum Council*, D.C.D.C. 1976, 407 F.Supp. 257, affirmed 553 F.2d 176.

In action by United States Senator alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fully balanced in membership and were improperly influenced by certain

petroleum industry special interests, Senator did not have standing to sue on theory that defendants' actions had affected effectiveness of his votes for this Appendix and Federal Energy Administration Act, section 761 et seq. of Title 15, and had hindered him in carrying out his legislative duties through his inability to get unbiased advice and accurate information from Department of Interior and Federal Energy Administration because of Council's input into that process, particularly in view of fact that Senator showed no nexus between his alleged injuries and defendants' challenged action. *Id.*

##### 2. Orders

Where dispute as to whether particular organization was covered by the Federal Advisory Committee Act, this Appendix, arose out of the consultation by a federal agency with the organization over certain proposed regulations, and where there was no allegation or proof that all contacts between the agency and the organization constituted a utilization of the organization as advisory committee, order that any future meeting between the representatives of the federal government and the organization be subject to the Federal Advisory Committee Act was overbroad; the order should apply only to consultation for advice or recommendations on proposed regulations. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

##### 3. Balanced point of view

Executive Committee of the President's Private Sector Survey on Cost Control did not violate balanced viewpoint requirement of this Appendix on basis that virtually every member of the executive committee was an executive of a major corporation and that no public-interest representatives or beneficiaries of federal feeding programs had been appointed where Survey was designed to apply private sector expertise to attain cost-effective management in the federal government, since Survey's members represented fair balance of viewpoints given the functions to be performed. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, 1983, 711 F.2d 1071, 229 U.S.App. D.C. 143.

National Advisory Committee on Microbiological Criteria for Foods met balanced membership requirements of Federal Advisory Committee Act; though public interest groups complained of absence of consumer representation, Committee was charged with highly technical mandate requiring extensive scientific background and expertise in processing and distribution practices. *Public Citizen v. National Advisory Committee on Microbiological Criteria for Foods*, D.D.C.1988, 708 F.Supp. 359.

The Executive Committee of the Private Sector Survey created by the President to give detailed advice on cost-effective management of the federal government and its agencies did not violate the balanced viewpoint requirement of this Appendix because most committee members were executives of major corporations, with two being academics

## FEDERAL ADVISORY COMMITTEE ACT

## § 6 Note 1

and one from the labor community, and this Appendix did not require representation of public interest advocates or beneficiaries of federal food assistance programs. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C. 1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Failure of the defendant commission to appoint more than one individual in outspoken opposition to ratification of the Equal Rights Amendment (ERA) to the United States Constitution when setting up the state committee to coordinate lobbying activities for the amendment in state legislature was not such as to establish a violation of this Appendix in that this Appendix did not, by its terms or otherwise, require balancing of points of view on the Equal Rights Amendment issue in the state coordinating committee. *Hall v. Siegel*, D.C.Ill.1977, 467 F.Supp. 750.

All interests need not be represented or represented equally to meet applicable balance of membership requirements, but required standard must be judged on case-by-case determination, depending on authority creating particular committee. 1981, 60 Comp.Gen. 386.

### 4. Task forces

Task forces established to assist Executive Committee of the President's Private Sector Survey on Cost Control in the study of domestic feeding programs for low-income persons were not subject to this Appendix where it appeared that task force reports and recommendations would be exhaustively reviewed and revised by Executive Committee. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, 1983, 711 F.2d 1071, 229 U.S.App. D.C. 143.

### § 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

(As amended Pub.L. 97-375, Title II, § 201(c), Dec. 21, 1982, 96 Stat. 1822.)

### Historical and Statutory Notes

**1982 Amendment.** Subsec. (c). Pub.L. 97-375, § 201(c), substituted provision that the President shall, not later than Dec. 31 of each year, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year, for provision the President, not later than March 31 of each calendar year after 1972, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year.

**Effective Date of 1982 Amendment.** Section 201(c) of Pub.L. 97-375 provided in part that the

amendment by that section to subsec. (c) of this section is effective July 1, 1983.

### Notes of Decisions

#### Requests for documents 1

#### 1. Requests for documents

Federal Advisory Committee Act does not impose upon President or upon the Office of Administration special responsibility to guide document requests. *Federal Advisory Committee Act*, §§ 6, 6(b), 10, 10(b), 5 U.S.C.A.App. 2.—*National Sec. Archive v. Archivist of the U.S.*, C.A.D.C. 1990, 909 F.2d 541.

**§ 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations**

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

## FEDERAL ADVISORY COMMITTEE ACT

## § 8

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36067, 92 Stat. 3783; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.)

### Historical and Statutory Notes

**References in Text.** Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(1)(c)(i), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

**1980 Amendment.** Subsec. (d)(1). Pub.L. 96-523 added subpar. (C).

**Effective Date of 1980 Amendment.** Amendment by Pub.L. 96-523 effective sixty days after Dec. 12, 1980, see section 3 of Pub.L. 96-523, set out as a note under section 3102 of this title.

**Transfer of Functions.** "Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in text, "General Services Administration" for "Office of Management and Budget" in subsec. (a), and "Administrator's" for "Director's" in subsec. (b), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to subsec. (a) of this section for all matters relating to advisory committees, to the Administrator of

General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex.Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

All functions of the Office of Management and Budget and the Director thereof relating to the Committee Management Secretariat were transferred to the Administrator of General Services by Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, effective on or before Apr. 1, 1978, at such time as specified by the President.

**Legislative History.** For legislative history and purpose of Pub.L. 96-523, see 1980 U.S. Code Cong. and Adm. News, p. 6530.

### § 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

### Historical and Statutory Notes

**Transfer of Functions.** "Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of

the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

**§ 9. Establishment and purpose of advisory committees; publication in Federal Register; charter; filing, contents, copy**

(a) No advisory committee shall be established unless such establishment is—  
(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;
- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

**Historical and Statutory Notes**

**Transfer of Functions.** "Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsecs. (a) and (c), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

**Notes of Decisions**

Compliance, necessity of 2  
Members of committee 3  
Purpose 1

**1. Purpose**

Purpose of this Appendix is to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals. *Food Chemical News, Inc. v. Davis*, D.C.D.C. 1974, 378 F.Supp. 1048.

**2. Compliance, necessity of**

Where a federal agency utilizes an advisory committee for the purpose of obtaining advice, the agency must charter and establish the committee in compliance with all the terms of this Appendix; and failure to comply with such requirements cannot be employed as a subterfuge for avoiding the public access requirements of this Appendix. *Food Chemical News, Inc. v. Davis*, D.C.D.C. 1974, 378 F.Supp. 1048.

If Energy Policy Task Force's Plan drafting role gives it more than solely advisory functions, its charter should so state, citing authority given for those functions. 1981, 60 Comp.Gen. 386.

**3. Members of committee**

Presence of retired Supreme Court justice and active circuit judge on Presidential Commission to

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## FEDERAL ADVISORY COMMITTEE ACT

## § 10

investigate organized crime did not violate constitutional separation-of-powers doctrine; service of judges was voluntary; judicial membership on advisory commission did not prevent it from carry-

ing out its duties, and participation by judges did not disrupt operation of courts. Matter of President's Com'n on Organized Crime Subpoena of Scarfo, C.A.3 (N.J.) 1986, 783 F.2d 370.

### § 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

(As amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

### Historical and Statutory Notes

**1976 Amendment.** Pub.L. 94-409 added "portion of an" following "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552b(c) of Title 5, for provisions relating to determinations of matters listed in section 552(b) of Title 5.

**Effective Date of 1976 Amendment.** Amendment by Pub.L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub.L. 94-409, set out as a note under section 552b of this title.

**Transfer of Functions.** "Administrator", meaning Administrator of General Services, was substituted for "Director", meaning Director of the Office of Management and Budget, in subsec. (a)(2) and (3), pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977.

as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

**Legislative History.** For legislative history and purpose of Pub.L. 94-409, see 1976 U.S. Code Cong. and Adm. News, p. 2183.

