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COMDTINST 5420.37A
15 SEP 2003

COMMANDANT INSTRUCTION 5420.37A

Subj: COMMITTEE MANAGEMENT POLICIES AND PROCEDURES

Ref: (a) The Federal Advisory Committee Act, Public Law 92-463
(b) 41 CFR Parts 101-6 and 102-3, Federal Advisory Committee Management

1. PURPOSE. This Instruction:

- a. Combines the policies and procedures from Committee Management Policy and Procedures, COMDTINST 5420.37 and COMDTINST 5420.18E, Advisory Committees; Requirements For;
- b. Updates and establishes policies, assigns responsibilities, and prescribes procedures for the management of:
 - (1) Coast Guard committees that fall under the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2) (FACA); and,
 - (2) Coast Guard-sponsored committees and participation by Coast Guard personnel on committees of other organizations.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, and assistant commandants for directorates, Chief Counsel, and special staff offices at Headquarters shall ensure compliance with the provisions of this Instruction. Internet release is authorized.

3. DIRECTIVES AFFECTED. Committee Management Policy and Procedures, COMDTINST 5420.37, and Advisory Committees, requirements for; COMDTINST 5420.18E are hereby cancelled.

4. DISCUSSION.

DISTRIBUTION – SDL No. 140 COMDTINST 5420.37A

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NON-STANDARD DISTRIBUTION:

- a. The Federal Advisory Committee Act (FACA) was enacted by Congress in 1972 (Public Law 92-463) to ensure that advice provided to the Executive Branch by individuals, groups, organizations, or special interests does not have undue influence on government actions. FACA requires that the advice from committees, task forces, boards, working groups, commissions, etc. be both objective and accessible to the public. FACA also requires that the public know who the members of committees are, when and where the committees will meet, and what issues will be discussed. Meetings must be announced and open to the public, and the information provided to committee members must be provided to the public.
- b. Coast Guard offices and personnel interact with individuals and groups in many ways, and the majority of these interactions do not trigger the provisions of FACA. However, if any of the following factors are present, that interaction may be subject to FACA: The committee is controlled by a government agency; the committee provides advice to a government agency; or the committee has a non-government member. The Coast Guard Committee Management Officer will help determine whether FACA applies and provide options for public input that does not trigger FACA.
- c. Coast Guard personnel also serve on committees, panels, etc. of other Federal agencies, State or local governments, or non-Government entities. Establishment of and/or participation on such committees by Coast Guard personnel are also addressed in this Instruction.

5. POLICY.

- a. The Coast Guard shall not establish or utilize an advisory committee unless directed or authorized by statute, executive order, Presidential direction, or Secretarial action.
- b. Prior to establishing or utilizing a committee, the sponsoring office shall consult with their servicing legal office and the Coast Guard Committee Management Officer to determine applicability of FACA and options for meetings with industry and the public that do not require establishing a committee under FACA.
- c. Prior to approving participation of Coast Guard personnel on non-Government committees, the Coast Guard approving official shall consult with their appropriate legal office and the Coast Guard Committee Management Officer to determine whether such participation is appropriate or in the Coast Guard's best interests.
- d. Federal Advisory Committees.
 - (1) The Coast Guard shall not establish or utilize an advisory committee, as defined under FACA, unless directed or authorized by statute, executive order, Presidential direction, or Secretarial action.
 - (2) The Coast Guard shall establish advisory committees only when they afford the most expeditious, economical, and appropriate means for accomplishing the intended purpose. An advisory committee must be essential to the conduct of Coast Guard business and in the

public interest. If the objective of the committee can be accomplished by an existing entity within the Coast Guard, by an existing committee, through public hearings, by hiring an employee or consultant, or by awarding a study contract, a committee should not be established.

(3) The function of advisory committees shall be advisory only, and all matters under committee consideration shall be determined by Coast Guard officials.

e. Non-FACA Committees. The Coast Guard shall establish or participate in non-FACA committees only when such participation:

- (1) Reduces overlapping efforts among counterpart Departmental, DOD, or other agencies;
- (2) Promotes the quality of performing Coast Guard missions, mission support functions, or management processes;
- (3) Supports required external management initiatives;
- (4) Contributes unique Coast Guard expertise needed by other public sector entities;
- (5) Enhances service to the American public; or
- (6) Provides mutual benefit to the participating entities.

