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## **DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE**

Office of the Secretary

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### **COMMITTEE MANAGEMENT**

Notice of Proposed Rulemaking

**DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE**

**Office of the Secretary**

**[ 45 CFR Part 11 ]**

**COMMITTEE MANAGEMENT**

**Notice of Proposed Rule Making**

Notice is hereby given of proposed Department regulations implementing the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. I et seq. and Office of Management and Budget Circular No. A-63, 39 FR 12389, April 5, 1974. The regulations will govern the formation and utilization of all advisory committees within the Department's administrative jurisdiction.

Section 11.2 contains definitions of words and terms used in later sections of the regulations and § 11.3 expresses the general policies underlying the regulation. Section 11.4 specifies procedures which must be met in establishing, terminating, and continuing advisory committees including provisions governing the chartering and reporting of all such bodies.

Section 11.5 provides rules governing meetings, public participation therein, the keeping of minutes and other records of meetings, and public access to committee records and § 11.6 establishes remedy in the event of denial of access.

Section 11.7 requires the Department to provide necessary staff and other resources for committees within its administrative jurisdiction; appropriate Department officials to maintain records fully disclosing the disposition of all funds at the disposal of a committee; and establishes guidelines for compensating committee members and staff for their services and expenses.

Section 11.8 provides a method for the submission of advisory committee reports and other documents to the Library of Congress; § 11.9 places responsibility for the conduct of an annual review and report thereon of all advisory committees on the Department Committee Management Officer; and § 11.10 provides for the designation by the Secretary of a Department employee to implement this regulation.

Prior to the final adoption of these proposed rules, consideration will be given to any data, views, or arguments, pertaining thereto which are submitted in writing on or before March 10, 1975.

Comments should be addressed to:

Department Committee Management Officer, Department of Health, Education, and Welfare, Room 4036 North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

Comments received will be available for inspection at the Department's Information Center, Room 5319 at the above address.

Dated: January 17, 1975.

CASPAR W. WEINBERGER,  
Secretary.

**PART 11—COMMITTEE MANAGEMENT**

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AUTHORITY: 86 Stat. 770, 5 U.S.C. App. I et seq. and Office of Management and Budget Circular A-63, 39 FR 12389, April 5, 1974.

**§ 11.1 Scope.**

(a) This part contains the Department's regulations implementing the Federal Advisory Committee Act.

(b) The regulations provided under this part apply to all advisory committees providing advice to the Department or any of its officials except to the extent that statutory provisions governing an advisory committee may specifically provide otherwise.

**§ 11.2 Definitions.**

(a) "Act" means the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. I et seq.).

(b) "Advisory committee," subject to exclusions described in paragraph (b) (3) of this section 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 reorganization plan; or established or utilized by the Department in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

(1) In determining whether a group is an advisory committee, the following factors will be utilized:

(i) Fixed membership including at least one person who is not a full-time Federal employee;

(ii) Establishment by a Federal official or law; or if not Federally established, the initiative for its use as an advisory body for the Federal Government comes from a Federal official rather than from a private group;

(iii) A purpose of providing advice regarding a particular subject or particular subjects;

(iv) An organizational structure (e.g.), officers and a staff;

(v) Regular or periodic meetings.

(2) The functions of an advisory committee are to be solely advisory. Where a group provides some advice to the Department, but the group's advisory function is incidental and inseparable from other (e.g., operational) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(3) Groups excluded from the effect of the provisions of this part include:

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

(ii) Any committee which is exclusively operational in nature (e.g., has functions which include making or implementing decisions, as opposed to the offerings of advice or recommendations);

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(iv) Any State or local committee or similar group established to advise State or local officials or agencies;

(v) The term "advisory committee" is not intended to include persons or organizations which have contractual relationships with the Department except in those cases where the criteria described in paragraph (b) (1) of this section are present.

(c) "Department" means the Department of Health, Education, and Welfare.

(d) "Secretary" means the Secretary of Health, Education, and Welfare, or his designee.

(e) "OMB Secretariat" is the office within the Office of Management and Budget to administer the provisions of OMB Circular A-63.

(f) "Presidential advisory committee" means an advisory committee which advises the President.

(g) "Statutory advisory committee" is one established by the Congress or required to be established by the Congress.

(h) "Non-statutory advisory committee" is one established by the President or other Federal officer, including a committee which was authorized by, but not established by or required to be established by statute.

