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39, United States Code, the provision of said title 39 shall govern.

(c) *Exceptions.* For the purposes of this subpart, references in the subparts of the rules and regulations cited above to (1) *employer* shall be deemed to include the Postal Service, (2) *Act* shall in the appropriate context mean "Postal Reorganization Act," (3) *section 9(c) of the Act* and cited paragraphs thereof shall mean "39 U.S.C. secs. 1203(c) and 1204," and (4) *section 9(b) of the Act* shall mean "39 U.S.C. sec. 1202."

[36 FR 12532, July 1, 1971]

Subpart R—Advisory Committees

§ 102.136 Establishment and utilization of advisory committees.

Advisory committees may from time to time be established or utilized by the agency in the interest of obtaining advice or recommendations on issues of concern to the agency. The establishment, utilization, and functioning of such committees shall be in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. I, sections 1-15, and Office of Management and Budget Circular A-63 (rev. March 27, 1975), Advisory Committee Management Guidance, 39 FR 12389-12391, to the extent applicable.

(49 Stat. 449 (29 U.S.C. 151-166, as amended by Act of June 23, 1947) 61 Stat. 136 (29 U.S.C. Supp. 151-167), act of October 22, 1951, 65 Stat. 601 (29 U.S.C. 158, 159, 168), and Act of September 14, 1959 73 Stat. 519; 29 U.S.C. 141-168); 86 Stat. 770; (5 U.S.C. Appendix I, section 1 *et seq.*)

[40 FR 59728, Dec. 30, 1975]

Subpart S—Open Meetings

AUTHORITY: Sec. 6, National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156) and sec. 3(a), Government in the Sunshine Act, Pub. L. 94-409, Sept. 13, 1976, 5 U.S.C. 552b(g).

SOURCE: 42 FR 13550, Mar. 11, 1977, unless otherwise noted.

§ 102.137 Public observation of Board meetings.

Every portion of every meeting of the Board shall be open to public observation, except as provided in § 102.139 of these rules, and Board members shall

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not jointly conduct or dispose of agency business other than in accordance with the provisions of this subpart.

§ 102.138 Definition of meeting.

For purposes of this subpart, *meeting* shall mean the deliberations of at least three members of the full Board, or the deliberations of at least two members of any group of three Board members to whom the Board has delegated powers which it may itself exercise, where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this subpart.

§ 102.139 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of particular representation or unfair labor practice proceedings under sections 8, 9, or 10 of the Act, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Board, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B)

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(disclosure would significantly frustrate implementation of a proposed agency action).

§ 102.140 Action necessary to close meetings; record of votes.

A meeting shall be closed to public observation under § 102.139, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 102.139(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 102.139(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty days after the initial meeting. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public within one day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a

clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting shall be kept and made available to the public within one day after the vote is taken.

(d) After public announcement of a meeting as provided in § 102.141 of this part, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed, only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 102.139, the solicitor of the Board shall certify that in his or her opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

§ 102.141 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of § 102.139(a) of this part, shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 102.139(a) of this part, the agency shall make public announcement of each meeting to be held at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or