

**§ 7.12 Attorneys.**

(a) Attorneys at law who are admitted to practice in any State of the United States, the District of Columbia, or any Territory or possession of the United States, and who are members of the Bar in good standing, may practice before the Board unless disqualified under paragraph (b) of this section or for some other valid reason.

(b) No attorney shall be permitted to appear before the Board as attorney representing an appellant if he or she is subject to the conflict of interest provisions of chapter 11 of title 18 of the United States Code.

[44 FR 68825, Nov. 30, 1979. Redesignated at 51 FR 15319, Apr. 23, 1986]

## PART 8—ADVISORY COMMITTEE MANAGEMENT

Sec.

- 8.1 Authorities.
- 8.2 Policy.
- 8.3 Scope.
- 8.4 Definitions.
- 8.5 Creation of a committee.
- 8.6 Membership.
- 8.7 Security.
- 8.8 Chartering of committees.
- 8.9 Meetings of advisory committees.
- 8.10 Reports.
- 8.11 Records.
- 8.12 Financial records.
- 8.13 Availability of records.
- 8.14 Public inquiries.

AUTHORITY: 22 U.S.C. 2658; sec. 8(a) Federal Advisory Committee Act (Pub. L. 92-463); E.O. 11769; and OMB Circular A-63, Rev.

SOURCE: 40 FR 28606, July 8, 1975, unless otherwise noted.

**§ 8.1 Authorities.**

(a) *Regulatory authorities.* (1) These regulations are issued to implement the Federal Advisory Committee Act, Pub. L. 92-463, which became effective January 5, 1973, and Office of Management and Budget Circular No. A-63 of March 27, 1974. These regulations also are in accordance with Executive Order 11769 of February 21, 1974, and the responsibilities of the Secretary of State under 22 U.S.C. 2656.

(2) These regulations apply to any advisory committee which provides advice to the Department of State or any officer of the Department. However, to

the extent that an advisory committee is subject to particular statutory provisions, which are inconsistent with the Federal Advisory Committee Act, these regulations do not apply.

(b) *Delegated authority.* (1) The Deputy Under Secretary for Management has been designated by the Secretary (Delegation of Authority No. 125 signed November 7, 1972) to have full responsibility for the Committee Management function.

(2) The Advisory Committee Management Officer in the Management Systems Staff administers the Committee Management Program for the Deputy Under Secretary for Management.

**§ 8.2 Policy.**

(a) Advisory Committees are to be used for obtaining advice and recommendations on matters for which they were established, and may be utilized only when the information sought is not otherwise efficiently and economically available.

(b) Unless provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions and any decision taken pursuant to the advice or recommendation of an advisory committee is the responsibility of the appropriate Department officer. For the purposes of this provision, "Presidential directive" includes an executive order or executive memorandum.

(c) Meetings of advisory committees will be open to the public unless there is a compelling reason which requires nondisclosure of the subject matter in accordance with public law (5 U.S.C. 552 (b)).

**§ 8.3 Scope.**

(a) The Federal Advisory Committee Act applies to committees "established" by the Government and to committees "utilized" though not established by the Government.

(1) The President and the Congress, or the Department in consultation with the Office of Management and Budget, may *establish* a group which shall be known as an advisory committee for the purpose of obtaining advice or recommendations and which

shall be subject to the Federal Advisory Committee Act throughout its existence.

(2) Though not established by the President or the Department, a group *utilized* for the purpose of obtaining advice or recommendations must file a charter prior to a meeting, and otherwise conform to the requirements of the Act during any meetings or other contacts with the Department.

(b) One requisite for coverage of either type (established or utilized) under the Federal Advisory Committee Act is that the group can be defined as a committee as set forth in the definition of a committee, as contained in § 8.4 of these regulations, and have all or most of the following characteristics:

(1) The purpose, objective or intent is that of providing advice to any officer or organizational component of the Department;

(2) Has regular or periodic meetings;

(3) Has fixed membership (membership may include more than one full time Federal officer or employee but is not comprised wholly of Government personnel);

(4) Has an organizational structure (e.g., officers) and a staff.

(c) Where a group provides some advice to an agency, but the group's advisory function is incidental to and inseparable from other operational functions such as making or implementing decisions, the Federal Advisory Committee Act does not apply.

(d) Where the advisory function of a group is separable from its operational function, the group is subject to the Act to the extent that it operates as an advisory committee.

#### § 8.4 Definitions.

(a) The Federal Advisory Committee Act defines advisory committee as any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is—

(1) Established by statute or reorganization plan, or

(2) Established or utilized by the President, or

(3) Established or utilized by one or more agencies, in the interest of ob-

taining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except a committee composed wholly of full-time officers and employees of the Government.