**§ 11.3 General policies.**

(a) In interpreting this part, Department officials will be guided by the Act and the intent of Congress in enacting the Act. These considerations include:

(1) Limiting the number of advisory committees to those that are essential and terminating any committee not fulfilling its purpose;

(2) Insuring effective use of advisory committees and their recommendations, while assuring that decisionmaking authority is retained by the responsible Department officers;

(3) Providing clear goals, standards and uniform procedures with respect to creation, operation, and duration of committees;

(4) Insuring that adequate information is provided to the President, the Congress and the public regarding advisory committees, and

(5) Insuring adequate opportunities for access by the public to advisory committee meetings.

(b) Department officials will be guided by the HEW Standards of Conduct (45 CFR 73.735), the Federal Personnel Manual, and the Federal Conflict of Interest statutes (18 U.S.C. 201 et seq.), in

preventing conflicts of interest or appearance of conflicts of interest on the part of Department employees concerned with advisory committees, advisory committee members and staff, and consultants and experts concerned with advisory committees.

**§ 11.4 Guidelines for the creation and renewal of advisory committees.**

(a) Advisory committees will be established by the Department only when they are determined to be essential. Their number will be kept to the minimum necessary. They will be terminated when they are no longer carrying out the purposes for which they were established or such purposes are no longer regarded as necessary to the operation of the Department.

(b) No advisory committee shall be established or renewed unless such establishment or renewal is specifically authorized by statute, or established by statute or the President, or determined as a matter of formal record by the Secretary (after written consultation with the OMB Secretariat) to be in the public interest in connection with the performance of duties imposed on the Department by law. In seeking such determination by the Secretary, the responsible official requesting establishment or continuance of an advisory committee will make a request in writing to the Secretary. The request shall describe the nature or purpose of the proposed committee and the reasons why it is needed, including an explanation of why the functions of the proposed committee cannot be performed by Department employees, by an existing committee, or by some other means.

(c) No advisory committee shall meet or take any action until:

(1) The establishment or renewal of the committee, in appropriate instances, has been approved by the OMB Secretariat;

(2) A formal charter has been approved by the Secretary;

(3) Public announcement of its establishment or renewal has been made in the FEDERAL REGISTER, at least fifteen days prior to the filing of the committee's charter with the Congress;

(d) Copies of the charter will be provided by the Department Committee Management Officer to the appropriate standing committees of the Senate and House of Representatives and to the Library of Congress. In the case of Presidential Committees a copy of the charter will also be provided to the Office of Management and Budget. The charter shall be in a form prescribed by the Department Committee Management Officer and shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

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

(4) The official to whom the committee reports;

(5) The person responsible for providing the necessary support for the committee;

(6) 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;

(7) The estimated annual operating costs in dollars and man-years for such committee;

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

(9) The committee's termination date, if less than two years from the date of the committee's establishment; and

(10) The date the charter is approved by the Secretary.

(e) With regard to subgroups, if all of its members are members of the parent committee, requisite information may be set forth in the charter of the parent committee. In the event a subgroup includes members who are not all drawn from the parent committee, it must be separately chartered. In addition, if not incorporated in the charter of the parent committee, subgroups must be separately chartered.

(f) No advisory committee will be created if its functions could otherwise be performed effectively within the Department or by an existing committee.

(g) The membership of an advisory committee shall be fairly balanced in terms of the points of view represented and the committee's functions.

(h) No strict rule of proportional representation of the various types of groups is applicable. However, in regard to the selection of committee members, there shall be no discrimination on the basis of race, color, national origin, religion, age or sex.

(i) Appropriate safeguards shall be taken to assure that an advisory committee's advice and recommendations will not be inappropriately influenced by any special interest, but will instead be the result of the advisory committee's independent judgment.

(j) Each advisory committee shall prepare an annual report describing its membership, functions, recommendations and other actions. A copy of the report shall be submitted to the Department Committee Management Officer. This report will be made available by the Department Committee Management Officer to the public upon request.

(k) Unless specifically provided otherwise by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. For purposes of this provision, "Presidential directive" refers to an executive order, executive memorandum or an OMB directive.

(l) When an advisory committee has both advisory and operating functions and the two types of functions are separable, this part shall apply only to the advisory functions.

(m) Decisions regarding actions or policies relating to matters dealt with by a Department advisory committee

shall be made solely by Department officials.

