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9-00-00 **PURPOSE AND SCOPE**

A. **Purpose** • This Chapter describes the Department's advisory committee policies for the:

1. Consultation on requirements and legal interpretations;
2. Roles and Responsibilities;
3. Establishment, Amendment, Renewal/Rechartering and Termination of Federal Advisory Committees;
4. Nomination, Selection and Appointment of Federal Advisory Committee Members;
5. Conflict of Interest, Confidentiality, Procurement Integrity and Ethical Conduct for Federal Advisory Committee Members;
6. Conduct of Committee Business; **AND**
7. Reports of Federal Advisory Committees.

B. **Scope** • The provisions of this Chapter apply to:

1. All Federal advisory committees and any similar group **whether or not established by this Department**, but which is used in the same manner as a committee established by the Department; **AND**
 2. Activities of all committees assigned to the Department by higher- authority.
- C. All other guidelines, instructions, policies or General Administration Manual (GAM) provisions which are inconsistent with this Chapter are superseded.

9-00-10 AUTHORITY

- A. Federal Advisory Committee Act (5 U.S.C. Appendix 2), as amended, Exhibit 9-00-1
13. Executive Order 12838, February 10, 1993, Exhibit O-00-2
- C. OMB Circular A-135, October 5, 1994, Exhibit 9-00-3

These authorities must be exercised to assure compliance with:

- A. 41 CFR Part 101-6 [FPMR Amendment A-40] Federal Advisory Committee Management, Exhibit 9-00-04
- B. Freedom of Information Act, 5 U.S.C. 552, and the Department's implementing regulation, 45 CFR 5, Exhibit 9-00-5
- C. Privacy Act, 5 U.S.C. 522a, and the Department's implementing regulation, 45 CFR 5a, Exhibit 9-00-6
- D. Government in the Sunshine Act, 5 U.S.C. 552b, Exhibit 9-00-7
- E. HHS Standards of Conduct (45 CFR Part 73), Exhibit 9-00-8
- F. Handicapped Federal Employees, Personnel Assistants Employment Excerpt, Exhibit 9-00-9
- G. Unfunded Mandate Reform Act of 1995, Section 204 (State, Local and Tribal Input), Exhibit 9-00-10, **AND**

Other relevant statutes as applicable.

9-00-20 DEFINITIONS

- A. **Federal Advisory Committee** - Any committee, board, commission, council, conference, panel, task force or other similar group, or any subcommittee or other subgroup thereof, which is not composed entirely of full-time Federal officials or employees, established by statute, or established or utilized by the Department for the purpose of obtaining advice or recommendations on issues or policies relating to the programs, responsibilities or activities of the Department.

The term Federal Advisory Committee applies to:

- (a.) All such committees regardless of whether they are established or utilized on a standing or intermittent basis; OR
- (b.) Any subcommittee or subgroup of a Federal advisory committee.

The term Federal advisory committee does not apply to single meetings between officials of the Department and groups of outside persons.

- B. **Presidential Advisory Committee** - Any advisory committee established by Executive Order or other direction by the President, or whose members are appointed by the President to provide direct advice and counsel; or any committee designated by statute as Presidential. These committees are considered to be non-discretionary.
- C. **Non-discretionary (statutory/directed by law) Advisory Committees** - Any advisory committee established by the Congress or required to be established by the Congress.
- D. **Discretionary (non-statutory) Advisory Committees** - Any advisory committee established by any Federal officer under a general authority.
- E. **Ad Hoc Committee** - Any Federal advisory committee whose expected duration is 12 months or less. The designation "ad hoc" will be included in a committee name to indicate its short-term status.
- F. **Operational Committee** - A committee which does not provide advice or make recommendations. It is not covered by the Federal Advisory Committee Act.

9-00-30 OBJECTIVES

- A. The objectives of the I HHS advisory committee management program are to:
1. Assure compliance with Executive Orders, laws, and regulations governing or pertaining to advisory committee management;
 2. Assure conformity to the law and basic principles of sound committee management as set forth below;
 3. Limit the number of advisory committees to those that are essential and terminate any committee not fulfilling its purpose;
 4. Assure effective use of advisory committees and their recommendations, while assuring that decision-making authority is retained by the responsible Department officers;
 5. Provide clear goals, standards and procedures with respect to creation, operation, and duration of committee;
 6. Assure that adequate information is provided to the President, the Congress, and the public regarding advisory committees;
 7. Assure adequate opportunities for access by the public to advisory committee meetings;
 8. Provide requirements for advisory committee reports and their availability to the public;
AND
 9. Assure that committees are used solely for advisory functions unless specifically provided otherwise by statute.

9-00-40 CONSULTATION ON REQUIREMENTS AND LEGAL INTERPRETATIONS

- A. If you are an OS official, you should consult the Office of the General Counsel, Business and Administrative Law Division, for legal interpretation.
- B. If you are an Operation Division (OPDIV), you should consult the Office of the General Counsel for your agency for legal advice and counsel.

- C. OS Staff Division, (STAFFDIV) officials should call the DCMO on all other matters relating to Federal advisory committees. OPDIV officials should consult their respective CMOs concerning matters other than legal interpretations.

9-00-50 ROLES AND RESPONSIBILITIES

- D. **Secretary** - The Secretary's responsibilities, unless delegated, are to:
1. Establish uniform administrative guidelines and management controls for advisory committees established by the Department or within the Department's jurisdiction;
 2. Ensure that systematic information on the nature, functions, and operations of each such committee is maintained;
 3. Designate an Advisory Committee Management Officer for the Department;
 4. Approve the establishment, renewal, amendment or termination of Federal advisory committees within the Department unless:
 - a. the authority has been vested by statute in another official; **OR**
 - b. the authority has been delegated by the Secretary to other Department officials.
 5. Approve the appointment of and rates of pay in accordance with applicable statutes and directives, for Federal advisory committee members except those members who are appointed by the President. The Secretary may delegate appointment authority to Department officials;
 6. Approve a change of the beginning or ending dates of terms of Secretarial appointed members;
 7. Designate a person or persons within the Immediate Office of the Secretary, if desired, to:
 - a. Review materials requiring the decision or action of the Secretary, in order to provide policy direction and oversight on advisory committee management;

- b. Represent the Secretary in dealings with officials within and outside the Department;
 - c. Act as a liaison between the Secretary and the Department Committee Management Office or others on advisory committee matters; OR
 - d. Approve waivers of policy regarding membership, unless delegated.
- B. **Department Committee Management Officer (DCMO)** - The DCMO assists the Secretary in the management of Federal advisory committees and Presidential advisory committees within the Department's jurisdiction. The DCMO's responsibilities are to:
- 1. Develop and issue policies, guidelines, standards, and procedures for management control of HHS advisory committees, after consultation with the Secretary or designee;
 - 2. Review and prepare comments for the Secretary on proposed legislation, Executive Orders, regulations, and directives relating to Federal advisory committees;
 - 3. Review and prepare comments for the Secretary on committee management documents which require approval;
 - 4. Provide leadership, direction and assistance to HHS officials and Committee Management Officers (CMOs) on advisory committee matters;
 - 5. Ensure that necessary data of advisory committees and their members are collected, records maintained, reports prepared, documents released and files disposed of as required by statute, regulation, directive, and HHS policies;
 - 6. Coordinate, prepare and, subject to the approval of the Secretary or designee, publish rosters and reports required by statute or requested by the Secretary, Congress, the General Services Administration (GSA), and the Office of Management and Budget (OMB);
 - 7. Serve as liaison with other Federal agencies, the Congress or other outside organizations on advisory committee matters, after consultation with the Secretary or designee; AND
 - 8. The DCMO performs Committee Management Officer functions for HHS organizations outside the Public Health Service.

C. Heads of OPDIVS and STAFFDIVS. If you have a Federal advisory committee, you must:

1. Designate a **Committee Management Officer (CMO)** for the organization;
2. Assure through the **CMO** that adequate controls and **procedures** are established for advisory committees;
3. Provide staff and **other** support services for each duly **established** advisory committee;
4. Designate a permanent HHS employee to serve as **Designated Federal Official (IWO)**;
5. Assure that any advisory **committee** proposed for **establishment** or **renewal** is essential;
AND
6. Make adequate plans for a **committee's** administrative support.

D. Committee Management Officers (CMOs)

1. **CMOs** are **designated** for **each** of the **HHS** organizations listed below:
 - ... **Agency for Health Care Policy and Research (AHCPR)**
 - ... **Agency for Toxic Substances and Disease Registry (ATSDR)**
 - ... **Centers for Disease Control and Prevention (CDC)**
 - ... **Food and Drug Administration (FDA)**
 - ... **Health Resources and Services Administration (HRSA)**
 - ... **National Institutes of Health (NIH)**
 - ... **Substance Abuse and Mental Health Services Administration (SAMHSA)**
2. **The DCMO** performs **CMO** functions for advisory **committees** outside the jurisdiction of **these** organizations.
3. **OPDIV** and **STAFFDIV** **CMO's** responsibilities are to:
 - a. Advise **officials** of **their** advisory committee management **responsibilities**;
 - b. Review charter proposals and member **nominations** to **assure** compliance with applicable statutes, **regulations, directives** and **I-II-IS** policies;

- c. Carry out the following activities for advisory committees and their members as required by statute, regulation, directives, and HHS policies:
 - (1) Ensure that necessary data are collected;
 - (2) Provide input for Department reports to the DCMO for consolidation;
 - (3) Prepare or coordinate the preparation and submission of reports;
 - (4) Maintain records and reports; AN D
 - (5) Dispose of files.
 - d. Coordinate preparation of notices and ensure publication in the Federal Register and in other publications, as appropriate, for:
 - (1) Advisory committee meetings;
 - (2) Establishment of committees; AN D
 - (3) Availability of reports.
- E. **Designated Federal Official (DFO)** - The official to whom the Federal advisory committee reports must designate a permanent HHS employee to serve as DFO, e.g. Executive Director, Executive Secretary or Scientific Review Administrator. This official's responsibilities are to:
- 1. Supervise the day-to-day operations of the committee;
 - 2. Provide direction, control, and assistance to ensure that the committee operates as required and in accordance with good management practices;
 - 3. Ensure that the committee fulfills its mission as described in its charter;
 - 4. Ensure necessary staff support;
 - 5. Initiate requests for approval of proposed committee members in accordance with Paragraph 9-00-60 of this chapter;

