

practice before the Board unless disqualified under paragraph (b) of this section or for some other valid reason.

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

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

## PART 8—ADVISORY COMMITTEE MANAGEMENT

Sec.

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

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

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

### § 8.1 Authorities.

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

(2) These regulations apply to any advisory committee which provides advice to the Department of State or any officer of the Department. However, to the extent that an advisory committee is subject to particular statutory provisions, which are inconsistent with the Federal Advisory Committee Act, these regulations do not apply.

(b) *Delegated authority.* (1) The Deputy Under Secretary for Management has been designated by the Secretary

(Delegation of Authority No. 125 signed November 7, 1972) to have full responsibility for the Committee Management function.

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

### § 8.2 Policy.

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

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

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

### § 8.3 Scope.

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

(1) The President and the Congress, or the Department in consultation with the Office of Management and Budget, may *establish* a group which shall be known as an advisory committee for the purpose of obtaining advice or recommendations and which shall be subject to the Federal Advisory Committee Act throughout its existence.

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

## Department of State

## § 8.6

the Act during any meetings or other contacts with the Department.

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

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

(2) Has regular or periodic meetings;

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

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

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

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

### § 8.4 Definitions.

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

(1) Established by statute or reorganization plan, or

(2) Established or utilized by the President, or

(3) Established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except a committee composed wholly of full-time officers and employees of the Government.

(b) A formal subgroup or subcommittee independently possesses significant requisites of an advisory com-

mittee, i.e., fixed membership, periodic meetings, et cetera.

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

### § 8.5 Creation of a committee.

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

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

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

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

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

### § 8.6 Membership.

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