

* * * is corrected to read "The sampling * * * PM₁₀ * * * PM₁₀"

(4) On page 10441, column one, § 58.13, paragraph (c)(1), third sentence "September 1983." is corrected to read, "February 1984."

(5) On page 10441, column three, first full sentence below Figure 1, "The site having the concentration * * * is corrected to read "The site having the highest concentration * * *"

(6) On page 10445, column one, first full paragraph, equations 6 and 7 "Limit = $d_i + 1.96 S_i$, 2 [6] and Limit = $d_i - 1.96 S_i$, 2 [7]" are corrected to read "Limited = $d_i + 1.96 S_i / \sqrt{2}$ [6] and Limit = $d_i - 1.96 S_i / \sqrt{2}$ [7]"

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LEGAL SERVICES CORPORATION

45 CFR Part 1622

Public Access to Meeting Under the Government in the Sunshine Act

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule makes revisions to the Corporation's regulations implementing the Government in the Sunshine Act ("Sunshine Act"). The revisions are needed to ensure that the Corporation's regulations adhere more closely to the Government in the Sunshine Act and are consistent with other LSC regulations. In addition to several slight revisions, the proposed rule makes five major changes in the present regulations. These changes are: (1) the addition of two new definitions for "public observation" and "publicly available"; (2) the revision of § 1622.6(b) so that the regulation more closely follows the wording of the Sunshine Act; (3) the addition of § 1622.6(d); to follow more closely the Sunshine Act; (4) the revision of newly designated § 1622.6(e)(2) to follow more fully the Sunshine Act; and (5) the addition of a new § 1622.9 which provides for emergency proceedings. These clauses are needed to ensure that the Corporation complies with the requirements of the Government in the Sunshine Act.

DATE: Comments must be received on or before May 29, 1984.

ADDRESS: comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street, NW., Room 260, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Terry G. Duga, Assistant General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The proposed rule makes a number of changes in the present regulations. The majority of the changes are technical in nature. However, two new definitions and a new section regarding "Emergency Proceedings" have been added. A section by section analysis of the changes made follows:

Section 1622.2 Definitions—The first change is the removal of the word "member" and the insertion of the word "Director" in the fourth definition. The use of the word "Director" rather than "member" is a technical change in nomenclature. This change is made to conform with the nomenclature used in the Corporation's By-laws. The substantive meaning of the section does not change.

The second change in the definitions section is in the definition of "General Counsel." The words "a person designated by the General Counsel" are removed and in their place are inserted the words "in the absence of the General Counsel of the Corporation, a person designated by the President to fulfill the duties of the General Counsel." This change reflects the Corporation's belief that the General Counsel's duty to certify that a meeting is, in his opinion, properly closed, is not a duty that may be delegated by the General Counsel under the government in the Sunshine Act. Allowing the President of the Corporation to designate a person to fulfill the duties of the General Counsel in the absence of the General Counsel allows the Corporation to function if the General Counsel is not available, while conforming to the opinion that the duty to certify the closing of a meeting is not a duty that may be delegated by the General Counsel.

The third change is in the definition of "Secretary." The initial "S" in "Secretary of the Corporation" is capitalized. This change is technical in nature correcting the English usage in the definition. The removal of the words "a person designated by the Secretary" and the insertion in their place of the words "in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of the Secretary" makes the regulation conform with the provisions of the Corporation's By-laws.

The fourth change is the definition of the term "public observation." While the Sunshine Act does not specifically define the term "public observation," several agencies, in their implementing regulations, do define the term. This definition is based upon definitions contained in regulations promulgated by the Foreign Claims Settlement

Commission and the Commodity Credit Corporation (45 CFR 504.20(g) and 7 CFR 1409.2(e) respectively). It is also based upon an April 19, 1977, Department of Justice letter to agencies covered by the Sunshine Act, and upon provisions for public comment at Board meetings contained in the Corporation's By-laws.

Finally, a definition of the phrase "publicly available" has been added to inform members of the public where they may locate the documents required by § 1622.6(e).

Section 1622.4 Public announcement of meetings—Three changes have been made. In subsections (a) and (b), the word "made" following "announcement shall be" is removed and the word "posted" is inserted in its place. This change in nomenclature clarifies that the announcement requirement of the Sunshine Act is to be fulfilled by the posting of the required announcement at least seven days prior to the meeting. This change comports with what has been standard Corporation practice and does not relieve the Corporation of the duty of submitting the announcement to the Federal Register for publication.

In subsections (b) and (d), the word "members" is removed and the word "Directors" is inserted in its place. This change in nomenclature is made to follow the nomenclature used in the Corporation's By-laws.

