

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 03/23/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 11/18/2008

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200810-0648-008
AGENCY ICR TRACKING NUMBER:
TITLE: Application Form for Membership on a National Marine Sanctuary Advisory Council
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0397

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 03/31/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	500	500	1,000
New	500	500	1,000
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Application Form for Membership on a National Marine Sanctuary Advisory Council	NA	National Marine Sanctuary Advisory Council Application Form	

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
APPLICATION FORM FOR MEMBERSHIP ON A NATIONAL MARINE
SANCTUARY COUNCIL
OMB CONTROL NO. 0648-0397**

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Section 315 of the [National Marine Sanctuaries Act](#) (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. Councils are individually chartered for each sanctuary to meet the needs of that specific site; fourteen councils are established as of September 4, 2008. Once a council has been chartered, the sanctuary superintendent starts a process to recruit members for that council by providing a notice to the public and asking interested parties to apply for the available seats. An application form has been developed to help ease the application process for the public and facilitate the review process for the sanctuary superintendent.

This request is for renewal of this information collection.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The availability of seats on a council is announced by the appropriate sanctuary through various public channels, including a [Federal Register](#) Notice, local press releases, announcements at local meetings, and posting on the sanctuary's web page. Interested persons can request the application kit (containing the application form, a copy of the council's charter, the council handbook and some information about the sanctuary itself) by phone, fax or email. The applicant then completes and returns the form to the sanctuary office, by mail, fax or electronically. Several sanctuaries per year will have to fill some vacancies on existing councils; new councils may be created if new sites are proposed for designation.

The specific information requested by the application will be used in the following ways:

- Seat applying for (applicants are asked to check a box for the seat for which they are applying): This information is used to determine which seat on the council the applicant is interested in holding.
- Name, addresses and phone numbers: This is basic contact information that is necessary in order to notify the applicant about whether he or she will serve on the council; if the applicant becomes a member of the council, this information is used to

keep them informed of meeting dates, upcoming events, etc.

- Question 1: Reasons for interest in serving on the council: This information is used to help the sanctuary superintendent determine the nature of the applicant's views on the protection and management of marine and/or Great Lakes resources.
- Questions 2 – 8: This information is used to determine the qualifications of the applicant for the seat for which he or she is applying, relative to those of other applicants for the same seat.
- Question 9: Other qualifications or information. This information allows the applicant to provide additional information about his or her qualifications for the seat that might not be readily apparent elsewhere in the application.

As explained in the preceding paragraphs, the information gathered has utility. The Office of National Marine Sanctuaries (ONMS) will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Should NOAA decide to disseminate information other than members' names and addresses, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The ONMS provides a broad opportunity for the public to apply for membership on councils. Application kits are available by mail or electronically on the individual sanctuary's web page or in the Council Handbook, at <http://sanctuaries.noaa.gov/management/ac/acref.html>, and can be submitted through the mail, by fax or email.

4. Describe efforts to identify duplication.

Sanctuary advisory councils are bodies unique to the ONMS; no other collection of information meets the needs of the ONMS for the purpose of selecting members of councils.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

N/A.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Councils serve an important function in the management of sanctuaries, by providing advice to the sanctuary superintendent (from a variety of different perspectives and interests) and helping link the sanctuary to the community. Congress understood this importance and deliberately provided the ONMS with its own authority to have councils, making the councils exempt from the [Federal Advisory Committee Act](#). Being able to collect this information allows the ONMS to choose the best applicants to serve as members of the council. Without this information collection, council work would not be done effectively.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A [Federal Register](#) Notice published on August 12, 2008 (73 FR 46873) solicited public comment. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Applicants are not given payment or gifts. If selected to serve on a council, members are eligible for invitational travel expenses (e.g., per diem) for costs associated with official meetings (per the National Marine Sanctuaries Act).

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

If chosen to serve on a council, members are informed that their names and business contact information (or other contact information as the member prefers) are made available so that constituents from the segment of the community the member represents can contact him or her. Applicants are also informed on the application that other parts

of the application may be subject to release under a request from the [Freedom of Information Act](#), through a court order, or in response to a Congressional inquiry.

Protection of applications (for both selected and non-selected applicants) is as follows:

- Council Applications for Selected Applicants: These are retained and filed in a secure location inaccessible to non-staff. When no longer needed, they are shredded. For record-keeping purposes, applications are retained for 5 years beyond the expiration of their seat term.
- Council Applications for Non-Selected Applicants: These applications are retained and filed in a secure location as described above. Applications are filed according to the seat applied for. It is useful to have this information to solicit qualified non-selected applicants to apply again when council seats are vacated. When no longer needed, they are shredded. For record-keeping purposes, these applications are retained for 5 years beyond their application date.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are asked.

12. Provide an estimate in hours of the burden of the collection of information.

The ONMS expects to have an average of 500 applicants per year, with an estimated time per applicant of one hour for obtaining, completing and returning the application, for a total annual response time of 500 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

There are no capital or start-up costs. No special equipment will need to be obtained for this information collection. The ONMS expects applications to cost about \$2 per person for the cost of a phone call or email request for the application and the cost of electronically returning or mailing the completed application, for a total annual cost to the public of \$1000.

14. Provide estimates of annualized cost to the Federal government.

The estimated annual costs to the federal government would include:

- Copying = \$200 (5000 pages at \$.04 a page for copying applications, council charters, and other information for application packages)
- Mailing = \$700 (mailing 700 applications* at \$1 each)
- Labor = \$28,000 (2 hours per application requested to cover responding to request for application, mailing, copying for review, conducting the review, and responding to applicant; estimate 2 hours/application x 700 applications x \$20/hour).

Total = \$28,900.