### Notes of Decisions

Burden of proof 6  
Construction with other laws 1  
Convening of meetings 3b  
Discretion of agency 3a  
Exchange of information 5  
Injunction 7  
Interagency or intra-agency memoranda 9  
Meetings within section 3  
Public access 8  
Public participation 4  
Purpose 2  
Regulations 10  
Standing to sue 11

#### 1. Construction with other laws

Freedom of Information Act provisions, section 552 of this title, dealing with intra-agency and interagency memoranda are applicable, under this section to advisory committee meetings. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meetings of advisory committees serving cost of living council. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

#### 2. Purpose

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" utilized by the Bureau Director to obtain advice within the meaning of this Appendix, and said meetings were therefore open to the public. *Food Chemical News, Inc. v. Davis*, D.C.D.C. 1974, 378 F.Supp. 1048.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations of committee meetings. *Nader v. Dunlop*, D.C.D.C. 1973, 370 F.Supp. 177.

#### 3. Meetings within section

The Food and Drug Administration had "established" an expert panel which it directed a private contractor to assemble to assist the FDA in identifying and categorizing important issues that would influence FDA's responsibilities for food safety and quality, for purposes of determining applicability of Federal Advisory Committee Act requirements to the expert panel, although the original contract solicitation did not require a panel and task order requiring assembly of panel

was issued in response to contractor's technical proposal in bid suggesting such a panel. *Food Chemical News v. Young*, D.D.C.1989, 709 F.Supp. 5.

Where meeting between Food and Drug Administration and organization representing cosmetics industry was for purpose of presenting organization's voluntary ingredient testing program, and no matters of Administration policy or regulation were at issue, parties were not bound by provisions of this Appendix, and thus neither public access to such meetings, nor chartering of such organization, would be required. *Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C.1976, 409 F.Supp. 473, affirmed 551 F.2d 466, 179 U.S.App.D.C. 280.

At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be provided. *Nader v. Dunlop*, D.C.D.C. 1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

#### 3a. Discretion of agency

Under this section, advisory committees both meet and render advice to governmental agencies involved at the pleasure of those agencies and if it pleases agency in question to refrain from convening committee or soliciting its advice, agency is entirely at liberty to do so. *Dabney v. Reagan*, D.C.N.Y.1982, 559 F.Supp. 861.

#### 3b. Convening of meetings

Fact that solar energy and energy conservation bank's advisory committees' charters provided that they would ordinarily convene in full session four times a year did not abrogate express subsec. (f) of this section that advisory committees "shall not hold any meeting except at the call of, or with the advance approval of," the designated federal employee. *Dabney v. Reagan*, D.C.N.Y.1982, 559 F.Supp. 861.

#### 4. Public participation

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the Services conducted so as to be open to public, there was no right of public participation in advisory committee. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

#### 5. Exchange of information

Executive committee's review of staff recommendations concerning cost control under food stamp program were deliberative and not a mere sham and did not violate this section where task force recommendations were distributed to members of executive committee for study in advance of public hearing and at the hearing comments were specifically brought to attention of full membership even though belatedly filed and in other instances the committee rejected recommendations contained in the staff reports. *National Anti-Hunger Coalition v. Executive Committee of Pres-*



## FEDERAL ADVISORY COMMITTEE ACT

## § 10

### Note 11

ident's Private Sector Survey on Cost Control, D.C.D.C.1983, 566 F.Supp. 1515.

For purposes of this Appendix, exchange of information does not make advisory committee "part of" its government agency. *Gates v. Schlesinger* D.C.D.C.1973, 366 F.Supp. 797.

#### 6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. *Nader v. Dunlop*, D.C.D.C.1973, 370 F.Supp. 177.

#### 7. Injunction

Where pleadings were limited to actions of Travel Advisory Board in holding closed meeting and did not refer to any other advisory committees in the Department of Commerce, and where all evidence was directed towards the TAB, injunction which purported to require timely advance public notice of each meeting of the TAB or any other advisory committee in the Department was overbroad. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Injury to nonprofit environmental protection organization if panel of scientist-executives convened by the Secretary of the Department of Energy to study safety of government-owned nuclear reactor in Washington were determined to in fact be subject to requirements of the Federal Advisory Committee Act was neither substantial nor irreparable, whereas injury to the Secretary and the remainder of the country caused by delay would be substantial and irreparable, and thus, organization was not entitled to preliminary injunction enjoining activities of panel until organization's representative should be allowed to attend, where any recommendations by panel would soon be available by request under the Freedom of Information Act. *Natural Resources Defense Council, Inc. v. Herrington*, D.D.C.1986, 637 F.Supp. 116.

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court would issue preliminary injunction requiring such meeting to be open to the public. *Gates v. Schlesinger*, D.C.D.C.1973, 366 F.Supp. 797.

#### 8. Public access

Public interest research institute's misdirected application to Office of Administration for Tower Commission report, which investigated the sale of arms to Iran and transfer of resulting proceeds to the Contras in Nicaragua, was not sufficient under the Freedom of Information Act or the Federal Advisory Committee Act, since the request should have been made to the Commission itself while it existed, since Office had no authority or responsibility over the Commission's records; institute was unable to compel disclosure of those documents. *National Sec. Archive v. Executive Office of The President*, D.D.C.1988, 688 F.Supp. 29.

The press has a statutory right under this Appendix as well as a privilege under U.S.C.A.

Const. Amend. 1 to report on the manner in which government affairs are conducted. *Food Chemical News, Inc. v. Davis*, D.C.D.C.1974, 378 F.Supp. 1048.

The privacy exemption of the open meeting requirement in section 552 of Title 5, Government Organization and employees, made applicable to advisory committees may permit closing of some portions of meetings of subgroups of the Humanities Panel at which individual grant applications are discussed. 1980 (Counsel-Inf.Op.) 4B Op.O. L.C. 743.

Legislation that would grant the President's Commission on the Accident at Three Mile Island the power to issue subpoenas is sufficient also to allow the closing of its meetings under certain circumstances under the exemption contained in section 552b(c)(10) of this title relating to the "agency's issuance of a subpoena. 1979 (Counsel-Inf. Op.) 3 Op.O.L.C. 208.

#### 9. Interagency or intra-agency memoranda

Evidence that there had been more than 20 meetings of the Travel Advisory Board and that on only three occasions had portions of the meeting been closed to the public demonstrated that the Board was not abusing exemption provided to it under subsec. (d) of this section from requirement of holding open meetings when interagency and intra-agency memoranda were being discussed. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Provisions of this section dealing with open meetings do not apply to any advisory committee meeting which the head of an agency determines is concerned with interagency or intra-agency memoranda. *Id.*

Even after interagency or intra-agency memorandum has been disclosed to member of an advisory committee, the memorandum may still be considered an inter-agency or intra-agency memorandum so that fact that such disclosure is made to a member of an advisory committee does not preclude advisory committee from holding a closed meeting in accordance with the exemption provided for in subsec. (d) of this section and section 552 of this title. *Id.*

#### 10. Regulations

Where regulations which were challenged had been revised through procedure in which the revised regulations were published in draft form and public comment was invited and where the new regulations were temporary, court would not overturn original regulations despite failure of Federal Highway Administration to comply with requirements of this Appendix in adopting the initial regulations. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

#### 11. Standing to sue

Persons active in opposing enactment of Equal Rights Amendment to United States Constitution were without standing to bring suit against National Commission on the Observance of International Women's Year, 1975, to enjoin it from supporting enactment of the Equal Rights Amendment, engaging in lobbying activities, and

## § 10

### Note 11

other pursuits. *Mulqueeny v. National Commission on the Observance of Intern. Women's Year*, 1975, C.A.Ill.1977, 549 F.2d 1115.

Corporation in business of manufacturing and supplying military decorations and insignia to government had standing to assert violations of the Federal Advisory Committee Act in challenging action of Committee for Purchase From the Blind and Other Severely Handicapped to take particular medals and medal sets out of competitive bidding and place them on list as commodities suitable for procurement by government for qualified nonprofit agencies for the blind or other severely handicapped since corporation had injury in fact based on Committee's decision, injury could be remedied if court invalidated decision, and corporation's interest fell within zone of interest of the Act. *HLI Lordship Industries, Inc. v. Committee for Purchase from the Blind & Other Severely Handicapped*, D.C.Va.1985, 615 F.Supp. 970.

Individual recipients of federal food assistance benefits and an antihunger coalition were granted standing to challenge membership on the Presi-

## TITLE 5—APPENDIX 2

dent's Executive Committee of the Private Sector Survey as lacking the balanced representation required by this Appendix as well as to question Committee's compliance with procedural requirements of this Appendix. *National Anti-Hunger Coalition v. Executive Committee of President's Private Sector Survey on Cost Control*, D.C.D.C. 1983, 557 F.Supp. 524, affirmed 711 F.2d 1071, 229 U.S.App.D.C. 143.