In subsection (c), the phrase "the governing body of" is inserted before the words "each recipient of funds from the Corporation" and "each recipient within the same state." This change reflects the provisions of the Corporation's By-laws and ensures that the recipient's governing body receives notification of Board and Advisory Council meetings.

Section 1622.5 Grounds on which meetings may be closed or information withheld—The changes in this section consist of two deletions and one typographical correction. The word "committee" has been removed in the first sentence after the words "Except when the Board," and "if the Board,". This change reflects the provision in the Sunshine Act that allows only the full Board to close a Board or Committee meeting.

At the end of subsection (f), the period is removed and replaced with a semi-colon.

Section 1622.6 Procedure for closing discussion or withholding information—Four changes have been made. The first change is the removal of the word "members" from subsections (a), (c), and newly designated (e)(1), and the insertion of the word "Directors" in its place. This change in nomenclature is

made to conform with the nomenclature used in the Corporation's By-laws.

Subsection (b) is revised, but is not substantively different from the old subsection (b). The revised subsection, however, more closely follows the language of the Sunshine Act.

A new subsection (d) is added which follows the language of the Sunshine Act and ensures that votes of each Director participating in a vote to close a meeting or portion thereof shall be recorded and that no proxy votes shall be allowed.

Subsection (d) is redesignated subsection (e). This change reflects the addition of the new subsection (d).

Subsection (e)(2) is revised to follow, more closely, the language of the Sunshine Act.

Section 1622.7 Certification by the General Counsel—This section is amended by removing the words "publicly whether" after the word "certify" and inserting the word "publicly" before the word "certify" and inserting the words "that, in his opinion," after the word "certify." This change follows the language of the Sunshine Act and clarifies that the General Counsel is giving an opinion and not a guarantee.

Section 1622.8 Records of closed meetings—Two changes have been made. In subsection (a), the word "members" has been removed and the word "Directors" inserted in its place. This change reflects the nomenclature used in the Corporation's By-laws. In subsection (b), the words "or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later" are added to the end of the subsection. This addition follows the language of the Sunshine Act and prescribes the period for which the records must be retained.

Section 1622.9 Emergency Proceedings—This new section is the major change in this Part. The problem has arisen with respect to interference with the conduct of Corporation business at past Board meetings. Because the right to public observation does not include the right to disrupt the conduct of Corporation business, this section is added to provide a procedure for the orderly transaction of business in the extraordinary circumstances when members of the public abuse their right to observe the conduct of the meeting of the Board.

The Corporation is not the only agency to deal with this potential problem. The National Commission on Libraries and Information Science provides that anyone who participates or attempts to participate in the

Commission meeting without approval is subject to removal. 45 CFR 1703.302. The United States Postal Services provides for the removal of persons who disrupt a Board meeting and subjects such persons to possible fines or imprisonment. 39 CFR 232.1(n). Such measures are considered inappropriate for the Legal Services Corporation.

In the extraordinary event that the Board is prevented from conducting Corporation business because of actions by members of the public, it is felt that the removal of the Board from such interference is the least confrontational option that will still allow the Board to conduct its business.

This section ensures that such a removal is not a "closed meeting" within the meaning of the Sunshine Act. Representatives of the public and the media will be invited to attend and observe the conduct of the Board meeting. In addition, information concerning the proceedings shall be available to the public at the close of the meeting.

To ensure the openness of the emergency proceedings, it has been provided that the meeting be recorded or transcribed and that the recording or transcript be made available for public inspection and that copies shall be furnished upon request at the actual cost of transcription or duplication.

The final safeguard is the admonition set forth in subsection (d) which ensures that the emergency proceedings are not closed meetings. It also ensures that no information concerning the meeting will be withheld due to the fact that the Board is forced to use the emergency proceeding provision.

The safeguards contained in this section ensure that the Board may conduct Corporation business while also ensuring that the Board meetings comply with the requirements of the Sunshine Act.

This section follows the Emergency Proceedings provision in the Corporation's By-laws. The section is included in this Part to ensure that such proceedings comply with the Sunshine Act.

The final change in this Part is the redesignation of § 1622.9 to § 1622.10. No substantive change has been made. It has merely been renumbered to allow the insertion of the new § 1622.9.

List of Subjects in 45 CFR Part 1622

Legal services, Government in the Sunshine Act.

For the reasons set out in the preamble, 45 CFR Part 1622 is proposed to be revised to read as follows:

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

Sec.

- 1622.1 Purpose and scope.
- 1622.2 Definitions.
- 1622.3 Open meetings.
- 1622.4 Public announcement of meetings.
- 1622.5 Grounds on which meetings may be closed or information withheld.
- 1622.6 Procedures for closing discussion or withholding information.
- 1622.7 Certification by the General Counsel.
- 1622.8 Records of closed meetings.
- 1622.9 Emergency proceedings.
- 1622.10 Report to Congress.