15. Explain the reasons for any program changes or adjustments.

There are no program changes or adjustments.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Only the name and contact information for each successful applicant would be published. Such information would likely appear in the individual sanctuary's web page, newsletters, and other usual information outlets for that sanctuary. New council members are usually announced about a month after the deadline for accepting applications has passed. Annually the ONMS also prints a directory of all council members across the program and their contact information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

No exemptions are being sought.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

* Approximately 700 applications are sent out, with an estimated 500 to be completed and returned.

**NATIONAL MARINE SANCTUARY ADVISORY COUNCIL
APPLICATION FORM**

Before applying for advisory council membership, please review the advisory council charter provided in your application kit, and the ONMS Sanctuary Advisory Council Implementation Handbook available online at <http://www.sanctuaries.noaa.gov/management/ac/acref.html> (or you may obtain a copy from your local sanctuary - see contact information below). The council charter outlines the purposes and governs the operation of the council; the handbook provides broader operational requirements for councils. In applying for council membership, you are agreeing to abide by the terms of the charter and the handbook if you are selected as a member or alternate. As a part of the selection process, please note the Office of National Marine Sanctuaries (ONMS) will conduct a LEXIS/NEXIS check and a departmental bureau check for potential conflict of interest and other issues in your background. Also review the information provided at the end of this form; it contains important guidance with regard to the information you submit on this form and its availability under federal law.

Council members and alternates must be 18 years of age or older. The complexity of the issues addressed by sanctuaries and councils, the ability to effectively network with all ages of constituents, and the ability to travel to and attend meetings and retreats all necessitate this minimum age limit.

Please note that under federal law, federal government employees are not allowed to sit on the advisory councils in a personal capacity. State employees are allowed to sit on the advisory councils in a personal capacity, but must include letters of support on agency letterhead from their state supervisors.

Please indicate which seat(s) you are applying for, provide your contact information, and respond to the questions below. The ONMS may consider applicants for seats for which they have not applied if the ONMS believes they are qualified for that seat and are willing to serve in it.

The application deadline is [date]. Please return all pages of this application to [fill in with local contact information].

Date: _____

First Name*: _____ **Middle** _____ **Last** _____

* Please include full first, middle and last names.

Seat(s) applying for: _____ Agriculture _____ Business/Industry
_____ Conservation _____ Diving _____ Education _____ Fishing
_____ Other Recreational _____ Research _____ At-Large

Home Address: _____

Home Phone: _____

Home Fax: _____ **Home E-mail:** _____

Work Address (include company/organization name):

Work Phone: _____

Work Fax: _____ **Work E-mail:** _____

Please thoroughly address each of the following in an attached statement:

1. Reasons for interest in serving on the council, including a statement of guiding views regarding protection and management of marine or Great Lake resources
2. Formal community and professional affiliations and employment
3. Length of residence in area affected by the sanctuary, and if a year-round or seasonal resident of the area
4. Previous attendance of council and/or working group meetings
5. Particular expertise and experience germane to the goals and uses of the sanctuary, particularly in relation to the seat(s) for which you are applying
6. Description of your views of what the role of the council is, and how you will work to best support the sanctuary while on the council
7. Description of the amount of time you have to devote to council activities (council meetings, subcommittee meetings, working group meetings, council retreats, chairing subcommittee or working groups, reviewing written materials, constituent outreach)

8. Description of how you will coordinate with, consult with, and inform the members of the constituency you will represent
9. Other qualifications or information relevant to membership on the council

The information obtained through this application process will be used to determine the qualifications of the applicant for membership on the sanctuary advisory council. The ONMS intends affirmatively to disclose the applications only to ONMS staff and other members of the review panel. However, the ONMS may be required to disclose the applications in response to a court order, a congressional request, or a request from the public under the Freedom of Information Act (FOIA). If disclosure is requested under the FOIA, the ONMS will endeavor to protect the privacy of applicants by withholding personal information such as home addresses and telephone numbers. In contrast, statements of philosophy or opinions contained in the application would likely be released. Applying for membership on the council is voluntary.

Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Office of National Marine Sanctuaries, 1305 East West Highway, N/ORM6, Silver Spring, Maryland 20910.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB Control #0648-0397
Expires [insert new date]

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-CITE-

16 USC Sec. 1445a

01/19/04

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 32 - MARINE SANCTUARIES

-HEAD-

Sec. 1445a. Advisory Councils

-STATUTE-

(a) Establishment

The Secretary may establish one or more advisory councils (in this section referred to as an "Advisory Council") to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) Membership

Members of the Advisory Councils may be appointed from among -

(1) persons employed by Federal or State agencies with expertise in management of natural resources;

(2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and

(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) Limits on membership

For sanctuaries designated after November 4, 1992, the membership

of Advisory Councils shall be limited to no more than 15 members.

(d) Staffing and assistance

The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) Public participation and procedural matters

The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

(2) Emergency meetings may be held at the call of the chairman or presiding officer.

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.

(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

-SOURCE-

(Pub. L. 92-532, title III, Sec. 315, as added Pub. L. 102-587, title II, Sec. 2112, Nov. 4, 1992, 106 Stat. 5046; amended Pub. L. 104-283, Secs. 5, 9(f), Oct. 11, 1996, 110 Stat. 3363, 3368; Pub. L. 106-513, Secs. 16, 19(b)(5), Nov. 13, 2000, 114 Stat. 2391, 2393.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

2000 - Subsec. (a). Pub. L. 106-513, Sec. 16, substituted "advise and make recommendations" for "provide assistance".

Subsec. (b)(2). Pub. L. 106-513, Sec. 19(b)(5), made technical amendment to reference in original act which appears in text as reference to section 1852 of this title.

1996 - Pub. L. 104-283, Sec. 9(f), made technical amendment to directory language of Pub. L. 102-587, Sec. 2112, which added this section.