6. Call or approve the calling of committee meetings;
 7. Formulate or retain final approval of the agenda for each meeting (other than Presidential advisory committees);
 8. Prepare or provide information for a notice of each meeting for submission to the Federal Register;
 9. Ensure preparation of materials for consideration by the committee;
 10. Attend each meeting or ensure that another full-time HHS employee attends;
 11. Ensure orientation of new members;
 12. Ensure that detailed minutes are kept of each meeting;
 13. Adjourn any meeting when adjournment is in the public interest, if the chairperson is a public member. If the DFO is not present at the meeting, the designated full-time HHS employee in attendance may also adjourn the meeting in the public interest;
 14. Coordinate the preparation of committee reports;
 15. Maintain all committee records required by statute, Presidential directives, directives or regulations of the OMB and GSA, and Department policy and regulations;
 16. Dispose of committee records in accordance with provisions of section 36 CFR 1228, Disposition of Federal Records, and procedures prescribed in the Department's General Administration Manual and by agency retention and disposal schedules; **AND**
 17. Perform such other duties as may be assigned by the head of the appropriate OPDIV, OS STAFFDIV, or agency.
- I. Federal Advisory Committee Members - Federal advisory committee members' responsibilities are to:
1. Comply with the requirements for Conflict of Interest and Standards of Conduct outlined in 9-00-80 of HHS GAM;

2. Excuse themselves from participating in any meeting (or portion) or other activity where they would:
 - a. Give advice or participate in any particular matter which might have:
 - (1) A direct or indirect effect on the interests of an organization or institution where the member is an employee, official, or consultant, **OR**
 - (2) A direct or indirect effect on financial interest of the member.

9-00-60 ESTABLISHMENT, AMENDMENT, RENEWAL/RECHARTERING AND TERMINATION OF ADVISORY COMMITTEES

- A. **Policy** - No Federal advisory committee will be established unless such establishment is specifically authorized by statute, by the President or by the Secretary. Discretionary (non-statutory) advisory committees will be established only after the Secretary has determined, after consultation with the GSA and OMB, where required, that the specific functions and duties cannot be adequately performed by existing I-HIS offices, by informal working relationships within or between departments or agencies of the Federal government, or by existing Federal advisory committees.
- B. **Authority** - The authority to establish a Federal advisory committee is reserved by the Secretary unless a statute or Presidential directive provides otherwise, or unless the Secretary has made a specific delegation of authority.
- C. **Establishment Process** - Heads of OPDIVS and OSSTAFFDIVS may request establishment of a Federal advisory committee when:
 1. There is a genuine need for advice from an advisory committee, and it is in the public interest to establish a committee to provide advice necessary to carry out the responsibilities imposed on the Department by law; AND
 2. These officials have ensured that adequate authority exists for such establishment and the authority complies with statutory requirements and restrictions.
- D. **Charter** - A charter must be filed for all Federal advisory committees subject to FACA. The charter should be prepared by the responsible official with assistance from the CMO. Committees are established for 2-year periods, unless otherwise fixed by law.

Charters should be specific and cite the purpose, authority, functions, structure, meetings, compensation, annual cost estimates, reports, and termination date. A committee may not meet until the charter has been signed by the appropriate authority and filed with the appropriate oversight committee in the U.S. Senate, House of Representatives and Library of Congress.

- E. **Charter Amendments and Renewal/Rechartering** - The appropriate official must approve charter amendments, the renewal of discretionary (non-statutory) committees, and rechartering of non-discretionary (statutory) committees.
- F. **Termination of Committees** - Federal advisory committees whose duration is not otherwise fixed by law or Presidential directive will terminate:
1. Two years after the date of establishment unless approved for renewal after consultation (if necessary) with the Administrator, GSA; OR
 2. Upon the expiration date set forth in the charter, unless approved for renewal after consultation (if necessary) with the Administrator, GSA; OR
 3. When its mission has been accomplished, even though the expected period of duration has not expired; OR
 4. When the function(s) assigned to the committee can be handled by another committee.

9-00-70 NOMINATION, SELECTION AND APPOINTMENT OF FEDERAL ADVISORY COMMITTEE MEMBERS

- A. **Appointing Authorities** - The President appoints members to committees which are established by Presidential directive. The Secretary appoints members to all other HHS advisory committees unless specific statutory or delegated authority has been made to other HHS officials to do so.
13. **Policy** -
1. Persons are nominated, selected and appointed to HHS Federal advisory committees based on their qualifications to contribute to the accomplishment of the committee's objectives.

2. The authority which establishes the committee or the committee charter may spell out the qualification requirements for specific members or for the entire committee membership.
3. Department policy provides that committee membership will be:
 - a. Fairly balanced in terms of the points of view represented and the functions to be performed;
 - b. Composed of as equitable geographic, ethnic and gender representation so long as the effectiveness of the committee is not impaired;
 - c. Selected without discrimination on the basis of age, ethnicity, gender, sexual orientation, disability or cultural, religious, or socioeconomic status; **AND**
 - d. Appointed in such a manner as to assure an orderly rotation of the members' terms.
4. It is Department policy to avoid excessive individual service on advisory committees and multiple committee memberships. Specifically, this policy provides that a Federal advisory committee member will not:
 - a. Serve continuously as a member of any single advisory committee for more than four years;
 - b. Serve for more than eight combined years within a period of 12 years on one or more committees within an agency;
 - c. Serve on more than one committee within an agency at the same time; **OR**
 - d. Serve on the same committee at the same time with another individual who is affiliated with a particular non-Federal organization or institution in the same city excluding designated multi-campus organizations and State systems.

**9-00-80 CONFLICT OF INTEREST, CONFIDENTIALITY, PROCUREMENT
INTEGRITY AND ETHICAL CONDUCT FOR ADVISORY COMMITTEE MEMBERS**

- A. **Policy** - The Department's policy is to avoid conflicts of interest (COI) and the appearance of such conflicts, in the selection and use of individuals serving as members of the Department's advisory committees subject to the Federal Advisory Committee Act.

Such committees shall also be operated in such a manner as to preclude the potential for violations of procurement integrity regulations and applicable regulations governing ethical behavior. Required records shall be maintained regarding financial and organizational interests of such committee members, and the appropriate steps shall be taken to handle any potential conflict or appearance situation.

- B. Authority and Responsibility** - Regarding conflict of interest and ethics regulations, the Office of Government Ethics (OGE) has the authority to issue such regulations and provide interpretations. Regarding Procurement Integrity laws, the Business and Administrative Law division of the HHS Office of General Counsel has the lead authority to manage contract review activities.
1. Within the Department, the authority to serve as the Designated Agency Ethics Official (DAEO) has been delegated to the Special Counsel for Ethics, Office of Special Counsel for Ethics (OSCE) and this individual has the responsibility and the authority to manage the ethics program within the Department.
 2. Heads of OPDIVS and OS STAFFDIVS are responsible for providing a Deputy Ethics Counselor (DEC), with authority delegated by the DAEO, to manage the ethics program within the OPDIV/STAFFDIV. This individual is responsible for establishing and operating an effective ethics program in which the Designated Federal Official (DFO) performs the day-to-day management of COI functions for specific committees and their members.
 3. The DFO, or appropriate permanent specialized staff in each HHS agency, shall be responsible for:
 - a. Providing new committee members with orientation and training regarding conflicts of interest, ethical standards of conduct, and procurement integrity;
 - b. Obtaining and reviewing confidential financial or other pertinent information to prevent potential conflicts of interest or appearances of conflicts, as required; **AND**
 - c. Actively monitoring members' participation in meetings and precluding members from participation in matters, as appropriate, to avoid potential conflicts of interest, appearances of conflict of interest, violations of procurement integrity regulations or applicable ethics regulations.

C. Committee Members Who Serve as Special Government Employees (SGEs) -

1. **Policy** - SGEs shall comply with Federal conflict of interest laws and regulations and with regulations governing confidentiality, procurement integrity anti ethical behavior.
 - a. The Standards of Ethical Conduct for Employees of the Executive Branch provide the relevant definitions and delineate the standards of ethical behavior required of SGE advisory committee members.
 - b. SGE members of advisory councils, boards and committees are governed by the criminal Conflict of Interest Statutes (18 U.S.C. §201-208), Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), the HHS Standards of Conduct and regulations pertaining to protection of confidential information and procurement integrity.

D. Authority and Responsibility - In addition to the responsibilities listed in 2C. above, the DFO shall be responsible for:

1. Providing annual ethics training for SGEs, as defined by the DAEO and DEC;
2. Initiating, justifying, and obtaining approval for individual recusals, waivers or authorizations regarding participation in advisory committee matters, as appropriate;
AND
3. **Preparing** reports on SGEs, including the Annual Ethics Report (financial disclosure forms filed, annual ethics training provided, conflict of interest waivers granted), and other documentation, as required.

9-00-90 CONDUCT OF COMMITTEE BUSINESS

A. Limitations - No Federal advisory committee will:

1. Hold any meeting except at the call of or with the advance approval of the designated Federal official (DFO), and with an agenda approved by such official (other than Presidential advisory committee) unless the Secretary or designee determines it is in the public interest to permit such meetings;

2. Hold any meeting in the absence of a quorum. Unless otherwise established in the charter of the committee, a quorum shall consist of a majority (one more than one-half) of the committee's authorized membership, including ex officio members. In addition, ex officio members shall have full voting rights, unless otherwise prohibited by statute. The same rules will apply to sub-committees which are composed entirely or partly of members of the parent committee;
3. Hold any meeting in the absence of the DFO. If simultaneous subgroup meetings are to be held, each subgroup must have a DFO in attendance; AND
4. Make recommendations or give advice with respect to matters not considered by the committee in regular sessions or not within the scope of its functions as set forth in the charter.