(b) A formal subgroup or subcommittee independently possesses significant requisites of an advisory committee, *i.e.*, fixed membership, periodic meetings, et cetera.

(c) An informal subgroup or subcommittee is one that facilitates the activities of its advisory committee. For example, during a particular meeting, the advisory committee may divide itself into subgroups to permit simultaneous discussion of different topics.

#### § 8.5 Creation of a committee.

(a) A bureau or an office designated or desiring to sponsor an advisory committee will prepare a memorandum to the Advisory Committee Management Officer setting forth the purpose, organization (including subgroups), proposed balanced membership (see § 8.6), and a justification for the need of the particular committee.

(b) The Advisory Committee Management Officer will review the request and will make an action recommendation to the Deputy Under Secretary for Management through the Director of the Management Systems Staff.

(c) If the Deputy Under Secretary for Management approves the request, it will be submitted to the Committee Management Secretariat of the Office of Management and Budget for approval. The OMB Secretariat will usually take action within 15 days.

(d) The Advisory Committee Management Officer will advise the sponsoring bureau or office of the approval for or rejection of the request to establish the advisory committee.

(e) After OMB approval the intent to establish an advisory committee, containing a description of the committee and a statement of why it is in the public interest to create it, will be published in the FEDERAL REGISTER at least 15 days prior to filing the committee charter.

**§ 8.6 Membership.**

(a) The act requires a balanced membership in terms of the points of view represented. Members are selected for their expertise in the committee's functions and should be chosen from different vocations having knowledge in the subject.

(b) It is Department policy that members will be selected without regard to national origin, religion, race, sex, or color.

(c) The committee office will keep the Advisory Committee Management Officer currently advised of a committee's membership including vacancies.

**§ 8.7 Security.**

(a) All officers and members of a committee must have a security clearance for the subject matter level of security at which the committee functions.

(b) The responsible committee office will provide the Advisory Committee Management Officer with each member's security clearance level and date of issue.

(c) The substantive office sponsoring an advisory committee is responsible for access to and removal from official premises of classified material in accordance with the Department's security regulations (5 FAM 940 and 973). Any questions arising involving security procedures are to be presented to the Office of Security for guidance and resolution.

**§ 8.8 Chartering of committees.**

(a) *Requirements.* (1) Each advisory committee, whether established or utilized, must have a charter approved by the Deputy Under Secretary of State for Management and filed with the Advisory Committee Management Officer, the Senate Foreign Relations Committee and the House Committee on International Relations, and in the case of a Presidential advisory committee only with the Committee Management Secretariat of OMB before it can hold a meeting.

(2) Formal subgroups may be chartered separately or the requisite information set forth in the charter of the parent committee.

(3) Informal subgroups may not require a charter; however, the charter of

the parent committee must cover this aspect of its organization.

(4) The Advisory Committee Management Officer will, at the time a charter is filed, furnish a copy of the filed charter to the Library of Congress.

(b) *Contents.* Each committee charter shall contain: The official name and acronym, if any; the objectives, scope of activity, and full description of duties; the authority for such functions; the Department official (by title) to whom the committee reports; the relationship to or with other committees; the committee organization, composition of membership and officers' responsibilities; a description of the type of minutes, with their certification of accuracy, and records to be maintained; the estimated annual operating costs in dollars and man-years, and the source and authority for these resources; the period of time that will be required by the committee to accomplish its stated purpose; the estimated number and frequency of meetings; the termination date; and the filing date of the charter.

(c) *Termination and Renewal.* (1) An existing advisory committee will be automatically terminated at the end of a 2-year period (*i.e.*, date specified in charter) unless its charter is renewed, except for a statutory committee which has provisions providing to the contrary.

(2) The Deputy Under Secretary for Management will make a determination, based on a comprehensive review, whether or not a committee will be continued.

(3) The OMB Secretariat will be advised of the determination and reasons therefore 60 days prior to the charter expiration date of the committee. If the Secretariat concurs, the Advisory Committee Management Officer will publish in the FEDERAL REGISTER the Department's intent to continue those advisory committees so designated by the Deputy Under Secretary for Management.

(4) Each office responsible for an advisory committee it wishes to continue will prepare a new charter and submit it to the Advisory Committee Management Officer before October 1 biennially.

(5) No advisory committee shall meet, advise or make recommendations between the expiration date of its charter and the date its new charter is filed.

(d) *Amendments.* (1) The charter of a committee may be amended, as necessary, to reflect current information on organization, composition, activities, et cetera.

(2) A proposed amendment must be approved prior to any committee activity to which the proposed amendment relates.

