a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) only if:

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

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(f) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and telephone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§ 242a.6 Procedure for closing meetings.

(a) Action to close a meeting or portion thereof, pursuant to the exemptions set forth in § 242a.4 shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting a portion or portions of which are proposed to be closed to the public pursuant to § 242a.4 or with respect to any information which is proposed to be withheld under § 242a.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in § 242a.4 (e), (f), and (g), the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board's representative may ascertain by notation voting, or similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting following, or

(2) Whether the members wish to close such meeting.

(f) Within 1 day following any vote taken pursuant to paragraphs (a), (b), (c), or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within 1 day of the vote taken pursuant to paragraphs (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 242a.4.

(g) For every meeting closed pursuant to paragraphs (a) through (j) of § 242a.4, the General Counsel or chief legal officer of the USUHS shall publicly certify before the meeting that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 242a.7.

§ 242a.7 Transcripts, recordings, and minutes of closed meetings.

(a) The Board of Regents shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, closed to the public pursuant to § 242a.4(j), the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete, verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within 10 days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Board shall make available to the public, in the offices of the Board of Regents, USUHS, Bethesda, Maryland, 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 the meeting, except for such item or items of such discussion or testimony as the Executive Secretary determines to contain information which may be withheld under § 242a.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the Executive Secretary to withhold information pursuant to subsection (1) of this paragraph, may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within 20 days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

§ 242a.8 Effective date.

This part shall become effective on March 12, 1977.

MEREL P. GLAUBIGER,
Legal Counsel, Uniformed Services University of the Health Sciences.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Office of the Assistant Secretary of Defense (Comptroller).

MARCH 2, 1977.

[FR Doc.77-6615 Filed 3-4-77;8:45 am]

CHAPTER XIV—RENEGOTIATION BOARD

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1482—PUBLIC NOTICE AND OBSERVATION OF MEETINGS

Government in the Sunshine Rules

On January 18, 1977, a document was published in the FEDERAL REGISTER (42 FR 3322–3325) proposing to amend 32 CFR by adopting a new Part 1482 to implement the provisions of the Government in the Sunshine Act (Pub. L. 94–409, 90 Stat. 1241). Interested persons were given until February 21, 1977 to submit written comments. Full and careful consideration was given to each of the comments received. In view of such comments minor changes have been made in the proposed regulations.

The changes include: (1) Elimination of a portion of the proposed § 1482.4(b)(9), which is not applicable; (2) a revision of § 1482.4(b) to require, rather than permit, the Board to open a meeting to public observation if the public interest so requires even though the meeting is otherwise exempt from such public observation; (3) a revision of § 1482.4(c)(1) to make it clear that the Board can close a meeting to the public only after tht General Counsel has determined that such action is authorized under one or more of the exemptions set forth in §§ 1482.4(b); and (4) 1482.4(e) has been changed to remove the restriction on recording meetings of the Board which are open to the public and to include more restrictive prohibition against conduct which could reasonably disturb a meeting. The Board regards the above changes as insubstantial.

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

Dated: March 2, 1977.

REX M. MATTINGLY,
Chairman.

32 CFR Chapter XIV is amended by adding a new Part 1482, reading as follows:

Sec.
1482.1 Scope.
1482.2 Definitions.
1482.3 Public announcement of meetings.
1482.4 Public observation of meetings.
1482.5 Recordings of meetings.

AUTHORITY: Sec. 109, Pub. L. 9, 82d Cong., 65 Stat. 22 (50 U.S.C. App. 1219); sec. 3, Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b).

§ 1482.1 Scope.

(a) *In general.* This part implements the Government in the Sunshine Act (Pub. L. 94-409, 90 Stat. 1241). The regulations herein provide for public announcement of information concerning meetings of the Board, public observation of such meetings unless exempt from such obstrvation by law, and public access to recordings of such meetings except to the extent that such recordings are of meetings or portions of meetings closed to public observation and the discussion thereon is exempt from disclosure by law.

(b) *Applicability.* This part applies to all meetings of the Board and all meetings of divisions of the Board which are composed of two or more members. The members of the Board shall not jointly conduct or dispose of official agency business other than in accordance with this part.

(c) *Access to records.* Access to records, including those discussed, referred to or adopted in a meeting to which this part is applicable, shall be governed exclusively by the provisions of Part 1480 of this subchapter.

§ 1482.2 Definitions.

(a) "Board" means the Renegotiation Board.

(b) "Division" means one or more members of the Board designated by the Chairman pursuant to section 107(e) of the act.

(c) "Member" means an individual who has been appointed to the Board.

(d) "General Counsel" means the General Counsel of the Board appointed pursuant to section 107(c) of the act or, in his absence, the Acting General Counsel.

(e) "Meeting" means the deliberations of at least the number of members required to take action on behalf of the Board, or the deliberations of at least the number of members of a division required to take action on behalf of the division but not less than two, where such deliberations determine or result in the joint conduct or disposition of official business, but does not include deliberations for the purpose of closing a meeting or portion thereof to public observation under § 1482.4, deliberations for the purpose of establishing or changing the time, place or subject matter of a meeting under § 1482.3, or actions taken by the Board or a division through sequential, written notation of its members.

(f) "Earliest practicable time" means as soon as reasonably possible which, except in unusual circumstances, will be not later than the close of the next day which is not a Saturday, Sunday or legal holiday.

§ 1482.3 Public announcement of meetings.

(a) *In general.* A public announcement, in the form prescribed in paragraph (c) of this section, will be posted at least seven calendar days in advance of each meeting except that if a majority of the Board determines by recorded vote that agency business requires that such meeting be called at an earlier date, such public announcement will be posted at the earliest practicable time.

(b) *Changes in public announcements.* The time and place of a meeting may be changed following its public announcement only if the Board posts a public announcement of such change at the earliest practicable time. The subject matter of a meeting or the determination to open or close a meeting or portion thereof to public observation may be changed only if (1) a majority of the Board determines by recorded vote that that agency business so requires and that no earlier announcement of the change was possible, and (2) a public announcement of such change, and the vote of each member thereon, is posted at the earliest practicable time.

(c) *Contents of public announcements.* Each public announcement of a meeting required by paragraphs (a) and (b) of this section shall state:

(1) The time and place of the meeting;

(2) The subject matter of the meeting;

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

(4) The name, address and telephone number of the official designated to respond to requests for information concerning the meeting;

except that, with respect to a meeting or portion thereof which is to be closed to public observation under § 1482.4, to the extent that any information required to be stated in a public announcement by this paragraph is exempt from disclosure under the provisions of § 1482.4(b), such information will not be included in a public announcement.

(d) *Posting.* A public announcement required under this section shall be posted by making it available for public inspection and copying during the usual hours of business in the Public Information Office at the principal office of the Board. See §§ 1472.6 (d)(1) and (e)(2). Immediately following its posting, such public announcement shall be submitted for publication in the FEDERAL REGISTER.

§ 1482.4 Public observation of meetings.

(a) *In general.* Except as provided in paragraph (b) of this section, every meeting shall be open to public observation.

(b) *Exemptions.* Meetings or portions of meetings will be closed to public observation, and information concerning such meetings or such portions will not be announced to the public, if the Board determines that public observation of such meeting or such portion, or public announcement of such information, is likely to:

(1) Disclose matters that are (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 internal personnel rules and practices of the Board;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided,* That such statute (i) requires that the matters be withheld from the public 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.

(4) Disclose trade secrets and commercial or financi lanfor amtcionmmmm mercial or financial information obtained from a person and privileged or confidential;

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

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

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (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 by 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 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) Disclose information the premature disclosure of which would be likely to frustrate implementation of a proposed agency action, except that this subparagraph shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Board's participation in a civil action or proceeding an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal agency adjudication involving a determination on the record after opportunity for a hearing;

Provided, That the Board will open to public observation any meeting to which this paragraph applies if it determines that the public interest so requires. In making a determination that the public interest requires public observation of a meeting, the Board shall consider the probable effect of such public observation on the Board's ability to carry out the purposes and intent of the act and on the rights, duties and interests of affected persons, including other agencies, employees and contractors, and whether such public observation would violate any applicable provision of law, such as 5 U.S.C. 552a, 18 U.S.C. 1905 or 26 U.S.C. 7213.

(c) *Procedures*. (1) Upon the motion of any member of the Board to close any meeting or portion thereof to public observation, the General Counsel shall certify whether, in his opinion, such meeting or such portion may be closed to public observation under one or more of the exemptions set forth in paragraph (b) of this section. If the General Counsel certifies that such meeting or such portion may be closed to public observation, the Board shall vote upon such motion.

(2) Within one business day following a vote under subparagraph (1) of this paragraph, a written record of such vote, reflecting the vote of each member and attaching the General Counsel's certification, shall be posted.

(3) If the vote of the Board under subparagraph (1) of this paragraph is to close such meeting or such portion to public observation, within one business day following such vote a full written explanation of the Board's action, together with a list of all persons expected to attend such meeting or such portion and their affiliation shall be posted.

(4) At the earliest practicable time following a meeting any portion of which is closed to public observation pursuant to this paragraph, the presiding member shall file a statement setting forth the time and place of such meeting and the persons present, which shall be posted.

(5) For the purposes of this paragraph, posting a document shall consist of making such document available for public inspection and copying during usual hours of business in the Public Information Office at the principal office of the Board. See § 1472.6(d)(1) and (e)(2) of this subchapter.

(6) With respect to any meeting or portion of a meeting closed to public observation pursuant to this section, if the Board determines that any information contained in any of the documents required to be posted pursuant to subparagraphs (1)–(4) of this paragraph is exempt from public disclosure under paragraph (b) of this section, such information shall be deleted from the copies of such documents that are posted: *Provided, however*, That undeleted copies of such documents shall be retained by the Board in its files.

(d) *Requests to close meetings*. Any person who believes that his interests may be directly affected by public observation of a meeting or portion of a meeting may request that such meeting or such portion be closed to such public observation for any of the reasons set forth in paragraph (b) of this section. Such requests shall be filed with the Assistant General Counsel-Secretary at the principal office of the Board, who shall distribute copies of such request to each member at the earliest practicable time. See § 1472.6 (d)(1) and (e)(2). Action on such request, if any, shall thereafter be taken in accordance with the procedure set forth in paragraph (c) of this section.

(e) *Public observation*. Unless otherwise stated in a public announcement made pursuant to § 1482.3 (a) or (b) of this subchapter, public observation of a meeting shall mean that all members of the public are invited to attend such meeting for the purposes of observing and listening to the proceedings but not for the purposes of participating in such proceedings. The Board reserves the right to prohibit any conduct by persons attending any meeting which can reasonably be expected to result in the disruption of such meeting.

§ 1482.5 Recordings of meetings.

(a) *In general*. Recordings of every meeting, whether open or closed to public observation under § 1482.4 of this subchapter, shall be made and retained. Each such recording shall accurately identify the meeting to which it relates, each speaker thereat and each document or physical item discussed thereat.

(b) *Excision of recordings of closed meetings*. The Assistant General Counsel-Secretary or his duly appointed representative shall prepare a copy of the recording of each meeting or portion thereof closed to public observation pursuant to § 1482.4 of this subchapter and shall excise therefrom all discussion which, in his opinion, is exempt from public disclosure under paragraph (b) of such section. The original recording of each such meeting or portion shall be retained by him.

(c) *Public access to recordings*. The recording of each meeting or portion thereof which is open to public observation and the copy of the recording of each meeting or portion thereof which is closed to public observation, after excision in accordance with paragraph (b) of this section, together with an index of the subject matter thereon and suitable equipment for the review of such recordings and copies, shall be available to the public during the usual hours of business in the Public Information Office at the principal office of the Board. See § 1472.6 (d)(1) and (e)(2) of this subchapter.

(d) *Procedure for obtaining copies of recordings*. (1) Any person desiring a copy of any recording available to the public under the preceding paragraph shall submit a written request therefor, stating that it is made pursuant to the Government in the Sunshine Act and describing such recording with sufficient particularity to permit its identification with reasonable certainty. All requests should be addressed to the Assistant General Counsel-Secretary, Renegotiation Board, Washington, D.C. 20446. The envelope in which such request is sent shall be prominently marked with the letters "GISA."

(2) The Assistant General Counsel-Secretary or, in his absence, his duly appointed representative, shall furnish the requested copies within ten days (excluding Saturdays, Sundays and legal holidays) after the receipt of a request under this paragraph.

(e) *Review of excisions*. Any person who has been afforded access to a copy of a recording of a closed meeting under paragraph (c) of this section or who has received a copy of such a recording under paragraph (d) of this section may obtain review by the Board of the decision of the Assistant General Counsel-Secretary excising portions of such recordings under paragraph (b) of this section by making written application to the Renegotiation Board, Washington, D.C. 20446, within 20 calendar days after the date of such access or receipt of such copy. The decision of the Board shall be made within 20 days (excluding Saturdays, Sundays and legal holidays) after the receipt of such application. Failure of the Board to act within the time limit prescribed in the preceding sentence shall constitute a decision of the Board not to furnish the excised discussion to the requester.

(f) *Fees*. (1) The charge for furnishing a copy of a recording under paragraph (d) of this section shall be the actual cost of its duplication.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requester has not indicated in advance his willingness to pay fees as high as antici-

pated, the requester shall be notified of the amount of the anticipated fee. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it.

(3) Where the anticipated fee exceeds $25 or where a requester has previously failed to pay a fee under this paragraph, an advance deposit of the full amount of the anticipated fee may be required. In any case requiring a deposit, the request will not be deemed to be received until receipt of such deposit.

(4) Remittances of fees under this paragraph shall be made payable to the order of the Renegotiation Board and mailed to the Renegotiation Board, Attention: Director, Office of Administration, Washington, D.C. 20446. The Board will assume no responsibility for cash which is lost in the mail.

(5) The Board shall waive any fee prescribed in this paragraph in any instance in which the Board, in its discretion, determines such waiver to primarily benefit the general public. There will be no charge for making copies of recordings required for use by other agencies of the Government.

(g) *Period of retention*. A recording made and maintained under paragraphs (a) or (b) of this section shall be retained for a period of not less than two years after the meeting or one year after the conclusion of any Board proceeding with respect to which the meeting was held, whichever is longer.

(Sec. 109, Pub. L. 9, 82nd Cong., 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219.)

[FR Doc.77-6660 Filed 3-4-77;8:45 am]

Title 36—Parks, Forests, and Public Property

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

PART 800—PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

CFR Correction

Section 800.5(d) should read as follows:

§ 800.5 Consultation process.

* * * * *

(d) Finding of no adverse effect. Upon finding the effect not to be adverse, the Agency Official shall forward adequate documentation of the determination, including evidence of the views of the State Historic Preservation Officer, to the Executive Director for review. Unless the Executive Director notes an objection to the determination within 45 days after receipt of adequate documentation, the Agency Official may proceed with the undertaking.

Title 38—Pensions, Bonuses and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

CONTINUANCE IN EFFECT OF ALL CURRENT REGULATIONS AND OTHER FORMAL ISSUES AND CONFIRMATION OF ISSUES PROMULGATED BY OR PURSUANT TO THE AUTHORITY OF RICHARD L. ROUDEBUSH TO BECOME EFFECTIVE AFTER TERMINATION OF HIS APPOINTMENT

All current Veterans Administration regulations, manuals, instructions, bulletins, circulars, Administrator's decisions, delegations of authority and other issues applicable to the Veterans Administration shall remain in full force and effect.

In addition all Veterans Administration issues applicable to the Veterans Administration which were approved by or pursuant to the authority of Richard L. Roudebush to become effective on a date subsequent to the termination of his appointment as Administrator of Veterans' Affairs are hereby confirmed and approved as though the same had been approved by me.

All the above issues shall remain in full force and effect until such time as they may be specifically amended or revoked. This issue is effective March 2, 1977.

MAX CLELAND,
Administrator.