B. Committee Meetings -

1. Selection of Meeting Site Locations - Meetings must be held at reasonable times and at places that are reasonably accessible to members of the public, including accommodations for physically challenged individuals, if requested. Whenever feasible, Government facilities must be used and meetings held in places involving the least expense to the Department.
2. Public Attendance and Participation at Meetings -
 - a. Any interested person may attend, as an observer, any meeting or portion thereof which is open to the public;
 - b. Questioning by the public of committee members or other participants will not be permitted, except with the approval of the committee chairperson;
 - c. Persons desiring to submit statements should be advised to address them to the DFO of the committee. Committee members must be given copies of all written statements submitted by interested individuals; AND
 - d. The DFO has authority to adjourn any meeting not considered to be in the public interest, such as an unwarranted departure from the agenda.
3. Notice and Cancellation of Committee Meetings -

- a. The DFO is responsible for ensuring that notices of all committee and subcommittee meetings are submitted to the Federal Register in sufficient time to permit publication at least 15 calendar days before each meeting. In the event that 15 days' notice is not given, the reasons must be made a part of the meeting notice;
 - b. Notices must include the name of the committee, the date, time, and place of the meeting; a summary of the agenda; a statement that the meeting is open to the public or, if the meeting or any portion thereof is closed, a statement to that effect citing the specific exemptions of the Government in the Sunshine Act as the basis for closing all or part of the meeting. In addition, the notice must contain the name, address and telephone number of the contact person from whom a list of committee members and summaries of meetings may be obtained; AND
 - c. Cancellation of a meeting previously published must be submitted to the Federal Register in time for public notice.
4. Closing of Committee Meetings to the Public - All meetings shall be open except as provided in the FACA, as amended by the Government in the Sunshine Act.
 5. Committee Meeting Records -
 - a. Detailed minutes shall be kept of each advisory committee meeting, including meetings of subgroups;
 - b. 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 must 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. 552b. Notice of the availability of such a summary shall be incorporated in the notice of the meeting published in the Federal Register.

9-00-100 REPORTS OF FEDERAL ADVISORY COMMITTEES

- A. President's Annual Report to the Congress - The DCMO will coordinate the Department's submission of the President's Annual Report to Congress on Federal Advisory Committees, as required by section 6(c) of the FACA. Each committee in existence (including those that terminated) during the preceding fiscal year must report on the activities, status, and changes in its composition.

- B. Annual Report of Closed Meetings - The CMO of each OPDIV, OS STAFFDIV or agency must ensure that all Federal advisory committees issue a written annual report as required by section 10(d) of the FACA. The report must include:
1. The function of the committee;
 2. A list of members and their business addresses;
 3. The dates and places of meetings;
 4. A summary of the committee's activities and recommendations during the preceding year; AND
 5. Notice of availability of such reports must be published in the Federal Register no later than 60 days after completion. Within this period, a copy of each report will be provided directly to the Library of Congress.
- C. Annual Report Required by Section 1114(f) of the Social Security Act - The DCMO will coordinate the preparation of the annual reports on Federal advisory committees created to advise the Secretary in the discharge of the Department's responsibilities under the Social Security Act. The report requires a list of all such committees, the names and addresses of members, and a summary of activities during the preceding year.
- D. Report on Presidential Advisory Committee Recommendations - The CMO of each OPDIV, OS STAFFDIV or agency will develop, compile and submit to the DCMO the information necessary to report to GSA as required by section 6(b) of FACA: Within one year after a Presidential advisory committee has submitted a public report to the President, the President or designee (Administrator, GSA) shall make a report to Congress stating either the proposals for action or reasons for inaction, with respect to the recommendations contained in the public report.
- E. Dissemination of Reports - All of the above reports will be reviewed by the Secretary or designee before they are printed for dissemination or delivered to another Federal agency for dissemination.



Federal Advisory Committee Act

Public Law 92-463
92nd Congress, H. R. 4383
October 6, 1972

An Act

86 STAT. 770

To authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Advisory Committee Act".

Federal Advisory Committee Act.

FINDINGS AND PURPOSES

Sec. 2. (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.

DEFINITIONS

Sec. 3. For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(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 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, United States Code.

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

APPLICABILITY

Sec. 4. (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.

Restrictions. (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.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

Review. Sec. 5. (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.

Guidelines. (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

October 6, 1972

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(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.

RESPONSIBILITIES OF THE PRESIDENT

Sec. 6. (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. Report to Congress.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar 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. Annual report to Congress.
Exclusion.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Sec. 7. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees. Committee Management Secretariat.
Establishment.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine-- Review.

- (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 Director 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 Director'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 Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection. Recommendations to President and Congress.
Agency cooperation.

86 STAT. 773

Performance
guidelines.

(c) The Director 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 Director 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.

Uniform pay
guidelines.

(d) (1) The Director, after study and consultation with the Civil Service Commission, 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; and

Travel expenses.

(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.

80 Stat. 499;
83 Stat. 190.

(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, 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.

Expense recom-
mendations.

(e) The Director 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.

RESPONSIBILITIES OF AGENCY HEADS

Sec. 8. (R) 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 Director 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.

Advisory Com-
mittee Manage-
ment Control
Officer, design-
ation.

(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

81 Stat. 54.

(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.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

Sec. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President : or

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86 STAT. 774
Publication in
Federal Register.

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, 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 Director, 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:

Charter,
filing.

Contents.

- (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.

Corp.

ADVISORY COMMITTEE PROCEDURES

Sec. 10. (a) (1) Each advisory committee meeting shall be open to the public.

Meetings.

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

Notice.
Publication in
Federal Register.
Regulations.

(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 Director 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.

51 Stat. 54.

(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

Minutes.

86 Stat. 775

Certification.

advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

81 Stat. 54.

Annual report.

(d) Subsections (a) (1) and (A) (3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552 (b) 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.

Federal officer or employee, attendance.

(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.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (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.

"Agency proceeding."
80 Stat. 392.

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

FISCAL AND ADMINISTRATIVE PROVISIONS

Recordkeeping.

SEC. 13. (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.

Audit.

Agency support services.

(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.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

Reports and background papers.

Depository.

SEC. 13. Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each 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.

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86 STAT. 776

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. (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). Renewal.

(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. Continuation.

EFFECTIVE DATE

SEC. 15. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

Approved October 6, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-1017 (Ctm. on Government Operations) and No. 92-1403 (Cam. of Conference).

SENATE REPORT No. 92-1096 accompanying S. 3529 (Comm. on Government Operations).

CONGRESSIONAL RECORD, VOL. 118 (1972):

May 9, considered and passed House.
Sept. 22, considered and passed Senate, amended,
in lieu of S. 3529.
Sept. 19, Senate agreed to conference report.
Sept. 20, House agreed to conference report.

THE FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS OF 1997

One Hundred **Fifth** Congress of the United States of America

AT **THE FIRST SESSION**

Begun and held at the City of Washington on **Tuesday, the seventh** day of **January**, one thousand **nine** hundred and **ninety-seven**, An Act to amend the Federal Advisory Committee Act to clarify public disclosure requirements that are applicable to the National Academy of Sciences and the National Academy of Public Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. This Act may be cited as the Federal Advisory Committee Act Amendments of 1997.

SEC. 2. AMENDMENTS TO THE FEDERAL ADVISORY COMMITTEE ACT.

(a) **EXCLUSIONS FROM DEFINITION.** Section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended in the matter following subparagraph (C), by striking such term 'excludes' and all that follows through the period and inserting the following: such term 'excludes' (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(b) **REQUIREMENTS RELATING TO THE NATIONAL ACADEMY OF SCIENCES AND THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION.** Such Act is further amended by redesignating section 15 as section 16 and inserting after section 14 the following new section:

REQUIREMENTS RELATING TO THE NATIONAL ACADEMY OF SCIENCES AND THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

SEC. 15. (a) IN GENERAL. An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by USC of a committee created by that academy under an agreement with an agency, unless--

- (1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;
- (2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and
- (3) in developing the advice or recommendation, the academy complied with--
{:%% subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of

(2) **RETROACTIVE EFFECT-** Subsection (a) and the amendments made by subsection (a) shall be effective as of October 6, 1972, except that they shall not apply with respect to or otherwise affect any particular advice or recommendations that are subject to any judicial action filed before the date of the enactment of this Act.

SEC. 3. REPORT.

Not later than 1 year after the date of the enactment of this Act, the Administrator of General Services shall submit a report to the Congress on the implementation of and compliance with the amendments made by this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Executive Order 12838 of February 10, 1993

Termination anti Limitation of Federal Advisory Committees

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

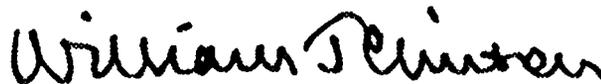
Section 1. Each executive department and agency shall terminate not less than one-third of the advisory committees subject to FACA (and not required by statute) that are sponsored by the department or agency by no later than the end of fiscal year 1993.

Sec. 2. Within 90 days, the head of each executive department and agency shall submit to the Director of the Office of Management and Budget, for each advisory committee subject to FACA sponsored by that department or agency: (a) a detailed justification for the continued existence, or a brief description in support of the termination, of any advisory committee not required by statute; and (b) a detailed recommendation for submission to the Congress to continue or to terminate any advisory committee required by statute. The Administrator of General Services shall prepare such justifications and recommendations for each advisory committee subject to FACA and not sponsored by a department or agency.

Sec. 3. Effective immediately, executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head (a) finds that compelling considerations necessitate creation of such a committee, and (b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests. These requirements shall apply in addition to the notice and other approval requirements of FACA.

Sec. 4. The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

Sec. 5. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.



THE WHITE HOUSE,
February 10, 1993.



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

October 5, 1994

CIRCULAR NO. A-135

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Management of Federal Advisory Committees

1. Purpose. This Circular provides guidance and instructions on the management of Federal advisory committees and requires Executive Departments and agencies to establish a committee planning and review process.

