

Department of the Interior Departmental Manual

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Series: Departmental Management

Part 308: Committee Management

Chapter 2: Advisory Committees

Originating Office: Immediate Office of the Secretary

This chapter has been given a new release number.* No text changes were made.

308 DM 2

2.1 Purpose. This chapter provides policy and procedural information regarding the establishment, use, revision, and operating criteria for advisory committees established or utilized by the Department. The requirements specified in this chapter, and the general criteria provided in 308 DM 1, apply to all advisory committees for which this Department is responsible. OMB Circular No. A-63, Rev., dated March 27, 1974, and Appendix 1 to this chapter provide additional criteria established by the Office of Management and Budget to assure compliance with the requirements of the Federal Advisory Committee Act (Public Law 92-463).

2.2 Authority.

A. General. Except as provided by statute, regulation, or other Departmental directive, the authority to establish, appoint members, utilize, revise or abolish advisory committees is reserved by the Secretary and exercised only by him.

B. Specific Statutory Limitations. Section 9(a) of Public Law 92-463 provides that: 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 Director, [Office of Management and Budget], 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.@

C. Other Limitations. In addition to the limitations described above, advisory committee members are subject to the provisions of Executive Order 11222 (Prescribing Standards of Ethical Conduct for Government Officers and Employees) and Public Law 87-849 (an Act to strengthen the criminal laws relating to bribery, graft, and conflicts of interest). Appendix C of Chapter 735, Federal Personnel Manual, includes a discussion of the effect of Public Law 87-849, on a person serving as a member of an advisory committee, and who is by virtue of his membership an officer or employee of the United States.

2.3 Policy.

A. In addition to the general criteria in 308 DM 1.1 regarding use of committees, the policies specified in paragraph 3 of OMB Circular No. A-63, Rev., dated March 27, 1974, are applicable in the management of the Department's advisory committees.

B. Policies regarding membership of advisory committees are provided in 308 DM 8.

C. As defined in Section 9(b) of Public Law 92-463, the purpose and function of an advisory committee is to provide a means of obtaining advice or recommendations. The Departmental policy is that the function of advisory committees shall be solely that of giving advice unless otherwise provided by law. Decisions based completely or in part on such advice, shall be made only by officials of the Department or other employees of the Government.

D. Advisory committees will not be used to administer or conduct a function which is the assigned responsibility of an organizational entity of the Department.

2.4 Definitions.

A. **Advisory Committee:** As defined in Section 3(2) of Public Law 92-463; advisory committee means: Any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof..., 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 excludes...any committee which is composed wholly of full-time officers or employees of the Federal Government. @

B. **Establishment Date:** For the record keeping requirements prescribed in this chapter, the establishment date@ for an advisory committee is considered to be the date the committee charter is filed with the Congress and the Library of Congress.

2.5 General Criteria. The following criteria apply when considering the proposed establishment or use of an advisory committee:

A. Before proposing to establish or utilize an advisory committee the bureau or office head should determine that the functions cannot be performed by existing organizations or individuals within the Federal service, or by an advisory committee already in existence, or by enlarging the mission of an existing advisory committee.

B. The procedures for the creation of advisory committees, and the provisions required for their establishment and utilization should not be used for the employment of consultants, a panel of consultants, or combined employee-consultant work groups to make specific surveys or studies. However, it is recognized that in the course of developing advice and recommendations, an advisory committee may find it useful to conduct a survey or study. In such cases see 370 DM 304 for the employment of experts and consultants, and for the negotiation of contracts with experts and consultants see IPR 14-3 and 365 DM 1.

2.6 Establishment Criteria. This paragraph provides procedural guidance for advisory committees which are to be established by the Secretary.

A. Proposals. The proposal to establish a non-statutory advisory committee may be initiated by any Secretarial official or by any bureau or office which has an interest in the creation of such a committee, and should be prepared for the approval of the Secretary.

