

part or skeletal metastasis, and significant post-therapeutic residuals.

C. *Malignant solid tumors*, as listed under § 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, § 113.03 should not be used for evaluating brain tumors (see § 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in § 113.02 and § 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 *Category of impairments*, neoplastic diseases—malignant.

113.02 *Lymphoreticular malignant neoplasms*. Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

113.03 *Malignant solid tumors*. Consider under a disability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma*. With one of the following:

A. Extension across the midline; or

B. Distant metastasis; or

C. Recurrence; or

D. Onset at age 1 year or older.

113.05 *Retinoblastoma*. With one of the following:

A. Bilateral involvement; or

B. Metastases; or

C. Extension beyond the orbit; or

D. Recurrence.

[FR Doc. 77-7605 Filed 3-15-77; 8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Public Observation of Parole Commission Meetings

On February 3, 1977 42 FR 6610, the United States Parole Commission published a notice of proposed rules implementing the requirements of 5 U.S.C. 552b, subsections (b) through (f), ("The Government in the Sunshine Act"). Following the period announced for the submission of public comment, the Commission voted to adopt its rules with the single change that § 16.200(e) (5) was expanded to clarify the functions of the study committees referred to in that section.

The only comment received was from Rep. Richardson Preyer, Chairman of the Government Information and Individual Rights Subcommittee of the House Committee on Government Operations. This letter raised several points of criticism, specifically discussed below.

1. Section 16.202(b) was criticized for prohibiting the use of "any mechanical or electronic device" to record an open meeting. The comment suggested consideration be given to permitting recording methods whose operation would not disturb the proceedings. The Commission

reserves in its rule the right to grant prior permission for the use of such methods in appropriate circumstances. The Commission believes that as a general policy, a limitation to observation and note-taking prevents the possibility of disruption while providing members of the public with the opportunity to keep memoranda of points of interest to them.

2. Section 16.203(a) (4) was criticized for varying from the language of exemption 4 of the Act. However, the Commission believes that one proper function of agency rules is to apply a general law such as the Sunshine Act to the specific context within which the agency operates, and to explain its practical significance to day to day agency operations. No criticism was made that the type of financial information involved in applications for exemptions under 29 U.S.C. 504 and 1111, would not fall within the exemption for "financial information" set forth at section (c) (4), whenever obtained upon a promise of confidentiality.

3. Section 16.203(b) was criticized for not setting up a formal, two-step procedure by which the Commission would apparently first vote whether a meeting could be closed, and second, whether the meeting should be opened in the public interest, notwithstanding an available exemption under the law. However, such a procedural formality is not, in the Commission's view, required by the law. The Commission believes that it is implicit in its regulation, and it is the Commission's intent, that it will in all cases consider the public interest, and that it will open its meetings whenever feasible notwithstanding the available exemptions.

4. Section 16.203(d) (4) was criticized for failing to require certification by the General Counsel before a meeting may be closed. The Commission agrees that the better practice, as suggested in H. Rep. 94-1441, p. 19, is to obtain certification prior to the holding of a closed meeting, and will endeavor to make it its practice to do so. Moreover, the relative infrequency of Commission business and policy meetings (as compared with other agencies), makes the possibility of late certification generally unlikely. Only in the case of meetings to decide individual parole cases would the rare emergency be likely to arise (under statutory deadlines for decision-making) necessitating late certification.

5. Finally, § 16.204(c) (2) was criticized because it would permit deletion of items without notice; however, this deletion provision applies only to closed meetings. Thus, no member of the public planning to attend a meeting would be inconvenienced by such a deletion.

Accordingly, pursuant to the authority of 18 U.S.C. 4203(a) (1) and 5 U.S.C. 552b(g), a new Subpart F is added to 28 CFR, Chapter I, Part 16 as follows, effective March 12, 1977.

Dated: March 10, 1977.

GEORGE J. REED,
Acting Vice Chairman,
United States Parole Commission.

Subpart F—Public Observation of Parole Commission Meetings

Sec.	
16.200	Definitions.
16.201	Voting by the Commissioners without joint deliberation.
16.202	Open meetings.
16.203	Closed meetings, formal procedure.
16.204	Public notice.
16.205	Closed meetings, informal procedure.
16.206	Transcripts, minutes, and miscellaneous documents concerning Commission meetings.
16.207	Public Access to non-exempt transcripts and minutes of closed Commission meetings, documents used at meetings, record retention.
16.208	Annual report.

AUTHORITY: 18 U.S.C. 4203(a) (1), 5 U.S.C. 552b(g).

Subpart F—Public Observation of Parole Commission Meetings

§ 16.200 Definitions.

As used in this part: (a) The term Commission means the United States Parole Commission and any subdivision thereof authorized to act on its behalf.

(b) The term meeting refers to the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(c) Specifically included in the term meeting are:

(1) Meetings of the Commission required to be held by 18 U.S.C. 4203(a);

(2) Special meetings of the Commission called pursuant to 18 U.S.C. 4204(a) (1);

(3) Meetings of the National Commissioners in original jurisdiction cases pursuant to 28 CFR 2.17(a);

(4) Meetings of the entire Commission to determine original jurisdiction appeal cases pursuant to 28 CFR 2.27; and

(5) Meetings of the National Appeals Board pursuant to 28 CFR 2.26.

(6) Meetings of the Commission to conduct a hearing on the record in conjunction with applications for certificates of exemption under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, and section 411 of the Employee Retirement Income Security Act of 1974 (28 CFR 4.1-17 and 28 CFR 4a.1-17).

(d) Specifically excluded from the term meeting are:

(1) Determination made through independent voting of the Commissioners without the joint deliberation of the number of Commissioners required to take such action, pursuant to § 16.201;

(2) Original jurisdiction cases determined by sequential vote pursuant to 28 CFR 2.17;

(3) Cases determined by sequential vote pursuant to 28 CFR 2.24 and 2.25;

(4) National Appeals Board cases determined by sequential vote pursuant to 28 CFR 2.26;

(5) Meetings of committees of Commissioners, not constituting a quorum of the Commission, which shall be established by the Chairman to report and make recommendations to the Commission.

sion and the Chairman on any matter, including (i) policy, (ii) budget, (iii) personnel and training, and (iv) research; in addition, such committees may from time to time be approved by a majority of the Commission and Chairman regarding policies and procedures of the Commission;

(6) Determinations required or permitted by these regulations to open or close a meeting, or to withhold or disclose documents or information pertaining to a meeting.