2. Background. On February 7, 1993, the President signed Executive Order 12939, "Termination and Limitation of Federal Advisory Committees," which requires each Executive Department and agency to reduce the number of discretionary committees by one-third. New discretionary advisory committees are subject to review and approval by the Director of OMB.

On June 28, 1994, the Vice President issued a memorandum reiterating Administration policy regarding the maintenance of the reduction targets mandated by Executive Order 12838, as well as new guidance relating to Executive Branch action on advisory committees proposed by statute. The Vice President's memorandum also called for additional savings in committee costs over and above those achieved under E.O. 12838, as recommended by the National Performance Review (NPR),

3. Policy. The Administration is committed to maintaining advisory committees as a way of ensuring public and expert involvement and advice in Federal decision-making. At the same time, the number and cost of advisory committees must be carefully managed. Advisory committees should get down to the public's business, complete it and then go out of business.

Agencies should review and eliminate advisory committees that are obsolete, duplicative, low priority or serve a special, rather than national interest. New advisory committees should be established only when essential to the attainment of clearly defined Executive Branch priorities, as defined by E.O. 12838, and when they will not exceed an agency's advisory committee ceiling as established by the Executive order's reduction requirement.

The Administration will generally not support the establishment of new statutory committees or legislative language that exempts advisory committees from coverage under the Federal Advisory Committee Act (FACA). In addition, each agency should make a concerted effort to work with its Congressional oversight

committees to reduce the number of existing committees required by statute.

4. **Definitions.** For purposes of **this** Circular, definitions for "**advisory committee,**" "**agency,**" and other terms are the same as defined in **GSA's** implementation regulations for the Federal Advisory Committee Act (**41 CFR Part 101-6**). In addition:

A "non--discretionary advisory committee" is an advisory committee either mandated by Presidential directive **or** by statute and is **subject** to the Federal Advisory Committee Act. A "non-discretionary advisory committee" mandated by statute is: (1) specifically identified by name, specific purpose or function in statute, and (2) a committee whose creation or termination is beyond an agency's legal discretion. Advisory committees referenced by general (non-specific) authorizing language or committee report **language** will not be considered "non-discretionary." In addition, where a statute requires an advisory committee as defined above, but **allows** for one or more committees, only one committee shall be considered to be required by statute.

5. **Required Action.** **Each** Executive Department and agency shall report to OMB annually on the **results** of its efforts to maintain discretionary committee levels required by E.O. 12838, and other actions to reduce its inventory of non-discretionary statutory **committees.** **This** submission **will** be used by the Director of OMB as the basis for approving requests to establish new committees.

(I)' Agency advisory committee management plans **will** be submitted to OMB and GSA each year and include:

(a) performance measures used to evaluate each committee's progress in achieving its stated goals or **mission;**

(b) plans for the establishment of any new advisory committees during the coming fiscal year;

(c) a summary of actions taken to ensure the advisory committee reduction goal. is maintained; and

(d) the results of a review of non--discretionary advisory committees and plans to continue, terminate or merge these groups through legislation. 'This will include a **list** of those committees established by specific statutory authority during **the** current fiscal year regardless of their coverage under the Federal Advisory **Committee** Act.

(2) With regard to non-discretionary advisory committees mandated by statute, the agency will notify GSA of plans to establish such committees prior to filing the charter required by section 9(c) of the Federal Advisory Committee Act. Such notification will provide GSA with at least 10 working days to review the proposed committee charter and advise the agency of its recommendations.

6. OMB Responsibilities-. The Office of Management and Budget shall:

(a) review and approve agency advisory committee management plans pursuant to Section 5 and in accordance with the Executive order;

(b) set advisory committee ceilings for: each agency within the government-wide advisory committee reduction goal established by the Executive order;

(c) work with agencies to control the establishment of statutory advisory committees and develop legislation to terminate those non-discretionary committees which are no longer necessary;

(d) ensure that relevant legislation is reviewed consistent with OMB Circular A-19; and

(e) ensure agencies meet the cost reduction target recommended by the Vice President's National Performance Review.

7. GSA Responsibilities. The General Services Administration shall (in addition to its responsibilities under the FACA and as an agency under Section 5 above):

(a) prepare required justifications and recommendations specified in Section 5 for each advisory committee subject to the FACA and not sponsored by another department or agency;

(b) assist OMB in its management and oversight of advisory committees, including tracking agency compliance with the reduction goals specified by E.O. 1.2838;

(c) develop guidance, specific reporting formats and instructions to implement Section 5 of this Circular. To the extent practicable, new reporting requirements will be limited to information not readily available through existing sources of data;

(d) provide recommendations to OMB and each agency regarding the continuance or management of advisory committees as required by Section 7(b) of FACA, which mandates an annual comprehensive review of all advisory committees; and

(e) implement section 5(2) of this Circular.

8. Information Contact. Questions about this' Circular should be addressed to the Federal Services Branch (202) 395-5090. Questions concerning the role of GSA should be directed to the Committee Management Secretariat (202) 273-3556.

9. Termination Review Date. This Circular will be subject to review two years after issuance.

1.0. Effective Date. This Circular is effective upon issuance.



Alice M. Rivlin
Acting Director

**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 ties 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 guidelines 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

full 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 procedures 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]

§ 101-6.1029 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]

BILLING CODE 6820-34-M

**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 8206 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 81445, 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, 1989 (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 (j) 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 6(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 6(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 FIRMR 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.
[FR Doc. 89-23455 Filed 10-4-89; 8:45 am]
BILLING CODE: 6820-34-M

The Freedom of Information Act

5 U.S.C. Section 552 (As Amended)

Sec. 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

- (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
- (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
- (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
- (E) each amendment, revision, or repeal of the foregoing. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
- (C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or as precedent by an agency against a party other than an agency only if-

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that--

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section--

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is

on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) *[Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.]*
Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

1. Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

1. determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request--

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are--

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and--

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its

pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include--

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

H.R.3802

**One Hundred Fourth Congress of the United States of America
AT THE SECOND SESSION**

**Begun and held at the City of Washington on Wednesday, the third day of January,
one thousand nine hundred and ninety-six**

An Act

To amend section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, to provide for public access to information in an electronic format, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the Electronic Freedom of Information Act Amendments of 1996.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS-** The Congress finds that---

- (1) the purpose of section 552 of title 5, United States Code, popularly known as the Freedom of Information Act, is to require agencies of the Federal Government to make certain agency information available for public inspection and copying and to establish and enable enforcement of the right of any person to obtain access to the records of such agencies, subject to statutory exemptions, for any public or private purpose;
- (2) since the enactment of the Freedom of Information Act in 1966, and the amendments enacted in 1974 and 1986, the Freedom of Information Act has been a valuable means through which any person can learn how the Federal Government operates;
- (3) the Freedom of Information Act has led to the disclosure of waste, fraud, abuse, and wrongdoing in the Federal Government;
- (4) the Freedom of Information Act has led to the identification of unsafe consumer products, harmful drugs, and serious health hazards;
- (5) Government agencies increasingly use computers to conduct agency business and to store publicly valuable agency records and information; and
- (6) Government agencies should use new technology to enhance public access to agency records and information.

(b) **PURPOSES-** The purposes of this Act are to--

- (1) foster democracy by ensuring public access to agency records and information;
- (2) improve public access to agency records and information;
- (3) ensure agency compliance with statutory time limits; and
- (4) maximize the usefulness of agency records and information collected, maintained, used, retained, and disseminated by the Federal Government.

SEC. 3. APPLICATION OF REQUIREMENTS TO ELECTRONIC FORMAT INFORMATION.

Section 552(f) of title 5, United States Code, is amended to read as follows:

(f) For purposes of this section, the term--

- (1) agency as defined in section 551(1) of this title includes any executive department, military department, government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and
- (2) record and any other term used in this section in reference to information includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format..

SEC. 4. INFORMATION MADE AVAILABLE IN ELECTRONIC FORMAT AND INDEXATION OF RECORDS.

Section 552(a)(2) of title 5, United States Code, is amended--

- (1) in the second sentence, by striking or staff manual or instruction and inserting staff manual, instruction, or copies of records referred to in subparagraph (D);
- (2) by inserting before the period at the end of the third sentence the following: , and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made;
- (3) by inserting after the third sentence the following: If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.;
- (4) in subparagraph (B), by striking and after the semicolon;
- (5) by inserting after subparagraph (C) the following:

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);;
- (6) by inserting after the fifth sentence the following: Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999.; and
- (7) by inserting after the first sentence the following: For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means..

SEC. 5. HONORING FORM OR FORMAT REQUESTS.

Section 552(a)(3) of title 5, United States Code, is amended--

- (1) by inserting (A) after (3);
- (2) by striking (A) the second place it appears and inserting (i);
- (3) by striking (B) and inserting (ii); and
- (4) by adding at the end the following new subparagraphs:

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term search means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request..

SEC. 6. STANDARD FOR JUDICIAL REVIEW.

Section 552(a)(4)(B) of title 5, United States Code, is amended by adding at the end the following new sentence: In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to the affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B)..

SEC. 7. ENSURING TIMELY RESPONSE TO REQUESTS.

(a) MULTITRACK PROCESSING- Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following new subparagraph:

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence..

(b) UNUSUAL CIRCUMSTANCES- Section 552(a)(6)(B) of title 5, United States Code, is amended to read as follows:

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, unusual circumstances means, but only to the extent reasonably necessary to the proper processing of the particular requests---

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated..

(c) EXCEPTIONAL CIRCUMSTANCES- Section 552(a)(6)(C) of title 5, United States Code, is amended by inserting (i) after (C), and by adding at the end the following new clauses:

(i) For purposes of this subparagraph, the term exceptional circumstances does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(ii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (i) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph..

SEC. 8. TIME PERIOD FOR AGENCY CONSIDERATION OF REQUESTS.

(a) EXPEDITED PROCESSING- Section 552(a)(6) of title 5, United States Code (as amended by section 7(a) of this Act), is further amended by adding at the end the following new subparagraph:

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records--

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure--

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term compelling need means--

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such persons knowledge and belief..