[FR Doc.77-6653 Filed 3-4-77;8:45 am]

Title 39—Postal Service

CHAPTER 1—U.S. POSTAL SERVICE

SUBCHAPTER A—THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

GOVERNMENT IN THE SUNSHINE ACT

Bylaws of the Board of Governors

AGENCY: United States Postal Service (Board of Governors).

ACTION: Final Rule.

SUMMARY: This notice announces the amendment of Postal Service regulations to comply with the requirements of the Government in the Sunshine Act. In addition, it announces a general revision and republication of the bylaws of the Board of Governors, including certain unpublished provisions formerly referred to as "operating procedures".

EFFECTIVE DATE: March 12, 1977.

ADDRESSES: Secretary of the Board of Governors, U.S. Postal Service, Room 9150, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Louis A. Cox, (202-245-4632).

SUPPLEMENTARY INFORMATION: On January 13, 1977, the Postal Service published for public comment in the FEDERAL REGISTER (42 FR 2699) a notice of proposed rulemaking setting forth proposed regulations complying with the requirements of new 5 U.S.C. 552b(a)-(f), as enacted by the Government in the Sunshine Act, Pub. L. No. 94-409. On January 28, 1977, a subsequent notice corrected minor printing errors in the initial publication (42 FR 5383). These proposed regulations, contained in a new Part 7 of title 39, CFR, were drafted after consultation with the Office of the Chairman of the Administrative Conference of the United States, and a copy of the proposed regulations was supplied to the Office of the Chairman for reference and comment. Members of the public were invited to submit written data, views, or arguments concerning the proposed regulations.

In addition, the January 13, 1977, notice contained a tentative general revision of the bylaws of the Board of Governors, previously codified at 39 CFR Parts 1-6. Although the Board was not required to submit its proposed bylaws (with the exception of those dealing with the Government in the Sunshine Act) for public comment, the Board hoped that informational publication of the full text of its tentative bylaws would permit a more accurate evaluation of its proposed Sunshine regulations.

The Postal Service received only one public comment which specifically addressed the proposed provisions of new 39 CFR Part 7. This comment suggested: (1) that proposed § 7.3 be modified to indicate more clearly that the Board will consider public interest factors in each determination to close a meeting or withhold information concerning a meeting which otherwise would be disclosed to the public, (2) that §§ 7.4(e) and 7.5(d) be amended to provide for publicizing Board meetings and related information through methods in addition to publication of notices in the FEDERAL REGISTER; and (3) that § 7.6(a) be amended to clarify that the General Counsel's certification of a closed meeting must be given before the meeting is closed.

The Postal Service has made appropriate changes in the sections referred to in the comment received. As amended, § 7.3 indicates that the Board must determine that the public interest does not require otherwise before taking action to close a meeting or withhold information. Revised §§ 7.4(e) and 7.5(d) require the Secretary to submit information published in the FEDERAL REGISTER to the Postal Service Public and Employee Communications Department for dissemination to the public. Finally, revised § 7.6(a) provides for the General Counsel's certification at the beginning of any meeting or portion of a meeting closed to the public.

The Postal Service also received one comment regarding the general revision of the bylaws of the Board. This comment suggested that the minutes of

Board meetings be made more widely available. In response to this suggestion, a new § 6.5 dealing with minutes of meetings has been inserted in the final version of the bylaws. This new section provides that after approval by the Board, copies of the minutes of meetings will be available in the Public and Employee Communications Department at Postal Service Headquarters.

As a result of its own review of proposed new 39 CFR Parts 1-8, the Postal Service has made certain other changes in the proposed text. Editorial corrections have been made wherever necessary, throughout the text. Proposed § 6.1 has been amended by adding a procedure for setting the agenda of a regular or annual meeting. A general prohibition against proxy voting, and special majority requirements for certain votes under the Government in the Sunshine Act have been inserted in § 6.6 (formerly § 6.5).

In Part 7, proposed § 7.2 has been amended slightly to prohibit any person to participate in, film, televise, or broadcast any portion of a Board meeting without permission, and to apply the rules of 39 CFR 232.6, dealing with conduct on postal property, with regard to meetings of the Board. Members of the public will be permitted to record or photograph a meeting, as long as that action does not interfere with the members of the Board in the performance of their duties, or with members of the public who are attempting to attend or observe a meeting.

In view of the considerations discussed above, the Postal Service hereby adopts, as amended, the following amendment to title 39, Code of Federal Regulations, effective March 12, 1977:

In 39 CFR, Parts 1 through 6 are revised, and new parts 7 and 8 are adopted to read as follows:

PART 1—POSTAL POLICY [ARTICLE I]

AUTHORITY: The provisions of this Part 1 are issued under authority of 39 U.S.C. 101, 202, 205, 401(2), 402, 403, 3621, as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b(b), (g), as enacted by Pub. L. No. 94-409.

§ 1.1 The United States Postal Service.

The United States Postal Service is operated as a fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service has as its basic function the obligation to bind the Nation together through the correspondence of the people. It is charged with providing prompt, reliable, and efficient services throughout the Nation; and its statutory charter, the Postal Reorganization Act (the Reorganization Act) of August 12, 1970, Pub. L. No. 91-375, 84 Stat. 719, clothes it with extensive powers intended to enable it to carry out its responsibilities effectively and economically.

§ 1.2 The Board of Governors.

The Board of Governors of the Postal Service (the Board) directs the exercise of its powers under management that is expected to be honest, efficient, and economical. The Board consists of nine Governors chosen by the President, by and with the advice and consent of the Senate, to represent the public interest generally, together with the Postmaster General and Deputy Postmaster General. The Board directs and controls the expenditures of the Postal Service, reviews its practices and policies, and establishes basic objectives and long-range goals in consonance with the provisions of the Postal Reorganization Act.

§ 1.3 Delegation of authority.

Except for powers, duties, or obligations specifically vested in the Governors by law, the Board may delegate its authority to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it finds desirable. The bylaws of the Board are the framework of the system through which the Board monitors the exercise of the authority it has delegated, measures progress toward the goals it has set, and shapes the policies to guide the future development of the Postal Service. Delegations of authority do not relieve the Board of full responsibility for carrying out its duties and functions, and are revocable by the Governors in their exclusive judgment.

§ 1.4 Open meetings.

It is the policy of the United States, established in section 2 of the Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241, that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The Postal Service is charged to provide the public with this information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, except as specifically permitted by statute, every portion of every meeting of the Board of Governors, or of a subdivision of the Board authorized to act on its behalf, is open to public observation.

PART 2—GENERAL AND TECHNICAL PROVISIONS [ARTICLE II]

AUTHORITY: The provisions of this Part 2 are issued under authority of 39 U.S.C. 202, 203, 205(c), 207, 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b(f), (g), as enacted by Pub. L. No. 94-409.

§ 2.1 Establishment of the United States Postal Service.

The United States Postal Service is established under the provisions of the Postal Reorganization Act, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer.

§ 2.2 Agent for receipt of process.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service, and as agent for the receipt of legal process against members of the Board of Governors and all other officers and employees of the Postal Service to the extent that the process arises out of the official functions of those officers and employees. The General Counsel shall also issue public certifications concerning closed meetings of the Board as appropriate under 5 U.S.C. 552b(f).

§ 2.3 Offices.

The principal office of the Postal Service is located in Washington, D.C., with such regional and other offices and places of business as the Postmaster General establishes from time to time, or the business of the Postal Service requires.

§ 2.4 Seal.

(a) The Seal of the Postal Service is filed by the Board in the Office of the Secretary of State, and is required by 39 U.S.C. 207 to be judicially noticed. The General Counsel shall keep the Seal in his custody, affix it to all commissions of officers of the Postal Service, and use it to authenticate records of the Postal Service and for other official purposes. The following describes the Seal adopted for the Postal Service:

(1) A stylized bald eagle is poised for flight, facing to the viewer's right, above two horizontal bars between which are the words "U.S. MAIL", surrounded by a square border with rounded corners consisting of the words "UNITED STATES POSTAL SERVICE" on the left, top, and right, and consisting of nine five-pointed stars on the base.

(2) The color representation of the Seal shows, a white field on which the bald eagle appears in dark blue, the words "U.S. MAIL" in black, the bar above the words in red, the bar below in blue, and the entire border consisting of the words "UNITED STATES POSTAL SERVICE" and stars in ochre.

UNITED STATES POSTAL SERVICE

U.S.MAIL

(b) The Postal Service emblem, which is identical with the seal, is registered as a trademark and service mark by the U.S. Patent Office. Except for the emblem on official stationery, the emblem must bear one of the following notations: "Reg. U.S. Pat. Off.", "Registered in U.S. Patent Office", or the letter R enclosed within a circle.

§ 2.5 Authority.

These bylaws are adopted by the Board under the authority conferred upon the Postal Service by 39 U.S.C. 401(2) and 5 U.S.C. 552b(g).

§ 2.6 Severability, Amendment, Repeal, and Waiver of Bylaws.

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least 5 days before the meeting. The members of the Board may waive the 5 days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the FEDERAL REGISTER as soon as practicable after the amendment is adopted by the Board.

PART 3—BOARD OF GOVERNORS

[ARTICLE III]

AUTHORITY: The provisions of this Part 3 are issued under authority of 39 U.S.C. 202, 203, 205, 401(2), 402, as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b(g), (j), as enacted by Pub. L. No. 94-409.

§ 3.1 Composition of Board.

The Board of Governors consists of 11 members. Nine members (the Governors) are appointed by the President, by and with the advice and consent of the Senate. Not more than five Governors may be adherents of the same political party. The Governors are chosen to represent the public interest generally, may not be representatives of specific interests using the Postal Service, and may be removed only for cause. The Postmaster General, appointed by the nine Governors, and the Deputy Postmaster General, appointed by the Governors and the Postmaster General, are also voting members of the Board of Governors.

§ 3.2 Responsibilities of Board.

The Board directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in 3.5 of these bylaws, and except for those powers, duties, or obligations which the Reorganization Act specifically vests in the Governors, as distinguished from the Board of Governors, the Board accomplishes its purposes by monitoring the operations and performance of the Postal Service, and by establishing basic objectives, broad policies, and long-range goals for the Postal Service.

§ 3.3 Compensation of Board.

As provided by 39 U.S.C. 202(a), each Governor receives a salary of $10,000 a year plus $300 a day for not more than 30 days of meetings each year, and reimbursement for travel and reasonable expenses incurred in attending meetings of the Board.

§ 3.4 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors;

(a) Appointment, pay, term of service, and removal of the Postmaster General (by the Governors, 39 U.S.C. 202(c)).

(b) Appointment, term of service, and removal of the Deputy Postmaster General (by the Governors and the Postmaster General, 39 U.S.C. 202(d)); pay of the Deputy Postmaster General (by the Governors, 39 U.S.C. 202(d)).

(c) Election of the Chairman of the Board of Governors (by the Governors, 39 U.S.C. 202(a)), the Vice Chairman of the Board, and the Secretary of the Board.

(d) Adoption of, and amendments to, the bylaws of the Board.

(e) Approval of the annual Postal Service budget program in both tentative and final form, including requests for appropriations.

(f) Approval of Postal Service five-year plans and capital investment plans, including specific approval of each capital investment project exceeding $5 million.

(g) Approval of the budget of the Postal Rate Commission, or adjustment of the total amount of the budget (by unanimous written vote of the Governors in office, 39 U.S.C. 3604(d)).

(h) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, including specific authorization of the amount of revenue estimated to be required so that total estimated income and appropriations will equal total estimated costs as nearly as practicable.

(i) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule.

(j) Action upon a recommended decision of the Postal Rate Commission, including action to approve, allow under protest, reject, or modify that decision (by the Governors, 39 U.S.C. 3625); determination of an effective date for changes in postal rates or mail classification.

(k) Authorization of the Postal Service to request the Postal Rate Commission to submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.

(l) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005, except for short-term "line of credit" borrowings and purchase money obligations assumed in the normal course of business .

(m) Approval of the terms and conditions of each issue of obligations by the Postal Service under 39 U.S.C. 2005, including the time and manner of sale and the underwriting arrangements.

(n) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(o) Determination of the number of Assistant Postmasters General, including Senior Assistant Postmasters General and Regional Postmasters General.

(p) Compensation of officers and executive. in PES Grade 34 and above.

(q) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

(r) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.

(s) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).

(t) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(g).

(u) All other matters that the Board may consider appropriate to reserve for its decision.

§ 3.5 Delegation of authority by Board.

As authorized by 39 U.S.C. 402, these bylaws delegate to the Postmaster General the authority to exercise the powers of the Postal Service to the extent that this delegation of authority does not conflict with powers reserved to the Governors or to the Board by law, these bylaws, or resolutions adopted by the Board. The Postmaster General may redelegate to any officer, employee, or agency of the Postal Service any of the powers delegated to him by these bylaws that he considers appropriate.

§ 3.6 Information furnished to Board—statistical reports.

To enable the Board to monitor the operations and performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board the following statistical reports at least quarterly:

(a) Detailed summaries of financial and operating statements of the Postal

Service, with balance sheet information, for each accounting period during the fiscal year to date, together with comparable figures for the previous year and for the current budget plan, categorized as:

(1) Income (revenue by principal mail classification, subsidies, and reimbursements); and

(2) Expenditures (expenses by function and by unit of organization).

(b) Performance data for the most recent quarter, categorized as:

(1) Service performance measurement (by particular classes and types of mail, and showing delivery times within representative distances); and

(2) Employee productivity measurement (reflecting paid work hours and mail volume).

§ 3.7 Information furnished to Board—Program review.

(a) To enable the Board to review the Postal Service operating program, postal management shall furnish the Board information on all aspects of the Postal Service budget plan, including:

(1) The tentative and final annual budgets submitted to the Office of Management and Budget and the Congress, and amendments to the budget;

(2) Five-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(3) The need for rate increases or decreases and the progress of any pending rate cases and related litigation; and

(4) Debt financing needs, including a review of all borrowings of the Postal Service from the United States Treasury and private sources.

(b) Postal management shall also regularly furnish the Board information regarding major programs for improving postal service or reducing the cost of postal operations.

§ 3.8 Information furnished to Board—Special reports.

To insure that the Board receives significant information on developments meriting its attention, postal management shall bring to the Board's attention the following matters:

(a) Major developments in personnel areas, including but not limited to equal employment opportunity, career development and training, and grade and salary structures.

(b) Other matters of special importance, including but not limited to important research and development initiatives, major changes in Postal Service organization or structure, major litigation and law enforcement activities, and other matters having a significant impact upon the relationship of the Postal Service with its employees, with any major branch of Government, or with the general public.

PART 4—OFFICERS [ARTICLE IV]

AUTHORITY: The provisions of this Part 5 are issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Pub. L. No. 91-375.

§ 4.1 Chairman.

The Chairman of the Board of Governors is elected by the Governors from among the members of the Board. The Chairman:

(a) Shall preside at all regular and special meetings of the Board;

(b) Shall select and appoint the Chairman and members of any committee properly established by the Board;

(c) Serves a term that commences at his election and expires at the end of the first annual meeting following the meeting at which he was elected.

If the Postmaster General is elected Chairman of the Board, the Governors shall also elect one of their number to preside during proceedings dealing with matters upon which only the Governors may vote.

§ 4.2 Vice Chairman.

The Vice Chairman is elected by the Board from among the members of the Board. He shall perform the duties and exercise the powers of the Chairman during the Chairman's absence or disability. The Vice Chairman serves a term that commences at his election and expires at the end of the first annual meeting following the meeting at which he was elected.

§ 4.3 Postmaster General.

The Governors appoint and have the power to remove the Postmaster General, who is a voting member of the Board. In addition to his responsibilities as a member of the Board, the Postmaster General is the chief executive officer of the Postal Service, authorized to exercise the powers of the Postal Service under the general supervision and direction of the Board. The Governors set the salary of the Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§ 4.4 Deputy Postmaster General.

The Governors and the Postmaster General appoint and have the power to remove the Deputy Postmaster General, who is a voting member of the Board. In addition to his responsibilities as a member of the Board, the Deputy Postmaster General is the alternate chief executive officer of the Postal Service. He shall perform all tasks assigned to him by the Postmaster General, and act as Postmaster General during the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The Governors set the salary of the Deputy Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer.