(e) All other terms used in this part shall be deemed to have the same meaning as identical terms used in Chapter I, Part 2, of Title 28, of the Code of Federal Regulations.

§ 16.201 Voting by the Commissioners without joint deliberation.

(a) Whenever the Commission's Chairman so directs, any matter which (1) does not appear to require joint deliberation among the members of the Commission, or (2) by reason of its urgency, cannot be scheduled for consideration at a Commission meeting, may be disposed of by presentation of the matter separately to each of the members of the Commission. After consideration of the matter each Commission member shall report his vote to the Chairman.

(b) Whenever any member of the Commission so requests, any matter presented to the Commissioners for disposition pursuant to paragraph (a) of this section shall be withdrawn and scheduled instead for consideration at a Commission meeting.

(c) The provisions of § 16.206(a) of these rules shall apply in the case of any Commission determination made pursuant to this section.

§ 16.202 Open meetings.

(a) Every portion of every meeting of the Commission shall be open to public observation unless closed to the public pursuant to the provisions of § 16.203 (Formal Procedure) or § 16.205 (Informal Procedure).

(b) The attendance of any member of the public is conditioned upon the orderly demeanor of such person during the conduct of Commission business. The public shall be permitted to observe and to take notes, but unless prior permission is granted by the Commission, shall not be permitted to record or photograph by means of any mechanical or electronic device any portion of meetings which are open to the public.

(c) The Commission shall be responsible for arranging a suitable site for each open Commission meeting so that ample seating, visibility, and acoustics are provided to the public and ample security measures are employed for the protection of Commissioners and Staff. The Commission shall be responsible for recording or developing the minutes of Commission meetings.

(d) Public notice of open meetings shall be given as prescribed in § 16.204 (a), and a record of votes kept pursuant to § 16.206(a).

§ 16.203 Closed meetings—formal procedure.

(a) The Commission, by majority vote, may close to public observation any meeting or portion thereof, and withhold from the public announcement concerning such meeting any information, if public observation or the furnishing of such information is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission or any agency of the Government of the United States;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552, or the Federal Rules of Criminal Procedure): *Provided*, That such statute or rule (i) requires that the matters be withheld in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld, including exempted material under the Privacy Act of 1974 or the Commission's Alternate Means of Access under the Privacy Act of 1974, as set forth at 28 CFR 16.65;

(4) Disclose a trade secret or commercial or financial information obtained from any person, corporation, business, labor or pension organization, which is privileged or obtained upon a promise of confidentiality, including information concerning the financial condition or funding of labor or pension organizations, or the financial condition of any individual, in conjunction with applications for exemption under 29 U.S.C. 504 and 1111, and information concerning income, assets and liabilities of inmates, and persons on supervision;

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

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

(7) Disclose an investigatory record compiled for law enforcement purposes, or information derived from such a record, which describes the criminal history or associations of any person under the Commission's jurisdiction or which describes the involvement of any person in the commission of a crime, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed Commission action except where:

(i) The Commission has already publicly disclosed the content or nature of its proposed action or

(ii) The Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(9) Specifically concern the Commission's issuance of subpoena or participation in a civil action or proceeding; or

(10) Specifically concern the initiation, conduct, or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or of any case involving a determination on the record after opportunity for a hearing. Included under the above terms are:

(A) Record review hearings following opportunity for an in-person hearing pursuant to the procedures of 28 CFR 4.1-17 and 28 CFR 4a.1-17 (governing applications for certificates of exemption under the Labor-Management Reporting and Disclosure Act of 1959 and the Employee Retirement Income Security Act of 1974, and

(B) The initiation, conduct, or disposition by the Commission of any matter pursuant to the procedures of 28 CFR 2.1-58 (parole, release, supervision, and recommitment of prisoners, youth offenders, and juvenile delinquents).

(b) *Public Interest Provision.* Notwithstanding the exemptions at paragraph (a) (1)-(10) of this section, the Commission may conduct a meeting or portion of a meeting in public when the Commission determines, in its discretion, that the public interest in an open meeting clearly outweighs the need for confidentiality.

(c) *Nonpublic matter in announcements.* The Commission may delete from any announcement or notice required in these regulations information the disclosure of which would be likely to have any of the consequences described in paragraph (a) (1)-(10) of this section, including the name of any individual considered by the Commission in any case of formal or informal adjudication.

(d) *Voting and certification.* (1) A separate recorded vote of the Commission shall be taken with respect to each meeting or portion thereof which is proposed to be closed, and with respect to any information which is proposed to be withheld pursuant to this section. Voting by proxy shall not be permitted. In the alternative, the Commission may, by a single majority vote, close to public observation a series of meetings, or portion(s) thereof or withhold information concerning such series of meetings, provided that:

(i) Each meeting in such series involves the same particular matters and

(ii) Each meeting is scheduled to be held no more than thirty days after the initial meeting in the series.

(2) Upon the request of any Commissioner, the Commission shall make a determination as to closure pursuant to this subsection if any person whose interests may be directly affected by a portion of a meeting requests the Commission to close such portion or portions to the public observation for any of the grounds specified in paragraph (a) (5) (6) or (7) of this section.

(3) The determination to close any meeting to public observation pursuant to this section shall be made at least one week prior to the meeting or the first of a series of meetings as the case may be. If a majority of the Commissioners determines by recorded vote that agency business requires the meeting to take place at any earlier date, the closure determination and announcement thereof shall be made at the earliest practicable time. Within one day of any vote taken on whether to close a meeting under this section, the Commission shall make available to the public a written record reflecting the vote of each Commissioner on the question, including a full written explanation of its action in closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation, subject to the provisions of paragraph (c) of this section.

(4) For every meeting or series of meetings closed pursuant to this section, the General Counsel of the Parole Commission shall publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 16.204 Public notice.