#### § 8.9 Meetings of advisory committees.

(a) *Applicability.* The term “meeting” covers any situation in which all or some of the members of an advisory committee convene with a representative of the Department to transact committee business or to discuss matters related to the committee. This is applicable to an advisory committee and to its subordinate components.

(b) *Designated Department official.* (1) No advisory committee may hold a meeting in the absence of the designated full-time Department or other U.S. Government officer.

(2) The designated Department or other U.S. Government officer has the following responsibilities:

(i) Prepares or approves the agenda for all meetings;

(ii) Calls or approves in advance the calling of the meetings;

(iii) Adjourns any meeting whenever he or she determines that adjournment is in the public interest.

(c) *Notice of meetings.* (1) All advisory committee meetings, open or closed, will be publicly announced except when the President of the United States determines otherwise for reasons of national security.

(2) Notice of each such meeting shall be published in the FEDERAL REGISTER and in a Department of State Press Release at least 15 days prior to the meeting date.

(3) The responsible committee office will prepare the notice and press release, obtaining clearances as set forth in paragraphs (c)(3) (i) and (ii) of this section, and deliver to the Advisory Committee Management Officer for action:

(i) *Open meeting*—clearance within initiating office/bureau;

(ii) *Closed meeting*—clearance within initiating office/bureau including its legal adviser, and the Bureau of Public Affairs at the Bureau level.

(4) The Deputy Under Secretary for Management will determine if an advisory committee may hold a closed meeting, after a request for a meeting not open to the public is cleared by the Advisory Committee Management Officer and the Office of the Legal Adviser.

(5) After the clearances set forth in paragraphs (c) (3) and (4) of this section, a notification of meeting may also be provided by the office/bureau to any persons or organizations known to be interested in the activities of the committee.

(6) The office sponsoring the committee is responsible for meeting publishing date requirements. Overall normal processing time prior to a meeting date is 25 days for an open meeting and 47 days for a closed meeting.

(d) *Contents of notice.* (1) The content of the FEDERAL REGISTER public notice and the Department of State press release will be identical.

(2) An *open meeting* announcement will state the name of the committee; the date, time, and place of the meeting; the agenda or summary thereof; that the meeting will be open to the public; the extent to which the public may participate in the meeting, either orally or in writing; seating space available; and the name and telephone number of a committee officer to whom inquiries may be directed, including arrangements for those attending if the meeting is in a secure building.

(3) A *closed meeting* announcement will state the name of the committee, the date of meeting and the reason or reasons which justify the closing of the meeting in the public interest.

(e) *Closed meetings.* (1) An advisory committee meeting may be closed in accordance with the Federal Advisory Committee Act when the President or Department determines that the meeting is concerned with matters listed in section 552(b) of title 5, United States Code.

(2) Any determination to close all or a part of a meeting must be based upon

specific reasons. If a meeting is to cover separable matters, not all of which are within the exemptions of 5 U.S.C. 552(b), only the portion of the meeting dealing with exempt matters may be closed.

(3) When a meeting or portion of a meeting is to be closed to the public, the notice should state the reasons for the closing.

(4) The written request in accordance with paragraph (c)(4) of this section, for a determination by the Deputy Under Secretary for Management that a committee may hold a closed meeting must be submitted at least 47 days before the scheduled date of the meeting unless the Deputy Under Secretary for Management determines that a shorter period of time is necessary.

(f) *Cancelled meetings.* (1) The cancellation of a scheduled committee meeting must be publicized without delay.

(2) The responsible committee office will prepare a public notice and press release and hand-carry them to the Advisory Committee Management Officer as soon as the decision to cancel the meeting is made.

(3) The notice and press release will state the name of the advisory committee, identify the meeting that is cancelled, and state why it is cancelled. The FEDERAL REGISTER data, if known, concerning the announcement should be cited.

(g) *Rescheduled meetings.* When it is not feasible to hold an advisory committee meeting on the date that has been announced such meeting may be rescheduled for a later date by utilizing the same procedure as set forth in paragraph (f) of this section except the word rescheduled is substituted for cancelled.

(h) *Minutes.* (1) *Detailed minutes* of each advisory committee meeting, including subgroups, shall be kept.

(2) The minutes for an *open meeting* shall as a minimum cover the following items: The time and place of the meeting; a listing of advisory committee members and staff and agency employees present at the meeting; a complete summary of matters discussed and conclusions reached; copies of all reports received, issued, or approved by the advisory committee; a

description of the extent to which the meeting was open to the public; an explanation of the extent of public participation, including a list of members of the public who presented oral or written statements; and an estimate of the number of members of the public who attended the meeting.

