

telephone call among the Commissioners is a *meeting* if it otherwise qualifies as a *meeting* under this paragraph. The term does not include:

(a) The deliberations required or permitted under §§ 2203.4(d) and 2203.5, e.g., a discussion of whether to open or close a meeting under this part;

(b) Business that is conducted by circulating written materials sequentially among the Commissioners for their consideration on an individual basis;

(c) A gathering at which the Chairman of the Commission seeks the advice of the other Commissioners on the carrying out of a function that has been vested in the Chairman, by statute or otherwise; or

(d) Informal discussions of the Commissioners that clarify issues and expose varying views but do not effectively predetermine official actions.

Official Commission business means matters that are the responsibility of the Commission acting as a collegial body, including the adjudication of litigated cases. The term does not include matters that are the responsibility of the Commission's Chairman. See, e.g., 29 U.S.C. 661(e).

Regularly-scheduled meetings means meetings of the Commission that are held at 10:00 a.m. on Thursday of each week, except on legal holidays. The term includes regularly-scheduled meetings that have been rescheduled for another time or day.

§ 2203.3 Public attendance at Commission meetings.

(a) *Policy.* Commissioners will not jointly conduct or dispose of official Commission business in a meeting unless it is conducted in accordance with this part. Because the Commission was created for the purpose of adjudicating litigated cases, it can be expected that most of its meetings will be closed to the public. However, meetings that do not involve Commission adjudication or discussion of issues in cases before it will be open to the extent practicable. The public will not be allowed to participate in discussions during open meetings.

(b) *Grounds for closing meetings.* Except where the Commission finds that the public interest requires otherwise,

all or part of a meeting may be closed to the public, and information about a meeting may be withheld from the public, where the Commission determines that the meeting, or part of the meeting, or information about the meeting, is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an 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 section 552 of title 5), *Provided*, That such statute

(i) Requires that the matter 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 are privileged or confidential;

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

(6) Disclose information of a personal nature where disclosure would constitute 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 an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(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

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information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) 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;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or

(ii) Be likely to significantly frustrate implementation of a proposed Commission action, except where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, discussion or disposition by the Commission of a particular case of formal Commission adjudication.

(c) *Regularly-scheduled meetings.* The Commission will hold regularly-scheduled meetings for the purpose of considering matters that may properly be closed to the public under paragraph (b)(4), (8), (9)(i) or (10) of this section, or any combination thereof. Primarily, these meetings will be held for the purpose of considering or disposing of particular cases of formal Commission adjudication. The Commission therefore expects to close all regularly-scheduled meetings. The procedures established in § 2203.4 apply to the public announcement and closing of regularly-scheduled meetings.

(d) *Other Commission meetings.* All other meetings of the Commission will be open to public observation unless the Commission determines that all or part of a meeting is likely to disclose

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information of the kind set forth in any subparagraph of paragraph (b) of this section. The procedures established in § 2203.5 apply to the public announcement of Commission meetings that are not regularly scheduled and to the total or partial closing of these meetings.

[50 FR 51679, Dec. 19, 1985, as amended at 62 FR 35963, July 3, 1997]

§ 2203.4 Procedures applicable to regularly-scheduled meetings.

(a) *Statutory authority to adopt expedited closing procedure.* The Government in the Sunshine Act provides, at 5 U.S.C. 552b(d)(4), that qualified agencies may establish by regulation expedited procedures for announcing and closing certain meetings. Specifically, “[a]ny agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c) [of the statute], or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof [through the expedited closing procedure].” See § 2203.3(b)(4), (8), (9)(i) and (10), which are equivalent to the referenced paragraphs of the statute. The Commission had determined, for the reasons stated in paragraph (b) of this section, that it is qualified to adopt implementing regulations under 5 U.S.C. 552b(d)(4). It hereby announces that it will follow the expedited closing procedure authorized under that statutory provision in conducting its regularly-scheduled meetings.

(b) *Commission qualification to adopt expedited closing procedure.* The Commission has determined that a majority of its meetings may be closed to the public under 5 U.S.C. 552b(c)(10). See § 2203.3(b)(10). The Commission is an adjudicatory agency that has no regulatory functions. It was established to resolve disputes arising out of enforcement actions brought by the Secretary of Labor under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651-678. See 29 U.S.C. 659(c). The Commission's experience under the Government in the Sunshine Act has been that almost all of its meetings have been closed, in whole or in part, under