

federal register

WEDNESDAY, JANUARY 19, 1977

PART VI



FEDERAL ELECTION COMMISSION

■
**PROPOSED SUNSHINE ACT
REGULATIONS**

PRIVACY ACT OF 1974

**ADVISORY OPINION
REQUESTS**

Systems of Records

FEDERAL ELECTION COMMISSION

[11 CFR Parts 2 and 3]

[Notice 1977-5]

SUNSHINE ACT REGULATIONS

Notice of Proposed Rulemaking

Pursuant to Pub. L. 94-409 as enacted in 5 U.S.C. 552b, the "Government in the Sunshine Act," the Federal Election Commission publishes for public comment its proposed regulations implementing 5 U.S.C. 552b, as required by 2 U.S.C. 552b(g).

Written comments on these regulations should be sent to: Regulation Section, Office of the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Comments should be submitted on or before February 18, 1977.

VERNON W. THOMSON,
Chairman for the
Federal Election Commission.

JANUARY 13, 1977.

It is proposed to add 11 CFR Parts 2 and 3 as follows:

PART 2—SCOPE AND DEFINITIONS

Sec.

- 2.1 Scope.
- 2.2 Commission.
- 2.3 Commissioner or member.
- 2.4 Person.
- 2.5 Meeting.

AUTHORITY: Sec. 3(a), Pub. L. 94-409.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. § 552b(g) which was added by section 3(a) of Pub. L. 94-409, the Government in the Sunshine Act and specifically implement subsections (b) through (f) of that Act.

§ 2.2 Commission.

"Commission" means the Federal Election Commission, 1325 K Street N.W., Washington, D.C. 20463.

§ 2.3 Commissioner or member.

"Commissioner" or "member" means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437(a) and § 101(e) of Pub. L. 94-283 and shall also include ex-officio non-voting Commissioners or members, the Secretary of the Senate and the Clerk of the House, but does not include a proxy or other designated representative of a Commissioner.

§ 2.4 Person.

"Person" includes an individual, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

§ 2.5 Meeting.

"Meeting" means the deliberation, including those conducted through conference telephone or similar communications equipment by means of which all persons participating in the meeting can

hear each other, of at least four voting members of the Commission in collegial where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under §§ 3.2 and 3.3 of this chapter.

PART 3—MEETINGS

Sec.

- 3.1 General rules.
- 3.2 Exempted meetings.
- 3.3 Procedure for closing meetings.
- 3.4 Transcripts, recordings and minutes.
- 3.5 Announcement of meetings and schedule changes.
- 3.6 Annual report.

AUTHORITY: Sec. 3(a), Pub. L. 94-409.

§ 3.1 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in § 3.2, every portion of every Commission meeting shall be open to public observation.

§ 3.2 Exempted meetings.

(a) (1) As required by 2 U.S.C. 437g (a) (3) (B), all Commission meetings, or parts of meetings, pertaining to the notification or investigation of a complaint that the Act has been violated, shall be closed to the public, and the requirements of §§ 3.4 and 3.5 shall not apply.

(2) For the purposes of this section, "notification or investigation of a complaint" means, *inter alia*, determinations pursuant to 2 U.S.C. 427g(a), the issuance of subpoenas, discussion of civil actions or proceedings, formal agency adjudication pursuant to § 5 of the Administrative Procedure Act, discussion of referrals to the Department of Justice, or any other matter related to the Commission's enforcement activity.

(b) The requirement of open meetings shall not apply where the Commission finds, pursuant to § 3.3, that an open meeting is more likely than not to result in the disclosure of:

(1) Matters that relate solely to the sions, rules and practices, except Commission's internal personnel decisions, rules and practices, except that exemption does not extend to Commission discussions regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(2) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(3) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(4) Financial information obtained from any person and which is privileged or confidential;

(5) Information the premature disclosure of which would be likely to have

a considerable adverse effect on the implementation of a proposed Commission action.

§ 3.3 Procedure for closing meetings.

(a) No meeting or portion of a meeting may be closed pursuant to § 3.2 to public observation unless a majority of the Commissioners (not including the ex-officio non-voting Commissioners) vote to take such action.

(b) A Commission vote to close a meeting shall be taken upon the motion of any member, other than the ex-officio non-voting members. A single vote may be taken with respect to a series of meetings, all or a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(c) Although no meeting need be held to consider closing a meeting each vote taken pursuant to subsection (b) shall be recorded by the Secretary to the Commission. No proxies, written or otherwise, shall be counted.

(d) (1) If the Commission votes to close a meeting, or any portion or portions thereof, to the public, then within 24 hours it shall make publicly available a written statement with respect to such vote. The written statement shall contain:

(i) A citation to the section of these regulations pursuant to which the meeting was closed to public observation together with an explanation as to why the specific discussion comes within the cited exemption;

(ii) The vote of each Commissioner on the motion to close the meeting;

(iii) A list of the names of all persons, other than Commissioners or Commission staff, expected to attend the closed meeting and their affiliations. For purposes of this paragraph (d) (iii) of this section affiliation means title or position, and employer and, in the case of a representative, the name of the person represented, and

(iv) Shall be signed by the Commissioner who presided at the meeting where the vote to close the meeting was taken.