Subsec. (e)(3). Pub. L. 104-283, Sec. 5, inserted before period at end ", except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register".



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Office of the Law Revision Counsel, U.S. House of Representatives

The Federal Advisory Committee Act became law in 1972 and is the legal foundation defining how federal advisory committees operate. The law has special emphasis on open meetings, chartering, public involvement, and reporting. This version is from the House web site, complete with all Amendments and annotations.

5 USC TITLE 5 - APPENDIX 01/02/01

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

TITLE 5 - APPENDIX

Item

Federal Advisory Committee Act (Pub. L. 92-463)
Inspector General Act of 1978 (Pub. L. 95-452)
Ethics in Government Act of 1978 (Titles I to V of Pub. L. 95-521)
Reorganization Plans

PUB. L. 92-463, OCT. 6, 1972, 86 STAT. 770,
AS AMENDED BY
PUB. L. 94-409, SEC. 5(C), SEPT. 13, 1976, 90 STAT. 1247;
PUB. L. 96-523, SEC. 2, DEC. 12, 1980, 94 STAT. 3040;
PUB. L. 97-375, TITLE II, SEC. 201(C), DEC. 21, 1982, 96 STAT. 1822;
PUB. L. 105-153, SEC. 2(A), (B), DEC. 17, 1997, 111 STAT. 2689

Sec. 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".
(Pub. L. 92-463, Sec. 1, Oct. 6, 1972, 86 Stat. 770.)

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-153, Sec. 1, Dec. 17, 1997, 111 Stat. 2689, provided that: "This Act (enacting section 15 of Pub. L. 92-463, set out in this Appendix, amending section 3 of Pub. L. 92-463, set out in this Appendix, renumbering former section 15 of Pub. L. 92-463, set out in this Appendix, as section 16, and enacting provisions set out as notes under sections 3 and 15 of Pub. L. 92-463, set out in this Appendix) may be cited as the 'Federal Advisory Committee Act Amendments of 1997'."

ACT REFERRED TO IN OTHER SECTIONS

The Federal Advisory Committee Act is referred to in sections 562, 565 of this title; title 2 sections 1534, 1602; title 7 sections 87j, 390b, 390c, 450i, 511d, 1725, 2020, 2026, 2204b, 2279b, 2286, 3123, 3124a, 3129a, 3152, 3196, 5872, 6518; title 8 section 1356; title 10 sections 183, 946, 2012, 2164; title 12 sections 1441a, 1708, 1831h, 2246, 4703; title 15 sections 78k-1, 78q-1, 2080, 4802, 4806; title 16 sections 410nn-3, 410pp-4, 410tt-4, 410aaa-6, 410aaa-27, 410aaa-58, 460vv-12, 460ww-5, 460mmm-6, 463, 470q, 541g, 668dd, 698u-5, 839b, 971b, 1386, 1387, 1389, 1421c, 1445a, 1533, 1612, 1852, 3602, 3632, 3862, 4403, 5404, 5601, 5607, 5705, 5958, 6105; title 18 section 208; title 19 sections 58c, 2155, 2605, 3312, 3512; title 20 sections 80q-10, 1098, 1098a, 1444, 2324, 6511, 7904, 9252; title 21 sections 360c, 679a, 1908; title 22 sections 290m-2, 2124, 2194b, 4356, 4833, 5422, 6434; title 24 section 225b; title 25 sections 166, 4046; title 29 sections 1147, 1302; title 31 section 5135; title 33 sections 467f, 2251; title 35 section 5; title 38 sections 545, 7314, 7320; title 42 sections 282, 285g-4, 290b-4, 300v-3, 903, 2210, 2486h, 3788, 4081, 5816, 6374c, 7234, 7383, 7492, 7506a, 10173b, 10248, 12651b, 13478, 14614, 14616; title 43 sections 1475a, 1600b, 1739, 1753; title 44 section 2701; title 45 sections 1116, 1212; title 46 sections 4508, 9307; title 46 App. Section 1295b; title 47 section 332; title 49 sections 106, 726, 5119, 20133; title 50 App. section 2158.

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 2 01/02/01

Sec. 2. Findings and purpose

-STATUTE-

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 2, Oct. 6, 1972, 86 Stat. 770.)

-EXEC-

EXECUTIVE ORDER NO. 11686

Ex. Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, which related to committee management, was superseded by Ex. Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, formerly set out below.

EXECUTIVE ORDER NO. 11769

Ex. Ord. No. 11769, Feb. 21, 1974, 39 F.R. 7125, which related to committee management, was revoked by Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out below.

EX. ORD. NO. 12024. TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), Section 301 of Title 3 of the United States Code, Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) (31 U.S.C. 1531), and Section 7 of Reorganization Plan No. 1 of 1977 (42 F.R. 56101 (October 21, 1977)) (set out in this Appendix), and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977, it is hereby ordered as follows:

Section 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 F.R. 56101) (set out in this Appendix), of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

Sec. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6(c) of that Act shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

Sec. 4. Executive Order No. 11769 of February 21, 1974 is hereby revoked.

Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

Sec. 6. This Order shall be effective November 20, 1977.

Jimmy Carter.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 3 01/02/01

Sec. 3. Definitions

-STATUTE-

For the purpose of this Act -

(1) The term "Administrator" means the Administrator of General Services.

(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) 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.

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 3, Oct. 6, 1972, 86 Stat. 770; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; Pub. L. 105-153, Sec. 2(a), Dec. 17, 1997, 111 Stat. 2689.)

AMENDMENTS

1997 - Par. (2). Pub. L. 105-153, in closing provisions, substituted "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." for "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."