(n) No Department advisory committee which was in existence on January 5, 1973 will continue to exist after January 5, 1975 unless renewed prior to that date by action of the Congress, the President, or the Secretary, as appropriate. In the case of a committee continued by the Congress or the President beyond its scheduled termination date, a charter must be approved by the Secretary and the requirements set forth in paragraph (c) of this section complied with before any meeting is held. To renew a committee the Secretary shall determine that such renewal is necessary and inform the OMB Secretariat of his determination and the reasons for it. Renewal determinations shall be made not more than sixty days before the scheduled date of termination. If the OMB Secretariat concurs, the Department Committee Management Officer shall notify the responsible Department officials who shall publish notice of the renewal in the FEDERAL REGISTER. A new charter shall also be approved by the Secretary.

(o) Any advisory committee which is renewed may continue for no more than a two-year period unless prior to the expiration of that period it is renewed for another two-year period in accord with the above provisions.

(p) Each advisory committee established by the President or the Secretary after January 5, 1973, shall terminate not later than two years after its establishment unless prior to that time it is renewed by appropriate action.

**§ 11.5 Operation of advisory committees.**

(a) *Meetings.* The provisions of this section shall apply to meetings of all Department advisory committees and all subgroups.

(1) *Calling of meetings and agenda.*  
(i) No advisory committee shall hold any meetings except at the call of or with the advance approval of the designated Department official.

(ii) No meeting shall be held in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership.

(iii) Each meeting of an advisory committee shall be conducted in accordance with an agenda approved by the designated Department official. Ordinarily, copies of the agenda shall be distributed to the members of the committee prior to the date of the meeting. The agenda shall list the matters to be considered at the meeting and shall indicate whether any part of the meeting is concerned with matters which are within the exemptions of the Freedom of Information Act, 5 U.S.C. 552(b).

(2) *Notice of meeting.* (i) Except when the Director of the Office of Management and Budget determines otherwise for reasons of national security, or except as otherwise provided herein, no-

## PROPOSED RULES

tice of each advisory committee meeting shall be published in the FEDERAL REGISTER at least fifteen days prior to the meeting. The fact that a meeting is closed to the public pursuant to paragraph 10(d) of Pub. L. 92-463 does not affect the foregoing requirement.

(a) The notice shall state the name of the advisory committee, the time and place of the meeting, and the purposes of the meeting and shall include a summary of the agenda.

(b) The notice shall state the extent to which the public will be permitted to attend or participate in the meeting. If the meeting will be closed to the public, the notice shall also state the reasons for closing, including appropriate citation to the Freedom of Information Act.

(c) This notice shall be provided by the Department official, or his designee, to whom the advisory committee reports. In the case of a Presidential advisory committee this notice shall be provided by the Executive Secretary of the committee.

(ii) In addition to notice in the FEDERAL REGISTER, other forms of notice shall be used to the extent practicable.

(iii) When a meeting must be called without fifteen days notice being given, the following steps shall be taken, to the extent possible:

(a) Advance notice shall be published in the FEDERAL REGISTER.

(b) Other forms of notice should be utilized whenever practicable.

(c) In the case of meeting notices published in accordance with paragraphs (a) (2) (iii) and (a) and (b) of this section, the notice must contain an explanation for the failure to give fifteen days notice.

### (3) Public participation at meetings.

(i) Subject to the exceptions described in paragraph (a) (6) of this section each advisory committee meeting shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee.

(ii) The Executive Secretary of each committee shall, with respect to any advisory committee meeting, all or part of which is open to the public, assure compliance with the following rules:

(a) Meetings shall be held at reasonable times and places that are reasonably accessible to members of the public. Whenever feasible, Government facilities shall be used and meetings held in places involving the least expense to the Department.

(b) The size of the meeting room shall be reasonable, considering such factors as the size of the advisory committee, the number of members of the public expected to seek to attend, and the resources and facilities available to the Department.

(c) Any member of the public who wishes to do so shall be permitted to file a written statement with the committee, before or after a meeting.

(d) To the extent that the time available for a meeting permits, interested persons may be permitted to present oral statements. Any person seeking to

present an oral statement to a committee may be required to obtain advance approval for such participation from the committee chairman or the committee's Executive Secretary.

(e) Participation by members of the public at committee meetings or questioning of committee members or other participants shall not be permitted except with the authorization of the committee chairman.

(4) *Minutes and transcripts of meetings.* (i) Detailed minutes shall be kept of each meeting of each advisory committee, including meetings of formal and informal subgroups. The Executive Secretary of each advisory committee shall keep the minutes or designate some person to keep the minutes. Minutes need not be kept if a verbatim transcript is made.