B. Format. Proposals to establish non-statutory advisory committees will include the following items:

(1) A memorandum to the Secretary requesting establishment of the committee. The memorandum must include:

- (a) description of the need and purpose of the committee,
- (b) alternative actions that were considered and reasons why each alternative was not acceptable,
- (c) a discussion of the criteria and determinations made as specified in 308 DM 2.5,
- (d) a statement regarding the rationale used to assure that the committee will represent a balanced membership,
- (e) a statement determining to the extent possible whether committee members (if any) are anticipated to be special government employees and whether their duties are subject to conflict of interest statutes requiring the filing of statements of employment and financial interests as required by 43 CFR 20.735,
- (f) any other information which would be useful for proper consideration.

(2) A proposed Federal Register Notice, to be signed by the Secretary, containing a description of the nature and purpose of the committee and a certification that the creation of the committee is in the public interest. The following form for the certification may be used:

Certification

I hereby certify that the (name of committee) is in the public interest in connection with the performance of duties imposed on the Department of the Interior by (cite statutory authority).

<hr style="width: 80%; margin: 0 auto;"/> Date	<hr style="width: 80%; margin: 0 auto;"/> Secretary of the Interior
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(3) A proposed charter for the committee containing the items prescribed in 308

DM 2.8, prepared for the signature of the Secretary.

(4) Recommendations for the appointment of named individuals to advisory committees may be included in the proposal for establishment. Inquiry letters to prospective appointees about their availability may be written by Departmental officials but only with the approval of the Secretary. Other provisions relating to appointments are specified in 308 DM 8.

C. Review Process. Proposals are forwarded to the Department Committee Management Officer, Immediate Office of the Secretary, through the Solicitor and the supervising program Assistant Secretary. The Department Committee Management Officer is responsible for all management review actions and coordination necessary for establishing advisory committees, including consultation with the Office of Management and Budget required by paragraph 6 of OMB Circular No. A-63, Rev., dated March 27, 1974.

2.7 Utilization Criteria. Any committee which is used to advise any Department official, even though it has not been established for that purpose, is subject to the requirements of this chapter.

A. A proposal to utilize an advisory committee, not established by the Department, will follow the criteria as specified in 308 DM 2.6. However, the following additional item is required to be included in the request package: A statement by an authorized official of the committee or the organization which established the committee to be utilized. The statement must include a certification that the committee will operate in accordance with existing statutes, regulations and directives for Federal advisory committees to the extent that the committee is engaged in providing advice to the Department official.

B. Officials proposing to utilize a committee for advisory purposes should assure that officials of the affected committee are apprised of all advisory committee management requirements, should the Secretary approve the utilization of the committee.

2.8 Charters. Section 9(c) of Public Law 92-463 provides that no advisory committee shall meet or take any action until a charter has been filed as prescribed in paragraphs 6c and 7c of OMB Circular No. A-63, Rev., dated March 27, 1974, and 308 DM 2.8D below. Advisory committee charters shall contain the following mandatory and optional items of information:

A. Mandatory Items. The following items of information must be included in all committee charters:

- (1) The committee's official designation;
- (2) The committee's purpose, objectives and the scope of its activity;
- (3) The period of time necessary for the committee to carry out its purposes;
- (4) The agency or official to whom the committee reports;

(5) The bureau/office responsible for providing the necessary support for the committee; (Note: Where an advisory committee reports to more than one agency, only one agency shall be responsible for support services.)

(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 of staff support for such committee; (Note: Dollar costs should include cost of man-years of staff support.)

(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. Otherwise, a statement should be included that the termination date will be two years from the date the charter is filed unless, prior to that date, it is renewed by the Secretary of the Interior. Note: Charters for advisory committees established by Act of Congress shall be filed on or before the expiration of each successive two-year period following the date of enactment of the statute establishing the committee (see section 7b(2) of OMB Circular No. A-63, Rev., dated March 27, 1974.)

(10) A description of the committee's membership (i.e., qualifications for membership, disciplines to be represented, and sufficient information and detail to assure balanced membership); size of the committee and tenure of members; and criteria for designating the chairman.