(a) *Requirements.* Every open meeting and meeting closed pursuant to § 16.203 shall be preceded by a public announcement posted before the main entrance to the Chairman's Office at the Commission's headquarters, 320 First Street, Northwest, Washington, D.C., and, in the case of a meeting held elsewhere, in a prominent place at the location in which the meeting will be held. Such announcement shall be transmitted to the FEDERAL REGISTER for publication and, in addition, may be issued through the Department of Justice, Office of Public Information, as a press release, or by such other means as the Commission shall deem reasonable and appropriate. The announcement shall furnish:

(1) A brief description of the subject matter to be discussed;

(2) The date, place, and approximate time of the meeting;

(3) Whether the meeting will be open or closed to public observation; and

(4) The name and telephone number of the official designated to respond to requests for information concerning the meeting. See § 16.205(d) for the notice requirement applicable to meetings closed pursuant to that section.

(b) *Time of notice.* The announcement required by this section shall be released to the public at least one week prior to the meeting announced therein except where a majority of the members

of the Commission determines by a recorded vote that Commission business requires earlier consideration. In the event of such a determination, the announcement shall be made at the earliest practicable time.

(c) *Amendments to notice.* The time or place of a meeting may be changed following the announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following the announcement only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided*, That individual items which have been announced for Commission consideration at a closed meeting may be deleted without notice.

§ 16.205 Closed meetings — Informal procedures.

(a) *Finding.* Based upon a review of the meetings of the U.S. Parole Commission since the effective date of the Parole Commission and Reorganization Act (May 14, 1976), the regulations issued pursuant thereto (28 CFR Part 2) the experience of the U.S. Board of Parole, and the regulations pertaining to the Commission's authority under 29 U.S.C. 504 and 29 U.S.C. 1111 (28 CFR Parts 4 and 4a), the Commission finds that the majority of its meetings may properly be closed to the public pursuant to 5 U.S.C. 552 (d) (4) and (c) (10). The major part of normal Commission business lies in the adjudication of individual parole cases, all of which proceedings commence with an initial parole or revocation hearing and are determined on the record thereof.

Original jurisdiction cases are decided at bi-monthly meetings of the National Commissioners (28 CFR 2.17) and by the entire Commission in conjunction with each business meeting of the Commission (held at least quarterly) (28 CFR 2.27).

The National Appeals Board normally decides cases by sequential vote on a daily basis, but may meet from time to time for joint deliberations. In the period from October, 1975 through September, 1976, the National Appeals Board made 2,072 Appellate decisions.

Finally, over the last two years the Commission determined eleven cases under the Labor and Pension Acts, which are proceedings pursuant to 5 U.S.C. 554. The only meetings of the Commission not of an adjudicative nature involving the most sensitive inquiry into the personal background and behavior of the individual concerned, or involving sensitive financial information concerning the parties before the Commission, are the normal business meetings of the Commis-

sion, which are held at least quarterly.

(b) *Meetings to which applicable.* The following types of meetings may be closed in the event that a majority of the Commissioners present at the meeting, and authorized to act on behalf of the Commission, votes by recorded vote at the beginning of each meeting or portion thereof, to close the meeting or portions thereof:

(1) Original jurisdiction initial and appellate case deliberations conducted pursuant to 28 CFR 2.17 and 2.27;

(2) National Appeals Board deliberations pursuant to 28 CFR 2.26;

(3) Meetings of the Commission to conduct a hearing on the record regarding applications for certificates of exemption pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1111 (28 CFR 4.1-17 and 29 CFR 4a.1-17).

(c) *Written record of action to close meeting.* In the case of a meeting or portion of a meeting closed pursuant to this section, the Commission shall make available to the public as soon as practicable:

(1) A written record reflecting the vote of each member of the Commission to close the meeting; and

(2) A certification by the Commission's General Counsel to the effect that in Counsel's opinion, the meeting may be closed to the public, which certification shall state each relevant exemptive provision.

(d) *Public notice.* In the case of meetings closed pursuant to this section the Commission shall make a public announcement of the subject matter to be considered, and the date, place, and time of the meeting. The announcement described herein shall be released to the public at the earliest practicable time.

§ 16.206 Transcripts, minutes, and miscellaneous documents concerning Commission meetings.

(a) In the case of any Commission meeting, whether open or closed, the Commission shall maintain and make available for public inspection a record of the final vote of each member on rules, statements of policy, and interpretations adopted by it: 18 U.S.C. 4203(d).

(b) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public pursuant to § 16.203. In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 16.205 of these regulations, the Commission may maintain either the transcript or recording described above, or a set of minutes unless a recording is required by Title 18, U.S.C. 4203(f). The minutes required by this section shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Com-

missioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Commission shall retain a copy of every certification executed by the General Counsel's Office pursuant to these regulations, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) Nothing herein shall affect any other provision in Commission procedures or regulations requiring the preparation and maintenance of a record of all official actions of the Commission.

§ 16.207 Public access to non-exempt transcripts and minutes of closed Commission meetings—documents used at meetings—record retention.

(a) *Public access to records.* Within a reasonable time after any closed meeting, the Commission shall make available to the public, in the Commission's Public Reading Room located at 320 First Street Northwest, Washington, D.C., the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at such meeting, maintained hereunder, except for such item or items of such discussion or testimony which contain information exempt under any provision of the Government in the Sunshine Act (Pub. L. 94-409), or of any amendment thereto. Copies of non-exempt transcripts, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Access to documents identified or discussed in any Commission meeting, open or closed, shall be governed by Department of Justice regulations at this Part 16, Subparts (c) and (d). The Commission reserves the right to invoke statutory exemptions to disclosure of such documents under 5 U.S.C. 552 and 552a, and applicable regulations. The exemptions provided in U.S.C. 552b(c) shall apply to any request made pursuant to 5 U.S.C. 552 or 552a to copy and inspect any transcripts, recordings or minutes prepared or maintained pursuant hereto.

(c) *Retention of records.* The Commission shall maintain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 16.208 Annual report.

The Commission shall report annually to Congress regarding its compliance with Sunshine Act requirements, including a tabulation of the total number of meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings,

and a description of any litigation brought against the Commission under this section, including any costs assessed against the Commission in such litigation and whether or not paid.

[FR Doc. 77-7663 Filed 3-15-77; 8:45 am]

Title 29—Labor

CHAPTER X—NATIONAL MEDIATION BOARD

PART 1209—PUBLIC OBSERVATION OF NATIONAL MEDIATION BOARD MEETINGS

Government in the Sunshine Act

Notice is hereby given that Chapter X, Title 29 Code of Federal Regulations, is amended by the addition of a new Part 1209, entitled "Public Observation of National Mediation Board Meetings." A notice of proposed rulemaking with respect to Part 1209 was published in the FEDERAL REGISTER on February 9, 1977, (42 FR 8155). The final text of Part 1209 reflects minor non-substantive editorial and organizational changes from the proposed text.

