

§ 2700.82 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Ex parte communication* means an oral or written communication not on the public record concerning any matter or proceeding with respect to which reasonable prior notice to all parties has not been given. A status or informational request does not constitute an ex parte communication.

(2) *Status or informational request* means a request for a status report on any matter or proceeding or a request concerning filing requirements or other docket information.

(3) *Merits of a case*, which shall be broadly construed by the Commission, includes discussion of the factual or legal issues in a case or resolution of those issues.

(b) *Prohibited ex parte communication.* There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, ALJ, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, amici, or other interested persons.

(c) *Procedure in case of violation.* (1) In the event a prohibited ex parte communication occurs, the Commission or the ALJ may make such orders or take such action to remedy the effect of the ex parte communication as circumstances require. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) A memorandum setting forth all ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) *Status or informational requests.* Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission's website (<http://www.fmsshrc.gov>). In the event such information is unavailable through the Commission's website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue

NW, Suite 520N, Washington, DC 20004-1710; 202-434-9950.

[58 FR 12164, Mar. 3, 1993, as amended at 67 FR 60862, Sept. 27, 2002; 77 FR 48430, Aug. 14, 2012; 90 FR 5627, Jan. 17, 2025]

§ 2700.83 Authority to sign orders.

The Chair or other designated Commissioner is authorized to sign on behalf of a quorum of the Commission, orders disposing of the following procedural motions: motions for extensions of time, motions for permission to file briefs in excess of page limits, motions to accept late filed briefs, motions to consolidate, motions to expedite proceedings, motions for oral argument, and similar procedural motions. In the absence of a designated Chair or Acting Chair, Commissioners continue to be authorized to sign orders disposing of procedural motions as identified above.

[90 FR 5628, Jan. 17, 2025]

Subpart J [Reserved]

PART 2701—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS

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AUTHORITY: Sec. 113, Federal Mine Safety and Health Act of 1977, Pub. L. 95-165 (30 U.S.C. 823).

SOURCE: 44 FR 2575, Jan. 12, 1979, unless otherwise noted.

§ 2701.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open, to the extent practicable, the meetings of the Commission to public observation while preserving the Commission's ability to fulfill its responsibilities and respect the interests of persons in confidential consideration of sensitive matters.

§ 2701.2

(b) *Scope.* This part applies to all meetings of the Commission. A “meeting of the Commission” means a joint deliberation in person or by conference telephone call of at least a majority of either the members of the Commission or of a panel of three or more Commissioners that determines or results in the joint conduct or disposition of official Commission business, but does not include (1) deliberations regarding a decision to open or close a meeting, to withhold information about a meeting, and the circumstances of meetings, such as their time, place, and subject matter, and (2) the individual deliberations of Commission members of matters considered upon circulated documents or other notation procedure.

§ 2701.2 Open meetings policy; closure of meetings.

(a) *Policy.* Commission meetings will generally be open to public observation, including meetings concerning the disposition by the Commission of a formal adjudication. See 5 U.S.C. 522b(c)(10).

(b) *Closure.* Meetings may be closed, or certain information about a meeting may not be disclosed under the circumstances contemplated by 5 U.S.C. 522b(c)(1)–(10), and under the procedures specified by 5 U.S.C. 552b (d) and (f). Commission employees may attend closed meetings of the commission unless the notice of a closed meeting states otherwise.

§ 2701.3 Announcement of meetings.

(a) *Generally.* The Commission shall publicly announce and submit to the FEDERAL REGISTER at least 7 days before a meeting, the time, place, subject matter of a meeting, whether it is to be open or closed, and the name and phone number of the Commission employee who will respond to requests for information about the meeting. The description of the subject matter of a meeting at which the Commission will consider adjudicatory matters, shall include the names and docket numbers of the cases to be considered. The Commission shall also contact, by phone or mail, the parties to the cases to be considered at the meeting, shall post a copy of a notice of the meeting at the Office of Public Information, shall mail notices to per-

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sons who have requested inclusion of their names on a meeting mailing list, and may issue press releases.