(11) If the committee is to be composed of formal subcommittees or subgroups, they should be identified and described as to their composition and specific functions. See 308 DM 2.11.

(12) The specific statutory authority for the committee. Note: The Federal Advisory Committee Act may not be cited as the statutory authority.

(13) The final entries will include the title line for the Secretary's signature, the ADate Signed:@ entry and a ADate Charter Filed:@ entry.

B. Optional Items. The following items of information should be included in advisory committee charters to the extent that they apply:

(1) Justification for dual or rotating chairmanships;

(2) Any special funding required;

(3) Allowances for committee members (compensation, travel, per diem, etc.);

(4) Any special terms of membership;

(5) Specific arrangements for staff support and costs of operating the committee.

C. Format. Advisory committee charters should be prepared as separate and distinct formal documents. Approved formal charters become permanent records of the committee, and copies are filed as required by 308 DM 2.8 and subparagraph D below

D. Filing of Charters.

(1) Upon approval of a new Department-established (non-statutory) committee, and upon renewal of such a committee, the committee's charter shall be filed with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of the Department. Paragraph 6(c) of OMB Circular No. A-63, Rev., dated March 27, 1974, also prescribes additional filing requirements.

(2) Each advisory committee established by statute or reorganization plan shall file a new charter upon its establishment and upon the expiration of each successive two-year period following the date of enactment of the statute establishing the committee. (See paragraph 7b(2) of OMB Circular No. A-63, Rev., dated March 27, 1974.) Charters for such committees shall be prepared for approval by the Secretary, and reviewed as prescribed in 308 DM 2.6C. The items required in 308 DM 2.8A shall be included in all charters for statutory committees.

(3) The head of the bureau/office providing administrative support for the committee is responsible for assuring that charters are appropriately filed. A copy of any charter which is filed with the Congressional committees will also be furnished the Department Committee Management Officer, Immediate Office of the Secretary. The date of the letter transmitting the charter will be considered the AFiling Date@ of the charter and the establishment date of the committee.

2.9 Membership. Standards for selection of advisory committee members and procedural instructions regarding the appointment of members to the Department's advisory committees are provided in 308 DM 8. Information concerning compensation of members is provided in 308 DM 2.13B.

2.10 Meetings.

A. General Criteria. All meetings of the Department's advisory committees, whether established or utilized by the Department, are subject to the provisions of Public Law 92-463. Paragraph 8 of OMB Circular No. A-63, Rev., dated March 27, 1974, contains detailed information regarding procedural steps to be taken to assure compliance with the law.

B. Notices of Meetings. A notice announcing each advisory committee meeting should be published in the Federal Register at least fifteen days before the date of the meeting. Normally, the Office of the Federal Register requires four days to process Federal Register documents, therefore meeting notices must be received at least nineteen days prior to the meeting. Other details regarding notices of meetings are provided in paragraph 8b of OMB Circular No. A-63, March 27, 1974.

C. Closed or Restricted Meetings. Details regarding closed or restricted meetings are

provided in paragraph 8d of OMB Circular No. A-63, Rev., dated March 27, 1974. Specific authority regarding advisory committee meetings has been delegated to pertinent bureau and office heads in 205 DM 16. However, any proposal to close or restrict any advisory committee meeting must be reviewed and approved by the Office of the Solicitor prior to final determination.

D. Designated Federal Employee. The head of the bureau or office that is assigned management responsibility for an advisory committee, or his designee, shall act as the Designated Federal Employee for the committee. Requirements for and actions of Designated Federal Employees are described in paragraph 8f of OMB Circular No. A-63, Rev., March 27, 1974.

2.11 **Subcommittees and Subgroups.** The provisions of Public Law 92-463 and this chapter are applicable to subcommittees and subgroups of advisory committees established or utilized by the Department.

2.12 **Management and Support.** After an advisory committee has been approved and established, the management of the committee and its administrative support is to be provided by the bureau or office designated in the committee's charter. The support to be provided includes: filing of charters, publication of Federal Register Notices, preparation of invitations to other participating Federal departments, or agencies (if any), appointment and other correspondence, schedules and agenda of meetings, record-keeping (308 DM 2.14), required reports, and any other related and required administrative matters to assure that the committee operates within statutory and Departmental requirements.

