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Title 29 — Labor

Subtitle B — Regulations Relating to Labor

Chapter XX — Occupational Safety and Health Review Commission

Part 2203 Regulations Implementing the Government in the Sunshine Act

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PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

Source: 50 FR 51679, Dec. 19, 1985, unless otherwise noted.

§ 2203.1 Purpose and scope.

This part applies to all meetings of the Occupational Safety and Health Review Commission. Its purpose is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open to public observation, to the extent practicable, the meetings of the Commission, while preserving the Commission's ability to fulfill its adjudicatory responsibilities and protecting the rights of individuals.

§ 2203.2 Definitions.

For the purposes of this part:

Expedited closing procedure means the simplified procedures described at 5 U.S.C. 552b(d)(4) for announcing and closing certain agency meetings.

General Counsel means the General Counsel of the Commission, or any other person designated by the General Counsel to carry out his responsibilities under this part.

Meeting means the deliberations of at least two Commissioners, where such deliberations determine or result in the joint conduct or disposition of "official Commission business." A conference 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 10:30 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.

[50 FR 51679, Dec. 19, 1985, as amended at 73 FR 56492, Sept. 29, 2008; 74 FR 63988, Dec. 7, 2009]

§ 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 that 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 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 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; 74 FR 63988, Dec. 7, 2009]

§ 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 5 U.S.C. 552b(c)(10) because they involved only formal agency adjudication of specific cases.
- (c) **Announcements.** Regularly-scheduled meetings of the Commission will be held at 10:30 a.m. every Thursday, except for legal holidays, in the Hearing Room (Suite 965) of the Commission's national office at One Lafayette Centre, 1120-20th Street NW., Washington, DC 20036-3457. If a regularly-scheduled meeting is scheduled, public announcement of the time, date and place of the meeting will be made at the earliest practicable time by posting a notice in a prominent place at the Commission's national office. If a regularly-scheduled meeting is cancelled, a notice of cancellation will be posted in the same manner. Information about the subject of each regularly-scheduled meeting will be made available in the Office of the General Counsel, telephone number (202) 606-5410, at the earliest practicable time. However, no information that may be withheld under § 2203.3(b) will be made available, and individual items may be added to or deleted from the agenda at any time. Inquiries from the public regarding any regularly-scheduled meeting will be directed to the Office of the General Counsel.
- (d) **Voting.** At the beginning of each regularly-scheduled meeting, the Commission will vote on whether to close the meeting. No proxy vote will be permitted and the vote of each Commissioner will be recorded. This record of each Commissioner's vote will be made available to the public at the Commission's national office immediately after the meeting.

[50 FR 51679, Dec. 19, 1985, as amended at 58 FR 26066, Apr. 30, 1993; 73 FR 56492, Sept. 29, 2008]

§ 2203.5 Procedures applicable to other meetings.

(a) *Announcements* —

- (1) ***Meetings announced.*** Public announcement will be made of every meeting that is not a regularly-scheduled meeting. This announcement will state the time, place, and subject of the meeting, whether it is to be open or closed, and the name and phone number of the person designated to respond to requests for information about the meeting. The announcement will be made at least one week before the meeting unless at least two Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date. In that case, the Commission will make its public announcement at the earliest practicable time.
- (2) ***Changes announced.*** The time or place of a meeting may be changed following the public announcement required by paragraph (a)(1) of this section, but only if public announcement of the change is made at the earliest practicable time. The subject of a meeting, or the determination by the Commission to open or close all or part of a meeting, may also be changed following the public announcement required by paragraph (a)(1) of this section; however, these changes may be made only if:
 - (i) At least two Commissioners determine by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and
 - (ii) Public announcement of the change and the vote of each Commissioner on the change is made at the earliest practicable time.
- (3) ***Form of announcements.*** The announcements required under paragraph (a) of this section will be made by posting a notice in a prominent place at the Commission's national office. In addition, immediately following each announcement required by paragraph (a) of this section, notice of the same matters described in the posted notice will also be submitted for publication in the FEDERAL REGISTER.

(b) *Voting* —

- (1) ***Requirement that vote be taken.*** Action to close all or part of a meeting that is not regularly scheduled or to withhold information about a meeting that is not regularly scheduled, under any paragraph of § 2203.3(b), will be taken only when at least two Commissioners vote to take the proposed action.
- (2) ***Separate votes required.*** A separate vote of the Commissioners will be taken with respect to each Commission meeting or each part of a meeting that is proposed to be closed under paragraph (b) of this section or with respect to any information that is proposed to be withheld under paragraph (b) of this section.
- (3) ***Single vote on a series of meetings.*** A single vote may be taken with respect to closing all or part of a series of meetings under paragraph (b) of this section, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in the series.
- (4) ***Public requests to close meetings.*** Any person whose interest may be directly affected by a portion of an open meeting may request that the Commission close that portion to the public for any of the reasons referred to in paragraph (b)(5), (6) or (7) of § 2203.3. Upon the motion of any Commissioner, the Commission will vote by recorded vote whether to grant the request.

- (5) **Proxy votes; recording of votes.** No proxy vote will be permitted for any vote required under paragraph (b) of this section. The vote of each participating Commissioner will be recorded.
- (6) **Public announcement of votes.** Within one day after any vote taken under paragraph (b) of this section, the vote of each Commissioner on the question will be made publicly available at the Commission's national office. If any part of a meeting is to be closed under paragraph (b) of this section, a full written explanation of the Commission's action, together with a list of all persons expected to attend the meeting and their affiliation, will be made publicly available at the Commission's national office within one day after the vote to close.

§ 2203.6 Certification by the General Counsel.

For every meeting closed under any provision of these rules, the General Counsel will be asked to certify before the meeting that in his opinion the meeting may properly be closed to the public, and to state which exemptions he has relied upon. A copy of this certification, together with a statement (from the Commissioner presiding over the meeting) setting forth the time and place of the meeting and the persons present, shall be retained by the Commission as part of the transcript, recording or minutes of the meeting described in § 2203.7.

§ 2203.7 Transcripts, recordings and minutes of closed meetings.

- (a) **Record of meeting.** The Commission will make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public. However, if all or part of a meeting is closed under paragraph (b)(8), (9)(i) or (10) of § 2203.3, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes will fully and clearly describe all matters discussed and will provide a full and accurate summary of any actions taken, and the reasons for the actions. The minutes will also include a description of each of the views expressed on any item and a record of any roll call vote (reflecting the vote of each Commissioner on the question). In addition, the minutes will identify all documents considered in connection with any action.
- (b) **Public access to records.** The Commission will make promptly available to the public, at its national office, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines to contain information which may be withheld under § 2203.3(b). Copies of the transcript, the minutes, or a transcription of the recording disclosing the identity of each speaker, with the deletions noted in the preceding sentence, will be furnished to any person at the actual cost of duplication or transcription. Requests to inspect or to have copies made of any transcript, electronic recording or set of minutes of any meeting, or any item(s) on the agenda of any meeting, should be made in writing to the General Counsel at the Office of the General Counsel, Occupational Safety and Health Review Commission, Room 941, One Lafayette Centre, 1120-20th Street NW., Washington, DC 20036-3457. The request should identify the time, date, and place of the meeting and briefly describe the items sought. The Commission will maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting, or closed portion of a meeting, for a period of at least two years after the meeting, or until one year after the conclusion of any Commission proceeding with respect to which all or part of the meeting was held, whichever occurs later.

[50 FR 51679, Dec. 19, 1985, as amended at 58 FR 26066, Apr. 30, 1993; 73 FR 56492, Sept. 29, 2008]