Nonprofit corporation whose activities centered broadly upon transportation safety issues and whose functions included monitoring activities of Federal Highway Administration had standing to challenge alleged failure of the Federal Highway Administration to comply with rule-making provisions of sections 551 et seq. and 701 et seq. of this title when providing for alternative procedure for approving state highway safety plans and failure of the Federal Highway Administration to open meetings with a particular organization to the public pursuant to this Appendix. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

### § 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

#### Historical and Statutory Notes

**References in Text.** Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub.L. 92-463 on Oct. 6, 1972, see section 15 of Pub.L. 92-463.

sue for the information. *Center for Auto Safety v. Tiemann*, D.C.D.C.1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

#### Notes of Decisions

##### 1. Standing to sue

Any person whose request for information under this appendix had been denied has standing to

### § 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

### § 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each

## FEDERAL ADVISORY COMMITTEE ACT

## § 14

report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

(As amended 1977 Reorg. Plan No. 1, § 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

### Historical and Statutory Notes

**Transfer of Functions.** "Administrator", meaning Administrator of General Services, was substituted for "director", meaning Director of the Office of Management and Budget, in text, pursuant to Reorg. Plan No. 1 of 1977, § 5F, 42 F.R. 56101, 91 Stat. 1634, set out in Appendix 1 of this title, which transferred all functions of the

Office of Management and Budget and its Director relating to the Committee Management Secretariat, which is responsible pursuant to section 7(a) of this Act for all matters relating to advisory committees, to the Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex.Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

### § 14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

### Historical and Statutory Notes

**References in Text.** Effective date of this Act, referred to in subsec. (a)(1), as meaning effective

upon expiration of ninety days following enactment of Pub.L. 92-463 on Oct. 6, 1972, see section 15 of Pub.L. 92-463.

## EXECUTIVE ORDERS

### EXECUTIVE ORDER NO. 11827

Ex.Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, as amended, formerly set out as a note under this section, which provided for the continuance of

certain federal advisory committees, was superseded by Ex.Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under this section.

**EXECUTIVE ORDER NO. 11948**

Ex.Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, as amended by Ex.Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839; Ex.Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, formerly set out as a note under this section, which provided for the

continuance of certain federal advisory committees, was superseded by Ex.Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under this section.

**EXECUTIVE ORDER NO. 12007**

Aug. 22, 1977, 42 F.R. 42839

**TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

**Section 1.** (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 [set out as a note under Section 2000e of Title 42, The Public Health and Welfare], is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

**Sec. 2.** (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of section 4 of Executive Order No. 11514 of March 5, 1970 [set out as a note under section 4321 of Title 42, The Public Health and Welfare], is revoked.

**Sec. 3.** (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 13, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade], is revoked.

**Sec. 4.** (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 [set out as a note under section 887d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

**Sec. 5.** (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 [set out as a note under section 3107 of Title 22, Foreign Relations and Intercourse], is revoked.

**Sec. 6.** Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

**EXECUTIVE ORDER NO. 12029**

Dec. 14, 1977, 42 F.R. 63631

**TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE**

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

**Section 1.** (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11342, as amended, is revoked.

**Sec. 2.** Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976, which extended the above advisory committee until December 31, 1978, is superseded.

JIMMY CARTER

**EXECUTIVE ORDER NO. 12110**

Ex.Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under this section, which provided for the continuance of certain

federal advisory committees, was superseded by Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under this section.

## FEDERAL ADVISORY COMMITTEE ACT

§ 14

### EXECUTIVE ORDER NO. 12258

Ex.Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, as amended by Ex.Ord. No. 12271, Jan. 15, 1981, 46 F.R. 4677; Ex.Ord. No. 12299, Mar. 17, 1981, 46 F.R. 17751; Ex.Ord. No. 12305, May 5, 1981, 46 F.R. 25421; Ex.Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which provided for the continuance of certain federal advisory commit-

tees, was superseded by Ex.Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, set out as a note below.

[Executive Order No. 12299, which had been set out in the credit to this Executive Order, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.]

### EXECUTIVE ORDER NO. 12305

May 5, 1981, 46 F.R. 25421

#### TERMINATION OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App. I), the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

(a) Executive Order No. 12059 of May 11, 1978, as amended, [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure], establishing the United States Circuit Judge Nominating Commission;

(b) Executive Order No. 11992 of May 24, 1977 [set out as a note preceding chapter 1 of Title 28], establishing the Committee on Selection of Federal Judicial Officers;

(c) Executive Order No. 12084 of September 27, 1978, as amended by Executive Order 12097 of November 8, 1978, [set out as a note under section 133 of Title 28], establishing the Judicial Nominating Commission for the District of Puerto Rico; and

(d) Executive Order No. 12064 of June 5, 1978, [set out as a note under section 7443 of Title 26, Internal Revenue Code], establishing the United States Tax Court Nominating Commission.

Subsections (g), (i), (j) and (k) of Section 1-101 of Executive Order No. 12258, [set out as a note under this section], extending these committees, are also revoked.

RONALD REAGAN

### EXECUTIVE ORDER NO. 12379

Aug. 17, 1982, 47 F.R. 30699

#### TERMINATION OF BOARDS COMMITTEES, AND COMMISSIONS

By the authority vested in me as President by the Constitution and statutes of the United States of America, and to terminate the establishing authorities for committees that are inactive or no longer necessary, it is hereby ordered as follows:

Section 1. Executive Order No. 12071, as amended [set out as a note under section 1001 of Title 29, Labor], establishing the President's Commission on Pension Policy is revoked.

Sec. 2. Executive Order No. 12042 [not classified to the code], creating a Board of Inquiry to Report on Labor Disputes Affecting the Bituminous Coal Industry in the United States, is revoked.

Sec. 3. Executive Order No. 12085 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Norfolk and Western Railway Company and Certain of Its Employees, is revoked.

Sec. 4. Executive Order No. 12132 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the National Railway Labor Conference and Certain of Its Employees, is revoked.

Sec. 5. Executive Order No. 12095 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between Wien Air Alaska, Inc., and Certain Individuals, is revoked.

Sec. 6. Executive Order No. 12159 [not classified to the code], creating an Emergency Board to Investigate Disputes Between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Ex-

press and Station Employees; and the United Transportation Union, is revoked.

Sec. 7. Executive Order No. 12182 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Long Island Rail Road and Certain of Its Employees, is revoked.

Sec. 8. Executive Order No. 12207 [not classified to the code], creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees, is revoked.

Sec. 9. Executive Order No. 12262 [set out as a note under section 1001 of Title 29, Labor], establishing an Interagency Employee Benefit Council, is revoked.

Sec. 10. Executive Order No. 12275 [set out as a note under section 951 of Title 20, Education], establishing the Design Liaison Council, is revoked.

Sec. 11. Executive Order No. 11829, as amended [set out as a note under section 640d of Title 25, Indians], establishing the Hopi-Navajo Land Settlement Interagency Committee, is revoked.

Sec. 12. Executive Order No. 11022, as amended [set out as a note under section 3001 of Title 42, The Public Health and Welfare], establishing the President's Council on Aging, is revoked.

Sec. 13. Executive Order No. 12192 [set out as a note under section 2021 of Title 42], establishing the State Planning [Planning] Council on Radioactive Waste Management, is revoked.

Sec. 14. Executive Order No. 12075, as amended [set out as a note under section 1450 of Title 42], establishing the Interagency Coordinating Council, is revoked.

Sec. 15. Executive Order No. 11782 [set out as a note under section 2281 of Title 12, Banks and Banking], establishing the Federal Financing Bank Advisory Council, is revoked.

Sec. 16. Executive Order No. 12089, as amended [set out as a note under section 2401 of Title 15, Commerce and Trade], establishing the National Productivity Council, is revoked.

Sec. 17. Executive Order No. 11330, as amended [set out as a note preceding section 2711 of Title 42, The Public Health and Welfare], establishing the President's Council on Youth Opportunity, is revoked.

Sec. 18. Executive Order No. 11256 [not classified to the code], establishing the President's Committee on Food and Fiber and establishing the National Advisory Commission on Food and Fiber, is revoked.

Sec. 19. Executive Order No. 11654 [set out as a note under section 278f of Title 15, Commerce and Trade], continuing the Federal Fire Council, is revoked.