2.13 **Committee Expenses.**

A. Fiscal Requirements. Section 12(a) of Public Law 92-463 requires that appropriate records be maintained to disclose the disposition of any funds used for advisory committee operations. If payment of expenses for a committee is not expressly dealt with in a statute or other authoritative document pertaining to that committee, the following factors should be considered in any determination of the legitimacy of committee expenses:

(1) No part of the public moneys, or of any appropriation made by Congress, may be used for the payment of compensation or expenses of any commission, council, board or other similar body unless its creation is authorized by law (31 U.S.C. 673).

(2) Unless specified to the contrary by Presidential directive or statute, the department or agency establishing a committee shall be responsible for providing support services for the committee's activities. Where more than one department or agency establishes a committee, only one of those departments or agencies shall be responsible for support services at any one time.

B. Compensation of Members.

(1) Public Members. For public members, compensation, travel expenses, per

diem or expenses in lieu of per diem may be fixed by the statute or Executive Order authorizing the advisory committee. In the absence of such provisions, and for those committees established through Departmental action, the appropriate fiscal or personnel office or the Solicitor's office should be consulted as to the authority for such expenditures.

(2) Federal Employees. 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.

(3) Limitations. Paragraph 11 of OMB Circular No. A-63, Transmittal Memorandum No. 4, dated February 5, 1976, provides uniform guidelines and restrictions regarding pay and travel expenses for advisory committee members, staff, and consultants.

2.14 **Records.**

A. General. To provide a base for reports that may be required from time to time by the Office of the Secretary or outside agencies, appropriate records will be maintained for all advisory committees by the committee management officers or their designees in the responsible bureaus and offices. Records shall be maintained for advisory committees in which we participate as well as committees created or used by the Department. For committees in which we participate, only basic identification data need be kept. The records should also include all appointment correspondence.

B. Minutes of Meetings. Paragraph 8e of OMB Circular No. A-63, Rev., dated March 27, 1974, describes the records required to be maintained of advisory committee meetings.

C. Access to Committee Records. Section 10(b) of Public Law 92-463 provides that subject to 5 U.S.C. 552, 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. Appendix 1 contains guidelines regarding availability of transcripts of advisory committee meetings. The foregoing guidelines shall be used in conjunction with the Departmental regulations and directives provided in 43 CFR 2 and the Departmental Manual in determining procedural requirements for access to records of advisory committees.

2.15 **Reports.**

A. Annual Review. Paragraph 10 of OMB Circular No. A-63, Transmittal Memorandum No. 3, dated September 3, 1975, requires periodic review of the activities of advisory committees and determination of the necessity for their continuation. This review will be made annually by the Department Committee Management Officer, Immediate Office of the Secretary, in coordination with the Office of the Solicitor, and based on reports gathered from the bureau and office officials designated to maintain committee records. Specific requirements for the reports, the review, and the determination are not described here as the provisions may change from time to time.

B. Annual Committee Report. Any advisory committee established or utilized by the

Department conducting a meeting which is closed or partially closed to the public shall issue a summary report at least annually as prescribed in paragraph 8d(3) of OMB Circular No. A-63, Rev., dated March 27, 1974. Copies of minutes of meetings are not appropriate for meeting this requirement.

C. Specific Subject Reports. Copies of all reports issued, made, or approved by any Departmental advisory committee, and where appropriate, background papers prepared by consultants, are required to be maintained as prescribed in 308 DM 2.14 and filed as prescribed in 308 DM 2.15D.

D. Filing of Reports. Eight copies of each report described in 308 DM 2.15B and C above shall be filed with the Library of Congress, Exchange and Gift Division, Federal Advisory Committee Desk, Washington, D.C. 20540. A copy of any Annual Committee Report@ (308 DM 2.15B), and a copy of the letter transmitting any Specific Subject Reports@ (308 DM 2.15C), will be sent to the Committee Management Officer, Immediate Office of the Secretary.