(b) EXTENSION OF GENERAL PERIOD FOR DETERMINING WHETHER TO COMPLY WITH A REQUEST- Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by striking ten days and inserting 20 days.

(c) ESTIMATION OF MATTER DENIED- Section 552(a)(6) of title 5, United States Code (as amended by section 7 of this Act and subsection (a) of this section), is further amended by adding at the end the following new subparagraph:

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made..

SEC. 9. COMPUTER REDACTION.

Section 552(b) of title 5, United States Code, is amended in the matter following paragraph (9) by inserting after the period the following: The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made..

SEC. 10. REPORT TO THE CONGRESS.

Section 552(e) of title 5, United States Code, is amended to read as follows:

e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include--

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason

for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests;

(F) the total amount of fees collected by the agency for processing requests; and

(G) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

(3) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section..

SEC. 11. REFERENCE MATERIALS AND GUIDES.

Section 552 of title 5, United States Code, is amended by adding after subsection (f) the following new subsection:

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including--

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section..

SEC. 12. EFFECTIVE DATE.

(a) **IN GENERAL.** Except as provided in subsection (b), this Act shall take effect 180 days after the date of the enactment of this Act.

(b) PROVISIONS EFFECTIVE ON ENACTMENT

- Sections 7 and 8 shall take effect one year after the date of the enactment of this Act.

aker of the House of Representatives.

vice President of the United States and President of the Senate.

Privacy Act of 1974 and Amendments (as of Jan 2, 1991)

[From GPO US Code on CD-ROM (GPO S/N 052-001-004-00439-6)]

5 USC Sec. 552a

TITLE 5

PART I

CHAPTER 5

SUBCHAPTER II

Sec. 552a. Records maintained on individuals

(a) Definitions. - For purposes of this section -

(1) the term 'agency' means agency as defined in section 552(e) (FOOTNOTE 1) of this title;

(FOOTNOTE 1) See References in Text note below.

(2) the term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term 'maintain' includes maintain, collect, use, or disseminate;

(4) the term 'record' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term 'matching program' -

(A) means any computerized comparison of -

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of -

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include -

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component

thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches -

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency; if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel; or

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(9) the term 'recipient agency' means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term 'non-Federal agency' means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term 'source agency' means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term 'Federal benefit program' means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term 'Federal personnel' means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of Disclosure. - No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be -

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to

the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) Accounting of Certain Disclosures. -- Each agency, with respect to each system of records under its control, shall --

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of --

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) Access to Records. -- Each agency that maintains a system of records shall --

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and --

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either -

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) Agency Requirements. - Each agency that maintains a system of records shall -

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual -

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include -

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and

disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b) (2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4) (D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) Agency Rules. - In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall -

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information

pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) Civil Remedies. -- Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of --

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of \$1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of

action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) Criminal Penalties. - Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is -

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) Specific Exemptions. - The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is -

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement

purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(1) Archival Records. - Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this

section except subsections (e) (4) (A) through (G) and (e) (9) of this section.

(m) (1) Government Contractors. - When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) Mailing Lists. - An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) Matching Agreements. - (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying -

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to -

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,
that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2) (A) A copy of each agreement entered into pursuant to paragraph (1) shall -

(i) be transmitted to the Committee on Governmental Affairs of

the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A) (i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if -

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) Verification and Opportunity to Contest Findings. - (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until -

(A) (i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that -

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C) (i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of -

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) Sanctions. - (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

- (2) No source agency may renew a matching agreement unless -
(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and
(B) the source agency has no reason to believe that the certification is inaccurate.

(r) Report on New Systems and Matching Programs. - Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) Biennial Report. - The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report -

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) Effect of Other Laws. - No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) Data Integrity Boards. - (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board -

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including -

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4) (A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective. (FOOTNOTE 2)

(FOOTNOTE 2) So in original. Probably should be 'cost-effective.'

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5) (A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that --

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3) (D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting

the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) Office of Management and Budget Responsibilities. - The Director of the Office of Management and Budget shall -

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub. L. 93-579, Sec. 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub. L. 94-183, Sec. 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97-365, Sec. 2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97-375, title II, Sec. 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97-452, Sec. 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-477, Sec. 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98-497, title I, Sec. 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100-503, Sec. 2-6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507-2514; Pub. L. 101-508, title VII, Sec. 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99-570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 464 and 1137 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), are classified to sections 664 and 1320b-7, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (1)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93-579, which was set out below and was repealed by section 6(c) of Pub. L. 100-503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

The date of enactment of this subsection, referred to in subsec. (u)(6), is the date of enactment of Pub. L. 100-503 which enacted subsec. (u) of this section, and which was approved Oct. 18, 1988.

CODIFICATION

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

AMENDMENTS

1990 - Subsec. (p). Pub. L. 101-508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988 - Subsec. (a)(8) to (13). Pub. L. 100-503, Sec. 5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100-503, Sec. 3(a), added par. (12).

Subsec. (f). Pub. L. 100-503, Sec. 7, substituted 'biennially' for 'annually' in last sentence.

Subsecs. (o) to (q). Pub. L. 100-503, Sec. 2(2), added subsecs. (o) to (q). Former subsecs. (o) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100-503, Sec. 3(b), inserted 'and matching programs' in heading and amended text generally. Prior to amendment, text read as follows: 'Each agency shall provide

adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.'

Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (o) as (r).

Subsec. (s). Pub. L. 100-503, Sec. 8, substituted 'Biennial' for 'Annual' in heading, 'biennially submit' for 'annually submit' in introductory provisions, 'preceding 2 years' for 'preceding year' in par. (1), and 'such years' for 'such year' in par. (2).

Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100-503, Sec. 2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100-503, Sec. 4, added subsec. (u).

Subsec. (v). Pub. L. 100-503, Sec. 6(a), added subsec. (v).

1984 - Subsec. (b)(6). Pub. L. 98-497, Sec. 107(g)(1), substituted 'National Archives and Records Administration' for 'National Archives of the United States', and 'Archivist of the United States or the designee of the Archivist' for 'Administrator of General Services or his designee'.

Subsec. (l)(1). Pub. L. 98-497, Sec. 107(g)(2), substituted 'Archivist of the United States' for 'Administrator of General Services' in two places.

Subsec. (q). Pub. L. 98-477 designated existing provisions as par. (1) and added par. (2).

1983 - Subsec. (b)(12). Pub. L. 97-452 substituted 'section 3711(f) of title 31' for 'section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))'.

Subsec. (m)(2). Pub. L. 97-452 substituted 'section 3711(f) of title 31' for 'section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))'.

1982 - Subsec. (b)(12). Pub. L. 97-365, Sec. 2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97-375, Sec. 201(a), substituted 'upon establishment or revision' for 'at least annually' after 'Federal Register'.

Subsec. (m). Pub. L. 97-365, Sec. 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97-375, Sec. 201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975 - Subsec. (g)(5). Pub. L. 94-183 substituted 'to September 27, 1975' for 'to the effective date of this section'.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 10 of Pub. L. 100-503, as amended by Pub. L. 101-56, Sec. 2, July 19, 1989, 103 Stat. 149, provided that:

'(a) In General. - Except as provided in subsections (b) and (c), the amendments made by this Act (amending this section and repealing provisions set out as a note below) shall take effect 9 months after the date of enactment of this Act (Oct. 18, 1988).

'(b) Exceptions. - The amendment made by sections 3(b), 6, 7, and

8 of this Act (amending this section and repealing provisions set out as a note below) shall take effect upon enactment.

'(c) Effective Date Delayed for Existing Programs. -- In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if --

'(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

'(2) such identification is --

'(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

'(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.'

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Section 8 of Pub. L. 93-579 provided that: 'The provisions of this Act (enacting this section and provisions set out as notes under this section) shall be effective on and after the date of enactment (Dec. 31, 1974), except that the amendments made by sections 3 and 4 (enacting this section and amending analysis preceding section 500 of this title) shall become effective 270 days following the day on which this Act is enacted.'

SHORT TITLE OF 1990 AMENDMENT

Section 7201(a) of Pub. L. 101-508 provided that: 'This section (amending this section and enacting provisions set out as notes below) may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'.'

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101-56, Sec. 1, July 19, 1989, 103 Stat. 149, provided that: 'This Act (amending section 10 of Pub. L. 100-503, set out as a note above) may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'.'

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100-503 provided that: 'This Act (amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below) may be cited as the 'Computer Matching and Privacy Protection Act of 1988'.'

SHORT TITLE

Section 1 of Pub. L. 93-579 provided: 'That this Act (enacting this section and provisions set out as notes under this section) may be cited as the 'Privacy Act of 1974'.'

DELEGATION OF FUNCTIONS

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title

PUBLICATION OF GUIDANCE UNDER SUBSECTION (P) (1) (A) (II)

Section 7201(b) (2) of Pub. L. 101-508 provided that: 'Not Later than 90 days after the date of the enactment of this Act (Nov. 5, 1990), the Director of the Office of Management and Budget shall publish guidance under subsection (p) (1) (A) (ii) of section 552a of title 5, United States Code, as amended by this Act.'

LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT

Section 7201(c) of Pub. L. 101-508 provided that: 'Section 552a(p) (1) (A) (ii) (II) of title 5, United States Code, as amended by section 2 (probably means section 7201(b)(1) of Pub. L. 101-508), shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b-7), until the earlier of --

' (1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

' (2) 30 days after the date of publication of guidance under section 2(b) (probably means section 7201(b)(2) of Pub. L. 101-508, set out as a note above).!

EFFECTIVE DATE DELAYED FOR CERTAIN EDUCATION BENEFITS COMPUTER MATCHING PROGRAMS

Pub. L. 101-366, title IX, Sec. 206(d), Aug. 15, 1990, 1.04 Stat. 442, provided that:

' (1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 3.0, United States Code, the amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) (other than the amendments made by section 10(b) of that Act) (see Effective Date of 3.988 Amendment note above) shall take effect on October 1, 1990.

' (2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a) (8) of title 5, United States Code.'

