

**§ 201.36**

to the FEDERAL REGISTER for publication.

(3) The Office of the Secretary shall respond to all questions from the public concerning the agendas of Commission meetings. Persons desiring to receive copies of notices of Commission meetings should contact the Office of the Secretary and request to be placed on the mailing list.

[42 FR 11243, Feb. 28, 1977, as amended at 58 FR 64121, Dec. 6, 1993]

**§ 201.36 Closing a portion or portions of a meeting or a series of meetings.**

(a) Every meeting of the Commission shall be open to public observation except when the Commission properly determines in the manner specified in paragraph (d) of this section that a portion or portions of a Commission meeting shall be closed to the public for the specific reasons enumerated in paragraph (b) of this section.

(b) The Commission may close a portion or portions of a Commission meeting only when it determines that public disclosure of information to be discussed at such meeting is likely to:

(1) Disclose matters that are (i) Specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

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

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

(6) Disclose information of a personal nature when disclosure would con-

stitute a clearly unwarranted invasion of personal privacy;

(7) 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: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) 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;

(8)(i) Disclose information the premature disclosure of which would, in those instances where the Commission regulates commodities, be likely to lead to significant financial speculation in such commodities;

(ii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(9) Specifically concern: (i) The Commission's issuance of a subpoena, (ii) the Commission's participation in a civil action or proceeding, or (iii) the initiation, conduct, or disposition by the Commission of a particular case of formal Commission adjudication under 19 U.S.C. 1337 pursuant to the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(c)(1) When the Commission has determined that one or more of the specific reasons enumerated in paragraph (b) of this section for closing a portion or portions of a Commission meeting is applicable to the subject matter or matters to be discussed, the Commission shall consider whether or not the

public interest requires that such portion or portions of the meeting be open to public observation.

(2) In making the public-interest determination under paragraph (c)(1) of this section, the Commission shall consider whether public disclosure would (i) Interfere with the Commission's carrying out its statutory responsibilities, (ii) Conflict with the individual right of privacy under the Privacy Act of 1974 (5 U.S.C. 552a), or (iii) Place the Commission in violation of any other applicable provision of law, in addition to any other factors which it deems to be relevant to the particular meeting in question.

(d)(1) Action by the Commission to close a portion or portions of a meeting for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section shall be taken only when a majority of the entire membership of the Commission has voted to take such action.

(2) A single recorded vote of the Commission shall be taken with respect to: (i) Each Commission meeting of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section, or (ii) any information which the Commission proposes to withhold from the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section. No proxy votes are permissible.

(e)(1) Action by the Commission to close a series of meetings of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section may be taken by a single recorded vote of the Commission to close such portion or portions of the series. No proxy votes are permissible.

(2) A series of meetings may be closed pursuant to paragraph (e)(1) of this section so long as each meeting in such series: (i) Involves the same particular matters and (ii) is scheduled to be held no more than 30 days after the initial meeting in such series.

(f) When the Commission (i) Has voted to close a portion or portions of a meeting in accordance with para-

graph (d) of this section or (ii) has voted to close a portion or portions of a series of meetings in accordance with paragraph (e) of this section, the public notices referred to in paragraph (a) or (c)(2) of §201.35 shall be issued or amended in accordance with paragraph (b) or (c)(3) of §201.35 at the earliest practicable time, but no later than one (1) working day following such vote.

**§201.37 Changing the time, place, subject matter, or determination to open or close a meeting following a public notice.**

(a) The time or place of a Commission meeting may be changed following a public announcement required by §201.35 only if the Commission publicly announces such change or changes at the earliest practicable time by issuing an appropriate amendment to the public notice as required by §201.35.

(b) The subject matter or matters of a Commission meeting or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following a public announcement required by §201.35 only if: (i) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and (ii) the Commission publicly announces such change in subject matter or such change in the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public and the vote of each Commissioner upon such change or changes in a subsequent amendment of the public notice required by §201.35.

**§201.38 Requests by interested persons that the Commission close a portion of a Commission meeting.**

(a) Whenever any person whose interests may be directly affected by a portion of a Commission meeting requests that the Commission close such portion to the public for any of the specific reasons enumerated in paragraphs (b) (5), (6), or (7) of §201.36, the Commission, upon the request of any one of the Commissioners, shall take a vote in the manner specified in §201.36 of this subpart on whether or not to close such portion of the meeting.