

each business meeting of the Commission (held at least quarterly) (28 CFR 2.27).

The National Appeals Board normally decides cases by sequential vote on a daily basis, but may meet from time to time for joint deliberations. In the period from October, 1975 through September, 1976, the National Appeals Board made 2,072 Appellate decisions.

Finally, over the last two years the Commission determined eleven cases under the Labor and Pension Acts, which are proceedings pursuant to 5 U.S.C. 554. The only meetings of the Commission not of an adjudicative nature involving the most sensitive inquiry into the personal background and behavior of the individual concerned, or involving sensitive financial information concerning the parties before the Commission, are the normal business meetings of the Commission, which are held at least quarterly.

(b) *Meetings to which applicable.* The following types of meetings may be closed in the event that a majority of the Commissioners present at the meeting, and authorized to act on behalf of the Commission, votes by recorded vote at the beginning of each meeting or portion thereof, to close the meeting or portions thereof:

(1) Original jurisdiction initial and appellate case deliberations conducted pursuant to 28 CFR 2.17 and 2.27;

(2) National Appeals Board deliberations pursuant to 28 CFR 2.26;

(3) Meetings of the Commission to conduct a hearing on the record regarding applications for certificates of exemption pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1111 (28 CFR 4.1-17 and 29 CFR 4a.1-17).<sup>1</sup>

(c) *Written record of action to close meeting.* In the case of a meeting or portion of a meeting closed pursuant to this section, the Commission shall make available to the public as soon as practicable:

(1) A written record reflecting the vote of each member of the Commission to close the meeting; and

(2) A certification by the Commission's General Counsel to the effect that in Counsel's opinion, the meeting may be closed to the public, which certification shall state each relevant exemptive provision.

(d) *Public notice.* In the case of meetings closed pursuant to this section the Commission shall make a public announcement of the subject matter to be considered, and the date, place, and time of the meeting. The announcement described herein shall be released to the public at the earliest practicable time.

**§ 16.206 Transcripts, minutes, and miscellaneous documents concerning Commission meetings.**

(a) In the case of any Commission meeting, whether open or closed, the Commission shall maintain and make available for public inspection a record of the final vote of each member on rules, statements of policy, and interpretations adopted by it: 18 U.S.C. 4203(d).

(b) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public pursuant to §16.203. In the case of a meeting, or portion of a meeting, closed to the public pursuant to §16.205 of these regulations, the Commission may maintain either the transcript or recording described above, or a set of minutes unless a recording is required by title 18 U.S.C. 4208(f). The minutes required by this section 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 (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Commission shall retain a copy of every certification executed by the General Counsel's Office pursuant to these regulations, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting

<sup>1</sup>Part 4a was removed at 44 FR 6890, Feb. 2, 1979.

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forth the time and place of the meeting, and the persons present.

(d) Nothing herein shall affect any other provision in Commission procedures or regulations requiring the preparation and maintenance of a record of all official actions of the Commission.

### **§ 16.207 Public access to nonexempt transcripts and minutes of closed Commission meetings—Documents used at meetings—Record retention.**

(a) *Public access to records.* Within a reasonable time after any closed meeting, the Commission shall make available to the public, in the Commission's Public Reading Room located at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at such meeting, maintained hereunder, except for such item or items of such discussion or testimony which contain information exempt under any provision of the Government in the Sunshine Act (Pub. L. 94-409), or of any amendment thereto. Copies of nonexempt transcripts, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Access to documents identified or discussed in any Commission meeting, open or closed, shall be governed by Department of Justice regulations at this part 16, subparts C and D. The Commission reserves the right to invoke statutory exemptions to disclosure of such documents under 5 U.S.C. 552 and 552a, and applicable regulations. The exemptions provided in 5 U.S.C. 552b(c) shall apply to any request made pursuant to 5 U.S.C. 552 or 552a to copy and inspect any transcripts, recordings or minutes prepared or maintained pursuant hereto.

(c) *Retention of records.* The Commission shall maintain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of

any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

[42 FR 14713, Mar. 16, 1977, as amended by Order No. 960-81, 46 FR 52357, Oct. 27, 1981]

### **§ 16.208 Annual report.**

The Commission shall report annually to Congress regarding its compliance with Sunshine Act requirements, including a tabulation of the total number of meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the Commission under this section, including any costs assessed against the Commission in such litigation and whether or not paid.

## **Subpart G—Access to Documents by Former Employees of the Department**

SOURCE: Order No. 2333-2000, 65 FR 68892, Nov. 15, 2000, unless otherwise noted.

### **§ 16.300 Access to documents for the purpose of responding to an official inquiry.**

(a) To the extent permitted by law, former employees of the Department shall be given access to documents that they originated, reviewed, or signed while employees of the Department, for the purpose of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority. Documents include memoranda, drafts, reports, notes, written communications, and documents stored electronically that are in the possession of the Department. Access ordinarily will be provided on government premises.

(b) Requests for access to documents under this section must be submitted in writing to the head of the component where the employee worked when originating, reviewing, or signing the documents. If the employee requesting access was the Attorney General, Deputy Attorney General, or Associate Attorney General, the request may be granted by the Assistant Attorney