EFFECTIVE DATE OF 1997 AMENDMENT

Section 2(c) of Pub. L. 105-153 provided that:

"(1) In general. - Except as provided in paragraph (2), this section (enacting section 15 of Pub. L. 92-463, set out in this Appendix, amending this section, and redesignating former section 15 of Pub. L. 92-463, set out in this Appendix, as section 16) and the amendments made by this section shall take effect on the date of the enactment of this Act (Dec. 17, 1997).

"(2) Retroactive effect. - Subsection (a) (amending this section) 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."

TRANSFER OF FUNCTIONS

" 'Administrator' means the Administrator of General Services" substituted for " 'Director' means the Director of the Office of Management and Budget" in par. (1) pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

COMMISSION ON GOVERNMENT PROCUREMENT

Commission on Government Procurement, referred to in par. (2)(ii), terminated Apr. 30, 1973, pursuant to Pub. L. 91-129, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 3 section 411; title 10 section 1783; title 12 section 1441a.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 4 01/02/01

Sec. 4. Applicability; restrictions

-STATUTE-

(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.

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 4, Oct. 6, 1972, 86 Stat. 771.)

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 5 01/02/01

Sec. 5. Responsibilities of Congressional committees; review; guidelines

-STATUTE-

(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.

(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

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 5, Oct. 6, 1972, 86 Stat. 771.)

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 6 01/02/01

Sec. 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

-STATUTE-

(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.

(c) The President shall, not later than December 31 of each year, make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal 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.

-SOURCE-

(Pub. L. 92-463, Sec. 6, Oct. 6, 1972, 86 Stat. 772; Pub. L. 97-375, title II, Sec. 201(c), Dec. 21, 1982, 96 Stat. 1822.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (c) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 173 of House Document No. 103-7.

AMENDMENTS

1982 - Subsec. (c). Pub. L. 97-375 substituted provision that the President shall, not later than Dec. 31 of each year, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding fiscal year, for provision the President, not later than March 31 of each calendar year after 1972, make an annual report to Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 210(c) of Pub. L. 97-375 provided that the amendment made by that section is effective July 1, 1983.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 7 01/02/01

Sec. 7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

-STATUTE-

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the

activities and responsibilities of each advisory committee to determine -

- (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 Administrator 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 Administrator'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 Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator 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 Administrator 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.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, 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;

(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; and

(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.

(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.

(e) The Administrator 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.

-SOURCE-

(Pub. L. 92-463, Sec. 7, Oct. 6, 1972, 86 Stat. 772; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634; 1978 Reorg. Plan No. 2, Sec. 102, eff. Jan. 1, 1979, 43 F.R. 36067, 92 Stat. 3783; Pub. L. 96-523, Sec. 2, Dec. 12, 1980, 94 Stat. 3040.)

REFERENCES IN TEXT

Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(1)(C)(i), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

AMENDMENTS

1980 - Subsec. (d)(1)(C). Pub. L. 96-523 added subpar. (C).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-523 effective sixty days after Dec. 12, 1980, see section 3 of Pub. L. 6-523, set out as a note under section 3102 of this title.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (d) pursuant to Reorg. Plan No. 2 of 1978, Sec. 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

"Administrator", "Administrator's", "Administrator of General Services", and "General Services Administration" substituted for "Director", "Director's", "Director, Office of Management and Budget", and "Office of Management and Budget" in text pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of this title, see section 529 (title I, Sec. 101(c)(1)) of Pub. L. 101-509, set out in a note under section 5376 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 568 of this title.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 8 01/02/01

Sec. 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

-STATUTE-

(a) 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 Administrator 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.

(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

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 8, Oct. 6, 1972, 86 Stat. 773; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services, substituted for "Director", meaning Director of Office of Management and Budget, in subsec. (a) pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 9 01/02/01

Sec. 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

-STATUTE-

- (a) No advisory committee shall be established unless such establishment is -
- (1) specifically authorized by statute or by the President; or
 - (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, 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 Administrator, 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:
 - (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.

-SOURCE-

(Pub. L. 92-463, Sec. 9, Oct. 6, 1972, 86 Stat. 773; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 0, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services, substituted for "Director", meaning Director of Office of Management and Budget, in subsecs. (a)(2) and (c) pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 10 01/02/01

Sec. 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

-STATUTE-

- (a)(1) Each advisory committee meeting shall be open to the public.
- (2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of

such meeting prior thereto.

(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 Administrator 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.

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

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b 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.

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 10, Oct. 6, 1972, 86 Stat. 774; Pub. L. 94-409, Sec. 5(c), Sept. 13, 1976, 90 Stat. 1247; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

AMENDMENTS

1976 - Subsec. (d). Pub. L. 94-409 inserted "portion of an" after "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552b(c) of title 5, for provisions relating to determinations of matters listed in section 552(b) of title 5.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94-409, set out as an Effective Date note under section 552b of this title.

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services, substituted for "Director", meaning Director of Office of Management and Budget, in subsec. (a)(2), (3) pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 566 of this title; title 15 section 4806; title 19 sections 2155, 2605; title 20 section 9011; title 30 section 1229; title 42 sections 6273, 7704; title 46 sections 4508, 9307; title 49 section 30306.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 11 01/02/01

Sec. 11. Availability of transcripts; "agency proceeding"

-STATUTE-

(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.

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

-SOURCE-

(Pub. L. 92-463, Sec. 11, Oct. 6, 1972, 86 Stat. 775.)

REFERENCES IN TEXT

Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of Pub. L. 92-463.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 4806; title 19 sections 2155, 2605; title 20 section 9011; title 42 section 6273.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 12 01/02/01

Sec. 12. Fiscal and administrative provisions; record-keeping; audit; agency support services

-STATUTE-

(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.

(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.

-SOURCE-

(Pub. L. 92-463, Sec. 12, Oct. 6, 1972, 86 Stat. 775.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 9011.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 13 01/02/01

Sec. 13. Responsibilities of Library of Congress; reports and background papers; depository

-STATUTE-

Subject to section 552 of title 5, United States Code, the Administrator 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.