2.16 Renewal of Advisory Committees.

A. Tenure. Public Law 92-463 provides generally that an advisory committee, established by the Department shall terminate not later than two years from the date of its formation unless the Secretary shall determine in writing, prior to the expiration of the two-year term, that the committee=s continued existence is in the public interest

B. Termination Dates. Termination dates for the Department=s advisory committees are determined as prescribed in 308 DM 2.8A(9). The termination date for any subcommittee or subgroup of an advisory committee shall be the same as that of the parent committee.

C. Renewal Action. Renewal actions for advisory committees are prescribed in paragraph 7 of OMB Circular A-63, Transmittal Memorandum No. 1, dated July 19, 1974. The Department Committee Management Officer shall be responsible for coordination with the OMB Secretariat and directing appropriate administrative actions required for renewed committees.

D. Termination or Abolishment. A committee may terminate on the date specified in its charter, or the Secretary may approve a proposal addressed to him through the Department Committee Management Officer to terminate the committee.

(1) Proposals should include recommendations for the disposition of committee records.

(2) Proposals to terminate committees established by law, Executive Order, or Presidential direction, must be referred to the Office of Management and Budget.

(3) When the proposed termination of a committee has been finally determined, letters of appreciation for service rendered (if appropriate) and notification of termination should be sent to all members.

2.17 Revisions to Charters. As specified in 308 DM 2.2A, authority rests with the Secretary

to make revisions regarding advisory committee missions and operations. However, minor or administrative revisions may be made to advisory committee charters without Secretarial approval. Such minor revisions are limited to updating items concerning costs, frequency of meetings; and other administrative aspects. All other proposed revisions to advisory committee charters must be reviewed and approved by the Secretary. Procedures for requesting such revisions are similar to those prescribed for establishing committees (308 DM 2.6). After approval of a charter revision by the Secretary, it is the responsibility of the pertinent bureau or office head to assure that copies of the revised charter are filed as prescribed in 308 DM 2.8 and 308 DM 2.8D. Note: If the original charter was published in the Federal Register, any changes thereto must also be published in the Federal Register.

308 DM 2
Appendix 1

GUIDELINES FOR SECTION 11, PUBLIC LAW 92-463

This section provides that copies of transcripts of agency proceedings or advisory committee meetings shall be made available to any person at actual cost of duplication. Section 11 does not impose a requirement that transcripts be made of agency proceedings or advisory committee meetings. Section 11 relates to the availability of transcripts which are prepared as a result of other requirements. Under section 10(b) of the Federal Advisory Committee Act, the availability of transcripts of advisory committee meetings is subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552(b).

A distinction should be made between the cost of transcription services and the cost of making copies of the transcript. The former is to be borne by the Government and not passed on to participants in the proceeding or other interested persons. In pricing the copies of transcripts, Actual cost of duplication@ should be understood to mean the price that would be paid to a commercial duplicating firm in a competitive market. This amount may therefore include overhead and profit.

Each agency should assure that transcripts are made available within a reasonable time of the proceeding or meeting. Regarding agency proceedings, the determination of timing (rush, daily, ordinary, etc.) should be based upon the agency=s needs and also the reasonable needs of parties. Consideration should be given to the requirements of a fair hearing and the nature of the proceeding.

Contractual provisions should be used whereby parties or other persons, upon advance request, may obtain copies of transcripts on a basis that will meet reasonable time requirements imposed by the proceedings. There may be situations in which a private party wishes to have a transcript even sooner than that deemed reasonable by the agency. Although the agency has no responsibility to provide such earlier copy, it may wish to provide a mechanism by which the

private party may pay the extra expense entailed for such copy (i.e., the incremental cost resulting from the expedited delivery). The agency should thereafter assure that copies can be obtained at actual cost of duplication by any person within a reasonable time.

Section 11 does not preclude agency activities in handling indigent cases.

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Rescinded