Sec. 20. Executive Order No. 12083, as amended [set out as a note under section 7101 of Title 42, The Public Health and Welfare], establishing the Energy Coordinating Committee, is revoked.

Sec. 21. Executive Order No. 12285, as amended and ratified [set out as a note under section 1701 of Title 50, War and National Defense], establishing the President's Commission on Hostage Compensation, is revoked.

Sec. 22. Executive Order No. 12202, as amended [set out as a note under section 5848 of Title 42, The Public Health and Welfare], establishing the Nuclear Safety Oversight Committee, is revoked.

Sec. 23. Executive Order No. 12194 [set out as a note under section 4321 of Title 42], establishing the Radiation Policy Council, is revoked.

Sec. 24. The veterans' Federal Coordinating Committee (Weekly Compilation of Presidential Documents, volume 14, number 41, page 1743) [not classified to the code] is terminated.

Sec. 25. The President's Council on Energy Efficiency (Weekly Compilation of Presidential Documents, volume 16, numbers 18 and 30, pages 790 and 1404) [not classified to the code] is terminated.

RONALD REAGAN

#### EXECUTIVE ORDER NO. 12399

Ex.Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, which related to the continuance of certain federal advisory committees, was superseded by Ex.

Ord.No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12489

Ex.Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, which related to the continuance of certain federal advisory committees was superseded by

Ex.Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12534

Ex.Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, which related to the continuance of certain federal advisory committees, was superseded by

Ex.Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12610

Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, which provided for the continuance of certain Federal advisory committees, was super-

sed by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 406-27, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12692

Sept. 29, 1989, 54 F.R. 40627, as amended by Ex.Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969

#### CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1991:

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior) (set out as a note under section 110 of Title 3, the President).

(b) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196, as

amended (Department of Labor) (set out as a note under section 7902 of this title).

(c) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(d) President's Committee on the Arts and the Humanities; Executive Order No. 12367, as amended (National Endowment for the Arts).

(e) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor) (set out as a note under section 271 of Title 22, Foreign Relations and Intercourse).

## FEDERAL ADVISORY COMMITTEE ACT

## § 15

(f) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services) (set out as a note preceding section 6000 of Title 42, the Public Health and Welfare).

(g) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation) (set out as a note under section 1881 of Title 42).

(h) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services) (set out as a note under section 300U-S of Title 42).

(i) President's Export Council; Executive Order No. 12131, as amended (Department of Commerce) (set out as a note under section 2401 of the Appendix to Title 50, War and National Defense).

(j) President's National Security Telecommunications Advisory Committee; Executive Order No. 12382, as amended (Department of Defense).

**Sec. 2.** Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [this Act] that are applicable to the committees listed in Section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

**Sec. 3.** The following Executive orders, which established committees that have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12462, as amended by Executive Order No. 12533, establishing the President's Advisory Committee on Mediation and Conciliation.

(b) Executive Order No. 12592 [set out as a note under section 5382 of Title 5, Government Organization and Employees]; establishing the President's Commission on Compensation of Career Federal Executives.

(c) Executive Order No. 12668, establishing the President's Commission on Federal Ethics Law Reform.

(d) Executive Order No. 12607, establishing the President's Commission on Privatization.

(e) Executive Order No. 12296, as amended by Executive Order No. 12309 [set out as a note under section 1023 of Title 15], establishing the President's Economic Policy Advisory Board.

(f) Executive Order No. 12528, as amended by Executive Order No. 12604, establishing the Presidential Board of Advisors on Private Sector Initiatives.

(g) Executive Order No. 12601, as amended by Executive Order No. 12603, establishing the Presidential Commission on the Human Immunodeficiency Virus Epidemic.

**Sec. 4.** Executive Order No. 12610 [formerly set out as a note under this section] is superseded.

**Sec. 5.** This order shall be effective September 30, 1989.

GEORGE BUSH

### Notes of Decisions

Powers and duties 3  
Presumptions 4  
Prospective effect 1  
Remedies available 2

#### 1. Prospective effect

This Appendix Committee Act was intended to have both immediate effect through this section providing for termination of advisory committees and prospective effect through sections 5, 6 and 7 providing procedures which contemplate studied decision on whether particular advisory committee is necessary. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

#### 2. Remedies available

Congress in enacting this Appendix was concerned about proliferation of advisory committees which had outlived their usefulness; to remedy situation. Congress chose to terminate all advisory committees. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

#### 3. Powers and duties

Congress contemplated that this Appendix would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. *Carpenter v. Morton*, D.C.Nev. 1976, 424 F.Supp. 603.

#### 4. Presumptions

The rebuttable presumption that, unless a statute creating an advisory committee deals expressly with its termination, the committee terminates 2 years after enactment of the Federal Advisory Committee Act or after the creation of the committee, whichever comes later, may be rebutted by a showing that the Congress, in creating a committee, assigned to it a specific ongoing function that is integral to a particular statutory scheme. 1979 (Counsel-Inf.Op.) 3 Op.O.L.C. 170.

### § 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-6

[FPMR Amendment A-40]

### Federal Advisory Committee Management

**AGENCY:** Office of Administration, GSA.  
**ACTION:** Final rule.

**SUMMARY:** This final rule provides administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the *Federal Register*, GSA published an interim final rule on the management of Federal advisory committees and requested comments (48 FR 19324; April 28, 1983). Additional comments were requested through an advance notice of proposed rulemaking published in the *Federal Register* on February 13, 1987 (52 FR 4631). A new proposed rule, removing suggested limitations on the size of Federal advisory committees, eliminating requirements for the provision of updated committee membership data on a quarterly basis and restrictions on the compensation of committee members, and reflecting other actions to streamline compliance with the Act, was published in the *Federal Register* on May 19, 1987 (52 FR 18774), with a 90-day comment period ending on August 17. All comments received were considered in formulating this final rule which is intended to improve the management and use of Federal advisory committees in the Executive Branch of the Federal Government.

**EFFECTIVE DATE:** January 4, 1988.

**ADDRESSES:** General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of all comments received are available for public inspection in Room 7030 of the General Services Building, 18th and F Streets NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James L. Dean, Director, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202) 523-1343.

#### SUPPLEMENTARY INFORMATION:

##### Background

GSA's authority for administering the Act is contained in section 7 of the Act

and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by Section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

#### Discussion of Comments

As stated above, GSA issued a proposed rule on the management of Federal advisory committees in the *Federal Register* and invited comments. Nineteen commenters responded. Seven commenters had no substantive recommendations and were fully supportive of the proposed rule. Twelve others offered suggestions for improving numerous sections and the disposition of these recommendations is addressed as follows:

##### *Clarify the Distinction Between Operational as Opposed to Advisory Committees*

Two commenters suggested that further guidance in the final rule was necessary to assist agencies in interpreting what constitutes primarily an operational committee as opposed to one which performs only advisory functions, in order to determine coverage under the Act. Accordingly, GSA has added language to § 101-6.1004(g) in the final rule which more fully describes what, in general, constitutes operational functions.

While the legislative history of the Act contains the concept for the exclusion of operational committees, there is no precise legal definition of operational committee in either the Act or its legislative history. GSA believes that operational functions to be performed by an advisory committee must be so authorized by law, since the making or implementation of Government decisions is normally reserved to Federal officials as opposed to advisory committees. Additionally, sections 2(b)(6) and 9(b) of the Act provide that, unless specifically provided by statute or Presidential directive, advisory committees may not make determinations or express policy in matters under their consideration. Given the additional language in this final rule, GSA believes that it will be easier for agencies to identify committees which perform primarily operational functions.

##### *Provide for Coverage Under the Act When Certain Groups Provide Consensus or Recurrent Advice*

One commenter stated that the language in § 101-6.1004 (i) and (j) of the proposed rule was too tentative to specifically provide that acceptance of consensus advice or advice on a recurring basis from certain groups were determinants for coverage under the Act. GSA has accepted these suggestions and has strengthened the wording of these sections in the final rule.

Agencies are, in effect, cautioned that the Act would apply when an agency accepts the deliberations of a group as a source of *consensus* advice, when heretofore the agency had been obtaining the advice of attendees on an *individual* basis only. Also, when an agency *recurrently* uses a group at the group's request, as a source of advice on a preferential basis, exclusion of coverage under the Act may become questionable even if the group continues only to express its own views without further solicitations from Federal officials.