-SOURCE-

(Pub. L. 92-463, Sec. 13, Oct. 6, 1972, 86 Stat. 775; 1977 Reorg. Plan No. 1, Sec. 5F, eff. Nov. 20, 1977, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator", meaning Administrator of General Services, substituted in text for "Director", meaning Director of Office of Management and Budget, pursuant to Reorg. Plan No. 1 of 1977, Sec. 5F, 42 F.R. 56101, 91 Stat. 1634, set out in this Appendix, which transferred functions of Office of Management and Budget and Director thereof relating to Committee Management Secretariat to Administrator of General Services, effective Nov. 20, 1977, as provided by section 1 of Ex. Ord. No. 12024, Dec. 1, 1977, 42 F.R. 61445, set out under section 2 of this Act in this Appendix.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 14 01/02/01

Sec. 14. Termination of advisory committees; renewal; continuation

-STATUTE-

(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).
(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.

-SOURCE-

(Pub. L. 92-463, Sec. 14, Oct. 6, 1972, 86 Stat. 776.)

REFERENCES IN TEXT

Effective date of this Act, referred to in subsec. (a)(1), as meaning effective upon expiration of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of Pub. L. 92-463.

EXECUTIVE ORDER NO. 11827

Ex. Ord. No. 11827, Jan. 4, 1975, 40 F.R. 1217, as amended by Ex. Ord. No. 11915, May 10, 1976, 41 F.R. 19195, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out below.

EXECUTIVE ORDER NO. 11948

Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839; Ex. Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12110, Dec. 28,

1978, 44 F.R. 1069, formerly set out below.

EX. ORD. NO. 12007. TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided: By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. (a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11126 of November 1, 1963, as amended by Executive Order No. 11221 of May 6, 1965 (42 U.S.C. 2000e note), is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows: "Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows: "To the extent practical and to the extent permitted by law

(1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and

(2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of Section 4 of Executive Order No. 11514 of March 5, 1970 (42 U.S.C. 4321 note), is revoked.

Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 13, 1971 (15 U.S.C. 631 note), is revoked.

Sec. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 (20 U.S.C. 2982 note), is amended as follows:

(1) The second sentence of subsection (b)(1) of Section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 (22 U.S.C. 3107 note), is revoked.

Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11948 of December 20, 1976 (formerly set out as a note under this section), which extended the above advisory committees until December 31, 1978, is superseded.

Jimmy Carter.

EX. ORD. NO. 12029. TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

Ex. Ord. No. 12029, Dec. 14, 1977, 42 F.R. 63631, provided: By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11342, as amended, is revoked.

Sec. 2. Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976 (formerly set out as a note under this section), which extended the above advisory committee until December 31, 1978, is superseded. Jimmy Carter.

EXECUTIVE ORDER NO. 12110

Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, as amended, formerly set out below.

EXECUTIVE ORDER NO. 12258

Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, as amended by Ex. Ord. No. 12271, Jan. 15, 1981, 46 F.R. 4677; Ex. Ord. No. 12299, Mar. 17, 1981, 46 F.R. 17751; Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which provided for the continuance of

certain Federal advisory committees, was superseded by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out below.

EX. ORD. NO. 12305. TERMINATION OF CERTAIN FEDERAL ADVISORY COMMITTEES

Ex. Ord. No. 12305, May 5, 1981, 46 F.R. 25421, provided: By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

- (a) Executive Order No. 12059 of May 11, 1978, as amended (28 U.S.C. 44 note), establishing the United States Circuit Judge Nominating Commission;
- (b) Executive Order No. 11992 of May 24, 1977 (28 U.S.C. note prec. chapter 1), establishing the Committee on Selection of Federal Judicial Officers;
- (c) Executive Order No. 12084 of September 27, 1978, as amended by Executive Order 12097 of November 8, 1978 (28 U.S.C. 133 note), establishing the Judicial Nominating Commission for the District of Puerto Rico; and
- (d) Executive Order No. 12064 of June 5, 1978 (26 U.S.C. 7443 note), establishing the United States Tax Court Nominating Commission.

Subsections (g), (i), (j) and (k) of Section 1-101 of Executive Order No. 12258 (formerly set out as a note under this section), extending these committees, are also revoked. Ronald Reagan.

EX. ORD. NO. 12379. TERMINATION OF BOARDS, COMMITTEES, AND COMMISSIONS

Ex. Ord. No. 12379, Aug. 17, 1982, 47 F.R. 36099, provided: By the authority vested in me as President by the Constitution and statutes of the United States of America, and to terminate the establishing authorities for committees that are inactive or no longer necessary, it is hereby ordered as follows:

- Section 1. Executive Order No. 12071, as amended (29 U.S.C. 1001 note), establishing the President's Commission on Pension Policy, is revoked.
- Sec. 2. Executive Order No. 12042, creating a Board of Inquiry to Report on Labor Disputes Affecting the Bituminous Coal Industry in the United States, is revoked.
- Sec. 3. Executive Order No. 12085, creating an Emergency Board to Investigate a Dispute Between the Norfolk and Western Railway Company and Certain of Its Employees, is revoked.
- Sec. 4. Executive Order No. 12132, creating an Emergency Board to Investigate a Dispute Between the National Railway Labor Conference and Certain of Its Employees, is revoked.
- Sec. 5. Executive Order No. 12095, creating an Emergency Board to Investigate a Dispute Between Wien Air Alaska, Inc., and Certain Individuals, is revoked.
- Sec. 6. Executive Order No. 12159, creating an Emergency Board to Investigate Disputes Between the Chicago, Rock Island, Pacific Railroad and Peoria Terminal Company and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; and the United Transportation Union, is revoked.
- Sec. 7. Executive Order No. 12182, creating an Emergency Board to Investigate a Dispute Between the Long Island Rail Road and Certain of Its Employees, is revoked.
- Sec. 8. Executive Order No. 12207, creating an Emergency Board to Investigate a Dispute Between the Port Authority Trans-Hudson Corporation and Certain of Its Employees, is revoked.
- Sec. 9. Executive Order No. 12262 (29 U.S.C. 1001 note), establishing an Interagency Employee Benefit Council, is revoked.
- Sec. 10. Executive Order No. 12275 (20 U.S.C. 951 note), establishing the Design Liaison Council, is revoked.
- Sec. 11. Executive Order No. 11829, as amended (25 U.S.C. 640d note), establishing the Hopi-Navajo Land Settlement Interagency Committee, is revoked.
- Sec. 12. Executive Order No. 11022, as amended (42 U.S.C. 3001 note), establishing the President's Council on Aging, is revoked.
- Sec. 13. Executive Order No. 12192 (42 U.S.C. 2021 note), establishing the State Planing (Planning) Council on Radioactive Waste Management, is revoked.
- Sec. 14. Executive Order No. 12075, as amended (42 U.S.C. 1450 note), establishing the Interagency Coordinating Council, is revoked.
- Sec. 15. Executive Order No. 11782 (12 U.S.C. 2281 note), establishing the Federal Financing Bank Advisory Council, is revoked.
- Sec. 16. Executive Order No. 12089, as amended (15 U.S.C. 2401 note), establishing the National Productivity Council, is revoked.

Sec. 17. Executive Order No. 11330, as amended (42 U.S.C. note prec. 2711), establishing the President's Council on Youth Opportunity, is revoked.

Sec. 18. Executive Order No. 11256, establishing the President's Committee on Food and Fiber and establishing the National Advisory Commission on Food and Fiber, is revoked.

Sec. 19. Executive Order No. 11654 (15 U.S.C. 278f note), continuing the Federal Fire Council, is revoked.

Sec. 20. Executive Order No. 12083, as amended (42 U.S.C. 7101 note), establishing the Energy Coordinating Committee, is revoked.

Sec. 21. Executive Order No. 12285, as amended and ratified (50 U.S.C. 1701 note), establishing the President's Commission on Hostage Compensation, is revoked.

Sec. 22. Executive Order No. 12202, as amended (42 U.S.C. 5848 note), establishing the Nuclear Safety Oversight Committee, is revoked.

Sec. 23. Executive Order No. 12194 (42 U.S.C. 1321 note), establishing the Radiation Policy Council, is revoked.

Sec. 24. The Veterans' Federal Coordinating Committee (Weekly Compilation of Presidential Documents, volume 14, number 41, page 1743) is terminated.

Sec. 25. The President's Council on Energy Efficiency (Weekly Compilation of Presidential Documents, volume 16, numbers 18 and 30, pages 790 and 1404) is terminated. Ronald Reagan.

EXECUTIVE ORDER NO. 12399

Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out below.

EXECUTIVE ORDER NO. 12489

Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out below.

EXECUTIVE ORDER NO. 12534

Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out below.

EXECUTIVE ORDER NO. 12610

Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out below.

EXECUTIVE ORDER NO. 12692

Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, as amended by Ex. Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12774, Sec. 4, Sept. 27, 1991, 56 F.R. formerly set out below.

EXECUTIVE ORDER NO. 12774

Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12869, Sec. 5, Sept. 30, 1993, 58 F.R. 51751, formerly set out below.

EX. ORD. NO. 12838. TERMINATION AND LIMITATION OF FEDERAL ADVISORY COMMITTEES

Ex. Ord. No. 12838, Feb. 10, 1993, 58 F.R. 8207, provided: 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.

William J. Clinton.

EXECUTIVE ORDER NO. 12869

Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, as amended by Ex. Ord. No. 12882, Sec. 4(c), Nov. 23, 1993, 58 F.R. 62493, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out below.

EXECUTIVE ORDER NO. 12974

Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, which provided for the continuance of certain Federal advisory committees, was superseded by Ex. Ord. No. 13062, Sept. 29, 1997, 62 F.R. 51755, formerly set out below.

EXECUTIVE ORDER NO. 13062

Ex. Ord. No. 13062, Sept. 29, 1997, 62 F.R. 51755, as amended by Ex. Ord. No. 13138, Sec. 4, Sept. 30, 1999, 64 F.R. 53880, provided for the continuance of certain Federal advisory committees and amendment of Ex. Ord. No. 13038 (47 U.S.C. 336 note) and Ex. Ord. No. 13054 (22 U.S.C. 3310 note).

EX. ORD. NO. 13138. CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 2001.

- (a) Committee for the Preservation of the White House; Executive Order 11145, as amended (Department of the Interior) (3 U.S.C. 110 note).
- (b) Federal Advisory Council on Occupational Safety and Health; Executive Order 12196, as amended (Department of Labor) (5 U.S.C. 7902 note).
- (c) National Partnership Council; Executive Order 12871, as amended (Office of Personnel Management) (5 U.S.C. 7101 note).
- (d) President's Advisory Commission on Educational Excellence for Hispanic Americans; Executive Order 12900 (Department of Education) (20 U.S.C. 3411 note).
- (e) President's Board of Advisors on Historically Black Colleges and Universities; Executive Order 12876 (Department of Education) (20 U.S.C. 1060 note).
- (f) President's Board of Advisors on Tribal Colleges and Universities; Executive Order 13021, as amended (Department of Education) (25 U.S.C. 1801 note).
- (g) President's Commission on White House Fellowships; Executive Order 11183, as amended (Office of Personnel Management).
- (h) President's Committee of Advisors on Science and Technology; Executive Order 12882 (Office of

Science and Technology Policy) (42 U.S.C. 6601 note).