(b) *Shorter notice.* If a majority of the members of the Commission or a panel of three or more Commissioners determines by a recorded vote that pressing Commission business requires that a meeting be called in less than 7 days, the announcement required by paragraph (a) of this section shall be made at the earliest practicable time.

(c) *Changes in time, place, subject matter, and decision whether to open or close after public announcement of meeting.* If the time or place of a meeting publicly announced is changed, or an item to be considered at such a meeting is to be deleted, the change or deletion shall be publicly announced without a recorded vote at the earliest practicable time in the manner required by paragraph (a) of this section. The subject matter of a meeting publicly announced shall not be expanded and the decision to open or close such a meeting shall not be changed unless a majority of the members of the Commission or if a panel of three or more Commissioners determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible; the Commission shall publicly announce such a change and the vote of each member upon the change at the earliest practicable time.

§ 2701.4 Request to open or close meeting.

Any person may request that the Commission open a meeting that it has earlier decided to close. Any person whose interest may be directly affected by the opening of a meeting may request that the meeting be closed. Two copies of a request shall be filed in writing with the Executive Director of the Commission at the earliest practicable time, and no later than one hour before the meeting. A request to close shall state the interest of the person that may be adversely affected. The Commission shall take a recorded vote on the request if one member desires that it do so. The Executive Director shall inform the requesting person of whether a vote was taken, and,

if so, its outcome. Requests shall be addressed as follows: Sunshine Act Request, Office of the Executive Director, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue NW., Suite 520N, Washington, DC 20004-1710.

[44 FR 2575, Jan. 12, 1979, as amended at 67 FR 60862, Sept. 27, 2002; 77 FR 48430, Aug. 14, 2012]

§ 2701.5 Petition for review.

Any person may petition the Commission to review any action he alleges to be in violation of this part or 5 U.S.C. 552b that was taken by any employee or member of the Commission. The petition shall be in writing and shall be filed with the Executive Director within 30 days of the alleged violation. The Commission shall consider and rule upon the petition with expedition.

§ 2701.6 Discussion during open meetings.

Deliberations, discussions, comments, statements, or observations made during the course of an open meeting do not constitute actions of the Commission, nor do they necessarily represent the basis for any Commission action. Comments made by a Commissioner or an employee of the Commission may be advanced for purposes of discussion or argument, or as an aside, and may not reflect the views or ultimate position of that Commissioner or employee. Reasons for decisions stated by a Commissioner at an open meeting may be later changed by that Commissioner, as may a Commissioner's vote. For these reasons, persons who choose to act on the basis of discussions at open meetings do so entirely at their own risk and without any assurance that the Commission's final decisions will be reflective of the discussions or initial vote.

§ 2701.7 Expedited closing procedure.

(a) *Policy.* Although it is the general policy of the Commission to open to the public meetings that may be subject to closure, including meetings concerning adjudication of cases, the Commission may find it necessary in the public interest to close meetings. The purpose of this section is to provide an

expedited closing procedure under 5 U.S.C. 552b(d)(4). The Commission has determined that, inasmuch as the Commission's responsibilities are almost entirely adjudicatory, a majority of its meetings may properly be closed under 5 U.S.C. 552b(c)(10). Although the Commission has to date held few meetings, those that have been held concerned the adjudication of cases and could properly have been closed.

(b) *Procedure.* A meeting may be closed if a majority of either the members of the Commission or of a panel of three or more Commissioners votes by recorded vote at the beginning of such a meeting to close it to the public. The record of the vote shall reflect the vote of each voting member and shall be made available to the public. A public announcement of the time, place, and subject matter of the meeting shall be made at the earliest practicable time, except to the extent that such information is exempt from disclosure under 5 U.S.C. 552b(c). Section 2701.3 does not apply to meetings closed under this section.

PART 2702—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

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AUTHORITY: 30 U.S.C. 801 *et seq.*; 5 U.S.C. 551, 552, and 552a and 44 U.S.C. 3102 as amended by Pub. L. 104-231, 110 Stat. 3048, Pub. L. 110-175, 121 Stat. 2524, and Pub. L. 114-185, 130 Stat. 538; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

SOURCE: 87 FR 5397, Feb. 1, 2022, unless otherwise noted.