(ii) The minutes shall include at least the following: The time and place of the meeting; a list of advisory committee members and staff and Department employees present at the meeting; a detailed summary of matters discussed, including different positions advanced by members and conclusions reached by the committee; copies of all reports received, issued, or approved by the advisory committee; an explanation 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.

(iii) Within a reasonable time after the meeting the minutes shall be completed and submitted to the chairman of the advisory committee.

(iv) Within a reasonable time after receipt of the minutes the chairman of the advisory committee shall certify to the accuracy of the minutes and submit them to the Department official advised by the committee.

### (5) Designated Department employee.

(i) Each advisory committee meeting will be attended by a Department employee designated by the Department official responsible for the Committee. Ordinarily, the employee so designated will serve the advisory committee on a continuing basis.

(ii) No advisory committee shall conduct a meeting in the absence of the designated Department employee. If simultaneous subgroup meetings are to be held, each subgroup shall have a designated Department employee in attendance.

(iii) The designated Department employee is authorized to adjourn any advisory committee meeting, whenever he determines adjournment to be in the public interest. Inter alia, the designated Department employee shall adjourn the meeting in the event of unwarranted departure from a meeting's agenda.

(6) *Closing advisory committee meetings.* (i) Subsection 10(d) of the Act provides that the provisions concerning open meetings and public participation shall not apply to any advisory committee which the President, or the head of

the department to which the advisory committee reports, determines is concerned with matters listed in 5 U.S.C. 552(b). The Department's regulation implementing that Act is found at 45 CFR 5. Department officials shall be guided by the policies set forth in that regulation in making determinations to close meetings. In applying the provisions of 5 U.S.C. 552(b) to advisory committee meetings, liberal interpretations shall be assumed with respect to the openness of such meetings. Any determination to close a meeting (or portion) shall restrict such closing to the shortest reasonable time.

(ii) In applying the Freedom of Information Act exemptions to advisory committee meetings, the following rules shall be followed:

(a) If a meeting (or portion) will have the express purposes of discussing an existing document which is within one of the exemptions set forth in 5 U.S.C. 552(b), the meeting (or portion) may be closed to the public.

(b) Meetings closed solely on the basis that a document exempt from mandatory disclosure under exemption (5) (concerning intra-agency and inter-agency memoranda and letters) is to be discussed, may only be closed if the Secretary determines that it is essential to close such meeting (or portion) to protect the free exchange of internal views of committee members and avoid undue interference with Department or committee operation.

(c) A meeting (or portion) involving solely the internal expression of views and judgments of committee members, and not the discussion of an exempt document may be closed if a finding is made that it is essential to close the meeting (or portion) to protect the free exchange of members' views and avoid undue interference with Department or committee operations, and such views if reduced to writing would be protected from mandatory disclosure under section 552(b)(5) of Title 5 U.S.C. When feasible, the public shall be given an opportunity to present relevant information and views to the committee. Concurrence for closing such a meeting shall be obtained from the Office of the General Counsel and the Office of Public Affairs.

(d) If a meeting (or portion of a meeting) will have the express purpose of discussing a matter which is within one of the exemptions set forth in 5 U.S.C. 552(b), other than exemption (5), the meeting (or portion) may be closed to the public even though no specific exempt document is to be discussed.

(e) If the subject of a meeting will be such that paragraphs (a)(6)(ii) (a) through (d) inclusive above do not furnish a basis for closing it, the meeting shall be open to the public.

(f) When an advisory committee seeks to have a meeting (or portion) closed, the Executive Secretary shall make a request in writing for a determination by the Secretary. Such a request shall set forth the reasons why the meeting (or portion) should be closed. Whenever practical, the request shall be

submitted at least thirty days before the scheduled date of the meeting.

(g) If the Secretary finds the request to be warranted and in accord with the policy of the Act and the Freedom of Information Act, the request shall be granted. The determination made by the Secretary shall be in writing and contain specific reasons for closing the meeting (or portion). Determinations made by authorized designees must be reviewed and approved by the Office of the General Counsel and the Office of Public Affairs.

(h) If a meeting is to be held for the consideration of several 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.

(i) When part of a meeting is to be closed, the agenda shall be arranged to facilitate attendance by the public at the open portion of the meeting.

(j) When a meeting (or portion) is closed, only members of the committee, its staff, and Federal employees shall be permitted to attend.