There are within the Postal Service a General Counsel, a Judicial Officer, and such number of Assistant Postmasters General (including Senior Assistant Postmasters General and Regional Postmasters General) as the Board authorizes by resolution. The Assistant Postmasters General, the General Counsel, and the Judicial Officer are appointed by, and serve at the pleasure of, the Postmaster General. Their powers and duties are delegated to them by the Postmaster General, consistent with these bylaws and the Reorganization Act.

§ 4.6 Secretary.

The Secretary of the Postal Service is elected by the Board. The Secretary shall issue notices of meetings of the Board and its committees, keep minutes of these meetings, and monitor compliance with all statutes and regulations dealing with public observation of meetings. He shall perform all duties incident to his office, including those duties assigned to him by the Board or by the Chairman of the Board. The Chairman may designate such assistant secretaries as he considers necessary to perform any of the duties of the Secretary.

PART 5—COMMITTEES [ARTICLE V]

AUTHORITY: The provisions of this Part 5 are issued under authority of 39 U.S.C. 202, 203, 204, 205(c), 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b (a), (b), (g) as enacted by Pub. L. No. 94-409.

§ 5.1 Establishment and appointment.

From time to time the Board may establish by resolution special and standing committees of one or more members of the Board. The Board shall specify, in the resolution establishing any committee, whether the committee is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board. Each committee may exercise only those duties, functions, and powers prescribed from time to time by the Board; and the Board may affirm, alter, or revoke any action of any committee. Each member of the Board may have access to all of the information and records of any committee at any time. The Chairman of the Board shall appoint the chairman and members of each committee, who serve terms which expire at the end of each annual meeting. Each committee chairman may assign responsibilities within his committee as he considers appropirate. The committee chairman or his designee shall preside at all meetings of the committee.

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum, and may take action by majority vote of the members present. Except as specifically provided by statute, every portion of every meeting of every committee of more than one member, which is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board, is open to public observation, and is subject to the requirements of §§ 7.1 through 7.8 of these bylaws.

§ 5.3 Compensation of members.

A Governor receives compensation of $300 a day for attendance at committee meetings, and reimbursement for travel and reasonable expenses incurred in attending committee meetings. No Governor may receive compensation under this section and § 3.3 of these bylaws for more than a combination of 30 days of Board meetings and committee meetings in any year.

PART 6—MEETINGS [ARTICLE VI]

AUTHORITY: The provisions of this Part 6 are issued under authority of 39 U.S.C. 202, 205, 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C 552b, (e), (g), as enacted by Pub. L. No. 94-409.

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly in Washington, D.C., on the first Tuesday of each month. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of § 7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by action of the Chairman, or by a recorded vote of a majority of the members of the Board, with the earliest practicable notice to the other members of the Board and to the Secretary. If the Chairman varies the time or place of a meeting, he shall give not less than 8 days' notice to the other members of the Board and to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting, after appropriate consultation with the Chairman and the Postmaster General.

§ 6.2 Special meetings.

Consistent with the provisions of § 7.5 of these bylaws, the Chairman may call a special meeting of the Board at any place in the United States, with not less than 8 nor more than 30 days' notice to the other members of the Board and to the Secretary, specifying the time, date, place, and subject matter of the meeting. By recorded vote a majority of the members of the Board may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the time, date, place and subject matter of the meeting.

§ 6.3 Notice of meetings.

The Chairman or the members of the Board may give the notice required under § 6.1 or § 6.2 of these bylaws in oral or written form. Oral notice to a member may be delivered by telephone and is sufficient if made to the member personally or to a responsible person in his home or office. Any oral notice to a member must be subsequently confirmed by written notice. Written notice to a member may be delivered by telegram or by mail sent by the fastest regular delivery method addressed to the member at his address of record filed with the Secretary, and except for written notice confirming a previous oral notice, must be sent in sufficient time to reach that address at least 2 days before the meeting date under normal delivery conditions. A member waives notice of any meeting by attending the meeting, and may otherwise waive notice of any meeting at any time. Neither oral nor written notice to the Secretary is sufficient until actually received by him, and the Secretary may not waive notice of any meeting.

§ 6.4 Attendance by conference telephone call.

Unless prohibited by law or by these bylaws, a member of the Board may participate in a meeting of the Board by conference telephone or similar communication equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting, except that no Governor may receive compensation for any meeting attended in this manner.

§ 6.5 Minutes of meetings.

The Secretary shall preserve the original minutes of Board meetings prepared under § 4.6 of these bylaws. After the minutes of any meeting are approved by the Board, the Secretary shall promptly make available to the public, in the Public and Employee Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, copies of the minutes, except for those portions which contain information inappropriate for public disclosure under 5 U.S.C. 552(b) or 39 U.S.C. 410(c).

§ 6.6 Quorum and voting.

As provided by 39 U.S.C. 205(c), the Board acts by resolution upon a majority vote of those members who are present. No proxies are allowed in any vote of the members of the Board. Any 6 members constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, 39 U.S.C. 205(c)(1) requires a favorable vote of an absolute majority of the Governors in office;

(b) In the appointment or removal of the Deputy Postmaster General, 39 U.S.C. 205(c)(2) requires a favorable vote of an absolute majority of the Governors in office and the Postmaster General;

(c) In the adjustment of the total budget of the Postal Rate Commission, 39 U.S.C. 3604(c) requires a unanimous written vote of the Governors in office;

(d) In the modification of a recommended decision of the Postal Rate Commission, 39 U.S.C. 3625 requires a unanimous written vote of the Governors in office; and

(e) In the approval, allowance under protest, or rejection of a recommended decision of the Postal Rate Commission, the Governors act upon a majority vote of the Governors present, and the required quorum of 6 members must include at least 5 Governors;

(f) In the determination to close a portion of a meeting or to withhold information concerning a meeting, 5 U.S.C. 552b(d)(1) requires a vote of a majority of the entire membership of the Board; and

(g) In the decision to call a meeting with less than a week's notice, 5 U.S.C. 552b(e)(1) requires a vote of a majority of the members of the Board. In the decision to change the subject matter of a meeting, or the determination to open or close a meeting, 5 U.S.C. 552b(e)(2) requires a vote of a majority of the entire membership of the Board.

PART 7—PUBLIC OBSERVATION [ARTICLE VII]

AUTHORITY: The provisions of this Part 7 are issued under authority of 39 U.S.C. 401 (a), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b (a)-(m) as enacted by Pub. L. No. 94-409.

§ 7.1 Definitions.

For purposes of §§ 7.2 through 7.8 and 8.1 of these bylaws:

(a) The term "Board" means the Board of Governors, and any subdivision or committee of the Board authorized under section 5.1 of these bylaws to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board.

(b) The term "meeting" means the deliberations of at least the number of individual members required to take action on behalf of the Board under §§ 5.2 or 6.5 of these bylaws, where such deliberations determine or result in the joint conduct or disposition of the official business of the Board. The term "meeting" does not include any procedural deliberations required or permitted by §§ 6.1, 6.2, 7.4, or 7.5 of these bylaws.

§ 7.2 **Open meetings required.**

(a) Except as provided in § 7.3 of these bylaws, every portion of every meeting of the Board is open to public observation. Members of the Board may not jointly conduct or dispose of business of the Board without complying with §§ 7.2 through 7.8 of these bylaws. Members of the public may obtain access to documents considered at meetings to the extent provided in the regulations of the Postal Service concerning the release of information.

(b) Without the permission of the Board, no person may participate in, film, televise, or broadcast any portion of any meeting of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board. The rules and penalties of 39 CFR 232.6, concerning conduct on postal property, apply with regard to meetings of the Board.

§ 7.3 **Exceptions.**

Section 7.2 of these bylaws does not apply to a portion of a meeting, and §§ 7.4 and 7.5 do not apply to information concerning the meeting which otherwise would be required to be disclosed to the public, if the Board properly determines that the public interest does not require otherwise, and that such portion of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (2) in fact properly classified under that Executive order;

(b) Relate solely to the internal personnel rules and practices of the Postal Service, including the Postal Service position in negotiations or consultations with employee organizations.

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, such as market information pertinent to Postal Service borrowing or investments, technical or patent information related to postal mechanization, or commercial information related to purchases of real estate;

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

(f) Disclose information of a personal nature, such as personal or medical data regarding an individual under consideration for appointment to a Postal Service office, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in those records, but only to the extent that the production of those records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) 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;

(i) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed action of the Board, such as information relating to the negotiation of a labor contract or proposed Postal Service procurement activity, except that this provision does not apply in any instance where (1) the Postal Service has already disclosed to the public the content or nature of the proposed action, or (2) the Postal Service is required by law to make such disclosure on its own initiative before taking final action on the proposal; or

(j) Specifically concern the issuance of a subpoena by the Postal Service, or the participation of the Postal Service in a civil action or proceeding, such as a postal rate or classification proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Postal Service of a particular case of formal adjudication under the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 7.4 **Procedure for closing a meeting.**

(a) A majority of the entire membership of the Board may vote to close a portion of a meeting or to withhold information concerning a meeting under the provisions of § 7.3 of these bylaws. The members shall take a separate vote with respect to each meeting a portion of which is proposed to be closed to the public, or with respect to any information which is proposed to be withheld, and shall make every reasonable effort to take any such vote at least 8 days before the date of the meeting involved. The members may take a single vote with respect to a series of meetings, portions of which are proposed to be closed to the public, or with respect to information concerning the series, so long as each portion of a meeting in the series involves the same particular matters, and no portion of any meeting is scheduled to be held more than 30 days after the initial portion of the first meeting in the series.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Board close that portion to the public for any of the reasons referred to in § 7.3 (e), (f), or (g) of these bylaws, upon request of any one of its members the Board shall vote by recorded vote whether to close that portion of the meeting.

(c) The Secretary shall record the vote of each member participating in a vote under subsection (a) or (b) of this section. Within 1 day of any vote under subsection (a) or (b) of this section, the Secretary shall make publicly available a written copy of the vote showing the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within 1 day of the vote, make publicly available a full written explanation of the action closing the portion, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If a committee of the Board determines that a majority of its meetings may properly be closed to the public for any combination of reasons referred to in § 7.3 (d), (h), or (j) of these bylaws, it may close a meeting or a portion of a meeting by a recorded vote of a majority of its members at the beginning of the meeting or portion in question. The Secretary shall promptly make available to the public a written copy of the vote showing the vote of each member on the question. Subsections (a), (b), and (c) of this section, and § 7.5 of these bylaws do not apply to any meeting or portion of a meeting closed under this subsection. However, at the earliest practicable time, the Secretary shall publicly announce the time, place, and subject matter of the meeting and each of its portions.

(e) Immediately following each public announcement required under subsections (c) and (d) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER the text of the announcement or the information made available. The Secretary shall also submit the announcement or information to the Postal Service Public and Employee Communications Department for dissemination to the public.

§ 7.5 **Public notice of meetings, subsequent changes.**

(a) At least one week before any meeting of the Board, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

(b) By a recorded vote, a majority of the members of the Board may determine that the business of the Board requires a meeting to be called with less than a week's notice. At the earliest practicable time, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, and whether it is to be open or closed to the public.

(c) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) As provided in § 6.1 of these bylaws, the Board may change the time or place of a meeting. At the earliest practicable time, the Secretary shall publicly announce the change.

(2) A majority of the entire membership of the Board may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Board and that no earlier announcement of the change was possible. At the earliest practicable time, the Secretary shall publicly announce the change, and the vote of each member upon the change.

(d) Immediately following each public announcement required under paragraphs (a), (b), or (c) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER a notice of the time, date, place, and subject matter of the meeting, whether the meeting is open or closed, any change in the preceding, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. The Secretary shall also submit the announcement and information to the Postal Service Public and Employee Communications Department for dissemination to the public.

§ 7.6 Certification and transcripts of closed meetings.

(a) At the beginning of every meeting or portion of a meeting closed under § 7.3 (a) through (j) of these bylaws, the General Counsel shall publicly certify that, in his opinion, the meeting or portion of the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

(b) The Secretary shall arrange for a complete transcript or electronic recordings adequate to record fully the proceedings to be made of each meeting or portion of a meeting of the Board which is closed to the public. The Secretary shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting or portion of a meeting closed to the public for at least 2 years after the meeting, or for 1 year after the conclusion of any Postal Service proceeding with respect to which the meeting was held, whichever occurs later.

(c) Except for those items of discussion or testimony which the Board, by a majority vote of those members who are present, determines to contain information which may be withheld under § 7.3 of these bylaws, the Secretary shall promptly make availalbe to the public, in the Public and Employee Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, the transcript or electronic recording of a closed meeting, including the testimony of any witnesses received at the meeting. The Secretary shall furnish a copy of this transcript, or a transcription of this electronic recording disclosing the identity of each speaker, to any person at the actual cost of duplication or transcription.

§ 7.7 Enforcement.

(a) Under 5 US.C. 552b(g), any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside any provisions of these bylaws which are not in accord with the requirements of 5 U.S.C. 552b (a)–(f) and to require the promulgation of provisions that are in accord with those requirements.

(b) Under 5 U.S.C. 552b(h) any person may bring a civil action against the Board in an appropriate United States District Court to obtain judicial review of the alleged failure of the Board to comply with 5 U.S.C. 552b (a)–(f). The burden is on the Board to sustain its action. The court may grant appropriate equitable relief, including enjoining future violations, or ordering the Board to make public information improperly withheld from the public.

(c) Under 5 U.S.C. 552b(i) the court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails, except that the court may assess costs against the plaintiff only if the court finds that he initiated the suit primarily for frivolous or dilatory purposes.

§ 7.8 Open meetings, Freedom of Information, and Privacy of Information.

The provisions of 5 U.S.C. 552b(c) (1)–(10), enacted by Pub. L. No. 94-409, the Government in the Sunshine Act, govern in the case of any request under the Freedom of Information Act 5 U.S.C. 552, to copy or to inspect the transcripts or electronic recordings described in § 7.6 of these bylaws. Nothing in 5 U.S.C. 552b authorizes the Board to withhold from any individual any record, including the transcripts or electronic recordings described in § 7.6 of these bylaws, to which the individual may otherwise have access under 5 U.S.C 552a, enacted by the Privacy Act of 1974. Pub. L. No. 93-579.

PART 8—REPORTS AND RECORDS [ARTICLE VIII]

AUTHORITY: The provisions of this Part 8 are issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b (g), (j), as enacted by Pub. L. No. 94-409.

§ 8.1 Open meetings report.

The Secretary shall annually prepare for approval by the Board and transmittal to Congress a report on the Board's compliance with 5 U.S.C. 552b, as enacted by the Government in the Sunshine Act. The report must contain a tabulation of the total number of Board meetings open to the public, the total number of meetings closed to the public, the reasons for closing those meetings and a description of any litigation brought against the Board under the Act, including any costs assessed against the Board in that litigation.

§ 8.2 Annual report.

No later than the annual meeting of the Board, the Postmaster General shall give to the Board an annual report concerning the operations of the Postal Service, as required by 39 U.S.C. 2402. Upon approval of this report, or after making any changes it considers appropriate, the Board shall transmit this report to the President and the Congress. The Postmaster General shall make the necessary arrangements for the printing of the report and its sale to the public.

§ 8.3 Annual budget; financial reports.

The Postmaster General shall annually submit to the Board a budget for the following fiscal year under requirements as to form, content, and schedule established by the Board. After review by the Board, the Postmaster General shall submit the annual budget of the Postal Service to the Office of Management and Budget of the Executive Office of the President in the manner provided by 39 U.S.C. 2009, and to the Committees on Post Office and Civil Service and the Committees on Appropriations of the Senate and the House of Representatives, as required by 39 U.S.C. 2401(g).

(39 U.S.C. 202, 205, 401(2), 410(a); 5 U.S.C. 552b(g).)