IMPLEMENTATION GUIDANCE FOR 1988 AMENDMENTS

Section G(b) of Pub. L. 100-503 provided that: 'The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act (amending this section and repealing provisions set out as a note below) not later than 8 months after the date of enactment of this Act (Oct. 3.8, 1988).'

CONSTRUCTION OF 1988 AMENDMENTS

Section 9 of Pub. L. 100-503 provided that: 'Nothing in the amendments made by this Act (amending this section and repealing provisions set out as a note below) shall be construed to authorize

' (1) the establishment: or maintenance by any agency of a national data bank that combines, merges, or Links information on individuals maintained in systems of records by other Federal agencies;

' (2) the direct linking of computerized systems of records maintained by Federal agencies;

' (3) the computer matching of records not otherwise authorized by law; or

' (4) the disclosure of records for computer matching except to a Federal, State, or local agency.'

Section 2 of Pub. L. 93-579 provided that:

' (a) The congress finds that. --

' (1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

' (2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

' (3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

' (4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

' (5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

' (h) The purpose of this Act (enacting this section and provisions set out as notes under this section) is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to --

' (1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

' (2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

' (3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

' (4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

' (5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

' (6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.'

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub. L. 93-579, as amended by Pub. L. 95-38, June 1,

Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93-579.

PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub. L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100-503, Sec. 6(c), Oct. 18, 1988, 102 Stat. 2513.

DISCLOSURE OF SOCIAL SECURITY NUMBER

Section 7 of Pub. L. 93-579 provided that:

'(a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

'(2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to ~

'(A) any disclosure which is required by Federal statute, or

'(B) the disclosure of a social security number to any Federal, state, or Local agency maintaining a system of records in existence and operating before January 1, 3.975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

'(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.'

AUTHORIZATION OF APPROPRIATIONS TO PRIVACY PROTECTION STUDY COMMISSION

Section 9 of Pub. L. 93-579, as amended by Pub. L. 94-394, Sept. 3, 1976, 90 stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 3.977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 121.2, 3111, 7133 of this title; title 7 sections 1359hh, 1359ii, 2204b; title 10 sections 424, 1102; title 12 section 1715z; title 15 section 278g-3; title 16 sections 410cc-35, 1536; title 20 sections 1080a, 1221e-1; title 26 sections 6103, 7852; title 32 sections 3701, 3711, 3718, 3729, 3733; title 38 sections 1784A, 3301; title 39 section 410; title 42 sections 300aa-25, 402, 405, 1306, 9660; title 44 sections 2906, 3501, 3504; title 46 sections 7702, 9303.

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GOVERNMENT IN THE SUNSHINE ACT

§ 552b. Open meetings

(a) For purposes of this section -

(1) the term "agency" means any agency, as defined in section 552(e) (FOOTNOTE 1) of this title, headed by a **collegial** body composed of two or more individual **members**, a majority of whom are appointed to such position by the President with the advice and **consent** of the Senate, and any subdivision thereof authorized to act on behalf of the agency; (FOOTNOTE 1) See References in Text note below.

(2) the term "meeting" **means** the deliberations of at least the number of individual agency **members required** to take action on **behalf** of the agency **where** such deliberations **determine** or result in **the** joint conduct or disposition of official agency business, but does not include deliberations **required** or permitted by subsection (d) or (c); and (3) the term "member" means an individual who belongs to a **collegial** body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this **section**. **Except** as provided in subsection (c), **every** portion of every meeting **of an** agency **shall** be open to public observation. **Except** in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the **requirements** of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this **section** to be disclosed to the public, **where** the agency properly determines that such portion or portions of its **meeting** or the **disclosure** of such information is **likely** to -

(1) disclose matters that are (A) specifically **authorized under** criteria established by an Executive order to be **kept** secret in the interests of **national** defense or foreign policy and (B) in fact properly **classified** pursuant to such Executive order;

(2) relate **solely** to the internal **personnel rules** and **practices** of an agency;

(3) disclose matters **specifically** exempted from disclosure by **statute** (other than section 552 of this title), provided that such statute (A) **requires** that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular **criteria** for withholding or refers to particular types of **matters** to be withheld;

(4) disclose trade secrets and commercial or financial information **obtained from** a person **and privileged** or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a **clearly** unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if **written** would be contained in such records, but only to the extent that **the** production of such **records** or **information** would (A) **interfere** with enforcement **proceedings**, (B) **deprive** a person of a right to a fair trial or an impartial adjudication, constitute an **unwarranted invasion** of **personal** privacy, (D) disclose the

identity of a confidential **source** and, in **the case** of a **record compiled** by a criminal law enforcement authority in the course of a criminal investigation, or by **an agency** conducting a **lawful national security intelligence** investigation, confidential information **furnished** only by **the confidential source**, (I) **disclose investigative techniques and procedures**, or (F) **endanger the life or physical safety of law enforcement personnel**;

(8) disclose information contained in or **related to examination**, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the **regulation** or supervision or **financial Institutions**;

(9) **disclose** information the premature **disclosure** of which would ..

(A) in the case of an agency which regulates currencies, securities, **commodities**, or financial institutions, be likely to (I) lead to significant financial speculation in currencies, securities, or commodities, or (ii) **significantly endanger** the stability of any **financial** institution; or

(B) in the case of any agency, be likely to significantly **frustrate implementation** of a **proposed** agency action, that subparagraph (B) shall **not** apply in any instance where the agency has **already** disclosed to the public the **content** or **nature** of its proposed action, or where the **agency is required by law** to make such disclosure on **its own initiative** prior to taking final **agency** action on such proposal; or

(10) specifically **concern** the agency's **issuance** of a subpoena, or **the agency's** participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or **the** initiation, conduct, or disposition by **the** agency of a particular **case** of formal agency adjudication pursuant to **the** procedures in section 554 of this title or otherwise involving a determination on the record after opportunity **for a hearing**.

(d)(f) Action under subsection shall be taken only **when** a majority of the **entire membership** of the agency (as **defined** in **subsection** (a)(f)) votes to take such action. A separate vote of **the** agency, **members** shall be taken with **respect** to each agency meeting a portion or portions of which are proposed to **be** closed to the public pursuant to subsection (c), or with respect to any information which is **proposed** to be withheld **under** subsection (c). A single vote may be taken with **respect** to series of **meetings**, a portion or portions of which are proposed to be closed to the public, or with **respect** to any information concerning such **series** of meetings, so long as each **meeting** in such series **involves the same** particular matters and is **scheduled** to be **held no more** than thirty days **after the initial** meeting in such **series**. The vote of each **agency member** participating in **such** vote shall be recorded and no proxies shall be allowed.

(2) **Whenever** any person **whose** interests may be directly **affected** by a portion of a meeting **requests** that **the** agency close such portion to the public for any of **the** reasons referred to in paragraph (S), (6), or (7) of subsection (c), **the** agency, upon request of any one of its **members**, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote **taken** pursuant to paragraph (1) or (2), the agency shall **make** publicly available a written copy of such vote reflecting the vote of each member on **the question**. **If** a portion of a **meeting** is to be closed to the public, **the** agency shall, within **one** day of the **vote** taken pursuant to paragraph (1) or (2) of this subsection, make publicly **available** a full written explanation **of** its action closing **the** portion together with a list of **all** persons expected to attend the **meeting** and **their** affiliation.

(4) Any agency, a majority of whose meetings may properly **be closed** to the public pursuant to **paragraph** (4), (8), (9)(A), or (10) of **subsection (c)**, or any combination **thereof**, may provide by regulation for **the**

closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: Provided, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes,

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or

transcription. **The** agency shall maintain a **complete verbatim** copy of **the** transcript, a **complete copy** of the minutes, or a **complete** electronic recording of each **meeting**, or portion of a **meeting**, closed to the public, for 8 period of at least two years **after** such meeting, or until one year **after** the conclusion of any agency proceeding with **respect** to Which **the meeting** or portion was **held, whichever occurs later.** (g) **Each agency** subject to the **requirements** of this section shall, within 180 days **after** the date of **enactment** of this **section**, following consultation with the **Office** of the Chairman of the Administrative Conference of **the** United States and published notice in **the Federal Register** of at least thirty days and opportunity for **written** comment by any person, **promulgate** regulations to implement the **requirements** of **subsections** (b) through (f) of this section. Any person may bring a **proceeding** in the **United States District Court** for **the** District of Columbia to require an agency to promulgate such regulations if such **agency** has not promulgated such regulations within the time period **specified** herein. Subject to any limitations of time provided by law, any **person** may bring a **proceeding** in the **United States Court of Appeals** for **the** District of Columbia to set aside agency **regulations** issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to **require** the promulgation of **regulations** that are in accord with such subsections (h)(1) **The** district courts of **the** United States **shall have** jurisdiction to **enforce the requirements** of subsections (b) through (f) of this section by declaratory **judgment**, injunctive relief, or **other relief** as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days **after**, **the** meeting out of which **the** violation of this section arises, **except** that if public **announcement** of such meeting is not initially provided by **the agency** in accordance with the **requirements** of this section, such action **may** be instituted pursuant to this section-at any time prior to sixty days after any public announcement of such **meeting**. Such actions may **be brought** in the district court of the **United States** for **the** district in which **the** agency meeting is held or in which the **agency** in question has its **headquarters**, or in the District Court for the District of Columbia. **In** such actions a defendant shall serve his **answer** within thirty days **after** the **service** of **the** complaint. **The** burden is on the defendant to sustain his action. In deciding such **cases** the court may examine in **camera** any portion of **the** transcript, **electronic** recording, or minutes of a **meeting closed** to **the** public, and may **take** such additional evidence as it deems **necessary**. **The** court, having **due regard** for orderly administration and the public **interest**, as well as **the interests** of the parties, may grant such equitable relief as it deems **appropriate**, including granting an injunction against future violations of this **section** or ordering the agency to make available to **the** public such **portion** of **the** transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection of this section.