Part 1209 implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. This part sets forth the regulations under which the National Mediation Board shall engage in public decisionmaking processes, make public announcement of meetings at which a quorum of Board Members consider and determine official agency actions, and inform the public of which meetings they are entitled to observe.

These amendments are issued pursuant to the authority of 5 U.S.C. 552b (g) and 44 Stat. 577, as amended (45 U.S.C. 151 et seq.).

The regulations as adopted read as set forth below and shall be effective for all meetings as defined therein held on or after March 12, 1977.

By direction of the National Mediation Board.

ROWLAND K. QUINN, Jr.,
Executive Secretary.

29 CFR, Chapter X, is amended by the addition of a new Part 1209, reading as follows:

Sec.	
1209.01	Scope and purpose.
1209.02	Definitions.
1209.03	Conduct of National Mediation Board Business.
1209.04	Open meetings.
1209.05	Public announcement of meetings.
1209.06	Special meetings.
1209.07	Change in meeting plans subsequent to public announcement.
1209.08	Providing information to the public.
1209.09	Federal Register notices.
1209.10	Capacity of public observers.
1209.11	Provisions under which meetings may be closed.
1209.12	Procedures for closing meetings.
1209.13	Public availability of recorded vote to close meetings and explanation therefore.
1209.14	Maintaining records of closed meetings.
1209.15	Availability of records to the public.
1209.16	Requests for records under Freedom of Information Act.

AUTHORITY: 5 U.S.C. 552b(g); 44 Stat. 577, as amended (45 U.S.C. 151 et seq.).

§ 1209.01 Scope and purpose.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) It is the policy of the National Mediation Board that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 1209.02 Definitions.

For purposes of this part:

(a) The term "Board" means the National Mediation Board, a collegial body composed of three Members appointed by the President with the advice and consent of the Senate.

(b) The term "meeting" means the deliberations of at least two Members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting shall be closed to public observation, or with respect to any information proposed to be withheld under 5 U.S.C. 552b(c).

§ 1209.03 Conduct of National Mediation Board Business.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part.

§ 1209.04 Open meetings.

Every portion of every Board meeting shall, except as otherwise provided by § 1209.11, be open to public observation.

§ 1209.05 Public announcement of meetings.

(a) Except as provided in §§ 1209.06 and 1209.07, the Board shall make a public announcement at least one week before the scheduled meeting, to include the following:

(1) Time, place, and subject matter of the meeting, except as qualified by paragraph (b) of this section;

(2) Whether the meeting is to be open or closed to the public; and

(3) Name and telephone number of the agency official who will respond to requests for information concerning the meeting.

(b) If announcement of the subject matter of a closed meeting would reveal information, the nature of which would frustrate the purpose for closing the meeting, the subject matter shall not be announced.

§ 1209.06 Special meetings.

Notwithstanding § 1209.05, where agency business so requires, the Board Members may determine, by majority recorded vote, to schedule a meeting for a date earlier than one week subsequent to public announcement. Under such circumstances, the information to be conveyed to the public pursuant to § 1209.05 shall be publicly announced at the earliest practicable time.

§ 1209.07 Change in meeting plans subsequent to public announcement.

(a) Following public announcement of a meeting pursuant to § 1209.05 or § 1209.06, the time or place of a meeting may be changed only if the change is announced publicly at the earliest practicable time in a manner otherwise in conformance with § 1209.05.

(b) Following public announcement of a meeting, the subject matter of a meeting or the determination to open or close a meeting may be changed only if both of the following conditions are met:

(1) A majority, recorded vote of the Members of the Board determines that agency business requires the change and that no earlier announcement of such change was possible; and

(2) A public announcement of the change and of the individual Board Members' votes is made at the earliest practicable time.

§ 1209.08 Providing information to the public.

Information available to the public in accordance with this part shall be posted on a bulletin board maintained for such purpose at the Board's offices, 1425 K Street NW., Washington, D.C. Interested individuals or organizations may request the Executive Secretary, National Mediation Board, Washington, D.C. 20572 to place them on a mailing list for receipt of information available under this part.

§ 1209.09 Federal Register notices.

Immediately following each public announcement required by this part, the following information, as applicable, shall be submitted for publication in the FEDERAL REGISTER.

(a) Notice of the time, place, and subject matter of a meeting;

(b) Whether the meeting is open or closed;

(c) Any change in one of the preceding; and

(d) The name and telephone number of the agency official who will respond to requests for information about the meeting.

§ 1209.10 Capacity of public observers.

The public may attend open Board meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited or otherwise interfere with the conduct and disposition of agency business. When a portion of a meeting is closed to the public, observers will leave the meeting room upon request to enable discussion of the exempt matter therein under consideration.

§ 1209.11 Provisions under which meetings may be closed.

A meeting as defined in § 1209.02 or portion thereof, may be closed to public observation where the Board determines that portions of the meeting are likely to incorporate deliberations subject to the exemptions enumerated in 5 U.S.C. 552b(c).

§ 1209.12 Procedures for closing meetings.

(a) The Board may determine to close to public observation a particular meeting or portions thereof, only if at least two Board Members vote on the record to take such action. No proxy votes shall be permitted. A single vote may be taken with respect to a series of meetings, or portions thereof, which are proposed to be closed to the public, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series.

(b) Whenever any person, whose interests may be directly affected by a portion of a meeting, requests that the Board close such portion to the public for any of the reasons referred to in 5 U.S.C. 552b(c) (5), (6) or (7), the Board, upon request of any of the Members thereof, shall determine by recorded vote whether to close such portion.

(c) For every meeting or portion thereof which Members of the Board have voted to close, the General Counsel of the National Mediation Board shall publicly certify whether, in his or her opinion, the meeting may properly be closed to the public. In addition, the General Counsel shall state each relevant exemptive provision as set forth in 5 U.S.C. 552b(c). A copy of the General Counsel's certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and listing the persons present, shall be retained by the Board's Executive Secretary.

§ 1209.13 Public availability of recorded vote to close meetings and explanation therefor.