RESOLUTION OF THE BOARD OF GOVERNORS OF THE UNITED STATES POSTAL SERVICE

Resolution No. 77-3

ADOPTION OF REVISED BYLAWS

Resolved:

Pursuant to the Postal Reorganization Act (39 U.S.C. 401(2)), and the Government in the Sunshine Act (Pub. L. 94-409), the Board of Governors adopts the revised Bylaws which are attached hereto and incorporated herein by reference. The revised Bylaws are effective on March 12, 1977.

The foregoing resolution was adopted by the Board of Governors on March 1, 1977.

LOUIS A. COX,
Secretary.

[FR Doc.77-6652 Filed 3-4-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21032; FCC-77-144]

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

Implementation of Government in the Sunshine Act

Adopted: February 24, 1977.

Released: March 4, 1977.

Report and Order. In the matter of implementation of the Government in the Sunshine Act, Pub. L. 94-409, Docket No. 21032.

1. A Notice of proposed rulemaking in this proceeding was released on December 23, 1976 (FCC 76-663, 41 FR 56675, December 29, 1976). The purpose of the proposed rules was to implement the Government in the Sunshine Act, Pub. L. 94-409. The Act and the proposed rules open many Commission meetings to public observation, require notice of all Commission meetings, and specify circumstances under which some meetings may be closed to the public and under which some information may be omitted from meeting notices. Comments were requested by January 27, 1977. Comments were submitted by two members of the Communications Committee, Section on Administrative Law, of the American Bar Association on their own behalf (Practitioners), The National Black Media Coalition (Black Media), and the Department of Applied Communications, Howard University School of Communications (Howard).[1] Reply comments were not requested. Comments were filed by Media Access Project (MAP) after the filing date and after a substantial part of this Report and Order had been drafted. MAP's Motion to Receive Late-Filed Comments is hereby granted. Because of the late filing, however, MAP's comments are dealt with out of sequence in the latter part of the Report and Order.

2. The comments are generally critical of the fact that the proposed rules essentially track the statute and do not go further to spell out procedural and substantive detail. In response to such comment we would note that the Sunshine Act itself is unusually precise and leaves little room for discretion in its interpretation or in implementing regulations.

This being the case, the rules closely follow the Act. In addition, we are hesitant to try to interpret the substantive provisions of the Act prior to reviewing individual items and gaining experience in judging whether they should be considered at open or closed meetings. We acknowledge that the Act should be construed in the light of its legislative history and, in the case of exemptions which parallel those contained in the Freedom of Information Act, case law under that Act. The rules contain cross references to the Freedom of Information Rules (§ 0.457), which set out examples of papers which are not routinely available for public inspection and, by analogy, meetings which may be closed to the public. Although we may eventually be able to embellish the rules with categories of matters usually considered in open or closed meetings, we note that the Act requires an individual determination for each item considered at each meeting.[2]

3. The Act imposes a substantial procedural burden. But no one should read the Commission's prior opposition to its enactment as meaning that we will not fully implement both the letter and spirit of the Act. The Congress has determined that public access to the decisionmaking processes of Government is more important than other considerations, and we will honor that determination in every respect. We hope that the details concerning implementation of the statute which are supplied in this Report and Order and in FCC Directive 1109.1[3] will dispel the cynicism and suspicion which appear to underlie the comments.

4. A number of questions were raised concerning the mechanics of Commission meetings which can be answered as follows with details concerning the meetings which we do not consider appropriate for the regulations:

(a) Commission meetings are held in the Commission meeting room—Room 856, 1919 M St., NW., Washington, D.C. This room contains 70 theatre-type seats which will be available to members of the public who attend open meetings. There are no steps for the handicapped to negotiate. The meeting room is equipped with a loud speaker system. A closed circuit television system connects the meeting room with a nearby conference room, which will be available to handle overflow crowds.

(b) Members of the audience may record the proceedings, provided they use battery-operated recording devices at their seats. They may take photographs from their seats, provided flash bulbs are not used. They may make artists' sketches. The only limitation imposed is that such activities be unobtrusive. Any additional activities of this nature which may be obtrusive should be cleared with the Executive Director in advance of the meeting. The Commission's policy statement on "Audio Visual Coverage of Agency Proceedings" (FCC 72-1181, January 23, 1973, 39 FCC2d 373) will govern audio and or visual (i.e., video or film) coverage of Commission meetings opened by the Sunshine Act, just as it has heretofore governed other public Commission proceedings.

(c) Notice will be given of all open and closed meetings. Copies of the notice will be available in the Public Information Office. We currently plan to attach the notice to "FCC Actions Alert", which is mailed to a number of individuals and public interest groups. The notice will name the Public Information Officer as the individual from whom additional information can be obtained. It will contain a concise, but specific, statement of the subject matter, including the docket number (if any) or other appropriate aids to identification of the subject. In the case of closed meetings, the applicable exemption(s) will be listed, together with an explanation of the reasons why the exemption applies, if they are not obvious from the subject matter.

(d) The notice will list all persons expected to attend a closed meeting, including Commission personnel. See § 0.605(d)(3) of the final rules.[4] The Commissioners, their assistants, the General Counsel, the Executive Director, the Public Information Officer and the Secretary are expected to attend all meetings. The appropriate Bureau or Office Chief and Division Chief are expected to attend meetings which relate to their responsibilities. In addition, the author(s) of the item under consideration is (are) expected to be present for discussion of that item. Other staff members are often present for discussion of all or part of an item on the agenda, because of interest in the subject matter, because they are responsible for matters to be considered later at the meeting, or for a variety of other trivial reasons, but their presence is not expected. After the meeting, the presiding Commissioner will issue a statement listing those persons other than Commission personnel who were present at the meeting and Commission personnel who participated in the discussion of each matter. We believe it would be misleading to list agency personnel who happened to be present for all or part of the discussion but who had no role in deciding the matters under consideration, and that the final rule is a truer rendering of the Congressional purpose than would be a listing of all those physically present.

(e) Howard notes that some Commission proceedings (or meetings) involve public participation and asks that the terms "participation" and "disruptive conduct" be defined. Black Media suggests that public input at the end of meetings may be appropriate. The Commission does, of course, hold meetings at which public input is solicited, and participation by the public is obviously welcomed and expected at such meetings. The Commission also conducts oral arguments, at which parties to the proceeding are allotted time to present their positions, and clearly no change in that procedure is contemplated by these rules. The Sunshine Act, and the implementing regulations, open to the public meetings in which members of the Commission and its staff discuss and decide matters of business before the agency—not those which have been held previously for the specific purpose of obtaining the views of the public or parties to the proceeding. Public participation in meetings opened by the Sunshine Act is not appropriate. Members of the public who attend such meetings will be expected to sit quietly and observe the meeting and not engage in any activity which is obtrusive or disruptive. Smoking will be permitted in the Conference Room only (RM. 847), and will not be permitted in the Commission Meeting Room (RM 856). We cannot go further in defining "disruptive conduct." However, any person engaging in inappropriate conduct will be cautioned by the presiding Commissioner and will be removed if such conduct continues.

5. Black Media takes exception to the definitions of "agency" and "meeting" set out in § 0.601 of the rules. Although the operative words are the same as those set out in section 552b(a) of the Act, Black Media apparently sees them as an attempt by the Commission to close meetings which will not result in final Commission action. However, that is not the intent and that is not what the Act

---

[1] Howard's comments were filed on January 28, 1977, one day after the filing date set out in the notice but within the 30 day comment period prescribed by the Sunshine Act, and were timely filed. Apparently, the notice was published one day later than had been expected.

[2] We surveyed matters considered by the Commission over a six month period and determined that a majority could not have been considered at a closed meeting under section 552(c) (4), (8), 9A or 10 of the Act. Thus, the rules do not provide for closing meetings by regulation pursuant to section 552(d)(4).

[3] This Directive instructs the staff on implementation of the Act. Copies are available in the Public Information Office.

[4] As suggested in the comments, proposed § 0.605 has been divided into three sections. Except as otherwise specified, references in this document to § 0.605 are to the section as proposed.

or the same words in the Rules provide. The term "meeting" encompasses deliberations which "determine or result in the joint *conduct* or determination of agency business." (Emphasis supplied) The conduct of business is not limited to the final vote on a matter but includes deliberations leading up to the vote. The words, "group of Commissioners * * * authorized to act on behalf of the Commission" likewise encompass any group of Commissioners authorized by the Commission to engage in deliberations which determine or result in the joint conduct of official agency business, regardless of whether they take, or are authorized to take, final action. However, the term "agency" does not include meetings of two or three Commissioners who are not authorized by the Commission to act on behalf of the Commission.

6. Practitioners object to the provision in § 0.601(b) which excludes the sequential consideration of Commission business from the definition of "meeting". Apparently, it is feared that this procedure will be used as a device to avoid holding open meetings. In any event, certain safeguards are suggested to preclude such use or the appearance thereof. Suffice it to say that this procedure (referred to as "action by circulation") has been in use for many years, subject to each of the suggested safeguards, and will continue to be used. Thus, action is taken by circulation only when action is required prior to the next regularly scheduled Commission meeting and where no Commissioner requests that the matter be discussed at a meeting. The vote of each Commissioner is reported to the Secretary, recorded and made public. The action document (if any) and a public notice are issued, exactly as if the action had been taken at a meeting. The final rules also provide for action by notation—a procedure under which Commissioners individually, but simultaneously, consider a matter referred to them for action. This procedure will replace the "Consent Agenda" meeting, which is now held prior to the "Regular Agenda" meeting and whose purpose is to weed out and act on those matters which no Commissioner believes warrant discussion. The same safeguards apply, except that the matter need not be urgent. The purpose of the procedure is to avoid wasting the time of the public and the staff in attending meetings which will not involve discussion.

7. Howard takes exception to § 0.605 (a) and (b) of the rules, under which the staff gives notice of open meetings and, if it believes a meeting should be closed, submits that question to the Commission for a vote. In Howard's view, this procedure, "gives the staff * * * too much discretion * * * and does not actually require that the staff make any announcement at all." We cannot understand Howard's position on this point or its reason for taking it. The whole thrust of the Sunshine Act is that as many meetings as possible should be open to the public. Consistently therewith, the Act requires an agency vote prior to holding a closed meeting but does not require a vote to hold an open meeting. Howard is understood to favor open meetings. This being the case, we do not understand why it should object to opening a meeting without a vote. Further, the rule clearly states that the notice of the open meeting required by the Act will be given. Since the matter does not go to the Commission for a vote, the notice will obviously be issued by the staff, for the agency. The basis for any contrary reading of the rule is not apparent. After the notice of an open meeting is issued, it is possible for a Commissioner who believes it should be closed to request a vote on closing the meeting, and § 0.060(b)(1) of the final rules allows for that possibility.

8. Black Media asks that § 0.605(b) (2) be expanded to specify the procedures under which a person directly affected may ask that a meeting be closed. Practitioners ask that we specify procedures for asking that a closed meeting be opened. These are sensible suggestions, and we are implementing them. Such requests may be submitted to the Secretary in writing at any time before the meeting is held, and should briefly state the reason(s) for closing or opening the meeting. To assure that they reach the Commission for consideration before the meeting is held, they should be submitted at the earliest possible time and should call prominent attention to the urgent nature of the request. If possible, they should be hand-carried to the Secretary's office and called specifically to his attention. If the request is mailed, telephone contact with the Secretary concerning the request would be appropriate. It will be helpful, though it is not required, if copies are also directed to the seven Commissioners and the General Counsel. If the request is granted, it should be appreciated that the meeting may be delayed. However, the filing of a request will not stay the holding of a meeting.

9. Practitioners and Black Media read § 0.605(e)(4) of the rules as providing that the Commission may omit notices of closed meetings. Black Media believes that the provision can only be based on § 552b(d)(4) of the Act, which provides that certain types of meetings can be closed by rule, without a vote and an explanation of the reasons for closing the meeting in each instance, if a majority of an agency's meetings are of those types. A number of things need to be said in response to these comments.

(a) First, notice of every open and closed meeting will be given.

(b) Secondly, § 0.605(e)(4) is based on section 552b(c) of the Act, which provides that subsections (d) and (e) of the Act, "shall not apply to any information pertaining to a closed meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that * * * disclosure of such information is likely to (fall within one of the 10 bases for closing a meeting set out in subsection (c).")

(c) Third, we do not read this provision as permitting an agency to withhold notice of a meeting. However, we do read it to mean that certain of the information usually contained in the notice may be omitted if there is a valid basis for omitting such information under subsection (c) of the Act. A separate vote to withhold information is required, and the basis for withholding information must be reasonably related to the act of withholding as opposed to the act of closing the meeting. For example, if the meeting involved accusing a person of a crime, we would announce the time and place of the meeting, the fact that it involved a criminal accusation and was being closed for that reason, the vote on the question of closing the meeting and on that of withholding information, and the name and phone number of the Public Information Officer. The name of the person involved would be withheld. To take a more extreme example, if a meeting involved a freeze on the filing of applications and notice of that fact would frustrate the purpose of the freeze, the subject matter of the meeting would be withheld; the other information would be set out in the notice.

(d) Fourth, the subsection has nothing to do with subsection (d)(4) of the Act. See footnote 2, above.

(e) Finally, we have altered § 0.605(e)(4) of the rules to make these matters clear. See § 0.606 (a) and (d)(4) of the final rules.

10. A number of the comments concerned the maintenance and availability of the transcripts of closed meetings. A public file of transcripts will be maintained in the Minute and Rules Branch, Office of the Secretary. If, after the meeting, the responsible Bureau or Office Chief decides, in light of the discussion which in fact took place, that the meeting could have been open to the public or that the reason for withholding information no longer pertains, he will direct the Secretary to place the transcript in the public file. If the sole reason for closing the meeting was to avoid frustrating a Commission action, for example, the transcript will be placed in the public file after the action is taken. In addition, if a request for inspection of a transcript is granted, in whole or in part, the transcript, or portion thereof, which is made available will thereafter be maintained in the public file. Where the transcript is not maintained in the public file, requests for copies must be reviewed by the responsible Bureau or Office Chief and in some cases, possibly, by the Commission. We expect to act without appreciable delay in most instances, since most transcripts should not be long and most judgments should not be difficult. However, there may be delays if requests are expansive in scope or large in number. It should also be appreciated that we cannot act on requests until the transcript has been typed and returned to us by the reporter. Some requests will be denied and some information may be deleted when a copy is furnished. If the meeting involved discussion of a trade secret for a period of time following the meeting, portions of the transcript which would disclose the secret cannot be furnished during that period.

11. Requests for inspection of transcripts will be considered under the Freedom of Information procedures.[5] Procedures for inspection of transcripts main-

---

[5] However, the bases for nondisclosure are those set out in § 0.603 of the Sunshine rules.

tained in the public file are set out in § 0.460; provisions for inspection of other transcripts appear at § 0.461. Copies of transcripts maintained in the public file and those made available for inspection may be obtained through the duplicating contractor pursuant to § 0.465(a). There will be no search fee.[6] However, persons requesting copies will be expected to furnish the date of the meeting, the name of the agenda, and the agenda item number, which information will appear in the meeting notice. Under § 0.465(c)(3), the Commission will make copies available directly, free of charge, if it serves the regulatory or financial interests of the U.S. Government. It would serve the regulatory interests of the Commission to waive the fee if the party seeking the transcript can use it to make a contribution to a proper public interest determination and cannot afford to pay the duplicating charges. However, if the request is reasonable in scope, the fee will not in most cases be very large and should not pose a financial problem for most members of the public.

12. All closed meetings will be transcribed, ordinarily by a court reporter. There will be a backup electronic recording system and, if that system is used, the recording will be transcribed immediately after it is made. We plan to fall back on the provision for minutes, where permissible, only in the unlikely event that both provisions for transcription should fail. We are considering the possibility of reducing the transcripts to microfiche and maintaining them in perpetuity. Transcripts of open meetings will not be prepared.

13. Black Media asks that we include in § 0.603 the statutory provision under which a meeting which may be closed to the public will be open if the agency finds that the public interest so requires. We are adding a passage to that effect, although we had thought the matter obvious; we would scarcely vote to close a meeting after finding that the public interest requires it to be open.