##### *Strengthen the Provision for Excluding Coverage of So-Called Fact-Finding Subgroups*

Several commenters were of the opinion that so-called fact-finding subgroups should continue to be excluded from coverage under the Act. However, it was their general consensus that § 101-6.1004(k) of the proposed rule was less than clear in including both the members of an advisory committee and any of its subcommittee members in this exclusion. One commenter felt strongly that this exclusion should apply to all members of an advisory committee and its subcommittees, whether or not the subcommittee members are members of the parent committee. GSA agrees with this recommendation since it parallels the language and intent expressed in § 101-6.1007(b) (3) and (4) which clarify certain requirements applicable to subcommittees. GSA has reworded the definition of "Advisory Committee" in § 101-6.1003 of the final rule to follow more precisely the language in section 3(2) of the Act, and has been more consistent in the use of the term "subcommittee" in § 101-6.1004(k) and § 101-6.1007(b)(3) of the final rule.

Another commenter felt that the language in § 101-6.1004(k) was not strong enough to preclude fact-finding subgroups from preparing what ultimately becomes the advice and recommendations of the chartered advisory committee, as opposed to



simply gathering information and analyzing facts for the committee. GSA has modified the language in this provision to clarify that the results of such fact-finding activities are to be subject to the deliberation of a chartered advisory committee, or a subcommittee when subsequently conducting a meeting under the Act.

*Provide Additional Guidance on the Requirements Applicable to Subcommittees*

One commenter requested that the final rule provide additional guidance on the applicability of various requirements of the Act to subcommittees. Since the definition of "advisory committee" in section 3(2) of the Act specifically includes " \* \* \* any subcommittee or other subgroup thereof \* \* \* ", GSA believes all requirements of advisory committees in the Act also apply to subcommittees. Furthermore, the Act itself contains no provisions for subcommittees which differ from those applicable to a full or parent committee. Absent more specific language in the Act, additional guidance by GSA which might serve to differentiate any requirements of subcommittees from those of advisory committees would be inconsistent with the Act.

*Exclude From Coverage Under the Act Groups Convened by Agencies on an Ad Hoc Basis*

One commenter recommended that the final rule contain an exclusion from coverage under the Act for so-called *ad hoc* groups lacking formal organization, structure, or continuing existence; convened by an agency to obtain views on particular matters of immediate concern. GSA is of the opinion that such an exclusion is not appropriate since the Act itself neither defines nor specifically excludes such groups. In fact, section 6(c) of the Act, providing for the President's annual report to the Congress, requires a statement for each advisory committee, " \* \* \* of whether it is an *ad hoc* or continuing body \* \* \* ". Accordingly, GSA has not accepted the recommendation to exclude *ad hoc* groups since GSA believes that the language of section 6(c) of the Act evidences the intent of the Congress that a group is not to be excluded from coverage merely because it is convened on an *ad hoc*, or temporary basis.

*Provide That Agencies May Exercise Policy Decisions in Issuing Exclusions for One-Time Meetings*

In a comment directed toward GSA's position stated in the discussion of prior comments in the proposed rule (see 52 FR 18774, **SUPPLEMENTARY**

**INFORMATION**); a commenter suggested that the final rule should not preclude agencies from issuing an exclusion for one-time meetings. This commenter felt that GSA's opinion, that such an exclusion in the rule was not appropriate in view of the limited litigation history, should not bar agencies from issuing such exclusions. In fact, it was the opinion of this commenter that the absence of litigation history was not sufficient reason to limit management discretion.

GSA continues to believe that a one-time meeting exclusion in the final rule would be inconsistent with the Act, and does not intend to provide either a direct exclusion in § 101-6.1004 or provide that such a decision may be left to an agency, thereby implying GSA's support for such exclusions. Accordingly, GSA reiterates its opinion that in the absence of any judicial precedent to the contrary, meetings or groups which take place or meet only once should not be excluded from the Act's coverage solely on this basis.

*Eliminate the Agency Requirement to Assess Duplication of Advisory Committees on a Governmentwide Basis*

Two commenters pointed out the impracticability of requiring an agency to assess duplication of effort of already existing committees on a Governmentwide basis as opposed to an individual agency basis. Both commenters further asserted that this Governmentwide role could be performed by GSA during its own review process subsequent to the receipt of the agency's proposal in accordance with § 101-6.1007(b) of the rule.

Since GSA is responsible for reviewing and maintaining data on all advisory committees in every agency pursuant to several provisions of the Act, GSA agrees that it can effectively perform this function. GSA can also provide agencies, on request, information on other agency committees relative to potential duplication of effort issues.

GSA has rewritten the language in § 101-6.1007 (a) and (b)(2)(ii) of the final rule to reflect this concept by providing that an agency only consider the functions of a proposed committee for duplication of existing committees in the same agency.

*Include the Agency's Plan for Balanced Membership in Federal Register Notices and Charters*

One commenter suggested that an agency's plan to attain balanced membership for a proposed advisory committee, to be submitted in conjunction with the review required by

§ 101-6.1007(b) of the proposed rule, should be included in both the **Federal Register** notice of establishment and in the filed charter.

GSA has not adopted this suggestion for two reasons. First, the agency letter proposing the establishment of an advisory committee under general agency authority already contains this information, as specified by § 101-6.1007(b)(2)(iii) of the rule, and this letter would be a public record following the establishment of the advisory committee. Second, inclusion of this information in the **Federal Register** notice of establishment and the filed charter is not specifically required under sections 9 (a)(2) and (c) of the Act. For purposes of this comment, GSA has not altered § 101-6.1007(b)(1) or § 101-6.1015(a)(1) of the final rule.

*Provide Additional Guidance on Balanced Representation and Selection of Members*

One commenter was concerned that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members, and suggested that the final rule provide additional instructions for agencies to follow in these areas. GSA recognizes that the guidelines in the proposed rule are limited to the language of the Act. However, GSA believes that the provisions of section 5(c) of the Act are broad enough to allow agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive Orders, and the needs of the agency responsible for the committee. Accordingly, GSA will retain the proposed guidelines in the final rule based on the language of the Act.

*Provide Revised Recordkeeping Requirements*

Two commenters, directly or indirectly, expressed concern over the recordkeeping requirements contained in the proposed rule. One commenter observed that it was not possible for the Committee Management Officer (CMO) to ensure compliance with sections 10(b), 12(a) and 13 of the Act, as required by § 101-6.1017. Section 10(b) of the Act requires that the records of an advisory committee *shall be* available at a single location at the advisory committee or the agency to which it reports during the committee's existence. This commenter suggested that GSA relax the requirement of § 101-6.1017.

Another commenter, taking a different view, complained of the haphazard approach by agencies to the public

availability and retention of advisory committee records. This commenter recommended that the regulations be strengthened in these aspects.

For the following reasons, GSA has determined not to adopt the specific suggestions of either commenter. First, section 8(b)(2) of the Act provides that the CMO shall "assemble and maintain the reports, records, and other papers of any such committee during its existence." When sections 8(b)(2) and 10(b) are read together, it is clear that the records of an advisory committee are to be available at a single location and it is the CMO who is responsible for ensuring that this is accomplished. GSA has therefore decided against relaxing the requirements of § 101-6.1017 in the final rule.

The commenter who expressed concern over the haphazard approach to recordkeeping suggested that the final rule should: (1) Require agencies to keep committee records available for a certain period of time after a committee has terminated, and (2) address the perceived unavailability of the deliberative process privilege under the fifth exemption of the Freedom of Information Act (FOIA) to advisory committee records. For the following reasons, GSA has not adopted these comments.

First, pursuant to the National Archives and Records Administration Act of 1984, as amended, Pub. L. 98-497, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition, as well as the process for identifying records appropriate for transfer to the permanent Archives of the United States. Since the Federal Advisory Committee Act is silent on records disposition for advisory committees, we see no reason or basis for GSA to alter normal Governmentwide procedures in this area which are the responsibility of the Archivist of the United States. Second, the commenter suggested that the Government's settlement of the law suit involving records of the Attorney General's Commission on Pornography was a concession that the deliberative process privilege under the fifth exemption of FOIA does not apply to advisory committees. Since cases may be settled for a variety of reasons which do not involve a decision on the merits, GSA does not believe that the mere settlement of a matter in litigation is dispositive of the legal issues raised in the litigation. Accordingly, GSA has determined not to adopt this suggestion.