6. TYPES OF COMMITTEES.

- a. Advisory Committee. Any committee board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, which is established by statute or established or utilized by the President or by any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities and which has at least one member who is not a full-time officer or employee of the Federal government.
- b. Department Committee. A formally established committee that is composed solely of employees within a department of the Federal government.
- c. Internal Committee. One established by the Coast Guard that is composed wholly of Coast Guard personnel.
- d. Interagency Committee. One formed by an agency of the Federal government and composed wholly of Federal employees from more than one agency.
- e. International Committee. One having representatives of foreign governments, industries, or organizations, usually established as a result of a treaty or agreement between the United States and a foreign government or by legislation. Participation, sponsorship, and establishment of international committees are dictated by treaty, agreement, or legislation.

- f. Non-Government Committee. One sponsored by any organization not part of the Federal government.
- g. Harbor Safety Committee (HSC).
 - (1) A committee established and controlled by local non-Federal entities to address local port or waterway issues, such as waterway safety, security, mobility and environmental concerns. The membership of HSCs include local port facility operators and users, maritime labor and industry organizations, environmental groups, public interest groups, and local government representatives. HSCs may also have Federal government members, including Coast Guard personnel.
 - (2) For the most part, HSCs fall under the FACA exemption for local civic groups because they are organized and run by local non-Federal entities. Coast Guard personnel may serve as members of HSCs, but any control of the committee's structure, membership, or agenda by the Coast Guard would convert the committee to a FACA. However, an HSC may be exempt from FACA as an operational committee even though created and controlled by Coast Guard personnel. The sponsoring office shall consult with their servicing legal office for guidance. See "Guidance for the Establishment and Development of Harbor Safety Committees Under the Marine Transportation System (MTS) Initiative," Navigation and Vessel Inspection Circular No. 1-00 (NVIC 1-00), COMDTPUB P16700.4.
- h. Port Security Committee (PSC).
 - (1) A committee established and managed in accordance with the guidance contained in "Guidance for Port Security Committees, and Port Security Plans Required for U. S. Ports," Navigation and Inspection Circular No. 9-02 (NVIC 9-02), COMDTPUB P16700.4, in order to provide a framework to communicate threats, identify risks, and coordinate resources to mitigate threats and vulnerabilities, including the development, review, and update of a Port Security Plan.
 - (2) PSCs, when managed in accordance with NVIC 9-02, are exempt from FACA as operational committees, even though they are created and controlled by Coast Guard personnel.
- i. Operational Committee. A committee established to perform primarily operational functions as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing government decisions or policy.

7. DEFINITIONS.

- a. Approving Official. The official having authority to approve committee actions (e.g., establish, modify, extend, or terminate committees) and to appoint members. For FACA committees, the Secretary approves committee actions and appoints members based on the recommendations of the Commandant.
- b. Chairperson. The presiding officer of the committee appointed to direct the committee's efforts in the effective completion of its assigned tasks.

- c. Coast Guard personnel. All military personnel, civilian employees, and contractors of the U.S. Coast Guard.
- d. Committee Management Officer (CMO). The official designated with the responsibility for exercising control, supervision, and accomplishments of committees within his or her organization.
- e. Designated Federal Officer (DFO) or Executive Director (ED). The Coast Guard official designated with the responsibility to approve or call meetings, approve agendas, attend meetings, and adjourn meetings when doing so is in the public interest. The DFO implements the provisions of sections 10(e) and (f) of FACA.
- f. Member. An individual duly appointed to attend and participate in committee meetings and may, within prescribed limits, represent his/her organization.
- g. Secretary. "Secretary" shall mean the Secretary of the Department in which the Coast Guard is operating.
- h. Sponsor. The individual designated by the approving official to be responsible for the committee and the maintenance of committee records. The Commandant, Assistant Commandants, and area and district commanders are solely authorized to be sponsors of advisory committees.
- i. Utilize. A committee that is not established by the Federal government is utilized when a Federal office or agency exercises actual management or control over the committee's operation.