14. At this stage of drafting this Report and Order, the late filed comments of Media Access Project (MAP) were received. Many of the points made in the comments are dealt with above. Others are covered in internal instructions to the staff (FCC Directive 1109.1), which have been prepared separately and are available for public inspection in the Public Information Office. The remaining matters are dealt with here.

(a) MAP states that § 0.605(a) should state that all meetings are open to the public unless the agency decides to close them. That is precisely what § 0.605 (a) and (b) now provide. The staff either issues a notice of an open meeting or refers the matter to the Commission for a vote. All meetings are open unless the Commission votes to close them.

(b) Affirmative action is required by someone to determine that a meeting should be open (or not closed), since it is required that notice of an open meeting be issued. We have assigned that function to the staff.

(c) We reject the proposition that a vote to close a meeting should be taken at least 48 hours prior to the meeting. While we expect to give the full 7 days notice in almost every case, there are bound to be emergency situations in which less than 7 days (or 48 hours) notice can be given. If a court should determine that such a meeting was improperly closed, the remedy would involve placing the transcript in the public file.

(d) Section 0.605(e)(4) is discussed above and, as noted, has been altered to make it clear that notice of all meetings will be given and that information will be deleted from the notice only if there is a substantial and sensible reason for the deletion pursuant to § 552(c) of the Act. Such deletions will probably be "most unusual", as MAP suggests, but we think it unwise to try to predict the frequency with which matters warranting such deletions will come before the Commission in the future.

(e) If the reason for giving less than 7 days notice of a meeting is not self-apparent, the reason will be stated.

(f) We reject the proposition that the transcript of each closed meeting should be reviewed regularly to determine whether it can be made available to the public. The proposition is impracticable. As noted above, consideration is being given to keeping the transcripts in perpetuity. After a relatively short passage of time, the regular review of transcripts would be consuming a substantial portion of the man hours available to the Commission to conduct its business. Many of the matters acted on by the Commission in closed meetings should be of little or no interest to the general public and should rarely be made the subject of requests for transcripts. A periodic review of such transcripts would be a waste of time and public funds. Transcripts may be placed in the public file just after the meeting is held, but otherwise will be reviewed only when requests for copies are received. Nor can we undertake to issue a public notice every time a transcript of a closed meeting is released.

[6] There will also be no transcription fee. We can devise no equitable way of dividing the transcription costs among the several persons to whom copies may be furnished at different times.

15. Authority for the rules hereby adopted and set out below is set out in section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and in the Government in the Sunshine Act, 5 U.S.C. 552b.

16. Accordingly, it is ordered, That Part O of the rules and regulations is amended by adding a new Subpart F, as set out in the Appendix below. As provided in the Sunshine Act, the rules apply to Commission meetings held on or after March 12, 1977. Because time has not permitted preparation of the Rules 30 days in advance of their publication, they are being published less than 30 days before the effective date.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,[7]
VINCENT J. MULLINS,
Secretary.

Part 0 and 1 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

[7] Commissioner Quello absent.

1. In § 0.457, a sentence is added at the end of the portion preceding paragraph (a), and the portion of paragraph (c) preceding subparagraph (1) is revised, to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * Requests to inspect or copy the transcripts, recordings or minutes of agency or advisory committee meetings will be considered under § 0.603 rather than under the provisions of this section.

* * * * *

(c) Materials that are specifically exempted from disclosure by statute (other than the Government in the Sunshine Act, 5 U.S.C. 552b): *Provided*, That such statute (1) requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of materials to be withheld. The Commission is authorized under the following statutory provisions to withhold materials from public inspection.

* * * * *

2. Subpart F of Part 0 is added, to read as follows:

Subpart F—Meeting Procedures

AUTHORITY: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (47 U.S.C. 154, 303).

Subpart F—Meeting Procedures

§ 0.601 Definitions.

For purposes of this section—

(a) The term "agency" means (1) the Commission, (2) a Board of Commissioners (see § 0.212), (3) the Telecommunications Committee (see § 0.215), (4) the Subscription Television Committee (see § 0.216), and (5) any other group of Commissioners hereinafter established by the Commission on a continuing or ad hoc basis and authorized to act on behalf of the Commission.

(b) The term "meeting" means the deliberations among a quorum of the Commission, a Board of Commissioners, or a quorum of a committee of Commissioners, where such deliberations determine or result in the joint conduct or disposition of official agency business, except that the term does not include deliberations to decide whether a meeting should be open or closed. (The term includes conference telephone calls, but does not include the separate consideration of Commission business by Commissioners.) For purposes of this subpart, each item on the agenda of a meeting is considered a meeting or a portion of a meeting.

§ 0.602 Open meetings.

(a) All meetings shall be conducted in accordance with the provisions of this subpart.

(b) Except as provided in § 0.603, every portion of every meeting shall be open to public observation. Observation does not include participation or disruptive conduct by observers, and persons engaging in such conduct will be removed from the meeting.

§ 0.603 Bases for closing a meeting to the public.

Except where the agency finds that the public interest requires otherwise, an agency or advisory committee meeting may be closed to the public, and information pertaining to such meetings which would otherwise be disclosed to the public under § 0.605 may be withheld, if the agency determines that an open meeting or the disclosure of such information is likely to—

(a) Disclose matters that (1) are specifically authorized under criteria established by executive order to be kept secret in the interest of national defense or foreign policy, and (2) are in fact properly classified pursuant to such executive order (see § 0.457(a));

(b) Relate solely to the internal personnel rules and practices of an agency (see § 0.457(b));

(c) Disclose matters specifically exempted from disclosure, by statute (other than the Freedom of Information Act, 5 U.S.C. 552). *Provided*, That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld (see § 0.457(c));

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential (see § 0.457(d));

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

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy (see § 0.457(f));

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) 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;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except where the agency has already disclosed to the public the content or nature of the disclosed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the agency's issuance of a subponea, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures specified in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for hearing.

§ 0.605 Procedures for announcing meetings.

(a) Notice of all open and closed meetings will be given.

(b) The meeting notice will be submitted for publication in the FEDERAL REGISTER on or before the date on which the announcement is made. Copies will be available in the Public Information Office on the day the announcement is made. Copies will also be attached to "FCC Actions Alert", which is mailed to certain individuals and groups who have demonstrated an interest in representing the public in Commission proceedings.

(c)(1) If the agency staff determines that a meeting should be open to the public, it will, at least one week prior to the meeting, announce in writing the time, place and subject matter of the meeting, that it is to be open to the public, and the name and phone number of the Public Information Officer, who has been designated to respond to requests for information about the meeting.

(2) If the staff determines that a meeting should be closed to the public, it will refer the matter to the General Counsel, who will certify that there is (or is not) a legal basis for closing the meeting to the public. Following action by the General Counsel, the matter may be referred to the agency for a vote on the question of closing the meeting (See § 0.606).

(d)(1) If the question of closing a meeting is considered by the agency but no vote is taken, the agency will, at least one week prior to the meeting, announce in writing the time, place and subject matter of the meeting, that it is to be open to the public, and the name and phone number of the Public Information Officer.

(2) If a vote is taken, the agency will, in the same announcement and within one day after the vote, make public the vote of each participating Commissioner.

(3) If the vote is to close the meeting, the agency will also, in that announcement, set out a full written explanation of its action, including the applicable provision(s) of § 0.603, and a list of persons expected to attend the meeting, including Commission personnel, together with their affiliations. The Commissioners, their assistants, the General Counsel, the Executive Director, the Public Information Officer, and the Secretary are expected to attend all Commission meetings. The appropriate Bureau or Office Chief and Division Chief are expected to attend meetings which relate to their responsibilities (see Subpart A of this part).

(4) If a meeting is closed, the agency may omit from the announcement information usually included, if and to the extent that it finds that disclosure would be likely to have any of the consequences listed in § 0.603.

(e) If the prompt and orderly conduct of agency business requires that a meeting be held less than one week after the announcement of the meeting, or before that announcement, the agency will issue the announcement at the earliest practicable time. In addition to other information, the announcement will contain the vote of each member of the agency who participated in the decision to give less than seven days notice and will specify the nature of the emergency situation if it is not clear from the subject matter.

(f) If, after announcement of a meeting, the time or place of the meeting is changed or the meeting is cancelled, the agency will announce the change at the earliest practible time.

(g) If the subject matter or the determination to open or close a meeting is changed, the agency will publicly announce the change and the vote of each member at the earliest practicable time. The announcement will contain a finding that agency business requires the change and that no earlier announcement of the change was possible.

§ 0.606 Procedures for closing a meeting to the public.

(a) For every meeting closed under § 0.603, the General Counsel will certify that there is a legal basis for closing the meeting to the public and will state each relevant provision of § 0.603. The staff of the agency will refer the matter to the General Counsel for certification before it is referred to the agency for a vote on closing the meeting. Certifications will be retained in a public file in the Minute and Rules Branch, Office of the Secretary.

(b) The agency will vote on the question of closing a meeting—

(1) If a member of the agency requests that a vote be taken;

(2) If the staff recommends that a meeting be closed and one member of the agency requests that a vote be taken; or

(3) If a person whose interests may be directly affected by a meeting requests the agency to close the meeting for any of the reasons listed in § 0.603 (e), (f) or (g), or if any person requests that a closed meeting be opened, and a member of the agency requests that a vote be taken. (Such requests may be filed with the Secretary at any time prior to the meeting and should briefly state the reason(s) for opening or closing the meeting. To assure that they reach the Commission for consideration prior to the meeting, they should be submitted at the

earliest practicable time and should be called specifically to the attention of the Secretary—in person or by telephone. It will be helpful if copies of the request are furnished to the members of the agency and the General Counsel. The filing of a request shall not stay the holding of a meeting.)

(c) A meeting will be closed to the public pursuant to § 0.603 only by vote of a majority of the entire membership of the agency. The vote of each participating Commissioner will be recorded. No Commissioner may vote by proxy.

(d) A separate vote will be taken before any meeting is closed to the public and before any information is withheld from the meeting notice. However, a single vote may be taken with respect to a series of meetings proposed to be closed to the public, and with respect to information concerning such series of meetings (a vote on each question, if both are presented), if each meeting involves the same particular matters and is scheduled to be held no later than 30 days after the first meeting in the series.

(e) Less than seven days notice may be given only by majority vote of the entire membership of the agency.

(f) The subject matter or the determination to open or close a meeting will be changed only if a majority of the entire membership of the agency determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible.

§ 0.607 Transcript, recording or minutes; availability to the public.

(a) The agency will maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting closed to the public, except that in a meeting closed pursuant to paragraph (h) or (j) of § 0.603, the agency may maintain minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any item will be identified in the minutes.

(b) A public file of transcripts (or minutes) of closed meetings will be maintained in the Minute and Rules Branch, Office of the Secretary. The transcript of a meeting will be placed in that file if, after the meeting, the responsible Bureau or Office Chief determines, in light of the discussion, that the meeting could have been open to the public or that the reason for withholding information concerning the matters discussed no longer pertains. Transcripts placed in the public file are available for inspection under § 0.460. Other transcripts, and separable portions thereof which do not contain information properly withheld under § 0.603, may be made available for inspection under § 0.461. When a transcript, or portion thereof, is made available for inspection under § 0.461, it will be placed in the public file. Copies of transcripts may be obtained from the duplicating contractor pursuant to § 0.465(a). There will be no search or transcription fee. Requests for inspection or copies of transcripts shall specify the date of the meeting, the name of the agenda and the agenda item number; this information will appear in the notice of the meeting. Pursuant to § 0.465(c)(3), the Commission will make copies of the transcript available directly, free of charge, if it serves the financial or regulatory interests of the United States.

(c) The Commission will maintain a copy of the transcript or minutes for a period of at least two years after the meeting, or until at least one year after conclusion of the proceeding to which the meeting relates, whichever occurs later.

(d) The Commissioner presiding at the meeting will prepare a statement setting out the time and place of the meeting, the names of persons other than Commission personnel who were present at the meeting, and the names of Commission personnel who participated in the discussion. These statements will be retained in a public file in the Minute and Rules Branch, Office of the Secretary.

3. Section 1.1223 is revised to read as follows:

§ 1.1223 Presentations prohibited in restricted application proceedings prior to their designation for hearing.

As provided in § 1.1203(b), certain application proceedings are "restricted" following the submission of a petition to deny or public notice of the filing of a mutually exclusive application. Except as provided in § 1.1227, no interested person shall, directly or indirectly, make or attempt to make any oral or written ex parte presentation to decision-making Commission personnel concerning such a proceeding. Nor, in the absence of public notice, shall such an ex parte presentation be made, directly or indirectly, by an interested person having actual knowledge that a mutually exclusive application has been filed. No interested person outside the Commission who knows that a proceeding will be designated for hearing shall make any ex parte presentation concerning that proceeding.

4. Section 1.1225(b) is revised to read as follows:

§ 1.1225 Solicitation of ex parte presentations.

* * * * *

(b) Except as provided in § 1.1227, decision-making personnel shall not make or cause to be made, solicit or encourage ex parte presentations from any person, and shall not entertain ex parte presentations which are made to them.

5. Section 1.1251(a) is revised to read as follows:

§ 1.1251 Sanctions.

(a) *Parties.* (1) Upon notice and hearing, any party to a restricted proceeding who directly or indirectly makes any unauthorized ex parte presentation, who encourages or solicits others to make any such presentation, or who fails to advise the Executive Director of the facts and circumstances concerning an unauthorized ex parte presentation (see § 1.1245), may be disqualified from further participation in that proceeding. Such alternative or additional sanctions as may be appropriate may be imposed.

(2) To the extent consistent with the interests of justice and the public, a party who has made an ex parte presentation may be required to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected.

* * * * *

[FR Doc.77-6703 Filed 3-4-77;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 74-25; Notice 04]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Metric Series and 60-psi Passenger Car Tires

AGENCY: National Highway Traffic Safety Administration.

ACTION: Final rule.

SUMMARY: This amendment of safety Standard No. 109, *New Pneumatic Tires*, permits the manufacture of both a new series of tires having load ratings and inflation pressures expressed in metric units and a newly designed tire having a maximum inflation pressure of 60 psi. The change for metric-unit tires accommodates a world-wide standardization process, and the change for 60-psi tires accommodates tires designed as substitutes for conventional spare tires, in order to reduce the overall weight of, and increase storage space in, passenger cars.

EFFECTIVE DATE: March 7, 1977.

FOR FURTHER INFORMATION CONTACT:

Arturo Casanova, Office of Crash Avoidance, Motor Vehicle Programs, National Highway Traffic Safety Administration, Washington, D.C. 20590. (202-426-1715).

SUPPLEMENTARY INFORMATION: On September 30, 1976, the NHTSA published a proposed rule (41 FR 43192) to amend the requirements of Standard No. 109 (49 CFR 571.109) as indicated in the summary statement. All comments received supported the amendments, except that Dunlop Corporation suggested that adoption of metric-series tires be delayed while other approaches to the world-wide standardization of tire sizes and nomenclature are studied. Because the agency's ability to further modify the standard in response to future standardization efforts is not hindered by final action on metric-series tires, the proposed changes are adopted, for the reasons set forth below.

TIRE PERFORMANCE REQUIREMENTS

Goodyear Tire and Rubber Company and the Rubber Manufacturers Association (RMA) petitioned for the adoption of new requirements and test specifications necessary to permit the production of a metric-series family of tires that differ in specification and construction from existing tire types. The metric-series tires have load ratings expressed in kilograms (in place of pounds) and inflation pressures expressed in kilopascals (kPa) (in place of pounds per square inch (psi)).

Firestone Tire and Rubber Company petitioned for the adoption of new requirements and test specifications necessary to permit the production of a "temporary use" spare tire that differs substantially in specification and construction from conventional tires. This tire type has a higher inflation pressure (60 psi), different dimensions, and a shorter treadwear life than conventional tires. In some cases its diameter may differ from that of the conventional tires it is designed to replace.

