

Present Customs standards for the approval of seals are no longer suitable to accommodate recent sweeping changes in security technology. In order to avoid greater risk to the security of imported cargo, the Customs Service will not consider new applications for the approval of seals until new standards are adopted. After the adoption of new standards, presently-approved seals may be subject to re-testing and reapproval.

The establishment of new standards will benefit seal manufacturers by defining more precisely the kinds of seals Customs needs and uses, thus reducing the engineering and development costs of prototype seals submitted to Customs for approval. New standards will also benefit seal users by encouraging the development of seals that are more practical, easier to affix, and more secure.

The Customs Service emphasizes that the suspension of its approval of new applications for car, compartment, and package seals does not immediately affect seals which have already been approved. Those seals will continue to be accepted for Customs use at least until new standards are adopted. Moreover, applications for seal approval which were received before the date of this notice will be considered for approval.

COMMENTS

Comments submitted will be available for public inspection in accordance with § 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C.

DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in developing the document, both on matters of substance and style.

G. R. DICKERSON,
*Acting Commissioner
of Customs.*

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[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR Part 1622]

PUBLIC ACCESS TO MEETINGS UNDER GOVERNMENT IN SUNSHINE ACT

Proposed Implementation of Statutory Requirement

AGENCY: Legal Services Corporation.

ACTION: Proposed regulation.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. Section 522b, requires certain agencies of the United States to hold open meetings, subject to prescribed exceptions, when agency members jointly dispose of its business. Although the Legal Services Corporation is not a Federal agency, Section 1004(g) of the Legal Services Corporation Act applies the Sunshine Act's provisions to the Corporation and the State advisory councils appointed pursuant to Section 1004(f) of the Act. This Part implements the statutory requirements, consistent with the Corporation's philosophy of providing the public with the fullest information practicable regarding its decisionmaking processes while protecting the rights of individuals and the ability of the Corporation to perform its responsibilities.

DATES: Comments must be received on or before February 27, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTAL INFORMATION:

DEFINITIONS

"Committee": The open meeting requirements of the Sunshine Act apply not only to meetings of the full decisionmaking body, but also to meetings of "any subdivision thereof authorized to act on behalf of the agency." The Regulations go beyond the requirements of the statute by applying the open meeting provisions to every committee appointed pursuant to § 1601.26 of the Corporation's By-Laws, regardless of the committee's membership or responsibility.

"Meeting": Not every gathering at which Board or Advisory Council members are present constitutes a "meeting" within the meaning of the Sunshine Act. Some degree of formality is required before a gathering is considered a "meeting". S. Rep. No. 94-354, 95th Cong., 1st Sess. (1975), at 18 (hereafter "S. Rep."); Berg and Klitzman, *Government in the Sunshine Act: An Interpretive Guide*, at 4. (Tentative Ed. 1977) (hereafter "Interpretive Guide"). On the other hand, the term "meeting" includes more than a session at which matters are formally disposed of. At a minimum the term includes any gathering of the requisite number of members where a serious exchange of views achieves a consensus on a matter of official Corporation business. The Senate Report makes clear, however, that the Sunshine Act does not prevent members from engaging in informal background

discussions to explore or clarify issues and expose varying views. The controlling distinction is between discussions that "effectively predetermine official actions," and those that do not. Because the Act applies only to the "joint" disposition of business, moreover, it does not require that a gathering be open when the Chairman seeks the informal advice of his colleagues in carrying out his functions under the Legal Services Corporation Act or Bylaws. S. Rep. at 17.

"General Counsel" and "Secretary".

It would obviously be impractical for the Corporation's General Counsel and Secretary to review the agendas and keep records of each state Advisory Council meeting. For this reason, and in order to maintain appropriate autonomy of the advisory councils, the Regulation contemplates that each Advisory Council will designate a member to act as legal adviser and secretary and perform the functions described in §§ 1622.6 through 1622.8.

PROCEDURES FOR CLOSING DISCUSSION OR WITHHOLDING INFORMATION

The Sunshine Act does not expressly state that a separate vote of the members is required on each agenda item for which closed discussion is proposed. However, because "each portion of each meeting stands on its own for purposes of complying with the closing requirements" of the Act (Interpretive Guide at 24), the better procedure is to require an item-by-item vote. Section 1622.6(b) makes this requirement explicit.

Section 1622.6(c) provides procedures for persons other than members of the Board or Advisory Council to request that a particular meeting be closed. The Regulation goes beyond the requirements of the Sunshine Act by permitting a request to close for any of the reasons set out in § 1622.5. In every instance, however, the person's interests must be "directly affected" by a discussion in order for him or her to request closure.