(2) Any Federal court otherwise authorized by law to **review** agency action may, at the application of any person **properly** participating in **the** proceeding pursuant to **other applicable** law, **inquire** into violations by **the agency** of **the** requirements of this section and **afford** such relief as it deems appropriate. Nothing. **in** this **section** authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, **enjoin**, or **invalidate** any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency **meeting** out of which the violation of this section **arose**.

(I) **The** court may assess against any party reasonable attorney **fees** and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by **the plaintiff primarily** for frivolous or dilatory **purposes**. In the **case** of assessment of costs against an agency, 'the costs may be assessed by the court against the United States.

(j) **Each agency** subject to **the requirements** of this **section** shall annually report to **Congress** regarding its compliance with such **requirements**, including a tabulation of the **total** number of agency meetings open to **the** public, **the total** number of **meetings** closed to the public, the reasons for closing such **meetings**, and a

description of any litigation brought against the agency under this section, including my costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) **Nothing** herein expands or limits the **present** rights of **any person** under **section 552** of this title, **except** that **the exemptions** set forth in subsection (f) of this section shall govern in **the case** of any **request made** pursuant to **section 552** to copy or **inspect** the transcripts, **recordings**, or **minutes described in subsection (f) of this section**. **The requirements** of **chapter 33** of title **44**, United States Code, shall not apply to **the transcripts, recordings, and minutes described in subsection (f) of this section**.

(l) This section does **not** constitute authority to withhold any information **from** Congress, and does not authorize the closing of any **agency meeting** or portion thereof required by any **other** provision of law to be open.

(m) **Nothing** in this section authorizes any **agency** to withhold **from any** individual any record, including transcripts, **recordings**, or **minutes** required by this section, which is **otherwise** accessible to such individual under section **552a** of this title.

ETHICS RULES FOR ADVISORY COMMITTEE MEMBERS APPOINTED AS SPECIAL GOVERNMENT EMPLOYEES (SGEs)

This summary has been prepared for committee members appointed to serve on HHS advisory committees as Special Government Employees (SGEs). Persons new to the Government often are surprised by, or even resentful of, the complexity of the rules governing Federal employees. Ignoring them, however, can result in serious consequences, including public embarrassment for the individual and the Department. If you have any questions on any of the topics covered in this guidance, you should consult with the Federal Official responsible for your committee.

Who is a Special Government Employee (SGE)?

An "SGE," or "special Government employee," is an officer or employee in the executive branch of the Federal Government who is appointed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. 18 U.S.C. § 202(a). This status is important since the ethics rules for SGEs are somewhat less restrictive than the rules for other Federal employees and officials.

Some members of advisory committees are appointed for a multi-year term. During their term of appointment, committee members generally will not be expected to perform work for HHS in excess of 130 days during any period of 365 consecutive days. Thus, most committee members will be considered "SGEs."

Confidential Financial Disclosure Reporting Requirements

All HHS advisory committee members appointed as SGEs are required under the Ethics in Government Act, amended by the Ethics Reform Act of 1989, to file a financial disclosure report when first appointed (5 C.F.R. Part 2634). Committee members may also be required to update the information on the report before each meeting throughout their term of appointment. The information reported is used to determine the matters for which a committee member must be disqualified under 18 U.S.C. § 208(a), and the matters for which a committee member may be granted a waiver under 18 U.S.C. § 208(b)(3). Complete reporting is essential to protect the committee member from inadvertently violating any of the criminal conflict of interest statutes, and to ensure to the public that the advice provided by an HHS advisory committee is free from any real, or perceived, conflicts of interest. The information reported by committee members is confidential and may not be released except under the limited circumstances described in the Privacy Act notice provided with the report.

Criminal Conflict of Interest Statutes.

As an SGE, you are subject to the following criminal conflict of interest statutes (18 U.S.C. §§ 201-216):

- 18 U.S.C § 201 - Section 201, commonly known as the "bribery" statute, prohibits Federal employees, including SGEs, from seeking, accepting, or agreeing to receive anything of value in return for being influenced in the performance of an official act,
- 18 U.S.C. § 203 - Section 203 prohibits an SGE from receiving compensation for representational services rendered by the employee or another person before HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party (i) in which the SGE has participated personally and substantially as a Government employee, or (ii) which is pending in the Government agency in which the SGE is serving if the SGE has served for more than 90 days during the immediately preceding 365 days.

Exempted from this rule are representations required in the proper discharge of official duties. Also exempted are representations required in the performance of work under a grant, contract or other agreement with or for the benefit of the Government.

A particular matter involving specific parties is a matter that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Particular matters may include, but are not limited to, reviews of grant proposals or contract applications, other funding decisions, studies or approvals of scientific studies or project, and other actions which involve deliberation, decision, or action.

Representational services include communications (written or oral) and appearances made on behalf of someone else, generally with the intent to influence or persuade the Government. An inquiry as to the status of a pending matter is not necessarily a representation, although depending upon the context of the inquiry, it could give rise to the appearance of a prohibited representation.

To avoid appearance problems, during the period in which a committee is in session, committee members may not contact Department staff concerning any matters pending before the agency, or as to which the agency has an interest. Such matters would include, for example, applications for Federal funding, progress reports regarding CRADAS or clinical trials, and pending drug investigations or applications.

- 18 U.S.C. § 205 - Section 20.5 prohibits an SGE from representing a party, with or without compensation, before HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the United States is a party or has a direct and substantial interest: (i) that the SGE participated in personally and substantially as a Government employee; or (ii) which is pending in the agency in which the SGE is serving, if the SGE has served for more than 90 days during the immediately preceding 365 days.
- 18 U.S.C. § 207 - Section 207, the "post-employment" statute, imposes a lifetime ban on a former SGE from representing another person or entity to HHS or another Federal agency or other specified entity (such as a court or commission) in any particular matter involving a specific party in which the former SGE participated personally and substantially while serving in the Government.
- 18 U.S.C. § 208 - Section 208(a), the main conflict of interest statute, prohibits an SGE from participating personally and substantially in any particular matter that could affect the financial interests of the SGE, the SGE's spouse, minor child, general partner, an organization in which the SGE serves as an officer, director, trustee, general partner, or employee, or an organization with which the SGE is negotiating or with which the SGE has an arrangement for prospective employment.

Under this statute, for example, you would be prohibited from reviewing a grant application submitted by a researcher from the same university in which you are employed, or a contract proposal from an association for which you serve as a member of the board of directors. In those instances, you would be required to disqualify yourself from participation in the reviews.

Section 208 would also prohibit you from participating in setting standards for grantees or contractors in general, to the extent that your university (or any organization with which you are affiliated as an officer or board member) would be affected by those standards. Under this scenario, however, a waiver could be issued to permit you to participate in such general matters.

A waiver for advisory committee members may be granted under 18 U.S.C. § 208(b)(3). Section 208(b)(3) authorizes issuance of a waiver to an SGE who serves on a committee subject to the Federal Advisory Committee Act if the official responsible for the individual's appointment certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the particular financial interest involved. The waiver granted is considered a "general" waiver, in that it allows participation in matters that affect all institutions, or types of institutions similarly. Even with

a general waiver, however, SGEs must disqualify themselves from participation in all matters that specifically and uniquely affect their financial interests. The Federal Official responsible for your committee will explain the procedures for disqualification.

Standards of Ethical Conduct

The following are some of the major Standards Of Ethical Conduct regulations (5 C.F.R. Part 2635) that pertain to HHS SGE advisory committee members during the term of their appointment:

I. Teaching, Speaking and Writing in a Personal Capacity (Other Than as a Government Employee)

Generally, during their term of appointment, committee members may continue to receive fees, honoraria, and other compensation for teaching, speaking and writing undertaken in their personal or non-Governmental capacities. However, there are some limitations:

- (A) An SGE is prohibited from receiving compensation for teaching, speaking, and writing that "relates to the employee's official duties." 5 C.F.R. § 2635.807. The "relatedness" test is met for an SGE if:
- (1) the activity is undertaken as an official Government duty;
 - (2) the circumstances indicate that the invitation to engage in the activity was extended to the SGE primarily because of the employee's position in the Government rather than the employee's expertise on the particular subject matter;
 - (3) the invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by the performance or nonperformance of the employee's official duties; or
 - (4) the information conveyed through the activity draws substantially on ideas or official data that are confidential or not publicly-available.

- (B) Additionally, if a committee member serves for less than 60 days during a one-year period, the SGE may not accept compensation for teaching, speaking, and writing if the subject matter of the teaching, speaking or writing concerns a particular matter, involving specific parties, in which the SGE participated or is participating personally and substantially as a Government employee.

For example, an AIDS researcher has been appointed to a four-year term as a member of an advisory committee established for the purpose of surveying and recommending modification of procedures that deter the development of treatments for HIV infection and HIV-related diseases. The committee member is not expected to serve more than 60 days each year during her four-year term of appointment.

The committee member may accept compensation for an article or speech about the deterrent effect of certain procedures required for clinical investigations and trial designs even though such issues are being discussed by the advisory committee. Clinical procedures in general are not a particular matter involving specific parties. The committee member could not accept compensation for an article or speech which recounts committee deliberations that took place in a closed meeting, or which relies upon other, non-public information. In addition, the committee member could not accept compensation for an article or speech about specific collaborations in the HIV drug development process which were discussed by the committee, since the collaborations are considered a particular matter involving specific parties.

- (C) If a committee member serves for more than 60 days, the SGE is additionally prohibited from receiving compensation for teaching, speaking, and writing if the subject of the activity deals in significant part with any matter to which the SGE is presently assigned or was assigned during the previous one-year period.

EXCEPTIONS:

1. This rule does not preclude a committee member from receiving compensation for teaching, speaking, or writing on a subject within the committee member's discipline or inherent area of expertise based on the SGE's educational background or experience. The outside activity must not be about or distinctly related to the work the SGE is providing to the Government.

7. These restrictions also do not apply to teaching in a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher education, an elementary or secondary school, or a program of education or training sponsored and funded by the Federal, State, or local government.

II. Gifts

Any gift given to a committee member because of the member's service on an HHS advisory committee would raise concerns. Please consult with the Federal Official responsible for your committee should this situation arise. Gifts given to you because of your position or achievements in the private (non-Government) sector generally are not problematic.