(i) President's Committee on the Arts and the Humanities; Executive Order 12367, as amended (National Endowment for the Arts).

(j) President's Committee on the International Labor Organization; Executive Order 12216, as amended (Department of Labor) (22 U.S.C. 271 note).

(k) President's Committee on the National Medal of Science; Executive Order 11287, as amended (National Science Foundation) (42 U.S.C. 1881 note).

(l) President's Committee on Mental Retardation, Executive Order 12994 (Department of Health and Human Services) (42 U.S.C. note prec. 6000).

(m) President's Council on Physical Fitness and Sports; Executive Order 12345, as amended (Department of Health and Human Services) (42 U.S.C. 300u-5 note).

(n) President's National Security Telecommunications Advisory Committee, Executive Order 12382, as amended (Department of Defense).

(o) Trade and Environment Policy Advisory Committee; Executive Order 12905 (Office of the United States Trade Representative) (19 U.S.C. 2155 note).

(p) President's Export Council; Executive Order 12131, as amended (Department of Commerce) (50 App. U.S.C. 2401 note).

Sec. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act that are applicable to the committees listed in section 1 of this order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 3. The following Executive orders, or sections thereof, which established committees that have terminated and whose work is completed, are revoked:

(a) Executive Order 13017, as amended by Executive Orders 13040 and 13056, establishing the Advisory Commission on Consumer Protection and Quality in the Health Care Industry;

(b) Executive Order 13038, establishing the Advisory Committee on Public Interest Obligation of Digital Television Broadcasters, as amended by section 5 of Executive Order 13062, and Executive Orders 13065, 13081, and 13102;

(c) Section 5 and that part of section 6(f) of Executive Order 13010, as amended by section 3 of Executive Order 13025, Executive Order 13041, sections 1, 2, and that part of section 3 of Executive Order 13064, and Executive Order 13077, establishing the Advisory Committee to the President's Commission on Critical Infrastructure Protection (42 U.S.C. 5195 note);

(d) Executive Order 13037, as amended by Executive Orders 13066 and 13108, establishing the Commission to Study Capital Budgeting;

(e) Executive Order 13050, establishing the President's Advisory Board on Race;

(f) Executive Order 12852, as amended by Executive Orders 12855, 12965, 12980, 13053, and 13114, establishing the President's Council on Sustainable Development; and

(g) Executive Order 12961, as amended by Executive Order 13034 (38 U.S.C. 1117 note), establishing the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

Sec. 4. Sections 1 through 4 of Executive Order 13062 are superseded.

Sec. 5. Executive Order 12131, as amended (50 App. U.S.C. 2401 note), is further amended by adding in section 1-102(a) a new paragraph as follows: "(9) Department of Energy."

Sec. 6. Executive Order 13115 is amended by adding the Department of the Treasury and the Office of National Drug Control Policy to the Interagency Task Force on the Roles and Mission of the United States Coast Guard, so that the list in section 1(b) of that order shall read as follows:

"(1) Department of State;

(2) Department of the Treasury;

(3) Department of Defense;

(4) Department of Justice;

(5) Department of Commerce;

(6) Department of Labor;

(7) Department of Transportation;

(8) Environmental Protection Agency;

(9) Office of Management and Budget;

(10) National Security Council;

(11) Office of National Drug Control Policy;

(12) Council on Environmental Quality;

(13) Office of Cabinet Affairs;

- (14) National Economic Council;
- (15) Domestic Policy Council; and
- (16) United States Coast Guard."

Sec. 7. Executive Order 12367, as amended, is further amended as follows:

- (a) in section 1, the text "the director of the International Communication Agency," is deleted;
- (b) in section 2, delete the first sentence and insert in lieu thereof "The Committee shall advise, provide recommendations to, and assist the President, the National Endowment of the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities. The Committee shall initiate and assist in the development of
 - (i) ways to promote public understanding and appreciation of the arts and the humanities;
 - (ii) ways to promote private sector support for the arts and humanities;
 - (iii) ways to evaluate the effectiveness of Federal support for the arts and humanities and their relationship with the private sector;
 - (iv) the planning and coordination of appropriate participation (including productions and projects) in major national cultural events, including the Millennium;
 - (v) activities that incorporate the arts and the humanities in government objectives; and
 - (vi) ways to promote the recognition of excellence in the fields of the arts and the humanities.";
- (c) in section 3(b), add the following sentence after the first sentence: "Private funds accepted under the National Endowment for the Arts' or the National Endowment for the Humanities' gift authority may also be used to pay expenses of the Committee."

Sec. 8. Executive Order 12345, as amended (42 U.S.C. 300u-5 note), is further amended by deleting the first sentence of section 2(b) and inserting in lieu thereof the following three sentences.

"The council shall be composed of twenty members appointed by the President. Each member shall serve a term of 2 years and may continue to serve after the expiration of their term until a successor is appointed. A member appointed to fill an unexpired term will be appointed for the remainder of such term."

Sec. 9. This order shall be effective September 30, 1999.

William J. Clinton.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8473 of this title; title 7 sections 5843, 5853; title 12 section 4703; title 15 section 4603; title 16 sections 1a-14, 410nn-3, 410oo-5, 410qq-2, 410ww-21, 430g-8, 460ww-5, 460kkk, 460lll-22, 463, 698u-5, 1274, 5404; title 20 section 5508; title 21 sections 360c, 360j; title 29 sections 765, 1142, 2911; title 33 section 2251; title 38 section 545; title 42 sections 218, 254j, 299c, 299c-1, 300d-1, 300j-5, 300v-3, 2471a, 11221, 12623, 12653l, 13458, 14131; title 44 section 2701; title 49 sections 30306, 44508.