Within one day of any vote taken on a proposal to close a meeting, the Board shall make publicly available a record reflecting the vote of each Member on the question. In addition, within one day of any vote which closes a portion or portions of a meeting to the public, the Board shall make publicly available a full written explanation of its closure action together with a list naming all persons expected to attend and identifying their affiliation, unless such disclosure would reveal information, the nature of which would frustrate the purpose for closing the meeting.

§ 1209.14 Maintaining records of closed meetings.

(a) A record of each meeting or portion thereof which is closed to the public will be made and retained for two years or for one year after the conclusion of the agency proceeding involved in the meeting, whichever is longer. Such record shall consist of a verbatim transcript or electronic recording of the meeting except as provided by § 1209.14(b).

(b) In lieu of a transcript or recording, a comprehensive set of minutes may be produced if the closure decision was made pursuant to 5 U.S.C. 552b(c) (8), (9) (A), or (10). Such minutes shall fully and clearly describe all matters dis-

cussed, provide a full and accurate summary of any actions taken and the reasons expressed therefor, and include a description of each of the views expressed on any item. The minutes shall also reflect the vote of each Member on any action taken during the proceedings and identify all documents produced at the meeting.

§ 1209.15 Availability of records to the public.

(a) The Board shall make promptly available to the public the transcript, electronic recording, or minutes maintained as a record of closed meetings, except for such records exempt from disclosure pursuant to 5 U.S.C. 552b(f) (2). Copies of such nonexempt transcripts, minutes, or electronic recordings, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Requests for transcripts, minutes, or electronic recordings of Board meetings shall be directed to the Executive Secretary, National Mediation Board, Washington, D.C. 20572. Such requests shall reasonably identify the records being sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount. The Board may determine to require prepayment of costs associated with this Subsection.

§ 1209.16 Requests for records under Freedom of Information Act.

Requests to review or obtain copies of agency records other than notices or records prepared under this Part may be pursued in accordance with the Freedom of Information Act (5 U.S.C. 552), part 1208 of the Board's rules addresses the requisite procedure under that Act.

[FR Doc. 77-7728 Filed 3-11-77; 3:23 pm]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Quality Control System; Revocation of Disallowance Provisions

The Administrator of the Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare, hereby amends § 205.40 and revokes § 205.41 of Title 45 of the Code of Federal Regulations. Current regulations in § 205.40 provide for a Quality Control system for the Aid to Families with Dependent Children program, and, in Puerto Rico, the Virgin Islands and Guam, for the programs of financial assistance to the aged, blind or disabled. This section requires States to sample their caseloads to determine their rates of erroneous payments thereunder for 6-month reporting periods, and to take corrective action to reduce the inci-

dence of these erroneous payments. As amended on August 5, 1975 (40 FR 32954) after proposed rulemaking published on May 19, 1975 (40 FR 21737), the regulations at § 205.41 provided for the disallowance of Federal financial participation in payments to ineligible and overpayments exceeding the prescribed tolerance levels of 3 percent and 5 percent, respectively. The disallowances were to be taken for all reporting periods beginning with the July 1-December 31, 1975 reporting period.

Two factors form the basis for the Department's revocation of § 205.41. First on May 14, 1976, the United States District Court for the District of Columbia issued an Order and Opinion in the case of *State of Maryland v. Mathews* which involved a challenge by 14 States to the validity of the disallowance provisions.

The Court ruled, contrary to the plaintiff States' argument, that the Social Security Act does not require Federal matching of all erroneous payments, and therefore concluded that a regulation providing for the disallowance of such payments exceeding specified levels is authorized by the Act. However, the Court ruled that the Act does contemplate Federal matching of a reasonable level of erroneous payments.

The Court found the tolerance levels of 3 percent and 5 percent to be inadequately justified, and, based upon the evidence before it, unreasonably strict. Accordingly, the Court enjoined the Department from enforcing § 205.41 against the plaintiff States.

Second, the Department has been discussing with representatives of a number of States the possibility of revising the Quality Control program. The Department decided not to appeal the *Maryland* decision as a demonstration of its good faith in these discussions. The Department also believes that it would be unfair, and certainly contrary to the spirit of cooperation necessary for successful completion of these discussions, to take the disallowances against those States which did not attain the prescribed tolerance levels and were not parties to the *Maryland* action.

Therefore, the Department is retroactively revoking § 205.41 to comply with the *Maryland* decision, and to demonstrate its good faith in discussion with the States to seek a fair alternative to the present Quality Control regulations. Accordingly, no disallowances will be taken for any periods pursuant to the § 205.41 provisions that are being revoked.

The revocation of the current content of § 205.41 does not exempt the States from the requirements of § 205.40. Thus, States are still required to sample their caseloads, report the results of these samples, and develop and implement corrective action plans to reduce the incidence of erroneous payments as specified under that section.

It should be noted that the revocation of § 205.41 also results in States being held fiscally accountable for individually identified payments to ineligible and

overpayments which are made after the date of publication of this revocation. The regulations at 45 CFR 233.10(b)(1) provide that Federal financial participation is available only in proper payments. Therefore, absent the provision of § 205.41 which, in effect, provide for FFP in these improper payments not exceeding the prescribed tolerance levels, the Department is now required to disallow FFP in all such individual improper payments identified by the State or through Federal reviews.

The Department finds that there is good cause to dispense with proposed rulemaking for two reasons. First, the revocation, effective retroactively, will relieve States of the potential fiscal burden of disallowances for prior periods. Second, immediate publication is necessary to enable those States which were not parties to the *Maryland* action to plan their budgets with full knowledge of the Department's intentions.

In addition to the revocation of § 205.41, two changes are being made in § 205.40:

1. Section 205.40(b)(3)(iv) incorporates by cross-reference the tolerance levels "specified in paragraph (a) of § 205.41 of this chapter"; § 205.40 (a) and (c) refer to § 205.41. The revocation of § 205.41 requires that tolerance levels be reflected in § 205.40 for purposes of corrective action plans; and that the references to § 205.41 be deleted. The revisions do not require proposed rulemaking procedures since they are purely technical and do not result in any substantive change.

2. The Department recognizes that the Child Support Enforcement Program under Title IV-D of the Act is a major Federal/State undertaking which cuts across many aspects of the eligibility and grant determination process for a large portion of the AFDC caseload, and that States continue to experience significant difficulty in fully implementing these provisions. Accordingly, § 205.40(c) is amended to extend, through June 30, 1977, the time period during which IV-D-related errors will not be counted as case errors.

