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Title 40 —Protection of Environment

Chapter VI —Chemical Safety and Hazard Investigation Board

Part 1603 Rules Implementing the Government in the Sunshine Act

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PART 1603—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Authority: 5 U.S.C. 552b; 42 U.S.C. 7412(r)(6)(N).

Source: 67 FR 35445, May 20, 2002, unless otherwise noted.

§ 1603.1 Applicability.

- (a) This part implements the provisions of the Government in the Sunshine Act, 5 U.S.C. 552b. These procedures apply to meetings, as defined herein, of the Members of the Chemical Safety and Hazard Investigation Board (“CSB” or “Board”).
- (b) This part does not affect the procedures by which CSB records are made available to the public, which continue to be governed by part 1601 of this chapter pursuant to the Freedom of Information Act, 5 U.S.C. 552, except that the exemptions set forth in § 1603.7 shall govern in the case of any requests made for the transcripts, recordings, and minutes described in § 1603.11.

§ 1603.2 Policy.

It is the policy of the CSB to provide the public with the fullest practicable information regarding the decisionmaking processes of the Board, while protecting the rights of individuals and the ability of the Board to discharge its statutory functions and responsibilities. The public is invited to attend but not to participate in open meetings. For any open meeting, the Board, by majority vote, may decide to allow for a public comment period immediately following the close of that meeting.

§ 1603.3 Definitions.

As used in this part:

- (a) **Days** means calendar days, except where noted otherwise.
- (b) **General Counsel** means the Board's principal legal officer, or a CSB attorney serving as Acting General Counsel.
- (c) **Meeting** means the deliberations of at least a quorum of Members where such deliberations determine or result in the joint conduct or disposition of official CSB business, and includes conference telephone calls or other exchanges otherwise coming within the definition. A meeting does not include:
 - (1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the Members individually by telephone.
 - (2) Action by at least a quorum of Members to:
 - (i) Open or to close a meeting or to release or to withhold information pursuant to § 1603.7;
 - (ii) Set an agenda for a proposed meeting(s);
 - (iii) Call a meeting on less than seven days' notice as permitted by § 1603.9(b); or
 - (iv) Change the subject matter or the determination to open or to close a publicly announced meeting under § 1603.10(b).
 - (3) A session attended by at least a quorum of Members for the purpose of having the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.
 - (4) A session attended by at least a quorum of Members for the purpose of having the Environmental Protection Agency or Occupational Safety and Health Administration (including contractors of those agencies) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official CSB business on such matters.
 - (5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not effectively predetermine official action.
- (d) **Member** means an individual duly appointed and confirmed to the collegial body known as the Board.

- (e) *Reporter* means a CSB employee designated by the General Counsel, under § 1603.5(c), to attend and prepare a written summary of all briefings described in paragraphs (c)(3) and (c)(4) of this section and all informal preliminary discussions described in paragraph (c)(5) of this section.
- (f) *Sunshine Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 1603.4 Open meetings requirement.

Any meetings of the Board, as defined in § 1603.3, shall be conducted in accordance with this part. Except as provided in § 1603.7, the Board's meetings, or portions thereof, shall be open to public observation.

§ 1603.5 Assurance of compliance.

- (a) The General Counsel or another attorney designated by the General Counsel will attend and monitor all briefings described in § 1603.3(c)(3) and (c)(4) and all informal preliminary discussions described in § 1603.3(c)(5), to assure that those gatherings do not proceed to the point of becoming deliberations and meetings for Sunshine Act purposes.
- (b) The General Counsel or the designated attorney will inform the Board Members if developing discussions at a briefing or gathering should be deferred until a notice of an open or closed meeting can be published in the FEDERAL REGISTER, and a meeting conducted pursuant to the Sunshine Act and this part.
- (c) For each briefing described in § 1603.3(c)(3) or (c)(4) and each informal preliminary discussion described in § 1603.3(c)(5), the General Counsel is hereby authorized to designate a CSB employee, other than the attorney referred to in paragraph (a) of this section, to serve as a reporter. An employee may be designated as reporter for a single briefing or informal discussion or for a series of briefings or discussions. The reporter shall attend and prepare a written summary of each briefing(s) or informal discussion(s) for which he/she has been designated. The reporter must prepare the summary of a particular briefing or informal discussion within five business days after the date of that briefing or discussion. The reporter must then submit the summary to the General Counsel or the designated attorney who attended the briefing or informal discussion that is the subject of the summary for review and approval as a fair and accurate summary of that briefing or discussion. The written summaries of briefings and informal discussions shall be maintained in the Office of General Counsel.

§ 1603.6 Business requiring a meeting.

The Board may, by majority vote of its Members, determine that particular items or classes of Board business cannot be accomplished by notation voting, but must instead be decided by a recorded vote at a meeting, as defined in § 1603.3(c).

§ 1603.7 Grounds on which meetings may be closed or information may be withheld.