The NHTSA concluded that the new tire types should be accommodated by appropriate revisions of the requirements and test specifications, as long as they can meet the same safety performance levels of the standard as conventional tires do. Data supplied by Firestone indictate that no significant degradation of vehicle handling occurs when the 60-psi tire is used on a vehicle in conjunction with three conventional tires, despite the substantial difference in its construction and other characteristics.

Endurance and high-speed performance. The standard set forth endurance and high-speed performance requirements that are conducted by pressing the tire against a test wheel at various levels of force. The appropriate force levels are taken from tables of information contained in the standard that list each passenger car tire size presently produced for use in the United States. In anticipation of deletion of these tire tables, the agency proposed that the appropriate force levels for the new tire types be stated as percentages of the maximum load rating of the tire, corresponding to the values set out in the standard's existing tables, but without the need to add additional tables to the standard.

Vehicle manufacturers, the RMA, and Goodyear requested that, in the case of metric-series tires, the new force levels be adopted using tire tables instead of the percentage method. Detailed review of the proposal demonstrates that use of a flat percentage would have an unintended result. Specifically, the tire selection standard for passenger cars (Standard No. 110, Tire Selection and Rims (49 CFR 571.110)) requires that the normal load-carrying ability assigned to a tire be no more than that used for the test loading in the Standard No. 109 high-speed performance test. Thus, the practical result of replacing specifically assigned test loads in Standard No. 109 with percentages would be an unintentional reduction of the tire's assignable load-carrying capabilities in some cases. Goodyear and the RMA provided tire tables for the metric-series tires that specify values that are approximately the same as the percentage values proposed.

Having reviewed these comments and the tables provided by the tire industry, the NHTSA finds that test values derived from the tables are, for safety purposes, virtually the same as the percentage values proposed and therefore fall within the ambit of the proposal. Accordingly, the agency has decided to incorporate additional tables in the standard as the basis for amendments of the high speed and endurance requirements for metric-series tires. Percentage values are required for the 60-psi tires because their tire tables do not list the appropriate values.

The general issue of deletion of tire tables from Standard No. 109 will be addressed comprehensively in future rulemaking.

With regard to the new tire tables, Goodyear and the RMA noted that additional metric-series tire sizes have been developed since the submission of their petitions. Firestone noted that additional 60-psi type tires have also been added to those proposed. These commenters asked that the additional tire listings be added to the standard. Although not proposed, the agency believes that the new listings can be added to the standard in the same manner that routine tire table changes are regularly made by the agency in accordance with published procedures (33 FR 14964, October 5, 1968) (39 FR 28980, August 31, 1974). These guidelines specify procedures by which routine additions are made without notice, unless any objection is subsequently received.

Testing of a conventional tire on a test wheel is conducted at the "design" load level (with overloading in the case of endurance testing up to the maximum load rating of the tire) and corresponding inflation pressure. Because the 60-psi tires does not have a "design" load level but only a single load level at its maximum inflation pressure of 60 psi, the agency used this single load level as if it constituted the design load level. The RMA demonstrated that the single load level of these tires is more accurately characterized as its maximum load level, and that a lower load level would constitute the tire's design load. Because the 60-psi tire is intended only for occasional use as a spare tire, it is not assigned the lower "design" load ratings that are provided in the case of conventional tires to improve vehicle ride.

The NHTSA accepts this view of the 60-psi tire's design load rating and makes appropriate adjustments in the tables that appear in S5.4.2.3 and S5.5.1. In the case of inflation pressures, 52- and 58-pound values are utilized in Table III, consistent with comparable values for conventional tires.

Strength requirements. The agency proposed breaking energy requirements for the new tire types that are comparable to those for existing tires. The only comment on these propsed amendments were RMA suggestions for modification of terminology and the statement of breaking energy values in Table III. The test values are made final as proposed.

The RMA believed that reference to tires with a certain "designated" section width would be clarified by reference to "specified" section width instead. The agency disagrees, and notes that the word "designated" conveys the intended meaning that section width characteristics are controlled by the manufacturer and not "specified" by this or any other Federal regulation.

In its comments on this and other aspects of the proposal the RMA suggested that the listing of English-system equivalents following metric-system values (and vice versa) would improve the clarity and informational value of Standard No. 109. General Motors Corporation (GM) also encouraged the listing of measurement equivalents in safety standards.

The agency believes it made clear in its proposal the reason why the publication of equivalent values in a motor vehicle safety standard is totally inappropriate. Motor vehicle safety standards are not informational or advisory documents but rather are minimum standards which must be complied with on pain of civil penalty. For this reason they must be stated objectively, without confusion. Because the equivalence of the metric and English systems is not exact, using significant figures, the listing of appropriate English-system equivalents in the standard would produce some confusion concerning what are the real test conditions or performance levels required. For example, several NHTSA requirements specify a 30-mph barrier crash as a procedure underlying certain minimum crashworthiness capabilities. If the metric equivalent (49 km/h) were listed next to this 30-mph value, it would convey the impression that the manufacturer (and the agency) has the choice whether to test at 30 mph or at 30.4 mph. Thus, the statement of an "equivalent value" that is not in fact equivalent only confuses in a regulatory environment where objectivity is important and is required by statute (15 U.S.C. § 1392(a)). For this reason, the RMA suggestion to add English-system and metric equivalents to Table II and the GM suggestion to add "dual dimensioning" throughout the standard are not adopted.

Physical dimensions. The NHTSA proposed a "growth allowance" for the new tire types that is comparable to the requirement for existing tires, with the addition of a 0.4-inch minimum for technical reasons in the case of both the metric-series tires and the 60-psi tire. Goodyear and the RMA requested that the 0.4-inch allowance be restated as a 10-millimeter allowance, in view of its association with metric-series tires. These requests are denied, because the 0.4-inch allowance is also associated with the 60-psi tire which does not have metric values. As a general matter, the agency intends to make a systematic change to metric measurements in its standards, rather than making isolated and arbitrary changes which consist of simple substitutions of near equivalents without regard to the basic units of the metric system.

Tubeless tire resistance to bead unseating. The NHTSA proposed that the force levels which must be sustained by conventional tubeless tires without bead unseating should be modified appropriately for the 60-psi tire because of its uncharacteristic section width. No objection was made to the proposed performance values and they are made final without change. The RMA noted that its earlier recommendations for test fixture modification should be supplemented in two minor respects based on further testing of the new tire type. One dimension of the test fixture should have been three-tenths-of-an-inch longer than proposed, and the cross section of the bead unseating block should have been narrower to avoid contact with the rim on which the tested tire is mounted. The agency considers these minor modifications from the proposed values to fall within the scope of the proposal and adopts the changes in the final rule.

TIRE LABELING

The NHTSA proposed that the metric-unit inflation pressure and load rating on metric-series tires be supplemented by English-system equivalents on the tire sidewall. Unlike the confusing listing of near-equivalent values in a performance standard, the use of equivalent markings on the tire sidewall can be of substantial benefit to the user without introducing confusion. No commenter objected to the proposed supplementary markings, and they are made final as proposed. General Motors suggested that "rounding" conventions be established to further assist the consumer. The agency does not wish to restrict the tire manufacturer's latitude in this area, and declines to adopt this suggestion in the absence of a demonstrable safety problem.

The agency proposed that the legend "Inflate to 60 psi" appear on the sidewall of the new 60-psi tire to make clear its distinctive inflation requirement. The RMA suggested that the proposed limits on location of the legend should be somewhat relaxed in view of the comparatively small size of the 60-psi sidewall. The agency agrees that some relaxation of the requirement is justified. As made final, location of the legend is limited to the area between the tire shoulder and the bead of the tire.

OTHER CONSIDERATIONS

The agency specifically addressed the possibility that consumers would have difficulty with the unconventional characteristics of the 60-psi tire, and that some safety problems could result from the confusion. The only problem raised by the agency that was responded to by commenters was the issue of storage of a large conventional tire after replacement by the smaller 60-psi tire, assuming that the car's trunk was full. Commenters minimized the extent of the problem, and Firestone noted that a majority of tires fail when the vehicle has been parked for a significant period of time, not on the highway.

In consideration of the foregoing, Standard No. 109 (49 CFR 571.109) is amended as follows:

1. Section S4.2.1(b) is amended to read:

S4.2.1 General.

* * * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240 or 280 kPa.

* * * * *

2. S4.2.2.2(a) is amended to read:

S4.2.2.2 Physical Dimensions.

* * * * *

(a) Its actual section width and overall width shall not exceed the section width specified in Table I for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240 or 280 kPa) 7 percent or .4 inches, whichever is larger; and

* * * * *

3. S4.2.2.3 is amended to read:

S4.2.2.3 Tubeless tire resistance to bead unseating.

S4.2.2.3.1 When a tubeless tire that has a maximum inflation pressure other than 60 psi is tested in accordance with S5.2, the applied force required to unseat the tire bead at the point of contact shall be not less than:

(a) 1,500 pounds for tires with a designated section width of less than six (6) inches;

(b) 2,000 pounds for tires with a designated section width of six (6) inches or more, but less than eight (8) inches;

(c) 2,500 pounds for tires with a designated section width of eight (8) inches or more, using the section width specified in Table I for the applicable tire size designation and type.

S4.2.2.3.2 When a tire that has a maximum inflation pressure of 60 psi is tested in accordance with S5.2, the applied force required to unseat the tire bead at the point of contact shall be not less than:

(a) 1,500 pounds for tires with a maximum load rating of less than 880 pounds;

(b) 2,000 pounds for tires with a maximum load rating of 880 pounds or more but less than 1400 pounds;

(c) 2,500 pounds for tires with a maximum load rating of 1400 pounds or more, using the maximum load ratings specified in Table I for the applicable tire size designation and type.

4. The word "designed" in the third sentence of S4.3 is corrected to read "designated" and new paragraphs S4.3.4 and S4.3.5 are added after S4.3.3 to read:

S4.3.4 If the maximum inflation pressure of a tire is 240 or 280 kPa, then:

(a) Each marking of that inflation pressure pursuant to S4.3(b) shall be followed in parenthesis by the equivalent inflation pressure in psi, rounded to the nearest whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S4.3(c) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

S4.3.5 If the maximum inflation pressure of a tire is 60 psi, the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words "Inflate to 60 psi". On both sidewalls, the words shall be positioned in an area between the tire shoulder and the bead of the tire. However, in no case shall the words be positioned on the tire so that they are obstructed by the flange of any rim designated for use with that tire in this standard or in Standard No. 110 (§ 571.-110 of this part).

5. The table in Figure 1 is revised to read:

Wheel size	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lb/in^2	60 lb/in^2
17	12.0	
16	11.5	9.9
15	11.0	9.4
14	10.5	8.9
13	10.0	
12	9.5	
11	9.0	
10	8.5	

6. Section S5.2.1.3 is amended by the addition of a new sentence at the end of the text to read:

"However, in testing a tire that has an inflation pressure of 60 psi, use the bead unseating block described in Figure 2A in place of the bead unseating block described in Figure 2."

7. A new Figure 2A (as set forth at the end of this notice) is added to the standard adjacent to existing Figure 2.

8. The table of loads in S5.4.2.4 is relocated immediately following S5.4.2.3 and is amended to read:

S5.4.2.3

* * * * *

Maximum permissible inflation pressure	Loads for—		
	4 hr	6 hr	24 hr
	Loads from table I (listed in specified lb/in^2 or kPa column)		
32 lb/in^2	24	28	32
36 lb/in^2	28	32	36
40 lb/in^2	32	36	40
240 kPa	180	220	240
280 kPa	220	260	280
	Load as specified percentage of maximum load rating marked on tire sidewall		
*60 lb/in^2	85	92	100

9. The term "Table I" in S5.4.2.1 is replaced by the phrase "the table in S5.4.2.3".

10. Section S5.5.1 is amended to read:

S5.5.1 After preparing the tire in accordance with S5.4.1, mount the tire and wheel assembly in accordance with S5.4.2.1, and press it against the test wheel with the load indicated in the following table:

A—Maximum permissible inflation pressure:	B—Load
32 lb/in^2	[1]24 lb/in^2 col.
36 lb/in^2	[1]28 lb/in^2 col.
40 lb/in^2	[1]32 lb/in^2 col.
240 kPa	[1]180 kPa col.
280 kPa	[1]220 kPa col.
60 lb/in^2	[2]85.

[1] Load from table I.

[2] Load as specified percentage of maximum load rating marked on tire sidewall.

11. In Appendix A, new tables II-D and II-E are added, and tables II-A, II-B, and II-C are amended by the addition of two columns at the right end, to read:

TABLE II—*Minimum breaking energy values (inch-pounds)*

TABLE II-A—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH OF 6 IN AND ABOVE

Cord material	Maximum permissible inflation		
	* * *	240 kPa	280 kPa
Rayon	* * *	1,650 in-lb	3,300 in-lb.
Nylon or polyester	* * *	2,600 in-bl	5,200 in-lb.

TABLE II-B—FOR BIAS PLY TIRES WITH DESIGNATED SECTION WIDTH BELOW 6 IN

Cord material	Maximum permissible inflation		
	* * *	240 kPa	280 kPa
Rayon	* * *	1,000 in-lb	2,500 in-lb.
Nylon or polyester	* * *	1,950 in-lb	3,900 in-lb.

TABLE II-C—FOR RADIAL PLY TIRES

Designated section width	Maximum permissible inflation pressure		
	* * *	240 kPa	280 kPa
Below 160 mm	* * *	1,950 in-lb	3,900 in-lb.
160 mm or above	* * *	2,600 in-lb	5,200 in-lb.

TABLE II-D—FOR TIRES WITH 60 LB/IN^2 MAXIMUM PERMISSIBLE INFLATION PRESSURE AND MAXIMUM LOAD RATING OF 880 LB AND ABOVE

Cord material:	Inch-pounds
Rayon	1,650
Nylon or polyester	2,600

TABLE II-E—FOR TIRES WITH 60 LB/IN^2 MAXIMUM PERMISSIBLE INFLATION PRESSURE AND MAXIMUM LOAD RATING BELOW 880 LB

Cord material:	Inch-pounds
Rayon	1,000
Nylon or polyester	1,950

12. In Appendix A, Table III would be amended to read:

TABLE III—*Test inflation pressures*

Maximum permissible inflation pressure	32 lb/in^2	36 lb/in^2	40 lb/in^2	60 lb/in^2	240 kPa	280 kPa
Pressure to be used in tests for physical dimensions, bead unseating, tire strength, and tire endurance	24	28	32	52	180	220
Pressure to be used in test for high-speed performance	30	34	38	58	220	260

13. In Appendix A, Table I is amended by the addition of new tables I-GG (for "P/80" ISO type tires), I-HH (for "P/75" ISO type tires), I-JJ (for "P/70" ISO type tires), I-KK(for "P/60" ISO type tires), and I-LL (for "T Series" 60-psi type tires), incorporating the following new tire size designations and corresponding values:

TABLE I-GG Tire load ratings, test rims, minimum size factors, and section widths for "P/80" ISO type tires

Tire Size Designation[1]	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test Rim Width (inches)	Minimum Size Factor (mm)	Section[2] Width (mm)
	120	140	160	180	200	220	240	260	280			
P155/80R12	290	315	340	360	380	395	415	430	445	4.50	698	157
P155/80R13	310	335	355	380	400	420	435	455	470	4.50	723	157
P165/80R13	345	370	395	420	445	465	485	505	525	4.50	746	165
P175/80R13	380	410	440	465	490	515	535	560	580	5.00	773	177
P185/80R13	415	450	480	510	540	565	590	615	640	5.00	796	184
P165/80R14	360	390	420	445	470	490	510	535	555	4.50	772	165
P175/80R14	400	430	460	490	515	540	565	590	610	5.00	799	177
P185/80R14	440	475	510	540	565	595	620	645	670	5.00	822	184
P195/80R14	480	520	555	590	620	650	680	710	735	5.50	849	196
P215/80R14	570	615	655	695	735	770	805	835	870	6.00	899	216

1. The letters "D" for diagonal and "B" for bias-belted may be used in place of the "R"

2. Actual section width and overall width shall not exceed the specified section width by more than the amount specified in S4.2.2.2.