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 15 01/02/01

Sec. 15. Requirements relating to the National Academy of Sciences and the National Academy of Public Administration

-STATUTE-

- (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 use 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 -
 - (A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences;
 - or
 - (B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements. - The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Academy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable,

(B) the committee membership is fairly balanced as determined by the Academy to be appropriate for the functions to be performed, and

(C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in section 552(b) of title 5, United States Code. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in section 552(b) of title 5, United States Code. The summary shall identify the committee members present, the topics discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in section 552(b) of title 5, United States Code. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) Regulations. - The Administrator of General Services may issue regulations implementing this section.

-SOURCE-

(Pub. L. 92-463, Sec. 15, as added Pub. L. 105-153, Sec. 2(b), Dec. 17, 1997, 111 Stat. 2689.)

REFERENCES IN TEXT

The date of the enactment of the Federal Advisory Committee Act Amendments of 1997, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 105-153, which was approved Dec. 17, 1997.

PRIOR PROVISIONS

A prior section 15 of the Federal Advisory Committee Act was renumbered section 16 by Pub. L. 105-153.

REPORT

Section 3 of Pub. L. 105-153 provided that: "Not later than 1 year after the date of the enactment of this Act (Dec. 17, 1997), 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 (enacting this section, amending section 3 of Pub. L. 92-463, set out in this Appendix, and redesignating former section 15 of Pub. L. 92-463, set out in this Appendix, as section 16)."

-CITE-

5 USC APPENDIX - FEDERAL ADVISORY COMMITTEE ACT Sec. 16 01/02/01

Sec. 16. Effective date

-STATUTE-

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

-SOURCE-

(Pub. L. 92-463, Sec. 16, formerly Sec. 15, Oct. 6, 1972, 86 Stat. 776; renumbered Sec. 16, Pub. L. 105-153, Sec. 2(b), Dec. 17, 1997, 111 Stat. 2689.)

The Freedom of Information Act, 5 U.S.C. § 552
As Amended By
Public Law No. 110-175, 121 Stat. 2524

Below is the full text of the Freedom of Information Act in a form showing all amendments to the statute made by the “Openness Promotes Effectiveness in our National Government Act of 2007.” All newly enacted provisions are in boldface type.

§ 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;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(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);

unless the materials are promptly published and copies offered for sale. 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. 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, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, 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. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. 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 an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. 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 cited 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)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) 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.

(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.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(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.

In this clause, the term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ‘news’ means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ‘news’) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(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.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request. [Effective one year from date of enactment]

(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. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an 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).

(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 is shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) 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.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) 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.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(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.

(5) 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—

(i) determine within 20 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.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the

agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

[Effective one year from date of enactment]

(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. **To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. [Effective one year from date of enactment].** 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)(i) 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.

(ii) 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.

(iii) 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 (ii) 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.

(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.

(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 person's knowledge and belief.

(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.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

[Effective one year from date of enactment]

(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 a 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. The amount of information deleted, **and the exemption under which the deletion is made**, 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, **and the exemption under which the deletion is made**, shall be indicated at the place in the record where such deletion is made.

(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 the 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)(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), **the number of occasions on which each statute was relied upon**, 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 **and average** 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, **based on the date on which the requests were received by the agency**;

(F) **the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests**;

(G) **based on the number of business days that have elapsed since each request was originally received by the agency—**

(i) **the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days**;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

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

~~(G)~~ **(O)** 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) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

~~(2)~~ **(3)** 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. **In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.**

~~(3)~~ **(4)** 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)~~ **(5)** 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)~~ **(6)** 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.

(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.~~

(2) ‘record’ and any other term used in this section in reference to information includes—

(A) 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; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(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.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to

litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

All attendees are required to submit their name, time of arrival, e-mail address and phone number to Ms. Breitberg.

Dated: August 5, 2008.

James M. Turner,
Deputy Director.

[FR Doc. E8-18618 Filed 8-11-08; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen M. Brubeck, 206-842-6084 or karen.brubeck@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. The councils are individually chartered for each sanctuary to meet the needs of the sanctuary. Once a council has been chartered, the sanctuary manager starts a process to recruit members for that Council by providing notice to the

public and requesting interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the sanctuary manager. Submissions may be made electronically.

III. Data

OMB Control Number: 0648-0397.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden

Hours: 500 hours.

Estimated Total Annual Cost to

Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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BILLING CODE 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Mr. G. Walter Swain

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Mr. G. Walter Swain.

DATES: The decision record for the administrative appeal of Mr. G. Walter Swain was closed on August 12, 2008.

ADDRESSES: Materials from the appeal record are available at the Internet site <http://www.ogc.doc.gov/czma.htm> and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA Office of General Counsel for Ocean Services, via e-mail at thomas.street@noaa.gov, or at 301-713-7390.

SUPPLEMENTARY INFORMATION: On February 4, 2008, Mr. G. Walter Swain filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. Mr. Swain appealed an objection by the State of Delaware in the proposed construction of a marina and associated structures at the confluence of Cedar Creek and Mispillion River, in Milford, Delaware.

Mr. Swain requested that the Secretary override Delaware's objection based upon an alleged threshold deficiency in the objection and on the grounds that the project is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. Decisions for CZMA administrative appeals are based on information contained in a decision record. Under the CZMA, the decision record must close no later than 220 days after notice of the appeal was first published in the **Federal Register**. See 16 U.S.C. 1465; 15 CFR 930.130. The CZMA requires that a notice be published in the **Federal Register** indicating the date on which the decision record has been closed. See 16 U.S.C. 1465(b); 15 CFR 930.130. Consistent with this deadline, the Swain appeal decision record was closed on August 12, 2008. No further information, briefs or comments will be considered in deciding this appeal.

Additional information about the Swain appeal and the CZMA appeals process is available from the