9. RESPONSIBILITIES.

- a. The Coast Guard Committee Management Officer (CG CMO) shall:
 - (1) Exercise control and management over the establishment and procedures of advisory committees established by the Coast Guard; develop policies and provide guidance on the interpretation and implementation of FACA, Government Services Administration (GSA) regulations, and Department policy; and provide guidance on the requirements for non-FACA committees;
 - (2) Maintain copies of establishing and renewal documents for all CG advisory committees as well as membership lists, advisory committee reports, data used to prepare reports to oversight agencies, and copies of all advisory committee documents requiring the Secretary's approval;
 - (3) Review and clear all FACA actions from the Commandant to the Secretary, including, but not limited to, appointment of committee members and charter actions;
 - (4) Develop policies, guidelines and procedures to establish and operate an effective committee management program within the Coast Guard;

- (5) Direct Executive Directors on committee policies and procedures and review all committee action documents before formal submission through clearance channels;
 - (6) Work with the Office of the Secretary to resolve questions on FACA or non-FACA committee issues; and
 - (7) Provide initial and yearly ethics training to public members.
- b. The committee Sponsor shall:
- (1) Serve as the principal responsible official for the committee. In this capacity, designate in writing an Executive Director (ED) for the committee. The ED or his or her designee shall serve as the Designated Federal Officer (DFO) as required under FACA;
 - (2) Provide staff, secretarial, and other support services to the committees;
 - (3) Serve as the Final Reviewing Official of Confidential Financial Disclosure Reports filed by public members and issue waivers of conflict of interest as appropriate for public members;
 - (4) Maintain committee records and files, including establishing documents, official correspondence, membership information, agendas, minutes of meetings, invitations, studies, analyses, compilations of data or working papers;
 - (5) Initiate committee action documents including any required reports; and
 - (6) Comply with the requirements of this Instruction and other applicable regulations and instructions.
- c. Area commanders (for area staff/units), district commanders, and assistant commandants or equivalent at Headquarters shall:
- (1) Approve all memberships and representation of Coast Guard personnel on non-Coast Guard-sponsored committees;
 - (2) Ensure that the CG CMO is kept fully informed of all pertinent committee matters through clearance or copies of correspondence, including all changes of membership. All committee transactions that require Departmental approval must be reviewed and approved by the CG CMO.
- d. The Executive Director shall act as the Designated Federal Officer (DFO) and shall carry out the provisions of sections 10(e) and (f) of FACA. As DFO, the Executive Director shall:
- (1) Approve or call the meeting of the advisory committee or subcommittee;
 - (2) Approve the agenda;
 - (3) Attend the meetings;

- (4) Adjourn any meeting when he or she determines it to be in the public interest; and
- (5) Chair the meeting when so directed by the Agency head.

- 10. ENVIRONMENTAL CONSIDERATIONS. Environmental considerations were examined in the development of this Instruction and have been determined to be not applicable.
- 11. FORMS. Office of Government Ethics (OGE) Form 450 and OGE Optional Form 450-A is available in Jetform Filler and Adobe, and Form DOT F 1120.1, Advisory Committee Candidate Biographical Information Request is available from the Committee Management Officer, Commandant (G-CQM).

/s/ T. W. ALLEN
Chief of Staff

- Encl: (1) Procedures for Non-FACA Committees
(2) Procedures for FACA Committees

PROCEDURES FOR NON-FACA COMMITTEES

1. As provided for in paragraph 5. Participation Approval, of this enclosure, the appropriate area commander (for area staff and units), district commander, or assistant commandant or equivalent shall approve the participation of a Coast Guard employee on any committee not sponsored by the Coast Guard.
2. Participation by Coast Guard Personnel on Committees Sponsored by the Department of Homeland Security. Coast Guard personnel serving on committees sponsored by the Department of Homeland Security shall fulfill their responsibilities as a committee member as follows:
 - a. The member shall assess the work of the committee to ensure that it is directed toward and serving a valid and useful purpose and shall, when appropriate, recommend to the establishing authority changes in purpose or scope, withdrawal of membership, or termination of the committee.
 - b. When a member is presumed to speak for or represent the Coast Guard or when designated to do so, he or she shall obtain Coast Guard coordination, review, and approval from the appropriate officials to ensure that such representation accurately reflects the official position of the Coast Guard.
 - c. If the committee charter provides for alternates, the member shall ensure attendance of his or her alternate at committee meetings when the member cannot be present.
3. Participation by Coast Guard Personnel on Federal Committees Not Sponsored by the Department of Homeland Security.
 - a. Coast Guard personnel may not participate on committees which are not sponsored by the Department of Homeland Security unless a determination has been made that such participation is justified, is in the public interest, and does not constitute a conflict of interest for the Department, the Coast Guard, or the employee. The approving official must clearly define in writing the extent of the Coast Guard member's authority to represent or commit the Coast Guard to a course of action or position as well as the member's responsibilities in so doing.
 - b. Representation Limitations. Representation by Coast Guard personnel on non-Department committees will normally be limited to one member and one alternate. In the event that more than one Department administration participates in a non-Department activity, the Department Committee Management Officer will designate the lead organization which will coordinate with the various participants to ensure a single Department position and avoid unnecessary duplication. When more than one Coast Guard representative participates on a committee, a single coordinated position shall