The purpose of this change is to provide the States with an additional period of time during which to fully implement the cited requirements. The basis for the extension is the Department's belief that to cite case errors associated with the IV-D program would be unreasonable and not in the best interest of the goal of improved management of the AFDC program and uniform national application of quality control.

This amendment does not exempt the States from implementing the statutory and regulatory program requirements. Failure to substantially comply with such requirements could still result in withholding of Federal financial participation. The Department finds that there is good cause to waive public participation procedures because the extension benefits State agencies without having any adverse effects on applicants for, or recipients of, assistance.

Both the *Maryland* decision and the decision in similar actions, *State of Ohio*

v. Mathews and *State of Georgia v. Mathews*, clearly allow the Department to establish new tolerance levels for overpayments and payments to ineligible, under regulations similar to those contained at § 205.41 prior to this revocation, as a basis for disallowing FFP in the future. Accordingly, the Department has prepared a draft proposal to establish new tolerance levels for use as the basis for future disallowances of FFP. The draft proposal is currently in the review process and is available prior to its publication in the *FEDERAL REGISTER*. Copies of the draft proposal may be obtained from:

Dr. Victor Kugalevsky, Office of Special Initiatives, Social and Rehabilitation Service, U.S. Department of Health, Education, and Welfare, Room 5092, MES Building, 330 C Street SW., Washington, D.C. 20201, 202-245-0330.

Accordingly, Chapter II, Title 45 of the Code of Federal Regulations is revised as set forth below:

1. Section 205.40 is revised by deleting all cross-references to § 205.41 and amending paragraphs (b)(3)(iv) and (c) to read as set forth below:

§ 205.40 Quality control system.

(a) *Definitions.* For purposes of this section, notwithstanding any other regulations in this chapter:

(b) *State plan requirements.*—A State plan under title IV-A or I, X, XIV or XVI of the Social Security Act must provide for a continuing system of quality control for assuring that assistance is furnished in accordance with permissible State practice (as defined herein). Under this requirement:

(3) The State agency shall submit to the Social and Rehabilitation Service, in such form and at such times as it prescribes:

(iv) A corrective action plan for reducing the case error rates of ineligibility, overpayments, and underpayments, within 90 days of the close of the 6-month sampling period to which they apply (January 1 through June 30, or July 1 through December 31), even after achieving case error rates of:

- (A) 3 percent for ineligibility;
- (B) 5 percent for overpayments; and
- (C) 5 percent for underpayments; and

(c) *Temporary exception.* Through June 30, 1977, for the purpose of this section, the term "case error" shall not include errors that result solely from the State's:

(1) Failure to apply, or improper or incomplete application of, the following provisions:

- (i) 45 CFR 232.10 Furnishing of social security numbers;
- (ii) 45 CFR 232.11 Assignment of rights to support; and
- (iii) 45 CFR 232.12 Cooperation in obtaining support; and

(2) Treatment of child support collected and distributed under the State

IV-D plan and support or contribution income received directly from a legally liable individual by the AFDC family, when the recipient's support rights have been assigned to the State agency.

2. Section 205.41 is revoked, retroactive to July 1, 1975.

§ 205.41 [Reserved]

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).)

Effective date. This amendment is effective July 1, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid))

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Answers to specific questions may be obtained by calling Victor Kugajevsky, 202-245-0330.

Dated: February 7, 1977.

DON I. WORTMAN,
Acting Administrator, Social and
Rehabilitation Service.

Approved: March 10, 1977.

JOSEPH A. CALIFANO, JR.,
Secretary.

[FR Doc.77-7756 Filed 3-15-77;8:45 am]

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

PART 614—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS OF THE NATIONAL SCIENCE BOARD

The following regulations implement the policy of the United States and of the National Science Board (NSB) to give the public open access to the decisionmaking of the Board to the fullest extent that is practicable, consistent with the rights of individuals, and consistent with the ability of the Board and the Federal Government generally to carry out their responsibilities. It will be the general rule of the Board that every portion of every meeting of the National Science Board will be open to public observation. Certain exceptions to this rule will be made to protect the rights of citizens and the functioning of the Board and the Foundation. The following regulations identify the conditions under which meetings may be closed under these exceptions and under which certain other information may be withheld. They also prescribe procedures for closing meetings, for handling the transcripts or recordings of closed meetings, and for making public announcements of Board meetings and meeting changes.

These regulations were published in proposed form in 41 FR 54956 on December 16, 1976. Comments received have been carefully considered. The principal points raised and the Foundation's responses follow:

1. *Comment.* The Board should be required to decide by majority vote whether any document considered at a Board meeting shall be kept secret. *Response.* The Foundation's currently effective

Freedom of Information Act regulations (45 CFR Part 612) cover the availability of documents, including documents considered at Board meetings. Meaningful detailed consideration by the full National Science Board of what parts of what documents may be and should be withheld would be impractical and a poor use of its limited time.

2. *Comment.* The regulations should permit requests from the public for reconsideration of decisions to close meetings. *Response.* Inclusion of a formal provision is not required by law and appears unnecessary. The staff of the Board will consider any such requests and bring them to the attention of the Chairman.

3. *Comment.* Any decision not to release all or parts of the transcript of a closed meeting should be taken in the same manner as a decision to close all or parts of the meeting—by record vote of the Board. *Response.* Such a requirement is conspicuously absent in 5 U.S.C. 552b(f)(2). Section 614.4(c) of the Board's regulations, which provides for release by the Chairman or his designee, should speed and simplify the release of information, since the Board meets as a whole only at intervals of a month or more.

4. *Comment.* Budget deliberations of the Board are not per se exempt under the Act. *Response.* The regulations do not make budget deliberations per se exempt. The Board will generally follow Administration guidance on interpretation of the Act in determining what budget deliberations to conduct in closed session.

5. *Comment.* The preamble to the NSB regulations indicates that there will be cases in which Board recommendations to the President will be considered in closed session to prevent premature disclosure. Agency recommendations to the President are not ipso facto within exemption 9B. *Response.* The proposed regulations do not require recommendations to the President to be considered in closed session. However, the Board may find in individual cases that deliberations on some such recommendations are within the exemption. This is consistent with its legislative history.