TABLE I-HH Tire load ratings, test rims, minimum size factors, and section widths for "P/75" ISO type tires

Tire Size Designation[1]	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test Rim Width (inches)	Minimum Size Factor (mm)	Section[2] Width (mm)
	120	140	160	180	200	220	240	260	280			
P165/75R13	320	350	370	395	415	435	455	475	490	4.50	731	165
P195/75R13	430	460	495	525	550	580	605	630	655	5.50	803	196
P185/75R14	410	445	475	505	530	560	585	605	630	5.00	804	184
P195/75R14	450	485	520	550	580	610	635	665	690	5.50	829	196
P205/75R14	490	530	565	600	635	665	695	720	750	5.50	852	203

1. The letters "D" for diagonal and "B" for bias-belted may be used in place of the "R"

2. Actual section width and overall width shall not exceed the specified section width by more than the amount specified in S4.2.2.2.

TABLE I-JJ Tire load ratings, test rims, minimum size factors, and section widths for "P/70" ISO type tires

Tire Size Designation[1]	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test Rim Width (Inches)	Minimum Size Factor (mm)	Section[2] Width (mm)
	120	140	160	180	200	220	240	260	280			
P195/70R13	380	410	440	465	490	515	535	560	580	5.50	786	196
P205/70R13	415	445	480	505	535	560	585	610	635	5.50	806	203
P205/70R14	435	470	505	535	565	590	615	640	665	5.50	832	203
P215/70R14	475	510	545	580	610	640	670	695	720	6.00	858	216
P225/70R15	535	580	620	655	690	725	755	790	820	6.00	904	223

1. The letters "D" for diagonal and "B" for bias-belted may be used in place of the "R"

2. Actual section width and overall width shall not exceed the specified section width by more than the amount specified in S4.2.2.2.

TABLE I-KK Tire load ratings, test rims, minimum size factors, and section widths for "P/60" ISO type tires

Tire Size Designation[1]	Maximum tire loads (kilograms) at various cold inflation pressures (kPa)									Test Rim Width (Inches)	Minimum Size Factor (mm)	Section[2] Width (mm)
	120	140	160	180	200	220	240	260	280			
P255/60R15	575	620	660	705	740	775	810	845	875	7.00	925	255

1. The letters "D" for diagonal and "B" for bias-belted may be used in place of the "R"

2. Actual section width and overall width shall not exceed the specified section width by more than the amount specified in S4.2.2.2.

TABLE I-LL Tire load ratings, test rims, minimum size factors, and section widths for "T Series" 60 lb/in^2 tires.

Tire Size Designation[1]	Maximum tire load (pounds) at 60-psi cold inflation pressure	Test rim Width (inches)	Minimum size factor (inches)	Section[2] Width (inches)
T105/70R14	1070	4.0	24.02	4.57
T105/70R15	1135	4.0	25.00	4.57
T105/70R16	1190	4.0	25.98	4.57
T115/70R14	1235	4.0	24.84	4.84
T115/70R15	1310	4.0	25.83	4.84
T115/70R16	1380	4.0	26.81	4.84
T125/70R14	1420	4.0	25.71	5.16
T125/70R15	1500	4.0	26.69	5.16
T125/70R16	1575	4.0	27.68	5.16
T135/70R14	1610	4.0	26.54	5.43
T135/70R15	1685	4.0	27.52	5.43
T135/70R16	1775	4.0	28.50	5.43

1. The letters "D" for diagonal and "B" for bias-belted may be used in place of the "R"

2. Actual section width and overall width shall not exceed the specified section width by more than the amount specified in S4.2.2.2.

Effective date finding: Because the amendments relieve a restriction and do not create additional requirements for any person, and because of vehicle manufacturers' need to settle on allowable tire designs as soon as possible, an immediate effective date is found to be in the public interest.

(Sec. 103, 112, 114, 119, 201, 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407, 1421, 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.)

Issued on March 1, 1977.

JOHN W. SNOW,
Administrator.

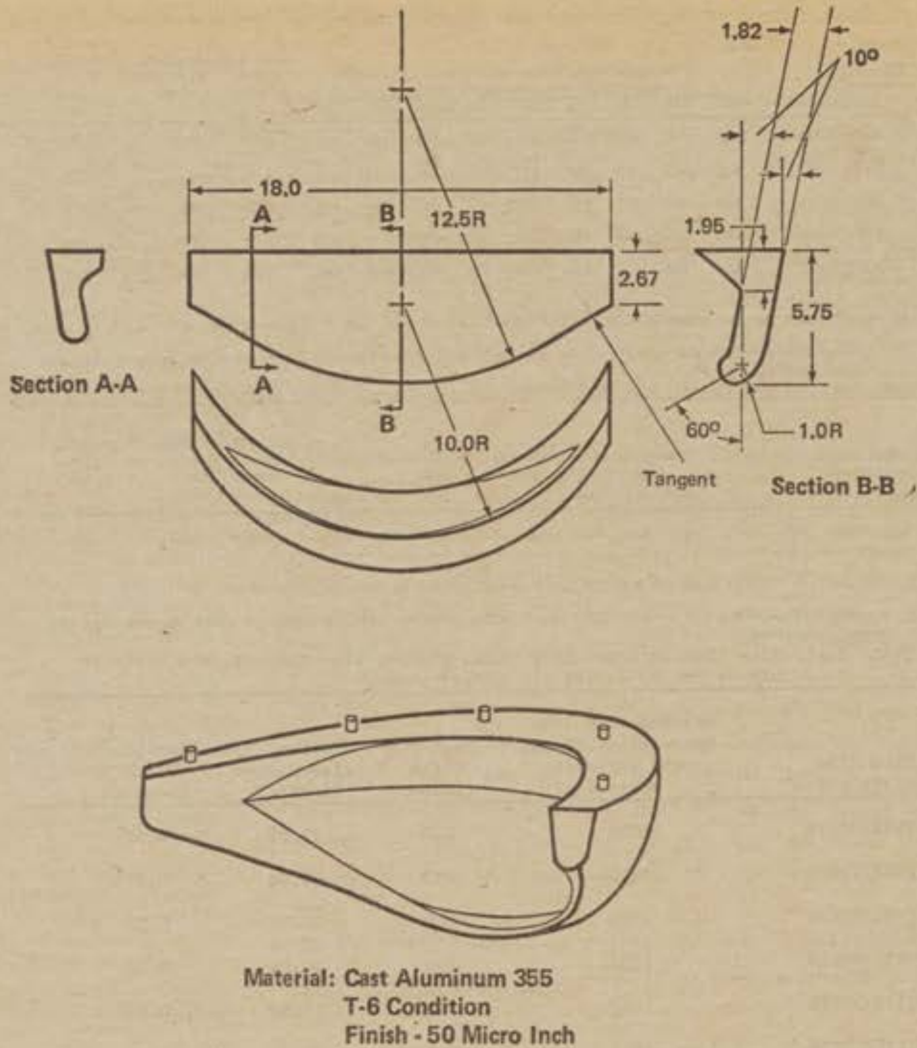

Figure 2A
Diagram of Bead Unseating Block (60-psi tire) - Dimensions in Inches

[FR Doc.77-6530 Filed 3-1-77;2:41 pm]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Taking of Marine Mammals Incidental to Commercial Fishing Operations

Correction

In FR Doc. 77-5990 appearing in the issue of Tuesday, March 1, 1977 on page 12010, the following corrections should be made:

1. On page 12010 in the first column, paragraphs "7" and "8" should read:

7. *Section 216.24(d)(2)(Q)(iv)(E)(i)* has been renumbered as § 216.24(d)(2)(iv)(E).

8. *Section 216.24(d)(2)(iv)(E)(ii)* has been renumbered as § 216.24(d)(2)(iv)(F) and its language amended to clarify placement of bunchlines.

2. On page 12011 in the 2nd column, paragraph "(A)(*1*), the tenth line should read, "* * * of 10 fathoms in length for each strip * * *".

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 9—PUBLIC RECORDS

Rules Governing Public Attendance at Meetings of the Nuclear Regulatory Commission

The Nuclear Regulatory Commission published a notice in the FEDERAL REGISTER on December 23, 1976 (41 FR 55880), announcing proposed amendments to Part 9 of its Rules of Practice to implement the open meeting requirements of the Government in the Sunshine Act of 1976, 5 U.S.C. 552b, Pub. L. No. 94-409 (the "Act"). Interested persons were requested to submit comments by February 1, 1977. Two written comments have been received, from Chairman Richardson Pryor of the House Subcommittee on Government Information and Individual Rights of the Government Operations Committee and from the Freedom of Information Clearinghouse. These comments have been considered, as have been suggestions received from other agencies and the Administrative Conference of the United States. The Commission has consulted with the Office of the Chairman of the Administrative Conference, as required by 5 U.S.C. 552b(g) of the Act. By this notice, final regulations are adopted.

These regulations make no major changes in the proposed rules, and the Statement of Considerations accompanying the proposed rules thus remains applicable. Minor changes have been made as the result of further analysis of the Act and of the Commission's experience during the past several months employing criteria similar to those in the Act to determine whether to open meetings to public attendance. 41 F.R. 55880. In several cases the proposed regulations have been altered to provide more direct guidance on the Act's application to specific items of Commission business.

The two commenters each questioned whether the definition of "Commission" in proposed § 9.101(a) left open the possibility that the Commission could circumvent the Act by delegating the power to act to assistants or employees and instructing them how to vote. The Commission acts only through the votes of a quorum of members present and may not use proxies for any vote. Its power to delegate certain authority (for example, to adopt minor amendments to its rules) to its Executive Director for Operations or other officials is not affected by the Act. It has delegated, pursuant to statute, certain authority for the conduct and review of adjudicatory proceedings to its Atomic Safety and Licensing Board and Appeal Board. The legislative history of the Act plainly supports the exclusion of these Boards (whose meetings would in any event be closed) from the definition of bodies subject to the Act.

Both commenters also questioned the proposed exclusion of "social or ceremonial" gatherings from the definition of meeting in proposed § 9.101(e). While the Commission acknowledges that agency decisions or covered discussions could occur at a "social" gathering, it is aware of the requirements of the Act and fully intends to observe the required discipline. The purpose of the exclusion is to prevent gatherings from being labeled meetings and made subject to the detailed procedural requirements of the Act solely because a quorum of Commissioners will be present. Section 9.102 of the rules adopted herein deals with the problem by making observance of these procedures mandatory whenever a quorum does conduct discussions that determine or result in the conduct or disposition of official agency business.

Public comment was specifically sought on the provision of proposed § 9.101(c) which specifically excludes from the definition of meeting "* * * briefings of the Commission by representatives of other agencies or departments of the United States Government or by representatives of foreign governments or international bodies, where such briefings are informational in nature and do not relate to any matter pending before the Commission." The two commenters questioned this provision, emphasizing those items of the legislative history of the Act providing that "all discussion relating to the business of the agency" was within the definition of meeting in 5 U.S.C. 552b(a)(2). H.R. Rep. 94-880, Part I, 94th Cong., 2nd Sess. (1976) at 8. Other legislative history, however, indicates that the Act was not intended to cover all gatherings of a quorum of agency members at which any discussion of agency business occurs. See, e.g., S. Rep. 94-354, 94th Cong., 1st Sess., (1975) at 18-19; 121 Cong. Rec. H. 9260 (daily ed. August 31, 1976) (remarks of Representative Fascell).

The amendment to the definition of meeting made by the Conference Committee appears clearly intended to make that definition less broad and less inclusive. See, S. Rep. 94-1178, 94th Cong., 2nd Sess. (1976) (Conference Report). Although the purpose of that amendment is not explained in the Conference Report or in subsequent floor discussion, it can only be interpreted as intending a limiting and narrowing of the House and Senate definitions. It seems most plausible to read that narrowing as excluding from the definition deliberations which do "concern" agency business but which are so tentative and general as not "to determine or result in" any joint agreement regarding future agency action. In this category might be placed briefings and even perhaps exploratory talks among Commissioners, provided, however, that such sessions are not designed or expected to result in any consensus among the Commissioners on any matter pending before the Commission. In supporting these views the Executive Secretary of the Administrative Conference of the United States ("ACUS") noted that to administer the fine distinction discussed above in accordance with the letter and the spirit of the Act will require diligence on the part of presiding officers and restraint on the part of individual Commissioners. The Commission agrees and intends to exercise the necessary diligence and restraint.

As the Commission remarked in the Statement of Considerations accompanying the proposed rules,

> * * * staff briefings of * * * the full Commission * * * purely to inform the Commissioners of matters of interest and general relevance to the performance of their duties * * * may well not come with the definition of "meeting" in the Act. (Nonetheless) * * * the Commission has determined to include such briefings of a quorum of the Commissioners within these regulations * * * because the Commission believes such briefings * * * are a vital portion of the Commission's supervision of its staff and of Commission business in general, and because of the presumption in favor of opening agency business to public observation established by the Act.
>
> The situation is quite different with regard to other briefings the Commission receives from time to time from sources outside the Commission. Where such briefings concern a specific item of Commission business such as a particular rulemaking or license application, then they properly are "meetings" and are treated as such in these regulations. However, some Commission briefings are by other agencies or by representatives of foreign governments and are not focused on specific items of Commission business, but are intended purely to provide general background information to the Commission. Often such briefings are on such sensitive topics that any application of the Act, even with the use of the mitigative procedures of that Act, would prevent the briefing from being held at all.

Experience in the past several months has demonstrated that such gatherings, although infrequent, do occur, particularly in connection with the Commission's export business and safeguards responsibilities. The inability of the Commission to participate in such gatherings would cause significant harm to the Commission's ability to carry out its responsibilities in several areas. The Commission continues to believe, for these reasons, that the definition of meeting contained in § 9.101(c) (with the minor amendment discussed below) is consistent with the Act.

Both commenters also suggested that, in determining whether to close particular meetings, the Commission must adopt a formal two-step procedure. The decision whether a specific exemption is available does not, in their view, aid in determining whether the public interest nevertheless requires a meeting to be open. Section 9.104(a) of the rules, like the proposals of several other agencies, gives presumptive but not conclusive force to the determination that an exemption is available in deciding the public interest question. The fact that a meeting does come within a specific provision of § 9.104(a) indicates that the Congress recognized a public interest in closing, not opening, meetings of this character. The Commission staff has been instructed to consider the public interest in recommending to the Commission whether or not to close particular meetings. The Commission believes that this internal procedure and the awareness of the Commissioners themselves and their advisors of public interest concerns will ensure adequate consideration of the public interest before any decision to close a meeting is made, without need for a formal procedure of the type proposed.

Both comments raised questions concerning the first example stated in proposed § 9.104(b). These comments interpreted the reference to *Brockway* v. *Department of the Air Force*, 518 F.2d 1184 (8th Cir. 1975), in the accompanying Statement of Considerations as an effort to create an exemption similar to Exemption 5 of the Freedom of Information Act, which the Commission recognizes was considered and rejected in the Sunshine Act. However, the Commission has no such purpose. In its view, the "Brockway" decision reflects a more basic consideration also embodied in Exemption 9(B) of the Sunshine Act, namely that the government has an inherent privilege to attempt to obtain information necessary for its functioning. 5 U.S.C. 552b(c)(9)(B) authorizes closing a meeting if opening it would substantially frustrate a proposed Commission action. In those few cases where needed information simply will not be provided to the Commission except in confidence, if the Commission does not close the meeting it would be forced to take action without that information and therefore may not have the required basis on which to proceed—a significant frustration of its action. While the Commission appreciates the contrary arguments, which were also suggested by the Administrative Conference comment, its experience has been that on those occasions when this exemption would be used the need for such information is pervasive and crucial to the Commission's decision. To abandon the exemption would be to risk error in decisions of great significance to the public.

Chairman Pryor also comments, with respect to the second example of § 9.104(b), that this reasoning may not be applied where the possible effect is upon the actions of others. An example of such a situation might be where anticipated discussion would influence the outcome of pending or reasonably anticipated litigation in which the Commission was not or would not be a party. The Commission agrees that in such a situation, this exemption would not apply.