Authority: Section 1004(g), Pub. L. 95-222, 91 Stat. 1619 (42 U.S.C. 2996c(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 established pursuant to Section 1601.27 of the By-Laws 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. 2996c(f).

"Director" means a voting member of the Board or a Council. Reference to actions by or communications to a "Director" 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.

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

"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,

the time, place, or subject of a meeting.

"Public observation" means the right of any member of the public to attend and observe a meeting within the limits of reasonable accommodations made available for such purposes by the Corporation, but does not include any right to participate unless expressly invited by the Chairman of the Board of Directors, and does not include any right to disrupt or interfere with the disposition of Corporation business.

"Publicly available" for the purposes of § 1622.6(e) means to be procurable either from the Secretary of the Corporation at the site of the meeting or from the Office of Government Relations at Corporation Headquarters upon reasonable request made during business hours.

"Quorum" means the number of Board or committee members authorized to conduct Corporation business pursuant to the Corporation's By-laws, or the number of council members authorized to conduct its business.

"Secretary" means the Secretary of the Corporation, or in the absence of the Secretary of the Corporation, a person appointed by the Chairman of the meeting to fulfill the duties of 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 posted 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 posted at least seven calendar days before the meeting, unless a majority of the Directors determined 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 posted 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 to the chairman of each council and the governing body of each recipient of funds from the Corporation, and of a council meeting to the governing body of 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 majority of the Directors 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). In the event that changes are made pursuant to § 1622.4(d)(2), the amended public announcement shall also include the vote of each Director upon such change.

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

Except when the Board 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, 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 or 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 paragraph 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 Procedure 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 Directors 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) A separate vote of all the Directors shall be taken with respect to each meeting or portion thereof proposed to be closed to the public, or with respect to any information which is proposed to be withheld; except, a single vote may be taken with respect to a series of meetings or portions thereof which are proposed to be closed to the public, 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.

(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 Secretary shall promptly communicate the request to the Directors, and a recorded vote as required by paragraph (a) of this section shall be taken if any Director so requests.

(d) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the vote of each Director participating in the vote shall be recorded and no proxies shall be allowed.

(e) With respect to each vote taken pursuant to paragraphs (a) through (c) of this section, the Corporation shall, within one business day, make publicly available:

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

(2) A full written explanation of the action closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation.

§ 1622.7 Certification by the General Counsel.

Before a meeting or portion thereof is closed, the General Counsel shall publicly certify that, in his opinion, 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 therefor, including a description of each Director's views expressed on any item and the record of each Director'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 paragraph (a) of this section 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, or until one year after the conclusion of any Corporation proceeding with respect to which the meeting was held, whichever occurs later.

(c) The Corporation shall make available to the public all portions of the transcript, recording, or minutes required by paragraph (a) of this section 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 Emergency proceedings.

(a) In the event that the Directors are rendered incapable of conducting a meeting by the acts or conduct of any members of the public present at the meeting, the Directors may thereupon determine by a recorded vote of the majority of the number of Directors present at the meeting to remove the meeting to a different location and to invite representatives of the public and media to attend the proceeding at the new location.

(b) The emergency proceedings at the new location shall be recorded by means of an electronic recording adequate to record fully the emergency proceedings, or a transcript of the emergency proceedings shall be made by a certified court reporter.

(c) In the event that the actions of members of the public present at the meeting necessitate action pursuant to § 1622.9(a), the Corporation shall also:

(1) Make a written statement summarizing the proceedings at the emergency proceedings available to the public at the close of the emergency proceedings;

(2) Make the entire transcript or electronic recording produced pursuant to paragraph (b) of this section available for public inspection within a reasonable time after the close of the emergency proceedings. A copy of the transcript or recording shall be furnished to any person upon request at the actual cost of duplication or transcription:

(3) Report the activities of the emergency proceedings at the next scheduled meeting of the Board.

(d) Action taken pursuant to this section shall not be construed to be actions taken pursuant to § 1622.6 (Procedure for closing discussion or withholding information). Action taken pursuant to this section does not create any right to withhold any information regarding the emergency proceedings or actions taken therein.

§ 1622.10 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. 552(b), 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.

Dated: May 22, 1984.

Donald P. Bogard,
President.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 42

[CC Docket No. 84-283]

Preservation of Records of Communication Common Carriers; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; Extension of comment/reply comment period.

SUMMARY: In response to a motion filed by Bell Communications Research, the Commission has extended the time for filing comments and reply comments for amending the rules concerning preservation of records of communication common carriers in the Commission's Notice of Inquiry (NOI) in CC Docket 84-283. The new dates are: **DATES:** Comments are due on or before July 2, 1984.

Reply comments are due on or before August 1, 1984.

ADDRESS: Comments in response to this NOI should be submitted to the