6. *Comment.* Section 614.2(a) should be amended to require, besides a finding that the subject matter falls within a specific exemption, a finding that the public interest mandates a closed meeting. *Response.* Proposed § 614.2(a) states that the Board may close portions of meetings if it properly determines that the subjects under discussion fall within one of the exemptions. In other words, the section is permissive, not mandatory. In deciding whether or not to close any discussion the Board will naturally be guided by the public interest provision of the Act.

7. *Comment.* Section 614.2(a)(9)(i), which reflects exemption 9A of the Act, is not available to the Board and should be deleted from the regulations. *Response.* The Board may conceivably receive information from a government agency within the scope of 9A. The provision which would allow the Board to consider any such information in closed

session might be used in such a rare circumstance, but not otherwise.

8. *Comment.* Section 614.3(a) should be amended to make clear that the General Counsel's certificate must be presented before a meeting may be closed. *Response.* The Act says only that "for every meeting closed" the General Counsel shall certify. It does not say when he shall certify. The certificate normally will nonetheless be executed before any meeting of the Board is closed. Instances may arise in which the certificate will not be reduced to written form before the the closed meeting, however, even though the Board's resolution to close will be made with advice from the General Counsel. This might occur, for example, when items that cannot be postponed are added to a closed-meeting agenda at the last minute. Thus, § 614.3 is consistent with the text of the Act and provides appropriate flexibility for special circumstances.

9. *Comment.* Section 614.4(a) should be amended to make the transcript or recording of a closed meeting publicly available on the Board's own initiative, whether or not a public request for it is made. *Response.* The Act does not require that the transcript be made available before a request is made. The Board has been conducting its meetings under the Act for several months, during which no request for a transcript or recording has yet been made. Preparation of a transcript or recording for release, with accompanying decisions on what will and will not be withheld, is costly. The Board's experience thus far indicates that anticipatory expenditure of the taxpayers' money for this purpose would be unjustified. Should the frequency of requests for transcripts materially increase, however, the Board will reconsider this matter.

10. *Comments.* Section 614.5(b) should be amended to provide for the posting on public notice boards of meeting announcements and related information. *Response.* This has been done.

Accordingly, Part 614 of Title 45 of the Code of Federal Regulations is promulgated as set forth below, effective March 12, 1977.

NORMAN HACKERMAN,
Chairman, National Science Board.

MARCH 11, 1977.

- Sec. 614.1 General rule.
- 614.2 Grounds for closing meetings.
- 614.3 Materials relating to closed portions of meetings.
- 614.4 Opening of transcript or recording.
- 614.5 Public announcement.
- 614.6 Meeting changes.
- 614.7 Record vote.
- 614.8 Application to Board Executive Committee.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, United States Code; 90 Stat. 1241.

§ 614.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the National Science Board will be open to public observation.

§ 614.2 Grounds for closing meetings.

(a) The National Science Board may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Science Foundation;

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

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

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(c)(7);

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

(9) Is likely to disclose information, the premature disclosure of which would:

(i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed Foundation action, unless the Foundation has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative before taking final action; or

(10) Is likely to specifically concern the Foundation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration.

(b) Anyone who believes his interests may be directly affected by a portion of a meeting may request that the Board close it to the public for any reason referred to in paragraphs (a) (5), (6), or (7) of this section. The request should be addressed to the National Science Board,

National Science Foundation, Washington, D.C. 20550. It will be circulated to Members of the Board if received at least three full days before the meeting, and on motion of any Member the Board will determine by record vote whether to close the affected portion of the meeting.

§ 614.3 Materials relating to closed portions of meetings.

If a portion or portions of any meeting of the National Science Board are closed to the public under § 614.2:

(a) The General Counsel of the National Science Foundation shall publicly certify that, in his opinion, that portion or portions may properly be closed to the public. The certificate shall state the exemptions under 5 U.S.C. 552b(c) that make the closings proper.

(b) The presiding officer of the meeting (usually the Chairman of the Board) shall furnish a statement setting forth the time and place of the meeting and the persons present.

(c) The Board shall make a complete transcript or electronic recording adequate to record fully the proceedings of each portion of the meeting that is closed to the public.

(d) The National Science Board Office shall maintain the General Counsel's certificate, the presiding officer's statement, and the transcript or recording of the meeting for at least two years after the meeting and at least one year after the Board completes consideration of any proposal, report, resolution, or similar matter discussed in any closed portion of the meeting.

§ 614.4 Opening of transcript or recording.

(a) Except as otherwise provided in this section, the transcript or electronic recording of every portion of every meeting closed to the public will promptly be made available on request to any member of the public in an easily accessible place. The National Science Board Office will furnish to any member of the public on request copies of the transcript or of a transcription of the recording disclosing the identity of each speaker, and will charge for the copies or transcriptions no more than the actual cost of duplication or transcription.

The Board will, however, withhold the transcript or recording of the discussion of any agenda item if the Chairman of the Board or a Board Member designated by him determines that the discussion contains information which should be withheld under the same standards as apply for closing meetings under § 614.2.

(c) The Board will release any transcript or recording withheld under this paragraph (b) when the Chairman of the Board or any person designated by him determines that the grounds for withholding it no longer apply.

(d) A request under paragraph (a) of this section should be directed in writing to the Executive Secretary, National Science Board, should clearly state what is requested, and should contain a promise to pay the costs of any duplication or transcription requested.

§ 614.5 Public announcement.

(a) Except as provided in paragraphs (c) and (d) of this section, the National Science Board will make a public announcement of each Board meeting at least one week before the meeting takes place.

The announcement will cover: (1) The time, place, and subject matter of the meeting;

(2) What portions of the meeting, if any, are to be closed to the public; and

(3) The name and telephone number of the official designated to respond to requests for information on the meeting.

(b) Each such announcement will be promptly posted on public notice boards at the National Science Foundation and made available to journals of general scientific interest. Immediately following the issuance of such an announcement, it will be submitted for publication in the *FEDERAL REGISTER*.

(c) The announcement may be made less than a week before the meeting if it announces or after the meeting only if (1) the Board by record vote determines that agency business requires the meeting to be called on such short or after-the-fact notice and (2) an announcement is made at the earliest practicable time.

(d) All or any portion of the announcement of any meeting may be omitted if the Board by record vote determines that the announcement would disclose information which should be withheld under the same standards as apply for closing meetings under § 614.2.

§ 614.6 Meeting changes.

(a) The time or place of a meeting of the National Science Board that has been publicly announced as provided in § 614.5 may subsequently be changed, but any such change will be publicly announced at the earliest practicable time.