*Provide Guidance to Agencies Concerning the Applicability of the Anti-Lobbying Statute and Hatch Act to Advisory Committee Members*

With respect to § 101-6.1033 of the proposed rule, one commenter stated that unless provided by statute, agencies should not compensate advisory committee members if they provide policy advice on proposals for legislation because this compensation would violate the anti-lobbying statute. (See 18 U.S.C. 1913). The same commenter also stated that GSA should direct agencies to ensure that any members of an advisory committee who are subject to the Hatch Act (5 U.S.C. 7321-7328) are aware of their obligations under that law.

For the following reasons, GSA has adopted neither suggestion. First, GSA does not believe that the traditional activities of an advisory committee fall within the scope of the activities which 18 U.S.C. 1913 was designed to protect against. Second, the Federal Advisory Committee Act itself does not reference the Hatch Act, and there is already a body of regulations on political activities by Federal employees which has been issued by the Office of Personnel Management, 5 CFR Part 733. Also, the Special Counsel of the Merit Systems Protection Board, who has responsibilities for investigation and administrative prosecution of alleged Hatch Act violations, issues advisory opinions on Hatch Act questions. GSA sees no need to issue regulations in this area when there are already regulations in place and an administrative mechanism available through agencies with greater responsibilities in this area than GSA.

*Clarify the Procedures for Transmitting Follow-up Reports on Presidential Advisory Committee Recommendations*

One commenter requested clarification in § 101-6.1035(a) of the proposed rule on the procedures required for transmittal of follow-up reports to the Congress on the disposition of Presidential advisory committee recommendations, as required by section 6(b) of the Act. GSA has decided to retain the proposed language in the final rule without further modification at this time. GSA agrees that there has been some confusion as to whether the agency responsible for supporting the Presidential advisory committee, or GSA, should transmit the report. GSA intends to propose further guidance in a future revision to this final rule following more consultation with the affected agencies.

**Procedural and Administrative Comments**

The final rule incorporates numerous technical and procedural recommendations made by several commenters, particularly in the following sections:

Section	Modification
101-6.1007(b)(2)	Requires proposed charter with agency letter.
101-6.1007(d)(1)	Provides that date of charter filing constitutes date of establishment.
101-6.1013 (a)(3) and (c)(3)	Eliminates proposed requirement for providing copies of filing letters to GSA by adding provision for filing dates on charters; makes related change to copies of Presidential advisory committee charters furnished to the Congress.
101-6.1015 (a)(2) and (b)(1)	Provides for timely notices in the Federal Register on a calendar-day basis.
101-6.1017 (a) and (d)	Adds requirements that membership lists and closed meeting determinations be included in records.
101-6.1025(b)	Adds requirement from section 10(c) of the Act on the certification to the accuracy of minutes of meetings.
101-6.1027(b)	Adds requirement to notify Secretariat when an agency head terminates a committee.
101-6.1035(d)	Provides for location for filing copies of reports with the Library of Congress.

Other sections were also amended or revised for clarity of intent, or corrected for errors in content and format.

These sections include:

Section	Modification
101-6.1002(d)	Changes citation of "the Act" to the Government in the Sunshine Act.
101-6.1007(b)(2)(iv)	Clarifies provision for considering the selection of members with respect to attaining balance.
101-6.1009	Corrects title of section to preclude inadvertent exclusion of committees directed or authorized by law; or established by the President.
101-6.1013(b)	Corrects heading of section to preclude inadvertent exclusion of committees authorized by law.
101-6.1015(a)(1)	Clarifies provision that a Federal Register notice of establishment is not required for committees specifically directed by law or established by the President.
101-6.1017	Eliminates sentence concerning files to preclude misinterpretation.
101-6.1019	Clarifies the status and role of the Designated Federal Officer.
101-6.1027(a)(3)	Specifies the means by which the President or an agency head terminates a committee.
101-6.1029(a)(1)	Clarifies the process involving the re-chartering of committees specifically directed by law whose duration extends beyond 2 years.
101-6.1031(a)	Corrects heading of section to encompass committees authorized by law; specifies that the agency head is responsible for minor charter amendments.
101-6.1031(b)	Specifies that the agency head retains final authority for amending certain charters.

**Additional Instructions**

Pursuant to section 7(d) of the Act, the modifications contained in this final rule

with respect to uniform fair rates of pay for comparable services for members, staffs and consultants of advisory committees have been established after consultation by the Administrator with the Director, Office of Personnel Management.

#### Executive Order 12291

GSA has determined that this final rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this final rule on adequate information concerning the need for and consequences of this final rule. GSA has also determined that the potential benefits to society from this final rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

#### Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

#### List of Subjects in 41 CFR Part 101-6

Civil rights. Government property management. Grant programs. Intergovernmental relations. Surplus Government property. Relocation assistance. Real property acquisition. Federal advisory committees.

Accordingly, 41 CFR Part 101-6 is amended as follows:

#### PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR Part 101-6 continues to read as follows:

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.

2. Subpart 101-6.10 is revised to read as follows:

#### Subpart 101-6.10—Federal Advisory Committee Management

Sec.

- 101-6.1001 Scope.
- 101-6.1002 Policy.
- 101-6.1003 Definitions.
- 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.
- 101-6.1005 Authorities for establishment of advisory committees.
- 101-6.1006 [Reserved]
- 101-6.1007 Agency procedures for establishing advisory committees.

Sec.

- 101-6.1008 The role of GSA.
- 101-6.1009 Responsibilities of an agency head.
- 101-6.1010 [Reserved]
- 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.
- 101-6.1012 [Reserved]
- 101-6.1013 Charter filing requirements.
- 101-6.1014 [Reserved]
- 101-6.1015 Advisory committee information which must be published in the Federal Register.
- 101-6.1016 [Reserved]
- 101-6.1017 Responsibilities of the agency Committee Management Officer.
- 101-6.1018 [Reserved]
- 101-6.1019 Duties of the Designated Federal Officer.
- 101-6.1020 [Reserved]
- 101-6.1021 Public participation in advisory committee meetings.
- 101-6.1022 [Reserved]
- 101-6.1023 Procedures for closing an advisory committee meeting.
- 101-6.1024 [Reserved]
- 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.
- 101-6.1026 [Reserved]
- 101-6.1027 Termination of advisory committees.
- 101-6.1028 [Reserved]
- 101-6.1029 Renewal and rechartering of advisory committees.
- 101-6.1030 [Reserved]
- 101-6.1031 Amendments to advisory committee charters.
- 101-6.1032 [Reserved]
- 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.
- 101-6.1034 [Reserved]
- 101-6.1035 Reports required for advisory committees.

#### § 101-6.1001 Scope.

(a) This subpart defines the policies, establish minimum requirements, and provide guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership, activities, and cost of these advisory committees are also included.

(b) The Act and this subpart do not apply to advisory meetings or groups listed in § 101-6.1004.

#### § 101-6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in

the creation or elimination of, or change in regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations:

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government:

(c) An advisory committee shall be balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the provisions in the Government in the Sunshine Act, 5 U.S.C. 552(b).

#### § 101-6.1003 Definitions.

"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 means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

"Agency" has the same meaning as in section 551(1) of Title 5 of the United States Code.

"Committee Management Secretariat" ("Secretariat"), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

"Committee member" means an individual who serves by appointment on an advisory committee and has the

right and obligation to participate in the activities of the committee, including voting on committee recommendations.

"Presidential advisory committee" means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

"Staff member" means any individual who serves in a support capacity to an advisory committee.

"Utilized" (or "used"), as referenced in the definition of "Advisory committee" in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

**§ 101-6.1004 Examples of advisory meetings or groups not covered by the Act or this subpart.**

The following are examples of advisory meetings or groups not covered by the Act or this subpart:

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

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or

make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this Subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee or subcommittee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the advisory committee or a subcommittee of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

**§ 101-6.1005 Authorities for establishment of advisory committees.**

An advisory committee may be established in one of four ways:

(a) By law where the Congress specifically directs the President or an agency to establish it;

(b) By law where the Congress authorizes but does not direct the President or an agency to establish it. In

this instance, the responsible agency head shall follow the procedure<sup>§</sup> provided in § 101-6.1007;

(c) By the President by Executive Order; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101-6.1007.