be developed for representation to the committee. Coast Guard personnel serving as members of such committees shall keep all other Coast Guard elements having an interest in the committee's work fully advised of its activities and ensure that appropriate and adequate coordination takes place in the development of any position or comments presented to the committee.

4. Participation by Coast Guard Personnel on Committees Not Sponsored by the Federal Government. This section does not apply to membership by Coast Guard personnel in private associations, organizations, or committees that have no official relationship to the Coast Guard such as homeowners associations, parent-teacher organizations, community groups, etc.
 - a. Coast Guard personnel may not participate in the management of a non-Federal entity unless permitted by Federal statute. All Coast Guard personnel must contact their servicing legal office before engaging in this type of activity.
 - b. Coast Guard personnel shall not participate in non-Government committees unless the approving official so designated in paragraph 1. documents in writing that Coast Guard participation in such committees is in the best interests of the Government, that potential embarrassment is not likely to result from such representation, and that the participant is not involved in formulating recommendations or standards which would later have an effect on the regulatory authority or responsibilities of the Government.
 - c. Coast Guard personnel cannot assume positions of leadership in a non-Federal entity unless expressly permitted by Federal statute. All Coast Guard personnel must contact their servicing legal office before assuming such a position. Permission to assume such a leadership position must be obtained from the approving official so designated in paragraph 1. who must determine that assuming the leadership position would be in the Federal government's best interest.
 - d. If participation in committees not sponsored by the Federal government is determined to be necessary, Coast Guard personnel must avoid any real or apparent conflict of interest in connection with such participation. Coast Guard personnel must not directly or indirectly commit the Coast Guard, the Department, or the Government to a course of action which is not in the public interest; espouse any cause which might be detrimental or embarrassing to the Coast Guard, the Department, or Government; permit their names to be associated with documents or reports which, if distributed, would be potentially embarrassing; nor under any circumstances receive pay from an non-Government committee for work performed or contributions made to the committee in connection with its activities.

5. Participation Approval. Official participation of Coast Guard personnel on any committee not sponsored by the Coast Guard shall be justified in a memorandum submitted via the chain of command to the approving official with a copy to the CG CMO. The justification for participation shall include a statement explaining the nature of participation and why such participation is in the interest of the Government. In approving a request, the extent of the Coast Guard member's authority to represent or commit the Coast Guard, as well as the responsibilities in doing so, must be clearly defined in writing by the approving official. In lieu of official participation as a member, the approving official should consider permitting Coast Guard personnel to participate as an observer or liaison, particularly for non-Government committees.

PROCEDURES FOR FACA COMMITTEES

1. Establishment Policy. No Coast Guard advisory committees shall meet or take any action until it has been formally established according to procedures set forth herein. An advisory committee shall not be considered formally established until:

- a. A draft charter has been submitted to the Secretary through the Commandant for approval;

The Secretary has approved the committee's establishment, except in cases where the Department is directed by statute or executive order to establish a committee;

A notice of establishment has been published in the Federal Register, except where a committee is directed to be established by statute or executive order; and,

The charter has been filed with appropriate congressional committees and the Library of Congress.

2. Establishment Procedures.

- a. In consultation with the Coast Guard Committee Management Officer (CG CMO), the Sponsor shall request establishment of an advisory committee after determining that such committee is essential to the conduct of Coast Guard business, is in the public interest, is the most effective, expeditious, and economical means of accomplishing the objective, and that the objective could not be accomplished by an entity existing within the Coast Guard, by an existing committee, by hiring an employee or consultant, or by awarding a study contract.