(2) The original copy of the statement shall be maintained in the Commission's Public Records Office.

(e) Each time that the Commission votes, pursuant to paragraph (b) of this section, to close a meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may properly be closed to public observation. The certification shall state each relevant exemptive provision. The original copy of such certification shall be attached to, and preserved with, the statement required by paragraph (d) of this section.

§ 3.4 Transcripts, recordings and minutes.

(a) The Secretary to 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 public observation. An electronic recording of a meeting shall be coded, or other records shall be kept, in a manner adequate to identify each speaker.

(b) In the case of a meeting, or portion of a meeting, closed to public observation because it concerns matters set out in paragraph (a) of § 3.2, the Commission may, in lieu of a complete transcript or electronic recording, maintain a set of minutes. Such minutes 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 at the meeting on any item by any person attending and shall reflect the vote of each member on any document considered in connection with any action taken at the meeting.

(c) The Commission shall, within a reasonable time not to exceed 30 days, place on file in the Public Records Office of the Commission, a copy of the transcript, recording, or minutes, as appropriate, which reflects matters discussed, or information developed, at the meeting which were not within the scope of the exemption provision of § 3.2 pursuant to which the meeting was closed.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of meeting, closed to the public, shall be maintained by the Secretary to the Commission in the confidential files of the Commission, for a period of two years subsequent to

such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting, or portion of the meeting was held, whichever occurs later.

§ 3.5 Announcement of meetings and schedule changes.

(a) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the FEDERAL REGISTER at least seven days prior to the day on which the meeting is to be called to order. Such announcement must contain:

- (1) The date of the meeting;
- (2) The place of the meeting;
- (3) The subject matter of the meeting;
- (4) Whether the meeting is to be open or closed to the public; and
- (5) The name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication required by paragraph (a) of this section, shall be made in the case of every meeting to be held by the Commission unless a majority of the Commissioners decide by recorded vote that the situation requires that a particular meeting be called at an earlier date, in which case the Commission shall make, at the earliest practicable time, the public announcement required by paragraph (a) of this section and a concurrent submission to the FEDERAL REGISTER.

(c) The time or place of a meeting may be changed following the public announcement required by paragraphs (a)

and (b) of this section, only if the Commission publicly announces such change at the earliest practicable time.

(d) The subject matter of a 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 the public announcement required by paragraphs (a) and (b) of this section only if:

- (1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and
- (2) The Commission publicly announces, and concurrently submits for publication in the FEDERAL REGISTER, the change and the vote of each member upon such change at the earliest practicable time.

§ 3.6 Annual report.

The Commission shall report annually to Congress regarding its compliance with such requirements including:

- (1) A tabulation of the total number of Commission meetings open to the public
- (2) The total number of such meetings closed to the public
- (3) The reasons for closing such meetings
- (4) A description of any litigation brought against the Commission under the Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

[FR Doc.77-1686 Filed 1-18-77;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1977-2]

PRIVACY ACT OF 1974**Proposed New Notice of System of Records**

On December 14, 1976 (41 FR 54719), the Federal Election Commission published in Notice 1976-68, FEC 8 which was to be effective 30 days after publication provided the request for a waiver of the new system notice was granted by the Office of Management and Budget or unless the Commission published a notice to the contrary. The Office of Management and Budget granted such a waiver on December 29, 1976.

THOMAS E. HARRIS,
*Vice Chairman for the
Federal Election Commission.*

JANUARY 13, 1977.

[FR Doc. 77-1683 Filed 1-18-77; 8:45 am]

[Notice 1977-4, AOR 1976-116 and AOR
1977-1]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 4371(c) and the procedures reflected in Part 112 of the

Commission's Proposed Regulations, published on August 25, 1976 (41 FR 35954), Advisory Opinion Requests 1976-116 and 1977-1 have been made public at the Commission. Copies of AOR 1976-116 and AOR 1977-1 were made available on January 11, 1977. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific

AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-116: May the campaign committee of a Member of Congress expend funds to finance the writing of a book and screenplay about the life of a Member?—Requested by Representative Mario Biaggi, U.S. House of Representatives, Washington, D.C.

AOR 1977-1: Whether an automobile purchased by the principal campaign committee of a Member of Congress to provide campaign-related transportation may be used by the Member or his staff for official duties with expenses for such use being paid by the committee.—Requested by P. Robert Matthews on behalf of the Lent for Congress Committee, Baldwin, New York.

VERNON W. THOMSON,
*Chairman for the
Federal Election Commission.*

JANUARY 13, 1977.

[FR Doc. 77-1685 Filed 1-18-77; 8:45 am]