**§ 101-6.1006 [Reserved]**

**§ 101-6.1007 Agency procedures for establishing advisory committees.**

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider the functions of similar committees in the same agency before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee of the agency, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain balanced membership. For purposes of attaining balance, agencies shall consider for membership interested persons and groups with professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This should be construed neither to limit the participation, nor compel the selection of any particular individual or group to obtain divergent points of view that are relevant to the business of the advisory committee.

(3) Subcommittees that do not function independently of the full or parent advisory committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the full or parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The date of filing constitutes the date of establishment or renewal. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

#### § 101-6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by § 101-6.1009 and § 101-6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

#### § 101-6.1009 Responsibilities of any agency head.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this subpart;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committees, consistent with the public interest and the purpose of functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee and its subcommittees;

(h) The opportunity for reasonable public participation in advisory committee activities; and

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives.

#### § 101-6.1010 [Reserved]

#### § 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this subpart and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer; and

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d) and (h) of § 101-6.1009.

#### § 101-6.1012 [Reserved]

#### § 101-6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—

(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the filed charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section,

Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter indicating the Congressional filing date, with the Secretariat.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee shall file—

(1) The charter with the Secretariat;

(2) A copy of the filed charter with the Library of Congress; and

(3) If specifically directed by law, a copy of the charter indicating its date of filing with the Secretariat, with the standing committees on the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

#### § 101-6.1014 [Reserved]

#### § 101-6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the **Federal Register** is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the **Federal Register** that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also include statements describing the nature and purpose of the committee and that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 calendar days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested by the agency for good cause. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an



advisory committee meeting a notice in the **Federal Register**, which includes:

- (i) The exact name of the advisory committee as chartered;
- (ii) The time, date, place, and purpose of the meeting;
- (iii) A summary of the agenda; and
- (iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.

(2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the **Federal Register**.

**§ 101-6.1016. [Reserved]**

**§ 101-6.1017 Responsibilities of the agency Committee Management Officer.**

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that section 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records include, but are not limited to:

- (a) A set of approved charters and membership lists for each advisory committee;
- (b) Copies of the agency's portion of the Annual Report of Federal Advisory Committees required by paragraph (b) of § 101-6.1035;
- (c) Agency guidelines on committee management operations and procedures as maintained and updated; and
- (d) Agency determinations to close advisory committee meetings as required by paragraph (c) of § 101-6.1023.

**§ 101-6.1018 [Reserved]**

**§ 101-6.1019 Duties of the Designated Federal Officer.**

The agency head or, in the case of an independent Presidential advisory committee, the Administrator shall designate a Federal officer or employee, who may be either full-time or permanent part-time, to be the Designated Federal Officer for each advisory committee and its subcommittees, who:

- (a) Must approve or call the meeting of the advisory committee;
- (b) Must approve the agenda;
- (c) Must attend the meetings;
- (d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

**§ 101-6.1020 [Reserved]**

**§ 101-6.1021 Public participation in advisory committee meetings.**

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

- (a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;
- (b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;
- (c) Any member of the public is permitted to file a written statement with the advisory committee; and
- (d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

**§ 101-6.1022 [Reserved]**

**§ 101-6.1023 Procedures for closing an advisory committee meeting.**

(a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency or, in the case of an independent Presidential advisory committee, the general counsel of the General Services Administration should review all requests to close meetings.

(c) If the agency head or, in the case of an independent Presidential advisory committee, the Administrator agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

- (d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:
  - (1) Make a copy of the determination available to the public upon request; and
  - (2) State the reasons why all or part of the meeting is closed, citing the specific exemptions used from the Government

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

**§ 101-6.1024 [Reserved]**

**§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.**

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

- (1) Time, date, and place;
- (2) A list of the following persons who were present:
  - (i) Advisory committee members and staff;
  - (ii) Agency employees; and
  - (iii) Members of the public who presented oral or written statements;
- (3) An estimated number of other members of the public present;
- (4) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(5) Copies of each report or other document received, issued, or approved by the committee.

(b) The chairperson of each advisory committee shall certify to the accuracy of all minutes of advisory committee meetings.

**§ 101-6.1026 [Reserved]**

**§ 101-6.1027 Termination of advisory committees.**

(a) Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

- (1) Its duration is otherwise provided for by law;
- (2) The President or agency head renews it prior to the end of such period; or
- (3) The President or agency head terminates it before that time by revoking or abolishing its establishment authority.

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

**§ 101-6.1028 [Reserved]**

**§ 101-3.1029 Renewal and rechartering of advisory committees.**

(a) Advisory committees specifically directed by law:

- (1) Whose duration extends beyond 2 years shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not.

terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general agency authority with the provisions of § 101-6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a committee complies with the provisions of § 101-6.1007.

#### § 101-6.1030 [Reserved]

#### § 101-6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or authorized by law; or established by the President.* The agency head shall be responsible for ensuring that any minor technical changes made to current charters are consistent with the relevant statute or Executive Order. When the Congress by law, or the President by Executive Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number or frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. The agency head retains final authority for amending the charter of an advisory committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

#### § 101-6.1032 [Reserved]

#### § 101-6.1033 Compensation and expense reimbursement of advisory committee members, staffs and consultants.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this subpart shall require an agency head to provide compensation, unless otherwise provided by law, to a member of an advisory committee. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS-15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this subpart, an agency may not fix the pay of the members of an advisory committee at a rate of pay higher than the daily equivalent of a rate for a GS-18, as provided in 5 U.S.C. 5332.

(b) *Pay for staff members of an advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's

position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(c) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart shall prevent an agency from accepting the gratuitous services of an advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of

the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing in this section shall prevent any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section shall prevent any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and

pay system in chapter 51 and chapter 53 of Title 5, United States Code.

**§ 101-6.1034 [Reserved]**

**§ 101-6.1035 Reports required for advisory committees.**

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate will prepare a follow-up report to the Congress detailing the disposition of the committee's recommendations in accordance with section 6(b) of the Act:

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. This report has been cleared in accordance with FIRMR 201-45.6 in 41 CFR Chapter 201 and assigned interagency report control number 0304-GSA-XX.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of Section 552(b) of Title 5, United States Code.

(d) Subject to section 552 of Title 5, United States Code, eight copies of each report made by an advisory committee, including any report on closed meetings as specified in paragraph (c) of this section, and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress as required by section 13 of the Act, for public inspection and use at the location specified in paragraph (a)(2) of § 101-6.1013.

Dated: November 24, 1987.

**T.C. Golden,**

*Administrator of General Services.*

[FR Doc. 87-27776 Filed 12-1-87; 8:45 am]

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**GENERAL SERVICES  
ADMINISTRATION****41 CFR Part 101-6**

(FPMR Amdt. A-48)

**Federal Advisory Committee  
Management****AGENCY:** Office of Administration, GSA.**ACTION:** Final rule.

**SUMMARY:** This final rule provides additional administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the Federal Register, GSA published an initial final rule on the management of Federal advisory committees (52 FR 45928, December 2, 1987). This new final rule revises the current rule to improve further the management and use of Federal advisory committees in the Executive Branch of the Federal Government. These revisions: (1) Clarify the guidelines applicable to achieving committee memberships which are balanced in a way that is fair and consistent with section 5(b) of the Act; (2) add new language which cross-references regulations relating to Federal conflict-of-interest statutes and standards of conduct within the final rule; (3) clarify the procedures for transmitting follow-up reports to the Congress as required by section 6(b) of the Act on Presidential advisory committee recommendations; and (4) provide that annual agency fiscal year reports to GSA shall also include information requested to carry out the annual comprehensive review required by section 7(b) of the Act. Corrections of minor, nonsubstantive errors in the text of the original final rule have also been made.

**EFFECTIVE DATE:** October 5, 1989.**ADDRESSES:** General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of the two comments received are available for public inspection in Room 6206 of the General Services Building, 18th and F Streets, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Charles F. Howton, Senior Committee Management Specialist, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202) 523-4884.