- b. The Sponsor shall draft the committee charter with assistance from the CG CMO and the servicing legal office. The Sponsor shall then submit through appropriate clearance channels the draft charter with an action memorandum from the Commandant to the Secretary that provides justification for establishment and any other information about the committee which the Sponsor or Commandant may wish to convey to the Secretary. Proposed committee membership for appointment may also accompany the charter; however, appointments may be forwarded separately after the charter is approved.

NOTE: FACA requires that advisory committee membership be “fairly balanced in terms of points of view represented and functions to be performed.” Membership on Coast Guard FACAs should, therefore, encompass as many points of view of the industry affected, and others, by the committee’s scope. Balance on Coast Guard committees also encompasses other aspects such as race and gender

Notice of Establishment. A notice of committee establishment, reestablishment, or renewal is required to be published in the Federal Register except for a committee that is specifically directed by statute or established by executive order.

Charter Filing.

- (1) Fifteen days following publication of the notice in the Federal Register, the Department CMO shall forward the charter to the appropriate congressional committees and the Library of Congress.
 - (2) For committees directed by statute or established by executive order, the filing letters may be sent as soon as the charter is approved by the Secretary. No GSA/OMB consultation or Federal Register notice is required.
 - (3) The effective date of the charter is the date the charter is filed with the appropriate congressional committees and the Library of Congress. The Department CMO will provide this date.
3. Renewal Procedures. FACA requires that charters must be renewed every 2 years unless otherwise provided for by statute. Prior to recommending renewal of a charter, the Sponsor must critically examine the need for the committee's continued existence. When a committee has completed its mission, the Sponsor should recommend the committee be terminated.
 - a. Draft charters for renewal must be received by the Department CMO at least 60 days prior to the charter's expiration date. Draft charters are due to the CG CMO at least 90 days prior to the charter's expiration date.
 - b. The Sponsor shall review the charter for appropriate amendments and then submit through appropriate clearance channels the charter with any proposed revisions with an action memorandum from the Commandant to the Secretary justifying the need to continue the committee and explaining any charter amendments.
 - c. After the Secretary approves the charter, the Department CMO shall forward the charter to the appropriate congressional committees and the Library of Congress. Notice of renewal shall be published in the Federal Register per section 2. c. of these procedures.
4. Termination Procedures. An advisory committee should be terminated as soon as it has completed its mission. If a committee is no longer serving the purpose for which it was established, the Sponsor should make a recommendation for termination to the Secretary through the Commandant.

5. Charter Requirements. Charters for advisory committees shall contain the following minimum information. Additional information, as appropriate, may be included:

Official Designation. Advisory committees shall be designated as “committees” and their subordinate units as “subcommittees.” When a committee’s name is not specified by statute, the first word of the committee’s name should readily describe a key element of its function (e.g., Towing Safety Advisory Committee rather than National Advisory Committee on Towing Safety);

Objectives and Scope of Activities. Describe the expected goals and parameters of the committee’s mission;

Duration. When determined by statute, the date should be stated and shall cite the establishing statute. Otherwise, the duration may be described as “continuing”;

Official to Whom the Committee Reports. For Coast Guard committees, this will usually be the Commandant of the Coast Guard through the committee’s Sponsor;

Sponsor and Office Providing Support. The Commandant, Assistant Commandants, and area and district commanders are solely authorized to be sponsors of advisory committees. Any planned use of contractual services must be included in this section of the charter;

Duties. Describe the particular functions the committee is expected to perform;

Meetings. Provide the estimated number of meetings anticipated within a fiscal year. This section should also include procedural information.

Membership. Provide the number of members, length of terms, and groups to be represented;

Officers. Provide the method of choosing the chairperson, other officers, and length of terms;

Subcommittees. The chairperson of advisory committees may establish subcommittees with the Sponsor’s approval. To the extent practical, subcommittees should be composed of members of the parent committee. If that is not feasible, at least some members, including the chairperson, must be members of the parent committee. Subcommittees that are continuing should be listed in the charter and updated when the charter is renewed. Coast Guard subcommittees shall conform to FACA’s requirement of advertised, open meetings;

Costs. The estimated annual fiscal year costs to operate the advisory committee in dollars and staff years. The cost data reported in the Annual Comprehensive Review of Federal Advisory Committees shall be used for these costs. Full Time Equivalents (FTEs) established by the appropriate Coast Guard budget office shall be used to compute staff years;

Member Compensation. Include any compensation, travel, or per diem allowance permitted to be paid to committee members. Unless otherwise stated by the Department, compensation for members of Coast Guard advisory committees is \$0;

Filing Date. The Department CMO will provide the date the charter is filed.