(b) The subject matter of any portion of any meeting of the Board that has been publicly announced as provided in § 614.5 or the determination whether any portion of any meeting so publicly announced will be open or closed may subsequently be changed, but only when:

(1) The Board determines by record vote that agency business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member on the change at the earliest practicable time.

§ 614.7 Record vote.

(a) For purposes of this part a vote of the National Science Board is a "record vote" if: (1) It carries by a majority of all those holding office as Board Members at the time of the vote;

(2) No proxies are counted toward the necessary majority; and

(3) The individual vote of each Member present and voting is recorded.

(b) Within one day of any such record vote or any attempted record vote that fails to achieve the necessary majority under paragraph (a)(1) of this section, the Board Office will make publicly avail-

able a written record showing the vote of each Member on the question.

(c) Within one day of any record vote under which any portion or portions of a Board meeting are to be closed to the public, the Board Office will make available a full written explanation of the Board's action and a list of all persons expected to attend the meeting, showing their affiliations.

§ 614.8 Application to Board Executive Committee.

All the provisions of this part applicable to the National Science Board shall apply equally to the Executive Committee of the Board whenever the Executive Committee is meeting pursuant to its authority to act on behalf of the Board.

[FR Doc.77-7783 Filed 3-11-77; 4:35 pm]

CHAPTER XIV—NATIONAL INSTITUTE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1440—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

National Council on Educational Research ACTION: Final regulation.

SUMMARY: This notice contains the final regulation implementing the Government in the Sunshine Act, Pub. L. 94-409, as required by section 3(a) of the Act.

EFFECTIVE DATE: March 13, 1977.

FOR FURTHER INFORMATION CONTACT:

Peter Gerber, Chief, NCER Staff, 1200 19th Street, NW., Washington, D.C. 20208.

The National Council on Educational Research (NCER) published in the *FEDERAL REGISTER* (42 FR 9399, February 16, 1977) its proposed regulations implementing the "Government in the Sunshine Act" (Pub. L. 94-409; 5 U.S.C. 552b). Interested parties were encouraged to submit comments on these proposed regulations. Three written comments were received.

One party urged that closed meetings be the rare exceptions to the general rule stated in § 1440.1 that "except as otherwise provided in these regulations, every portion of every meeting of the NCER will open to public observation." NCER agrees that only in rare instances will the statutory exemptions be invoked. Thus § 1440.1 remains as proposed.

This party also stressed the importance of the public announcement requirements of § 1440.5. This party would have the NCER adopt a procedure of placing a notice at least one week in advance in a newspaper of general circulation in the area where the meeting is to be held. Whenever feasible, the NCER will give the broadest possible publication concerning the time, place and subject of its meetings. The NCER thinks that as currently written, § 1440.5 provides adequate authority for public notification, without requiring the specific notice suggested.

The second party was the Honorable Richard Preyer, in his capacity as Chairman of the House Subcommittee on Government Information and Individual Rights of the Committee on Government Operations. Mr. Preyer made three suggestions.

Mr. Preyer first referred to the introductory comments to the proposed regulations about the possibility of closing discussions on NIE's proposed budget and which indicate that NCER will follow the guidance of the Office of Management and Budget in this regard. Mr. Preyer indicated that this issue was raised at various times during congressional considerations of the Act and that Congress did not see fit to include a specific exemption for such discussions. The NCER agrees that budget discussions will be closed to the extent that they are determined to fit within any of the ten exemptions contained in the Act, and that budget discussions are not per se exempt under these regulations.

Mr. Preyer's second suggestion was that Section 1440.2 be amended to make clear that there are two distinct steps in any determination that the NCER agrees before it can vote to close a meeting, the NCER must decide first whether the discussion comes within one of the specific exemptions; and second, if it is determined that the meeting can be closed, whether the public interest nevertheless requires that the meeting be open.

Therefore, the NCER has adopted appropriate modifications to § 1440.2.

Mr. Preyer's third suggestion concerned possible ambiguity about the timing of the public certification by the General Counsel of HEW whether the meeting may properly be closed to the public.

In order to make the timing clear, the NCER has amended § 1440.3(a) so that the General Counsel of HEW shall certify, in writing to the NCER prior to any NCER vote, whether the proposed closing of any portion or portions of a meeting or series of meetings would be proper under the provisions of this subpart and of the Government in the Sunshine Act.

The third party was concerned that the statutory two year record preservation period of § 1440.3(d) might be inadequate. He suggested that NCER amend § 1440.3(d) to provide that the records would be kept "for at least five years after the meetings," because it may take the public two years to become aware of the existence of such records.

The NCER recognizes this concern, but is not convinced that it is necessary for the NCER to require records retention for five years. Section 1440.3(d) will remain as proposed.

JOHN E. CORBALLY,
Chairman.

Title 45 CFR Chapter XIV is amended by adding a new Part 1440 to read as follows:

- Sec.
1440.1 General rule.
1440.2 Grounds for closing meetings.
1440.3 Materials relating to closed portions of meetings.
1440.4 Opening of transcript or recording.
1440.5 Public announcement.
1440.6 Meeting changes.
1440.7 Record vote.
1440.8 Application to NCER Committees.

AUTHORITY: Government in the Sunshine Act, sec. 552b of Title 5, United States Code; 90 Stat. 1241.

§ 1440.1 General rule.

Except as otherwise provided in these regulations, every portion of every meeting of the NCER will be open to public observation.

§ 1440.2 Grounds for closing meetings.

(a) The NCER may by record vote close any portion of any meeting if it properly determines that an open meeting:

(1) Is likely to disclose matters that (i) are specifically authorized under criteria established by Executive Order to be kept secret in the interests of national defense or foreign policy and (ii) are in fact properly classified pursuant to the Executive Order;

(2) Is likely to relate solely to the internal personnel rules and practices of the National Institute of Education (NIE);

(3) Is likely to disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That the statute (i) requires in such a manner as to leave no discretion on the issue that the matters be withheld from the public, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

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

(6) Is likely to disclose personal information where the disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Is likely to disclose investigatory law-enforcement records, or information which, if written, would be contained in such records, but only to the extent provided in 5 U.S.C. 552b(v) (7);

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

(9) Is likely to disclose information, the premature disclosure of which (i) In the case of information received from an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or (ii) Be