Section 1622.6(d) requires that the result of every vote whether to close a meeting or a portion of a meeting will be made public. The report of the House Government Operations Committee states that this procedure will, "enable the general public to be aware of a * * * member's overall record on openness questions." H. Rep. 94-880, 94th Cong., 2d Sess. (1976), at 13. An explanation of the reasons advanced for closure, the relevant exemptions, and the persons expected to attend is necessary only when the vote has been to close.

CERTIFICATION BY THE GENERAL COUNSEL

The Sunshine Act's requirement of certification by the General Counsel for any closed meeting raises two

issues. First, it is unclear whether the statute requires certification before the members vote to close the meeting, or even whether certification must precede the meeting itself. It is obviously preferable for the members to consult with their legal adviser before making a public decision to close discussion of a particular matter. Practical considerations may make such consultation impossible, however, and members may always reconsider a vote to close. Therefore, § 1622.7 requires only that certification by the General Counsel take place before the meeting is closed.

The second issue is whether certification that closure is proper is a prerequisite to closing a meeting from public observation. Although the agencies that have issued Sunshine Act regulations have split on this issue, we believe that it is not. The members will ordinarily follow the advice of the General Counsel, but the Congress is not likely to have intended that the judgment of a Corporation staff member should override that of persons appointed by the President of the United States or the Governor of a State. This is particularly true since the legality of closing a meeting ultimately depends on the discussion that actually takes place, not the anticipated purpose of the meeting. The requirement of certification by the General Counsel is properly seen as one of several procedures to ensure that a decision to close will be well considered.

PART 1622—PUBLIC ACCESS TO MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

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AUTHORITY: Sec. 1004(g) (42 U.S.C. 2096c(g)).

§ 1622.1 Purpose and scope.

This Part is designed to provide the public with full access to the deliberations and decisions of the Board of Directors of the Legal Services Corporation, committees of the Board, and State advisory councils, while maintaining the ability of those bodies to carry out their responsibilities and protecting the rights of individuals.

§ 1622.2 Definitions.

"Board" means the Board of Directors of the Legal Services Corporation.
 "Committee" means any formally designated subdivision of the Board es-

tablished pursuant to § 1601.26 of the bylaws of the Corporation.

"Council" means a state Advisory council appointed by a State Governor or the Board pursuant to section 1004(f) of the Legal Services Corporation Act of 1974, 42 U.S.C. 2096c(f).

"Member" means a voting member of the Board or of a Council. Reference to actions by or communications to "members" means action by or communications to Board members with respect to proceedings of the Board, committee members with respect to proceedings of their committees, and council members with respect to proceedings of their councils.

"Meetings" means the deliberations of a quorum of the Board, or of any committee, or of a council, when such deliberations determine or result in the joint conduct or disposition of Corporation business, but does not include deliberations about a decision to open or close a meeting, a decision to withhold information about a meeting, or the time, place, or subject of a meeting.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to §§ 1601.21 and 1601.27 of the Corporation's bylaws, or the number of council members authorized to conduct its business.

"General Counsel" means the General Counsel of the Corporation, or a person designated by the General Counsel, or a member designated by a council to act as its chief legal officer.

"Secretary" means the secretary of the Corporation, or a person designated by the Secretary, or a member designated by a council to act as its secretary.

§ 1622.3 Open meetings.

Every meeting of the Board, a committee, or a council shall be open in its entirety to public observation except as otherwise provided in § 1622.5.

§ 1622.4 Public announcement of meetings.

(a) Public announcement shall be made of every meeting. The announcement shall include: (1) The time, place, and subject matter to be discussed; (2) Whether the meeting or a portion thereof is to be open or closed to public observation; and (3) The name and telephone number of the official designated by the Board, committee, or council to respond to requests for information about the meeting.

(b) The announcement shall be made at least seven calendar days before the meeting, unless a majority of the members determines by a recorded vote that Corporation business requires a meeting on fewer than seven days' notice. In the event that such a determination is made, public

announcement shall be made at the earliest practicable time.

(c) Each public announcement shall be posted at the offices of the Corporation in an area to which the public has access, and promptly submitted to the FEDERAL REGISTER for publication. Reasonable effort shall be made to communicate the announcement of a Board or committee meeting to the chairman of each council and each recipient of funds from the Corporation, and of a council meeting to each recipient within the same State.

(d) An amended announcement shall be issued of any change in the information provided by a public announcement. Such changes shall be made in the following manner:

(1) The time or place of a meeting may be changed without a recorded vote.

(2) The subject matter of a meeting, or a decision to open or close a meeting or a portion thereof, may be changed by recorded vote of a majority of the members that Corporation business so requires and that no earlier announcement of the change was possible.

An amended public announcement shall be made at the earliest practicable time and in the manner specified by § 1622.4 (a) and (c).