6. Charter Modification.

Modifications to existing charters may be made when the charter is renewed. The memorandum to the Secretary must include a description of and justification for any changes. Substantive modifications—such as a change of objectives and scope of activities (see 41 CFR 102-3.85)—will require a new charter.

Changes to charters of committees established by legislation, executive order, or Presidential direction must not conflict with the authorizing statute, executive order, or Presidential directive. If changes to the provisions of such charters are necessary, a recommendation must be made to the establishing authority by the Secretary.

7. Membership. Each appointed member shall be designated as a representative of a particular interest or group, a Special Government Employee, or a Federal government employee.

Representative. A candidate must represent a particular interest or party other than the U.S. Government and must be qualified to represent that interest by virtue of his or her employment, education, experience, or affiliation with a specific group, industry, or organization. If a committee charter specifies that member organizations shall name their own representatives, those persons shall be considered in the representative category. Individuals or organizations representing foreign governments or interests may not serve on Department of Homeland Security (DHS) advisory committees unless required by statute.

Special Government Employee.

A candidate appointed to represent the public (i.e., for his or her own views rather than a particular interest or industry) must be appointed as a Special Government Employee (SGE). The Sponsor shall ensure that each candidate shall be advised of his or her status as an SGE and that he or she is subject to the Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements applicable to executive branch officials.

The sponsoring office shall comply with all Federal requirements for appointing SGEs.

Public members must complete and submit a Confidential Financial Disclosure Report (CFDR), OGE Form 450, at the time of their appointment and on an annual basis. The appropriate Coast Guard legal office (Commandant (G-LGL) for committees at CG Headquarters and district legal offices for committees at the districts) shall act as the Intermediate Reviewer of CFDRs and determine whether a conflict of interest exists. The Sponsor shall act as the Final Reviewing Official and may waive the restrictions of section 208, Title 18, United States Code by certifying in writing that the need for the individual's services outweighs the potential for conflict of interest. The CG CMO shall provide initial and annual ethics training for public members.

Federal Government Employees. Advisory committees are established to provide the Federal government the benefit of perspectives, input, and advice unavailable from its employees. Therefore, unless specifically required by a committee's authorizing legislation or charter, Federal government employees shall not be members of Coast Guard advisory committees. Federal government employees from other Federal agencies may participate as observers on Coast Guard advisory committees. A member of the Coast Guard Auxiliary is not considered to be a Coast Guard employee unless under orders.

8. Appointments. Unless otherwise provided for by statute or delegation, the Secretary shall appoint committee members through recommendation by the Commandant.

A notice of upcoming vacancies and request for applications shall be published in the Federal Register. Requests for applications should also be published in all appropriate industry and general interest publications.

The memorandum from the Commandant to the Secretary shall briefly explain each candidate's qualifications and indicate whether the candidate is recommended for reappointment or appointment. The memorandum from the Commandant to the Secretary with recommended candidates are due to the Department CMO through the CG CMO three months prior to term expiration dates. A statement that CFDRs for candidates for public member have been reviewed and no conflict of interest exists or that a waiver has been issued shall be included for each candidate for public member. The CG CMO shall provide separate guidance on the memorandum format and other information required for appointment packages. Attachments to the memorandum should include, but may not be limited to:

- (4) A biographical application form for each candidate;
- (5) An appointment letter to be signed by the Secretary which states:

- (a) The particular interest the individual represents and the term expiration date;
 - (b) When applicable, that the member is being appointed as a SGE and is subject to Federal conflict of interest laws, agency standard of conduct regulations, and financial disclosure requirements; and,
- (6) Any letter of recommendation from a Member of Congress or other interested Federal official, a copy of the interim response to the letter, and a final response for the Secretary's signature notifying the Member of the candidate's appointment.