(3) The minutes for a *closed meeting* shall include all that is required for an open meeting except those items relating to the presence of the public.

(4) The chairperson of each advisory committee shall certify the accuracy of the committee minutes.

(22 U.S.C. 2658 and 3926)

[40 FR 28606, July 8, 1975, as amended at 49 FR 16989, Apr. 23, 1984]

#### § 8.10 Reports.

(a) There are two categories of reports on advisory committees. One category is concerned with management and the other with advisory activities.

(b) Management reports include:

(1) *Comprehensive Review.* An annual review shall be conducted on a calendar year basis to determine the essentiality of the committee. The results of that Review are included in the Annual Report. The due date is *October 1*.

(2) *Annual Report.* A calendar year report which covers the status of the committee. It is a component report for the President's annual report to the Congress. The due date is *December 31*.

(3) *Report of Closed Meeting(s).* A summary of the activities and related matters discussed by a committee during a closed meeting shall be prepared annually. It is to be as informative as possible for the public consistent with section 552(b) policy of the Freedom of Information Act.

(4) *Other reports.* Other management reports that may be required, such as requests from the Office of Management and Budget, Congressional Committees, et cetera, will be submitted in accordance with the requested due date.

(c) Advisory activities reports are reports issued by the committee. They are to be submitted, when prepared in final as a committee document or published, on a current basis.

(d) All reports are submitted to the Advisory Committee Management Officer.

(1) The Comprehensive Review is signed by the responsible committee officer and approved by the bureau/office policy making officer. It is submitted in original only.

(2) The Annual Report will be prepared on Standard Forms 248 and 249 in original and one copy. (Instructions for preparation are printed on the back of the forms.)

(3) The Report of Closed Meeting(s) is signed by the committee chairman and submitted in original and 8 copies.

(4) The Advisory activities reports are submitted in 9 copies each, except Presidential advisory committee reports are submitted in 12 copies.

#### § 8.11 Records.

(a) The records of an advisory committee consist of all papers and documents which are prepared for or by and/or made available to the committee, and are maintained by the office responsible for the committee. Such records are *inter alia* agenda, drafts, minutes, notices, press releases, reports, studies, transcripts, and working papers.

(b) The Advisory Committee Management Officer maintains the Department's official records relating to the management of all committees.

#### § 8.12 Financial records.

Accurate records will be kept by the responsible committee office of all operating and salary costs of a committee. (See instruction item 17 on SF-248.)

#### § 8.13 Availability of records.

The records of a committee are to be made available upon request in accordance with the Department's regulations promulgated in accordance with the provisions of the Freedom of Information Act (40 FEDERAL REGISTER 7256-7529, February 19, 1975).

#### § 8.14 Public inquiries.

Public inquiries concerning the implementation of the Federal Advisory Committee Act and the management of the advisory committees of the Department should be addressed to the Advisory Committee Management Officer, Management Systems Staff, Department of State, Washington, DC 20520.

## PART 9—SECURITY INFORMATION REGULATIONS

### Sec.

- 9.1 General policy.
- 9.2 Implementation and oversight responsibilities.
- 9.3 Responsibility for safeguarding classified information.
- 9.4 Classification.
- 9.5 Classification designations.
- 9.6 Requirements for classification.
- 9.7 Classification authority.
- 9.8 Limitations on classification.
- 9.9 Duration of classification.
- 9.10 Derivative classification.
- 9.11 Derivative classification guides.
- 9.12 Identification and markings.
- 9.13 Transferred material.
- 9.14 Declassification and downgrading.
- 9.15 Systematic review for declassification guidelines.
- 9.16 Mandatory review.
- 9.17 Schedule of fees.
- 9.18 Access by Presidential appointees.

### APPENDIX A TO PART 9—DEFINITIONS

AUTHORITY: E.O. 12356, National Security Regulations of April 2, 1982 (47 FR 14874, April 6, 1982); Information Security Oversight Office Directive No. 1 (47 FR 27836, June 25, 1982).

SOURCE: 47 FR 55594, Dec. 10, 1982, unless otherwise noted.

#### § 9.1 General policy.

(a) E.O. 12356 (hereinafter called "the Order") recognizes that it is essential that the public be informed concerning the activities of its government, but that the interests of the United States and its citizens require that certain information concerning the national defense and foreign relations be protected against unauthorized disclosure. With this object, the Order prescribes a uniform system for classifying, declassifying, and safeguarding national security information.

(b) The purpose of these regulations is to assist in the implementation of the Order and Information Security Oversight Office (hereinafter referred to as ISOO), Directive No. 1, (hereinafter called "the Directive"), and users of these regulations may refer to the Order and Directive for additional guidance.