§ 1622.5 Grounds on which meetings may be closed or information withheld.

Except when the Board, committee, or council finds that the public interest requires otherwise, a meeting or a portion thereof may be closed to public observation, and information pertaining to such meeting or portion thereof may be withheld, if the Board, committee, or council determines that such meeting or portion thereof, or disclosure of such information, will more probably than not:

(a) Relate solely to the internal personnel rules and practices of the Corporation;

(b) 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 types of matters to be withheld;

(c) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

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

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

(f) Disclose investigatory records compiled for the purpose of enforcing

the Act or any other law, 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, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel.

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

(h) Specifically concern the Corporation'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 Corporation of a particular case involving a determination on the record after opportunity for a hearing.

§ 1622.6 Procedures for closing discussion or withholding information.

(a) No meeting or portion of a meeting shall be closed to public observation, and no information about a meeting shall be withheld from the public, except by a recorded vote of a majority of the members with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information that is proposed to be withheld.

(b) Each matter, discussion of which is to be closed to public observation, and any information that is to be withheld, shall be the subject of a separate vote, unless the matter or information is expected to involve a series of meetings. In such cases, the members may vote to close the discussion or withhold information about the same particular matter for a period of thirty days from the date of the initial discussion in the series of meetings.

(c) Whenever any person's interest may be directly affected by a matter to be discussed at a meeting, the person may request that a portion of the meeting be closed to public observation by filing a written statement with the Secretary. The statement shall set forth the person's interest, the manner in which that interest will be affected at the meeting, and the grounds upon which closure is claimed to be proper under § 1622.5. The Secre-

tary shall promptly communicate the request to the members, and a recorded vote as required by § 1622.6(a) shall be taken if any member so requests.

(d) With respect to each vote taken pursuant to § 1622.6 (a)-(c), the Corporation shall, within one business day, make publicly available:

(1) A written record of the vote of each member on the question;

(2) A full statement of any action closing a meeting or portion thereof, with reference to the specific exemption listed in § 1622.5, including a statement of reasons as to why the specific discussion comes within the cited exemption and a list of all persons expected to attend the closed meeting and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall certify publicly whether the meeting may be closed to the public and shall state each relevant exemption. A copy of the 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 Corporation.

§ 1622.8 Records of closed meetings.

(a) The Secretary shall make a complete transcript, or electronic recording adequate to record fully the proceedings of each meeting or portion thereof closed to the public, except that in the case of a meeting or any portion thereof closed to the public pursuant to paragraph (h) of § 1622.5, a transcript, a recording, or a set of minutes shall be made. Any such minutes shall describe all matters discussed and shall provide a summary of any actions taken and the reasons therefore, including a description of each member's views expressed on any item and the record of each member's vote on the question. All documents considered in connection with any action shall be identified in the minutes.

(b) A complete copy of the transcript, recording, or minutes required by § 1622.8(a) shall be maintained at the Corporation for a Board or committee meeting, and at the appropriate regional office for a council meeting, for a period of two years after the meeting.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by § 1622.8(a) that do not contain information that may be withheld under § 1622.5. A copy of those portions of the transcript, recording, or minutes that are available to the public shall be furnished to any person upon request at the actual cost of duplication or transcription.

(d) Copies of Corporation records other than notices or records prepared under this Part may be pursued in accordance with Part 1602 of these regulations.

§ 1622.9 Report to Congress.

The Corporation shall report to the Congress annually regarding its compliance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b, including a tabulation of the number of meetings open to the public, the number of meetings or portions of meetings closed to the public, the reasons for closing such meetings or portions thereof, and a description of any litigation brought against the Corporation under 5 U.S.C. 552b, including any costs assessed against the Corporation in such litigation.

THOMAS EHRLICH,
President,
Legal Services Corporation.

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[1505-01]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. MC-80, Notice No. 77-111]

[49 CFR Part 392]

TOXIC CASES IN TRUCK CABS

Correction

In FR Doc. 77-37370 appearing at page 20 in the FEDERAL REGISTER of Tuesday, January 3, 1978, in the "DATES:" paragraph of the preamble, the comments closing date of "February 2, 1978" should be changed to "April 3, 1978".

[7035-01]

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1331]

[Ex Parte No. 297 (Sub-No. 3)]

MODIFIED TERMS AND CONDITIONS FOR APPROVAL OF COLLECTIVE RATEMAKING AGREEMENTS UNDER SECTION 5a OF THE INTERSTATE COMMERCE ACT

Proposed Rulemaking

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Interstate Commerce Commission will institute a rulemaking proceeding to determine whether to establish additional terms and conditions for approval of collective ratemaking agreements under section 5a of the Interstate Commerce