**SUPPLEMENTARY INFORMATION:****Background**

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

**Discussion of Comments**

GSA published a notice of proposed rulemaking in the Federal Register on the management of Federal advisory committees, with a 60-day comment period ending on February 28, 1988 (53 FR 53022, December 30, 1988). No Federal agency submitted substantive recommendations. Two non-Federal commenters responded in writing and were highly supportive of the proposed rule, stating, for example, that "The proposed rule provides greater guidance to agencies . . . and, that 'The changes proposed by GSA . . . represent a major improvement over the existing rules.'" Both commenters offered suggestions for improving two sections of the proposed rule, both of which pertained to provisions relating to balanced membership of advisory committees. These comments discussed three recommendations made in relation to § 101-6.1007(b)(2)(iii) and to § 101-6.1015(a)(1) of the proposed rule. The disposition of these recommendations is addressed as follows:

***Require that Agencies Include in Their Balanced Membership Plans a Description of Plans To Attain and Maintain Fairly Balanced Membership***

One commenter stated that the final rule should require agencies to describe plans to maintain fairly balanced membership, since . . . "advisory committees undergo changes from the initial composition through routine membership rotations or the resignation and replacement of members." GSA agrees that advisory committees often have changing membership composition.

However, section 14(a)(2)(A) of the Act provides that advisory committees established by agencies shall terminate after two years unless renewed by appropriate action. In § 101-6.1029(c) of the original final rule, GSA requires that an agency head who intends to renew a committee comply with the provisions of § 101-6.1007 of the final rule duplicating procedures for establishment. The

renewing agency must provide a description of its plan to attain fairly balanced membership on a biennial basis and, therefore, must address at the time of renewal any changes to the composition of the committee which may have occurred since its establishment or last renewal. GSA recognizes the merit of this suggestion, but believes that the Act and existing rule already provide for agencies to accommodate the requirement for fairly balanced membership. GSA, therefore, has not adopted this recommendation.

***Require that Agencies Consider and Select a Cross-Section of Certain Membership Categories***

The other commenter was of the opinion that the language in the proposed rule requiring that an agency consider (only) certain categories of potential members seemed to suggest that . . . "so long as an agency has 'considered' a cross-section of views and interests in the course of putting a committee together, it can ultimately select any composition it wants, including one which is one-sided and imbalanced." GSA does not believe that the guidance provided in the rule necessarily will cause agencies to adopt this perceived course with regard to membership selection, leading to the results suggested by this commenter.

In any case, § 101-6.1015(a)(1) of the new final rule will now require the agency to publish in advance in the Federal Register its description of its plan to attain fairly balanced membership, allowing for public comments which could include those offered by any interested party who might disagree that the committee will be fairly balanced. Furthermore, since the eventual selection of members for the composition an advisory committee established under this provision rests with the agency head, GSA does not believe that the final rule can compel an agency to make any particular membership selection. GSA has, therefore, not adopted this recommendation.

***Require that an Agency's Federal Register Notice of Establishment Solicit the Proposal of Specific Nominees for Inclusion on a Committee***

With regard to the Federal Register notice of establishment required by § 101-6.1015(a)(1) of the final rule, the previous commenter also suggested further that . . . "by requiring agencies to give the public an opportunity to comment on the plan for attaining fairly balanced membership, including by proposing specific nominees for

inclusion on the committee \* \* \* (that) This would be invaluable to the public and would also be of great benefit to agencies, because it would ensure that they would have the most information possible about potential committee members."

For the following reasons, GSA has not adopted this suggestion. First, a notice of establishment normally contains the name and telephone number of the agency official responsible for responding to questions from, or for receiving comments provided by, any interested person. Such comments can include proposals for specific nominees for membership on a committee. Second, notices of establishment frequently are published by an agency prior to the selection of members, and the agency would have the opportunity to consider the commenter's suggestions of potential members. Even if an agency has chosen the members of a committee prior to the publication of the notice, it can make changes to the membership at any time during the life of the committee. Third, GSA is of the opinion that the overall purpose of the Federal Register notice of establishment, which in accordance with § 101-6.1015(a)(2) of the final rule shall appear at least 15 days before the filing of the committee's charter, is to provide the public an opportunity to comment on the necessity or any other aspect of the proposed committee.

#### Additional Information

The guidelines contained in this final rule with respect to § 101-6.1008(d), wherein GSA may solicit the assistance of the Office of Management and Budget in assuring the completion of follow-up reports required by section 6(b) of the Act, were developed by GSA after consultation with that agency.

Similarly, the guidelines contained in this final rule with respect to § 101-6.1009(j), wherein an agency head shall ensure that the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government Ethics, were developed by GSA after consultation with that agency.

#### Executive Order 12291

GSA has determined that this final rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this final rule on adequate information concerning

the need for and consequences of this final rule. GSA has also determined that the potential benefits to society from this final rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least cost to society.

#### Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

#### List of Subjects in 41 CFR Part 101-6

Civil Rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, 41 CFR part 101-6 is amended as follows:

#### PART 101-6—MISCELLANEOUS REGULATIONS

1. The authority citation for 41 CFR part 101-6 continues to read as follows:

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.

2. Section 101-6.1001 is amended by revising paragraph (a) to read follows:

#### § 101-6.1001 Scope.

(a) This subpart defines the policies, establishes minimum requirements, and provides guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership activities, and cost of these advisory committees are also included.

3. Section 101-6.1002 is amended by revising paragraph (c) to read as follows:

#### § 101-6.1002 Policy.

(c) An advisory committee shall be fairly balanced in its membership in terms of the points of view represented and the functions to be performed; and

4. Section 101-6.1007 is amended by revising the introductory text of paragraph (b)(2) and paragraph (b)(2)(iii) to read as follows:

#### § 101-6.1007 Agency procedures for establishing advisory committees.

(b) \* \* \*

(2) Submit a letter and the proposed charter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(iii) A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

5. Section 101-6.1008 is amended by adding paragraph (d) to read as follows:

#### § 101-6.1008 The role of GSA.

(d) The Secretariat shall assure that follow-up reports required by section 6(b) of the Act are prepared and transmitted to the Congress as directed by the President; either by his delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated pursuant to paragraph (c) of § 101-6.1011. In performing this function, GSA may solicit the assistance of the Office of Management and Budget and other appropriate organizations, as deemed appropriate.

6. Section 101-6.1009 is amended by revising paragraphs (e), (h) and (i); and by adding paragraphs (j) and (k) to read as follows:

#### § 101-6.1009 Responsibilities of an agency head.

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(h) The opportunity for reasonable public participation in advisory committee activities;

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives;

(j) That the interests and affiliations of advisory committee members are reviewed consistent with regulations published by the Office of Government

ethics in 5 CFR parts 734, 735, and 737, and additional requirements, if any, established by the sponsoring agency pursuant to Executive Order 12574, the conflict-of-interest statutes, and the Ethics in Government Act of 1978, as amended; and

(k) Unless otherwise specified by the President, the preparation and transmittal of a follow-up report to the Congress detailing the disposition of the public recommendations of a Presidential advisory committee supported by the agency, in accordance with sections 6(b) of the Act.

7 Section 101-6.1011 is amended by revising paragraphs (a) and (b); and by adding paragraph (c) to read as follows:

**§ 101-6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.**

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer;

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (i) of § 101-6.1009; and

(c) Unless otherwise specified by the President, consult with the Administrator regarding the designation of an agency or organization responsible for implementing section 6(b) of the Act.

8. Section 101-6.1015 is amended by

revising paragraph (a)(1) to read as follows:

**§ 101-6.1015 Advisory committee information which must be published in the Federal Register.**

(a) \* \* \*

(1) A notice in the *Federal Register* is required when an advisory committee, except a committee specifically directed by law or established by the President by Executive Order, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat in accordance with paragraph (c) of § 101-6.1007, the agency shall publish a notice in the *Federal Register* that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also describe the nature and purpose of the committee and the agency's plan to attain fairly balanced membership, and shall include a statement that the committee is necessary and in the public interest.

9. Section 101-6.1035 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 101-6.1035 Reports required for advisory committees.**

(a) Within one year after a Presidential advisory committee has submitted a public report to the

President, a follow-up report will be prepared and transmitted to the Congress as determined under paragraph (d) of § 101-6.1008, detailing the disposition of the committee's recommendations in accordance with section 8(b) of the Act. Reports shall be consistent with specific instructions issued periodically by the Secretariat;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 8(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat. Agency reports shall also include information requested to enable the Secretariat to carry out the annual comprehensive review of each advisory committee as required by section 7(b) of the Act. These reports have been cleared in accordance with FIRM Subpart 201-45.6 in 41 CFR chapter 201 and assigned interagency report control number 0304-GSA-XX.

Dated: August 23, 1989.

Richard G. Austin,

Acting Administrator of General Services.

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