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§ 1603.8, 1603.9, and 1603.10 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof 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 pursuant to such Executive Order. In making the determination that this exemption applies, the Board shall rely upon the classification assigned to a document by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency;
- (b) Relate solely to the internal personnel rules and practices of the CSB;
- (c) Disclose matters specifically exempted from disclosure by statute (other than 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;
- (d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (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;
- (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 the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the CSB, except that this paragraph shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action or is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;
- (i) Specifically concern the Board's issuance of a subpoena, or the CSB'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 CSB of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing; or
- (j) Disclose other information for which the Government in the Sunshine Act provides an exemption to the open meeting requirements of that Act.

§ 1603.8 Procedures for closing meetings, or withholding information, and requests by affected persons to close a meeting.

- (a) A meeting shall not be closed, or information pertaining thereto withheld, unless a majority of all Members votes to take such action. A majority of the Board may act by taking a single vote with respect to any action under § 1603.7. A single vote is permitted 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 subject matters and is scheduled to be held no more than thirty days after the initial meeting in such series. Each Member's vote under this paragraph shall be recorded and proxies are not permitted.
- (b) Any person whose interest may be directly affected if a portion of a meeting is open may request the Board to close that portion on any of the grounds referred to in § 1603.7(e) through (g). Requests, with reasons in support thereof, should be submitted in writing, no later than two days before the meeting in question, to the General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite 400, Washington, DC 20037. In motion of any Member, the Board shall determine by recorded vote whether to grant the request.
- (c) Within one working day of any vote taken pursuant to this section, the CSB shall make available a written copy of such vote reflecting the vote of each Member on the question and, if a portion of a meeting is to be closed to the public, a full written explanation of its action closing the meeting and a list of all persons expected to attend and their affiliation.
- (d) Before every closed meeting, the General Counsel of the CSB shall publicly certify that, in his/her opinion, the meeting may be closed to the public and shall state each relevant exemption provision. If the General Counsel invokes the exemption for classified or sensitive unclassified information under § 1603.7(a), he/ shall rely upon the classification or designation assigned to the document containing such information by the Environmental Protection Agency, Occupational Safety and Health Administration, or other originating agency. A copy of such certification, together with a statement 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 § 1603.11.

§ 1603.9 Procedures for public announcement of meetings.

- (a) For each meeting, the CSB shall make public announcement, at least one week before the meeting, of:
 - (1) The time of the meeting;
 - (2) The place of the meeting;
 - (3) The subject matter of the meeting;
 - (4) Whether the meeting is to be open or closed; and
 - (5) The name and business telephone number of the official designated by the CSB to respond to requests for information about the meeting.
- (b) The one week advance notice required by paragraph (a) of this section may be reduced only if:
 - (1) A majority of all Members determines by recorded vote that CSB business requires that such meeting be scheduled in less than seven days; and
 - (2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time.

- (c) Immediately following each public announcement required by this section, or by § 1603.10, the CSB shall submit a notice of public announcement for publication in the FEDERAL REGISTER.

§ 1603.10 Changes following public announcement.

- (a) The time or place of a meeting may be changed following the public announcement only if the CSB publicly announces such change at the earliest practicable time. Members need not approve such change.
- (b) A meeting may be cancelled, or the subject matter of a meeting or the determination of the Board to open or to close a meeting, or a portion thereof, to the public may be changed following public announcement only if:
 - (1) A majority of all Members determines by recorded vote that CSB business so requires and that no earlier announcement of the cancellation or change was possible; and
 - (2) The CSB publicly announces such cancellation or change and the vote of each Member thereon at the earliest practicable time.
- (c) The deletion of any subject matter announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

§ 1603.11 Transcripts, recordings, or minutes of closed meetings.

- (a) Along with the General Counsel's certification referred to in § 1603.8(d), the CSB shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or a portion thereof, closed to the public. The CSB may maintain a set of minutes in lieu of such transcript or recording for meetings closed pursuant to § 1603.7(i). 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. All documents considered in connection with any actions shall be identified in such minutes.
- (b) The CSB shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or a portion thereof, closed to the public for at least two years after such meeting, or until one year after the conclusion of any CSB proceeding with respect to which the meeting, or a portion thereof, was held, whichever occurs later.

§ 1603.12 Availability of transcripts, recordings, and minutes, and applicable fees.

The CSB shall make promptly available to the public the transcript, electronic recording, or minutes of the discussion of any item on the agenda or of any testimony received at a meeting, except for such item, or items, of discussion or testimony as determined by the CSB to contain matters which may be withheld under the exemptive provisions of § 1603.7. Copies of the nonexempt portions of the transcript or minutes, or transcription of such recordings disclosing the identity of each speaker, shall be furnished to any person at the actual cost of transcription or duplication. Requests for transcripts, recordings, or minutes shall be made in writing to the General Counsel of the CSB, 2175 K Street, NW., Suite 400, Washington, DC 20037.

§ 1603.13 Report to Congress.

The CSB General Counsel shall annually report to the Congress regarding the Board'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 Board pursuant to the Government in the Sunshine Act, including any cost assessed against the Board in such litigation (whether or not paid by the Board).

§ 1603.14 Severability.

If any provision of this part or the application of such provision to any person or circumstances, is held invalid, the remainder of this part or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.