Section 9.104(a)(10) provides for closing of meetings that concern, inter alia, the Commission's participation in a civil action or proceeding. It should be noted that this also covers discussions about whether to initiate such an action or the possibility that outside parties might initiate such a proceeding against the Commission. See, S. Rep. 94-354, 94th Cong., 1st Sess. (1975) at 26; H.R. Rep. 94-880, Part I, 94th Cong., 2nd Sess. (1976) at 12. This point was also noted by the Administrative Conference.

Both commenters objected to the wording of § 9.105(c), which has been changed to meet their objections. Similarly, § 9.108(a) has been altered, inter alia, to reflect a comment by Chairman Pryor.

The comments received from the Executive Secretary of the Administrative Conference of the United States pointed out that the procedure provided for in proposed § 9.108(c) was not required by the statute. The Commission recognizes its right to delegate the responsibility for reviewing transcripts, S. Rep. 94-354, supra at 31, and see below, but believes that in the early period of implementation of the Act, it is appropriate to retain that responsibility for itself to ensure that it is carried out in a responsible and consistent manner. We note that the attachment to the comments of the Chairman of the Subcommittee on Government Information and Individual Rights appears to approve as appropriate the suggested procedures.

Outline of Changes to Proposed Regulations

Section 9.101(c) has been slightly changed to provide that briefings must not be "conducted" with reference to specific matters before the Commission to be excluded from the definition of meeting.

Two changes have been made in § 9.103. A sentence has been added to make it clear that the statements of Commissioners or NRC employees at open meetings do not represent final determinations or beliefs. This simply recognizes that during discussions before the Commission or any other deliberative body positions are often expressed not as reflections of fixed determinations but for purposes of argument or to obtain further exploration of certain points. Also, it is not uncommon for a position that was tentatively stated during a meeting to be abandoned upon further reflection. This addition restates the established rule that the Commission speaks formally only through its written opinions, orders or other documents. The other change to § 9.103 is intended to simplify enforcement of the portion of the rule prohibiting use of unauthorized recording equipment or cameras at open meetings.

A minor change was made to § 9.104(a) to delete an unnecessary reference to § 9.106 in the first sentence. Several clarifications were made to the specific exceptions in § 9.104(a). Section 9.104(a)(4) was clarified to include a reference to 10 CFR 2.790(d) in which the Commission defines certain information about safeguards for licensed special nuclear material and details of physical security measures for licensed facilities as proprietary information.

Section 9.104(a)(5) was changed to reflect that the exemption is available in circumstances involving a possible imposition of a civil penalty upon any person or possible revocation of any license. "Person" as used therein includes a corporation. S. Rep. 94-354, 94th Cong., 1st Sess. (1975) at 22. Both of the proposed changes reflect sanctions the Commission may inflict that have severity intermediate between accusation of a crime and formal censure. It would be anomalous to close meetings dealing with sanctions at the ends of the spectrum while leaving open meetings involving intermediate sanctions.

Section 9.104(a)(7) was changed to include specific reference to the Atomic Energy Act and the Energy Reorganization Act. The numbering of the subsections was changed by inserting a new § 9.104(a)(8) which will remain vacant and renumbering proposed § 9.104(a)(8) as § 9.104(a)(9), and § 9.104(a)(9) as § 9.104(10). This is designed to keep the numbering system of the regulations similar to that of the Act.

Section 9.104(a)(10) (proposed § 9.104(a)(9)) has been changed by adding Commission participation in a proceeding before another administrative agency to the list of varieties of proceedings. Considerations identical to those relating to participation before a court are applicable to such participation and it should receive similar treatment.

The two examples of possible applicability of 5 U.S.C. 552b(c)(9)(B) in the proposed regulations have been slightly changed and a third example added. The added example, dealing with communications with other agencies including the Executive Branch and the Congress is based upon a dialogue on the Senate floor between Senators Percy and Chiles, 121 Cong. Rec. S. 19442 (daily ed. November 6, 1975).

Section 9.105(c) has been slightly changed in response to comments received to make it clear that information may be withheld only if that information falls within one of the specific categories mentioned and a specific exemptive provision or provisions is cited by the Commission.

The public notice provisions of proposed § 9.107(c) have been somewhat modified to eliminate any possible implication that the Secretary would be obligated to perform useless acts such as mailing notices to persons who cannot possibly receive those notices until after the meeting takes place. Also, the requirement that the Secretary maintain a telephone recording system to give out the announcement has been deleted as of this time, although the practice may be introduced at some future date.

Section 9.108(a) has been changed in two respects. First, it now clearly provides, as recommended in a comment, that the General Counsel's certification must be made prior to the meeting in question. Second, a provision has been added permitting the certification not to be made public for the same reasons other information may be withheld from the public. Section 9.108(b) has been slightly changed to provide that the fee schedule used for requests for documents under the Freedom of Information Act shall also apply to requests made under the Sunshine Act. Minor changes have been made in the wording of the § 9.108(c), and there has been added an explicit reservation of the Commission's right to delegate the responsibilities provided for in that section.

A new § 9.108(d) has been added providing for the release of transcripts, recordings or other information which may no longer be justifiably withheld from the public.

In accordance with section 161 of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552b(g) and 553, 10 CFR Parts 2, 7, and 9 are amended as follows:

PART 2—RULES OF PRACTICE

1. Section 2.790 is amended by revising paragraph (a)(3) to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) * * *

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

* * * * *

PART 7—ADVISORY COMMITTEES

2. In § 7.8(b) the second sentence is changed to read:

§ 7.8 Meetings.

* * * * *

(b) * * * It shall also indicate when any part of the meeting will concern matters within the exceptions of the Government in the Sunshine Act, 5 U.S.C. 552b and § 9.104 of this chapter.

§ 7.9 [Amended]

3. In Paragraph 7.9(a) the phrase "listed in 5 U.S.C. 552b and Sec. 9.5(a) of this chapter" is changed to read: "* * * listed in 5 U.S.C. 552b(c) and Sec. 9.104 of this chapter.

4. In the first sentence of Paragraph 7.9(e) the phrase "policy of 5 U.S.C. 552(b) and Part 9 of this chapter" is changed to read: "* * * policy of 5 U.S.C. 552b(c) and Subpart C of Part 9 of this chapter.

PART 9—PUBLIC RECORDS

5. The authority section of Part 9 is amended by changing the period at the end to a semicolon and adding the following:

* * * Subpart C also issued under 5 U.S.C. 552b.

6. Sections 9.1 and 9.1a are revised to read as follows:

Sec. 9.1 Scope.

The regulations in this part implement: (a) The provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying; (b) the provisions of the Privacy Act of 1974, Pub. L. 93-579, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; and (c) the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation.

Sec. 9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act.

7. A new § 9.2a is added to Part 9 to read as follows:

§ 9.2a Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

8. Paragraph (a)(3) of § 9.5 is revised to read as follows:

§ 9.5 Exemptions.

(a) * * *

(3) records specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute (i) requires that the matters be withheld from the public 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.

9. A new Subpart C is added to 10 CFR part 9 to read as follows:

Subpart C—Government in the Sunshine Act Regulations

AUTHORITY: Sec. 161, Atomic Eneregy Act of 1954, as amended, Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552b(g) and 553.

Subpart C—Government in the Sunshine Act Regulations

§ 9.100 Scope of Subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. Sec. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by subpart A, except that the exemotions set forth in § 9.104(a) shall gover in the case of any request made pursuant to § 9.8 to copy or inspect the transcripts, recordings or minutes described in § 9.108. Access to documents considered at NRC meetings shall continue to be governed by subpart A of this Part.

§ 9.101 Definitions.

As used in this subpart:

(a) "Commission" means the collegial body of five Commissioners or a quorum thereof as provided by section 201 of the Energy Reorganization Act of 1974, or any subdivision of that collegial body authorized to act on its behalf, and shall not mean any body not composed of members of that collegial body.

(b) "Commissioner" means an individual who is a member of the Commission.

(c) "Meeting" means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by §§ 9.105, 9.106, or § 9.108(c), gatherings of a social or ceremonial nature, or briefings of the Commission by representatives of other agencies or departments of the United States government, or representatives of foreign governments or international bodies where such briefings or discussions are informational in nature and are not conducted with specific reference to any particular matter then pending before the Commission.

(d) "Closed meeting" means a meeting of the Commission closed to public observation as provided by § 9.104.

(e) "Open meeting" means a meeting of the Commission open to public observation pursuant to this subpart.

(f) "Secretary" means the Secretary to the Commission.

(g) "General Counsel" means the General Counsel of the Commission as provided by section 25(b) of the Atomic Energy Act of 1954 and section 201(f) of the Energy Reorganization Act of 1974, and, until such time as the offices of that officer are in the same location as those of the Commission, any member of his office specially designated in writing by him pursuant to this subsection to carry out his responsibilities under this subpart.

§ 9.102 General requirement.

Commissioners shall not jointly conduct or dispose of Commission business in Commission meetings other than in accordance with this subpart. Except as provided in § 9.104, every portion of every meeting of the Commission shall be open to public observation.

§ 9.103 General provisions.

The Secretary shall ensure that all open Commission meetings are held in a location such that there is reasonable space, and adequate visibility and acoustics, for public observation. No additional right to participate in Commission meetings is granted to any person by this subpart. An open meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinion made by Commissioners or NRC employees at open meetings are not intended to represent final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any loral argument or discussion of any matter during an open meeting except as the Commission shall direct. No electronic recording devices, cameras, photographic equipment or other similar devices shall be permitted in a Commission meeting except such as have been approved in writing in advance by the Secretary.

§ 9.104 Closed meetings.

(a) Except where the Commission finds that the public interest requires otherwise, Commission meetings shall be closed, and the requirements of §§ 9.105 and 9.107 shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Commission determines in accordance with the procedures of § 9.105 that opening such meetings or portions thereof or disclosing such information, is likely to:

(1) Disclose matters that are (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;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. Sec. 552) provided that such statute (i) requires that the matters be withheld from the public 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;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including such information as defined in § 2.790(d) of this title;

(5) involve accusing any person of a crime, imposing a civil penalty on any person pursuant to 42 U.S.C. Sec. 2282 or 42 U.S.C. Sec. 5846, or any revocation of any license pursuant to 42 U.S.C. Sec. 2236, or formally censuring any person;

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

(7) disclose investigatory reports compiled for law enforcement purposes, including specifically enforcement of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sec. 2011 et seq., and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Sec. 5801 et seq., or information which if written would be contained in such records, but only to the extent that the production of such records or information would (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 by 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) [Reserved]

(9) disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding or an action or proceeding before a state or federal administrative agency, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal agency adjudication pursuant to 5 U.S.C. Sec. 554 or otherwise involving a determination on the record after an opportunity for a hearing pursuant to part 2 or similiar provisions.

(b) Examples of situations in which Commission action may be deemed to be significantly frustrated are (1) if opening any Commission meeting or negotiations would be likely to disclose information provided or requests made to the Commission in confidence by persons outside the Commission and which would not have been provided or made otherwise; (2) if opening a meeting or disclosing any information would reveal legal or other policy advice, public knowledge of which could substantially affect the outcome or conduct of pending or reasonably anticipated litigation or negotiations; or (3) if opening any meeting or disclosing any information would reveal information requested by or testimony or proposals to be given to other agencies of government, including the Congress and the Executive Branch before the requesting agency would receive the information, testimony or proposals. The examples in the above sentence are for illustrative purposes only and are not intended to be exhaustive.

§ 9.105 Commission procedures.

(a) Action under § 9.104 shall be taken only when a majority of the entire membership of the Commission votes to take such action. A separate vote of the Commissioners shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 9.104, or with respect to any information which is proposed to be withheld under § 9.105 (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a) or § 9.108(c) the Secretary shall make publicly available in the Public Document Room a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available in the Public Document Room a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(c) The notices and lists required by paragraph (b) of this section to be made public may be withheld from the public to the extent that the Commission determines that such information itself would be protected against disclosure by § 9.104 (a). Any such determinations shall be made independently of the Commission's determination pursuant to paragraph (a) of this section to close a meeting, but in accordance with the procedure of that subsection. Any such determination, including a written explanation for the action and the specific provision or provisions of § 9.104(a) relied upon, must be made publicly available to the extent permitted by the circumstances.

§ 9.106 Persons affected and motions for reconsideration.

(a) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of § 9.104, the Commission, upon request of any one Commissioner, shall vote by recorded vote whether to close such meeting.

(b) Any person may petition the Commission to reconsider its action under § 9.105(a) or paragraph (a) of this section by filing a petition for reconsideration with the Commission within seven days after the date of such action and before the meeting in question is held.

(c) A petition for reconsideration filed pursuant to paragraph (b) of this section shall state specifically the grounds on which the Commission action is claimed to be erroneous, and shall set forth, if appropriate, the public interest in the closing or opening of the meeting. The filing of such a petition shall not act to stay the effectiveness of the Commission action or to postpone or delay the meeting in question unless the Commission orders otherwise.

§ 9.107 Public announcement of Commission meetings.

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

(b) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (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 Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time.

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

(d) The public announcement required by paragraph (a) of this section shall consist of the Secretary:

(1) publicly posting a copy of the document in the Public Document Room at 1717 H Street, N.W., Washington, D.C.; and, to the extent appropriate under the circumstances.

(2) mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(3) submitting a copy for possible publication to at least two newspapers of general circulation in the Washington, D.C. metropolitan area;

(4) any other means which the Secretary believes will serve to further inform any persons who might be interested.

(e) Action under the second sentence of paragraph (a) or (b) of this section shall be taken only when the Commission finds that the public interest in prompt Commission action or the need to protect the common defense or security or to protect the public health or safety overrides the public interest in having full prior notice of Commission meetings.

§ 9.108 Certification, transcripts, recordings and minutes.

(a) For every meeting closed pursuant to subparagraphs (1) through (10) of § 9.104(a) and for every determination pursuant to subsection 9.105(c), the General Counsel shall publicly certify at the time of the public announcement of the meeting, or if there is no public announcement at the earliest practical time, that, in his or her opinion, the meting may be closed to the public and shall state each relevant exemptive provision unless the Commission votes pursuant to § 9.105(c) that such certification is protected against disclosure by § 9.104(a). A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. 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, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of § 9.104(c), the Commission shall maintain such a transcript or recording or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(b) The Commission shall make promptly available to the public, in the Public Document Room, the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for 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 was held, whichever occurs later.

(c) In the case of any meeting closed pursuant to § 9.104, a member of the Office of the General Counsel shall observe each portion of such meeting unless the Commission determines that the nature of the matter to be discussed precludes such participation. Immediately following the last item on the agenda of each such closed meeting, the Commission shall receive an oral report from that person. The report shall indicate that person's recommendation as to which, if any, portions of the transcript, electronic recording or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which may be withheld pursuant to § 9.104. Immediately after receiving such report, or if no report is received, as the last item of business, the Commission shall vote on which, if any, portions of the electronic recording, transcript or minutes and which, if any items of information withheld pursuant to § 9.105(c) contain information which may be withheld pursuant to § 9.104; but the Commission may delegate the authority to make such determinations to the Secretary or to the General Counsel. Any portions or items determined not to contain such information shall be made available pursuant to paragraph (b) of this section, and the Commission's determination shall specify whether it has been made on the advice of an observer. If the Commission determines that further study is required, those questions shall be resubmitted for determination at the first opportunity.

(d) If at some later time the Commission determines that there is no further justification for withholding any transscript, recording or other item of information from the public which has previously been withheld, then such information shall be made available.

§ 9.109 Report to Congress.

The Secretary shall annually report to the Congress regarding the Commission's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Commission pursuant to the Government in the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

Effective date: These amendments become effective on March 12, 1977. The porcedural nature of these rules, the requirements of the Government in the Sunshine Act, and the public benefit anticipated from the implementation of these rules all contribute good cause for this early effectiveness.

Dated at Washington, D.C. this 3rd day of March, 1977.

For the United States Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-6898 Filed 3-4-77;9:03 am]