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(1) A written copy of the recorded vote reflecting the vote of each member of the agency;

(2) A full written explanation of the agency action closing that portion or those portions to public observation; and

(3) A list of the names and affiliations of all persons expected to attend the portion or portions of the meeting or the portion or portions of a series of meetings.

(c) Except as otherwise provided in §§ 503.80, 503.81 and 503.82, not later than the day following the day on which a vote is taken under § 503.74, or § 503.75, by which it is determined that the portion or portions of a meeting or the portion or portions of a series of meetings shall remain open to public observation, the Secretary shall make available to the public a written copy of the recorded vote reflecting the vote of each member of the agency.

§ 503.77 Responsibilities of the General Counsel of the agency upon a request to close any portion of any meeting.

(a) Upon any request that the agency close a portion or portions of any meeting or any portion or portions of any series of meetings under the provisions of §§ 503.74 and 503.75, the General Counsel of the agency shall certify in writing to the agency, prior to an agency vote on that request, whether or not in his or her opinion the closing of any such portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b). If, in the opinion of the General Counsel, the closing of a portion or portions of a meeting or portion or portions of a series of meetings is proper under the provisions of this subpart and the terms of the Government in the Sunshine Act (5 U.S.C. 552b), his or her certification of that opinion shall cite each applicable, particular, exemptive provision of that Act and provision of this subpart.

(b) A copy of the certification of the General Counsel as described in paragraph (a) of this section, together with a statement of the officer presiding over the portion or portions of any

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meeting or the portion or portions of a series of meetings setting forth the time and place of the relevant meeting or meetings, and the persons present, shall be maintained by the Secretary for public inspection.

§ 503.78 General rule—information pertaining to meeting.

(a) As defined in § 503.71, all information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings of the agency shall be disclosed to the public unless excepted from such disclosure under §§ 503.79, 503.80 and 503.81.

(b) All inquiries as to the status of pending matters which were considered by the Commission in closed session should be directed to the Secretary of the Commission. Commission personnel who attend closed meetings of the Commission are prohibited from disclosing anything that occurs during those meetings. An employee's failure to respect the confidentiality of closed meetings constitutes a violation of Commission's General Standards of Conduct. The Commission can, of course, determine to make public the events or decisions occurring in a closed meeting, such information to be disseminated by the Office of the Secretary. An inquiry to the Office of the Secretary as to whether any information has been made public is not, therefore, improper. However, a request of or attempt to persuade a Commission employee to divulge the contents of a closed meeting constitutes a lack of proper professional conduct inappropriate to a person practicing before this agency, and requires that the employee file a report of such event so that a determination can be made whether disciplinary action should be initiated pursuant to § 502.30 of this chapter.

§ 503.79 Exceptions—information pertaining to meeting.

Except in a case where the agency finds that the public interest requires otherwise, information pertaining to a portion or portions of a meeting or portion or portions of a series of meetings need not be disclosed by the agency if

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the agency determines, under the provisions of §§ 503.80 and 503.81 that disclosure of that information is likely to disclose matters which are:

(a) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and in fact properly classified pursuant to such Executive order;

(b) Related solely to the internal personnel rules and practices of an agency;

(c) Specifically exempted from disclosure by any statute other than 5 U.S.C. 552 (FOIA), 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) Trade secrets and commercial or financial information, obtained from a person and privileged or confidential;

(e) Involved with accusing any person of a crime, or formally censuring any person;

(f) Of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) 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 record 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) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use

of an agency responsible for the regulation or supervision of financial institutions;

(i) Information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, unless the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concerned with the agency's issuance of a subpoena, the agency'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 agency 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.

[49 FR 44401, Nov. 6, 1984; 49 FR 47395, Dec. 4, 1984]

§ 503.80 Procedures for withholding information pertaining to meeting.

(a) Any member of the agency, or the General Counsel of the agency may request that information pertaining to a portion or portions of a meeting or to a portion or portions of a series of meetings be withheld from public disclosure for any of the reasons set forth in § 503.79 by submitting such request in writing to the Secretary not later than two (2) weeks prior to the commencement of the first meeting in a series of meetings.

(b) Upon receipt of any request made under paragraph (a) of this section, the Secretary shall schedule a time at which the members of the agency shall vote upon the request, which vote shall take place not later than eight (8) days prior to the scheduled meeting of the agency.

(c) At the time scheduled by the Secretary in paragraph (b) of this section, the Members of the agency, upon consideration of the request submitted under paragraph (a) of this section, shall vote upon that request. That vote shall determine whether or not information pertaining to a meeting may be