9. Meetings.

- a. Call of Meetings. Advisory committee or subcommittee meetings may only be held with the approval of the Sponsor and at the call of the Executive Director (ED) who has formulated and approved the agenda. An advisory committee or subcommittee shall not conduct any meeting in the absence of the ED or his or her designee.
- b. Open Meetings. Advisory committee meetings shall be open to the public, and interested persons shall be permitted to attend, appear before, or file statements with any advisory committee subject to reasonable rules established by the committee. Meetings shall be held at reasonable times, and meeting places shall be accessible to all members of the public, including persons with disabilities. Coast Guard subcommittees shall also comply with the public notice and open meeting requirements of FACA.
- c. Closed Meetings. No advisory committee meeting or portion of a meeting may be closed to the public without written approval of the Commandant and public notification that the meeting or part of a meeting will be closed. Requests to close a meeting or portion of a meeting must be made in writing to the Commandant at least 45 days prior to the meeting date and shall be coordinated with the CG CMO prior to the 45-day deadline. The request must cite the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. Requests to close meetings shall be reviewed by the Coast Guard's Office of Regulations and Administrative Law (G-LRA). The agenda approved by the Designated Federal Officer (DFO) must indicate if any part of the meeting will be closed to the public.
- d. Notice of Meetings.
 - (1) The public shall be given timely notice of all committee and subcommittee meetings, whether open or closed to the public, through publication of a notice of the meeting in the Federal Register. The

notice shall contain, at a minimum, the name of the committee, the date and time, place, and purpose of the meeting, a summary agenda, and, if appropriate, a statement that the meeting or portion of a meeting is to be closed.

- (2) The notice shall be published by the Sponsor a minimum of 15 days prior to the meeting date. Failure to do so will result in cancellation of the meeting by the CG CMO. Shorter than 15-day notice may be granted by the CG CMO in consultation with Commandant (G-LRA) in exceptional circumstances that must be explained in the notice.

e. Meeting Procedures.

- (1) The ED shall prepare and approve the meeting agenda in cooperation with the committee's chairperson.
- (2) Meetings shall be conducted in general accordance with Robert's Rules of Order but may deviate from such rules when necessary or desirable for the management of a committee.
- (3) Committees may meet via teleconference. However, such meetings must comply with the requirements for open meetings, including publication of a notice in the Federal Register. Appropriate provisions, such as having sufficient communication lines available for non-members, must be made to permit public participation.
- (4) Coast Guard committees shall not vote by e-mail. Mail ballots may be used only in the case of issues that have been discussed in a public meeting, except for those meetings that have been closed according to the procedures in 9.c.
- (5) Interested persons are permitted to attend, appear before, or file statements with a committee subject to reasonable rules established by the Chairperson and ED (e.g., a copy of proposed remarks provided in advance to the Chairperson or speakers may be limited to 3 minutes). However, advisory committee meetings shall not be used as forums to discuss issues not the within the scope of the committee's charge or responsibility. If necessary the ED, in his or her capacity as DFO, shall stop or close an advisory committee meeting when the ED determines it is in the public interest to do so per section 10(e) of FACA.

f. Meeting Locations and Arrangements, Meals and Refreshments. The Sponsor shall ensure that:

- (1) Meetings are held at a reasonable time and place;

- (2) The meeting room, the resources, and facilities are sufficient to accommodate those who could reasonably be expected to attend and are accessible to persons with disabilities. When appropriate, Coast Guard will provide an interpreter for the hearing impaired;
- (3) Meetings at facilities provided by industry. An offer to hold a meeting free of charge at a company's facility is a gift to the Coast Guard. The Office of General Law (G-LGL) must review all offers of meeting space and determine for each case whether the gift can be accepted. The Office of Financial Management (G-CFM) is the accepting authority for gifts to the Coast Guard. If Commandant (G-LGL) determines that the gift can be accepted, Commandant (G-CFM) must accept the gift prior to scheduling and announcing the meeting. All meeting sites must be fully open and accessible to all members of the public who wish to attend an advisory committee meeting.

NOTE: Any appearance of favoritism—using one facility multiple times when there is no use of a competitor's facility—must be avoided. Even the perception of favoring one company over another must be avoided;

- (4) Meals hosted by non-government entities.
 - (a) As a Special Government Employee (SGE), a public member is subject to Federal conflict of interest laws, agency standard of conduct regulations, and annual financial disclosure requirements. An offer by a non-federal source to provide a complimentary meal to a public member is deemed to be a gift, and gifts valued over \$20 may not be accepted by public members. However, if the value of the meal does not exceed \$20, the public member may accept the meal. All such offers must be brought to the attention of the servicing legal office for resolution.
 - (b) Representative members are not subject to Federal conflict of interest laws, agency standard of conduct regulations, and annual financial disclosure requirements, including Federal gift rules. Representative members may accept an offer by a non-federal source to provide a complimentary meal regardless of value.

g. Minutes.