(k) When a meeting (or portion) is closed, members of the advisory committee shall not disclose the matters discussed except to other members of the advisory committee, the staff of the advisory committee or Department employees.

(l) The Department Committee Management Officer may review, after the meeting, the appropriateness of any determination to close a meeting (or portion) and require that corrective action be taken with respect to the particular advisory committee or general procedures concerning the closing of meetings.

(m) When a meeting (or portion) is closed, and detailed minutes are not to be made available in their entirety to the public, the advisory committee shall prepare and make available to the public within 14 days of the close of the meeting a summary of its activities and related matters which are informative to the public consistent with the policy of 5 U.S.C. 552(b). Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the FEDERAL REGISTER.

(b) *Access to records.* (1) All records, reports, and other documents of each advisory committee shall be available for public inspection and copying pursuant to the Department's public information regulation. Documents referred to herein include the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda or other documents which were made available to or prepared for or by each advisory committee.

(2) Advisory committee records determined to be available for public inspection are to be made available for inspection and copying at a single location in the offices of the advisory committee or

the Department organizational component to which the advisory committee reports. The advisory committee or appropriate Department organizational component shall make available to any person copies of transcripts of committee proceedings or meetings at cost determined in accordance with the appropriate fee schedule.

(3) Advisory committee records will be made available until the advisory committee ceases to exist. Disposition of advisory committee records after the termination of the committee shall be determined by the Department in accordance with applicable regulations.

#### § 11.6 Administrative remedies.

(a) Any person whose request for access to an advisory committee document is denied may seek administrative review in accord with the Department's Freedom of Information Act regulation.

(b) Any person whose request for access to an advisory committee meeting is denied after publication of the notice of the meeting in the FEDERAL REGISTER may appeal to the appropriate official designated at 45 CFR 5.82. If the decision on appeal is adverse to the requestor concurrence of the Assistant Secretary for Public Affairs or his designee, shall be obtained.

#### § 11.7 Administration of advisory committees.

(a) The Department shall provide support services, staff, quarters, supplies, funds (including, where appropriate, funds for the publication of reports), for each advisory committee within its administrative jurisdiction unless the establishing authority provides otherwise.

(b) Maintenance of financial records and uniform pay and expense guidelines.

(1) *Maintenance of records.* The Department official to whom a committee reports will be responsible for the maintenance of records fully disclosing disposition of all funds at the disposal of the committee and the nature and extent of its activities. 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.

(2) *Rates of pay.* (i) Members of all advisory committees shall be paid at rates fixed by the Secretary. In establishing the rate of pay, consideration will be given 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 such a committee.

(ii) Staff members of an advisory committee shall be paid at an appropriate rate in the general schedule.

(iii) The pay for consultants and experts utilized by advisory committees shall be fixed after giving consideration to the qualifications required of the consultant or expert and the significance,

scope, and technical complexity of the work to be undertaken by the consultant or expert. In no case shall the rate of pay to such a consultant or expert exceed the maximum rate of pay which the Department may generally pay experts and consultants under 5 U.S.C. 3109, or other law, including the statute establishing a committee.

(3) *Expenses.* The members of an advisory committee, or the staff of an advisory committee, 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 5 U.S.C. 5703 for persons employed intermittently in the government service.

#### § 11.8 Submission of reports to Library of Congress.

(a) Subject to the provisions of the Freedom of Information Act, each advisory committee, through the Department Committee Management Officer, shall file eight copies of each of its reports with the Library of Congress.

(b) When the Department Committee Management Officer determines that it would be appropriate, background papers prepared by consultants for an advisory committee and other advisory committee documents may also be filed with the Library of Congress.

#### § 11.9 Annual review; periodic reports.

(a) The Department shall conduct an annual review of all advisory committees within its administrative jurisdiction. The Department Committee Management Officer will be responsible for coordinating this review on behalf of the Secretary and for preparing a report on it for submission to the Office of Management and Budget in accordance with OMB Circular A-63.

(b) The Department Committee Management Officer shall coordinate the preparation of the Department's Annual Report on its advisory committees which shall be submitted annually to the General Services Administration as required by Executive Order 11769 dated February 21, 1974.

(c) The OMB Secretariat or the Department Committee Management Officer may, from time to time, require any Department advisory committee to submit periodic reports regarding its operations, including such matters as might be related to public access to committee meetings and committee records and the handling of any administrative complaints concerning such matters.

#### § 11.10 Department committee management officer.

The Secretary shall designate a Department employee to implement this part and consult with the Office of Management and Budget on his behalf.

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