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(d) 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

(e) 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.

(f) In establishing rates or classes of competitive products of both general and not of general applicability in §§3.9 and 3.10 of these bylaws, 39 U.S.C. 3632(a) requires the concurrence of a majority of all of the Governors then holding office.

(g) In removing the Inspector General for cause, 39 U.S.C. 202(e) requires the written concurrence of at least 7 Governors.

[73 FR 78983, Dec. 24, 2008, as amended at 77 FR 17334, Mar. 26, 2012]

§ 6.7 Notation voting.

(a) *General.* Notation voting consists of the circulation of written memoranda and voting sheets to each member of the Board simultaneously and the tabulation of submitted responses. Notation voting may be used only for routine, non-controversial, and administrative matters.

(b) *Administrative Responsibility.* The Secretary of the Board is responsible for:

(1) Distributing notation voting memoranda and voting sheets;

(2) Establishing deadlines for notation voting sheets to be completed and returned;

(3) Processing and tabulating all notation voting sheets; and

(4) Determining whether further action is required.

(c) *Veto of notation voting.* In view of the public policy for openness reflected in the Government in the Sunshine Act and in these bylaws, each Board member is authorized to veto the use of notation voting for the consideration of any matter. If a Board member vetoes the use of notation voting, the Secretary must notify all members of such

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action, and must promptly take action to place the particular matter on the agenda of the next regularly scheduled Board meeting following the date of the veto, or to schedule a teleconference to consider the matter, as appropriate.

(d) *Disclosure of result.* The Secretary shall maintain all records pertaining to Board actions taken pursuant to the notation voting process, and shall make such records available for public inspection, consistent with the Freedom of Information Act, 5 U.S.C. 552.

[77 FR 17334, Mar. 26, 2012]

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

Sec.

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AUTHORITY: 39 U.S.C. 410; 5 U.S.C. 552b(a)–(m).

SOURCE: 73 FR 78983, Dec. 24, 2008, unless otherwise noted.

§ 7.1 Definitions.

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

(a) The term *Board* means the Board of Governors, and any subdivision or committee of the Board authorized 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 §6.6 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 the bylaws in this chapter, or the notation voting process described in §6.7 of the bylaws in this chapter.

[73 FR 78983, Dec. 24, 2008, as amended at 77 FR 17334, Mar. 26, 2012]

§ 7.2 Open meetings.

(a) It is the policy of the United States, established in section 2 of the Government in the Sunshine Act, Public Law 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 is open to public observation.

(b) 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.

(c) Without the permission of a majority 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 Part 232, 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 any individual 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

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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 paragraph (a) or (b) of this section. Within 1 day of any vote under paragraph (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.

§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 Corporate 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 or her 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 recording 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 com-

plete 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 available to the public, in the Corporate 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 U.S.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 U.S. 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

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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 Public Law 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, Public Law 93–579.

PARTS 8–9 [RESERVED]

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS (ARTICLE X)

Sec.

- 10.1 Applicability.
- 10.2 Advisory service.
- 10.3 Post-employment activities.
- 10.4 Financial disclosure reports.

AUTHORITY: 39 U.S.C. 401(2), (10).

SOURCE: 73 FR 78983, Dec. 24, 2008, unless otherwise noted.

§ 10.1 Applicability.

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

§ 10.2 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office

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of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of Ethical Conduct for Employees of the Executive Branch, or the Postal Service regulations supplemental thereto, from the General Counsel or a designated assistant.

(c) If the General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained in 5 CFR parts 2635 and 7001, or conduct which creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

§ 10.3 Post-employment activities.

Governors are subject to the restrictions on the post-employment activities of special Government employees imposed by 18 U.S.C. 207. Guidance concerning post-employment restrictions applicable to Governors may be obtained in accordance with section 10.2(b).

§ 10.4 Financial disclosure reports.

(a) *Requirement of submission of reports.* At the time of their nomination, Governors complete a financial disclosure report which, under the practice of the Senate Governmental Affairs Committee, is kept confidential. Because the Director of the Office of Government Ethics has ruled that Governors who do not perform the duties of their office for more than 60 days in any calendar year are not required to file financial disclosure reports that are open to the public, Governors file non-public reports annually, in accordance with this section. A Governor who performs the duties of his or her office for more than 60 days in a particular calendar year is required to file a public report in accordance with 5 CFR 2634.204(c).

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or before