III. Charitable Fundraising

A committee member may engage in charitable fundraising in a personal capacity as long as the committee member does not personally solicit funds or other support from any person or entity known to the committee member to be a person or entity whose interests may be substantially affected by the performance or nonperformance of the committee member's Federal duties. 5 C.F.R. § 2635.808. If you have specific questions concerning particular fundraising events or activities, please consult with the Federal Official responsible for your committee.

IV. Expert Witness

A committee member cannot serve as an expert witness, in a proceeding before a United States court or agency in which the United States is a party or has a direct and substantial interest, except on behalf of the United States, if the committee member participated, while a Federal employee, in the particular proceeding, unless authorized by the HHS designated agency ethics official, the Special Counsel for Ethics, who can be reached at (202)690-7258.

In addition, a committee member who was appointed by the President, serves on a commission established by statute, or has served or is expected to serve for more than 60 days in a period of 365 consecutive days, cannot serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a United States court or agency in which the committee members' employing agency is a party or has a direct and substantial interest unless authorized by the Special Counsel for Ethics. 5 C.F.R. § 2435.805.

V. Impartiality

Although committee members are prohibited under 18 U.S.C. § 208(a) from participating in matters in which they have a financial interest, there may be other circumstances in which a committee member's participation in a particular matter involving specific parties would raise a question regarding the member's impartiality in the matter. For example, a committee member asked to review a grant application submitted by the SGE's mentor, or someone with whom the SGE has a close personal or professional relationship, would raise a concern about the committee member's impartiality in the review. In such circumstances, the committee member should discuss the relationship with the Federal Official responsible for the committee and a determination will be made as to whether the member should be disqualified from participation in the matter, or should be granted an "authorization" to permit the member to participate in the matter. 5 C.F.R. § 2635.502.

VI. Misuse of Position

Committee members are subject to a number of prohibitions intended to address the use, or appearance of use, of "public office for private gain." 5 C.F.R. Part 2635, Subpart G. These prohibitions include:

- (A) Using their HHS titles or referring to their Government positions for their own private gain, the private gain of friends, relatives, or anyone with whom they are affiliated in a non-Governmental capacity (including nonprofit organizations which they serve as officers, members, employees, or in any other business relationship), or for the endorsement of any product, service, or enterprise.
- (B) Using their HHS titles or Government positions to coerce or induce another person to provide any benefit to themselves or another person.
- (C) Using non-public Government information in a financial transaction to further their private interests or those of another, or disclosing confidential or non-public information without authorization.
- (D) Using Government property for unauthorized purposes.

Employment by, or Gifts from, Foreign Governments

There are constitutional limitations on a committee member's employment by a foreign government, including political subdivisions of a foreign government. United States Constitution, art. I § 9, cl. 8. There are also statutory provisions restricting acceptance of gifts from foreign governments. 5 U.S.C. § 7342. Committee members should consult with the Office of the Special Counsel for Ethics for details about these restrictions.

Lobbying Activities

In their official capacities or as a group, committee members are prohibited from engaging in any activity which directly or indirectly encourages or directs any person or organization to lobby one or more members of Congress, 18 U.S.C. § 1913. When authorized, committee members may appear before any individual or group for the purpose of informing or educating the public about a particular policy or legislative proposal. Committee members also may communicate to Members of Congress at the request of any Representative or Senator. Communications to Members of Congress initiated by committee members, in their official capacity as members of the committee, should be coordinated through the Office of the Assistant Secretary for Legislation.

As private citizens, committee members may express their personal views (but not the views of the committee as a whole or the opinions of HHS) to anyone. In doing so, committee members may state their affiliation with the committee, may factually state the committee's official position on the matter (to the extent that non-public information is not used), but may not take new positions and represent those views as the committee's position on the matter. Moreover, in expressing their private views, as with all other personal (non-Governmental) activities, committee members are not permitted to use Government computers, copiers, telephones, letterhead, staff resources, or other appropriated funds. All personal activities must occur "off duty time."

In addition, committee members are prohibited in their personal capacities from making representations on behalf of others, to the Government, on particular matters involving specific parties in which they were involved as Government employees. (See discussion above under 18 U.S.C. §§ 203 & 205.)

Political Activities

The Hatch Act (5 U.S.C. §§ 7321-7328) prescribes the restrictions on certain political activities of Federal employees (see chart below). Unlike the criminal statutes and most of the other ethics rules which are fully applicable to an SGE throughout the SGE's entire term of appointment, the Hatch Act restrictions apply only during the period of any day in which the SGE actually is performing Government business. For example, if an SGB attends an advisory committee meeting from 8:00 am - 1:00 pm, at 3:00 pm, the SGE could attend a political fund raiser and even solicit political contributions from the attendees.

Permissible Activities	Prohibited Activities (while on duty)
<ul style="list-style-type: none"> * <i>May be candidates for public office in nonpartisan elections</i> * <i>May register and vote as they choose.</i> * <i>May assist in voter registration drives.</i> * <i>May express opinions about candidates and issues.</i> * <i>May contribute money to political organizations.</i> * <i>May attend political fund raising functions.</i> * <i>May attend and be active at political rallies and meetings.</i> * <i>May join and be an active member of a political party or club.</i> * <i>May sign nominating petitions.</i> * <i>May campaign for or against referendum questions, constitutional amendments, municipal ordinances.</i> * <i>May campaign for or against candidates in partisan elections.</i> * <i>May distribute campaign literature in partisan elections.</i> * <i>May hold office in political clubs or parties (except Treasurer).</i> 	<ul style="list-style-type: none"> * <i>May not use their official authority to interfere with an election.</i> * <i>May not collect political contributions, unless both individuals are members of the same Federal labor organization and the one solicited is not a subordinate employee.</i> * <i>May not knowingly solicit or discourage the political activity of any person who has business before the agency.</i> * <i>May not engage in political activity while on duty.</i> * <i>May not engage in political activity in any Government office.</i> * <i>May not engage in political activity while wearing an official uniform.</i> * <i>May not engage in political activity while using a Government vehicle.</i> * <i>May not solicit political contributions from the general public.</i> * <i>May not actively participate as a candidate for public office in a partisan election.</i>

There are also criminal political statutes that apply at all times and prohibit coercion and intimidation regarding political activities.

Handicapped Federal Employees, Personal Assistants, Employment (excerpt)

94 STAT. 3040

PUBLIC LAW 96-523—DEC. 12, 1980

Travel expenses

“(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

Payment limitation.

“(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

“(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

5 USC 8101 et seq.

“(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

“(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.”

(b) The item relating to section 3102 in the analysis of chapter 31 of title 5, United States Code, is amended to read as follows:

“3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.”

(c)(1) Section 604(a)(16)(A) of title 23, United States Code, is amended by striking out “3102” and inserting in lieu thereof “3102(b)”.

(2) Section 410(b)(1) of title 39, United States Code, is amended by striking out “3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),” and inserting in lieu thereof “section 3102 (employment of personal assistants for blind, deaf, or otherwise handicapped employees).”

Sec. 2. Section 7(d)(1) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking out “and” at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting “; and” in lieu thereof, and by adding at the end thereof the following new subparagraph:

“(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, United States Code, 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.”

Sec. 3. The amendments made by this Act shall take effect sixty days after the date of the enactment of this Act.

Sec. 4. (a) Section 8332 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

Ante, p. 3039.

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29 USC 791.
Ante, p. 3039.

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Effective date.
5 USC 3102 note.

Unfunded Mandates Reform Act of 1995 (Excerpt)

PUBLIC LAW 104-4--MAR. 22, 1995

109 STAT. 65

- (B) the extent to which there are available Federal resources to carry out the **intergovernmental** mandate;
- (3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of-
- (A) the future compliance costs of the **Federal mandate**; and
- (B) any **disproportionate** budgetary effects of the Federal mandate upon any particular regions of the nation or particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;
- (4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and
- (5)(A) a description of the extent of the agency's prior consultation with elected representatives (under section 204) of the affected State, local, and tribal governments;
- (B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and
- (C) a summary of the agency's evaluation of those comments and concerns.

(b) **PROMULGATION.**---In promulgating a general notice of proposed rulemaking or a final rule for which a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement.

(c) **PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.**---Any agency may prepare any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a).

SEC. 203. SMALL GOVERNMENT AGENCY PLAN.

2 USC 1533.

(a) **EFFECTS OF SMALL GOVERNMENTS.**---Before establishing any regulatory requirements that might significantly or uniquely affect small governments, agencies shall have developed a plan under which the agency shall---

(1) provide notice of the requirements to potentially affected small governments, if any;

(2) enable officials of affected small governments to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates; and

(3) inform, educate, and advise small governments on compliance with the requirements.

(b) **AUTHORIZATION OF APPROPRIATIONS.**---There are authorized to be appropriated to each agency to carry out the provisions of this section and for no other purpose, such sum as are necessary.

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT INPUT.

2 USC 1534.

(a) **IN GENERAL.**---Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and tribal governments (or their designated employees

Unfunded Mandates Reform Act of 1995 - Continued

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with authority to act on their behalf) to provide meaningful and timely input in the development of regulatory proposals containing significant Federal intergovernmental mandates.

(b) **MEETINGS BETWEEN STATE, LOCAL, TRIBAL AND FEDERAL OFFICERS.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

(c) **IMPLEMENTING GUIDELINES.**—No later than 6 months after the date of enactment of this Act, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.

2 USC 1535.

SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

(a) **IN GENERAL.**—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 202, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) **EXCEPTION.**—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) **OMB CERTIFICATION.**—No later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.

2 USC 1536.

SEC. 206. ASSISTANCE TO THE CONGRESSIONAL BUDGET OFFICE.

The Director of the Office of Management and Budget shall—

(1) collect from agencies the statements prepared under section 202; and

(2) periodically forward copies of such statements to the Director of the Congressional Budget Office on a reasonably timely basis after promulgation of the general notice of proposed rulemaking or of the final rule for which the statement was prepared.