- (1) The Sponsor shall ensure that detailed minutes of all committee and subcommittee meetings are kept, and the chairperson shall certify the accuracy of the minutes. Subject to 5 U.S.C. 552, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda,

or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location until the advisory committee ceases to exist. Minutes shall include:

- (a) The time, date, and place of the meeting;
- (b) A list of all attendees including members, staff, and public observers;
- (c) A summary of matters discussed and conclusions reached;
- (d) Copies of reports received, issued, or approved by the committee; and,
- (e) A description of public participation, including oral and written statements.

- (2) The Sponsor is solely responsible for recording the proceedings of all advisory committee or subcommittee meetings. In some cases, it may be appropriate to hire a court reporter to ensure a verbatim record of the proceedings. Recording or videotaping of meetings shall only be done by the Sponsor or his or her designee.

10. Reports.

- a. Annual Report of the President on Federal Advisory Committees. This report provides information on committee activities for each fiscal year and is due at the end of each fiscal year. The Executive Secretariat at GSA maintains the report on an electronic data base that is updated by EDs throughout the year. The CG CMO will provide due dates and instructions for close out of the report at the end of each year. The CG CMO will review and verify the reports for accuracy and completeness of information.
- b. Annual Report on Closed Meetings. Each advisory committee that has held closed or partially closed meetings shall issue an annual report summarizing its activities consistent with the policies of the Freedom of Information Act (FOIA). Notice of the availability of the report shall be published in the Federal Register not later than 60 days after the report is issued.
- c. Filing of Committee Reports with the Library of Congress. Formal reports issued by advisory committees shall be filed with the Library of Congress in accordance with section 13 of FACA. At least eight copies of the report and, when appropriate, reports prepared by consultants, shall be submitted to the Department CMO through the CG CMO for filing.

11. Availability of Records.

- a. Section 10(b) of FACA requires that an agency be generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. The purpose of

section 10(b) is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to fully comprehend the work of the committee. Records covered by the exemptions set forth in section 552(b) of Title 5 of the United States Code, Freedom of Information Act (FOIA), may generally be withheld. However, 5 U.S.C. §552(b)(5) cannot be used to withhold documents reflecting an advisory committee's internal deliberations unless the meeting is closed in accordance with the procedures set forth in 9.c. of this Instruction.

- b. Therefore, all committee documents—working papers, drafts, studies, etc.—must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply. The public shall not be required to submit a request for materials under FOIA unless the Coast Guard can reasonably claim those materials as exempt from disclosure under FOIA provisions.
12. Privacy. FOIA exemption 6 (5 U.S.C. §552(b)(6)) allows an agency to withhold any information that, if released, would warrant a clear invasion of privacy. Releasing a committee member's home address, telephone number, private e-mail address, or similar private information would be an invasion of the member's privacy. Therefore, the Coast Guard shall only release the business name and telephone number of advisory committee members. In those situations where the member's home address and telephone number is also their place of business, such information may be released only if the member permits the release of such information in writing. "Release" shall mean any means of providing the information, including but not limited to: verbally, in newsletters, correspondence, e-mail, or web pages. Member information in the Annual Report of the President on Federal Advisory Committees shall comply with this section.
 13. Prohibited Data. Unless prior concurrence is given by the Associate General Counsel (General Law), advisory committees shall not receive, compile, or discuss data or reports concerning matters which would be exempt from disclosure under 5 U.S.C. §§ 552(b)(4) and (6) which deal, respectively, with records that are trade secrets and commercial or financial information and records, the release of which would constitute a clearly unwarranted invasion of personal privacy. Further, no personal information shall be received, compiled, or discussed unless done so in compliance with the Privacy Act.
 14. Antitrust Laws. The activities of advisory committees are subject to the antitrust laws, and committee members are subject to those laws. Industry representatives and Government personnel officially connected with advisory committees should be made aware of the application of the antitrust laws by the Sponsor. Should any specific question arise concerning a particular plan or course of action, the question should be referred to the General Counsel.

15. Forms Availability. All forms referenced in this Instruction are available from the CG CMO.