

Sunshine Act/Voting Checklist

Sunshine

Careful review of statute

Review of Nuclear proposed

Review of Nuclear final

Obtain Final Regs

49 CFR 804.3(c) NTSB

12 CFR 311.2(b) FDIC

Line-by-line editing of Proposed Regs

Edit Proposed Regs

Check cases

ERF v. DRNSB, 917 F.2d 581 (D.C. Cir. 1990)

Draft Closed Meeting Checklist

[f(1)]

- GC publicly certifies that the meeting may be closed and shall identify each basis
- Presiding officer provides memorandum stating time, place, and attendees of meeting
- copy of certification and presiding officer's memorandum to be retained by ARRB
- complete transcript (or electronic recording) of closed meetings shall be made ¹

Draft Open meeting checklist

Send Proposed Regs to ACUS

Clarify Federal Register publishing information

Outline Notes for Sunshine Act Briefing to the Board

¹The statute allows minutes to be substituted in closed meetings only when the basis for closing the meeting pertains to “regulation or supervision of financial institutions (552b(c)(8); regulation of currencies, securities, or commodities (552b(c)(9)(A)); or the issuance of a subpoena or discussion of litigation (552b(c)(10)). Only the third of these bases -- subpoenas and litigation -- is likely to an issue before the Board. Accordingly, it would seem advisable that all closed meetings be either recorded or transcribed verbatim.

Sunshine Act not popular with agencies.

However, it is not only necessary that the Board comply with the law, but given the particular mandate of the Board, it is doubly-important.

Proposed regs reflect careful review of statute; other regs from other agencies; Supreme Court decision, and other cases. There is no attempt to put in any bells or whistles.

The particular points that might be controversial are:

Briefings

Non-meetings.

The Proposed regs are in accordance with other regs, but may well elicit criticism.

Bottom line:

Meeting.

Most difficult part to determine. Effectively when a quorum deliberates and develops positions.

Controversy surrounding briefings. By staff. By agencies.

Meetings must be announced in advance, unless there is an emergency reason.

The presumption is that meetings are open to the public.

The fact that a meeting is open does *not* give the public any right to speak or participate in a meeting.

Meetings must be open unless there is a clear basis for closing the meeting.
Board members must have their votes recorded individually before a meeting can be closed.

All closed meetings must be recorded verbatim.

Notational Voting Form
Possible Issuance of Proposed Sunshine Act Regulations

This notational voting form will be hand delivered to each Member of the Assassination Records Review Board. In accordance with the terms of the Sunshine Act, the Members of the Board should not, while in a quorum (three or more Members), “deliberate” on the advisability of adopting either option.

Option 1: authorize the ARRB General Counsel's Office to issue the proposed Sunshine Act regs immediately. Individual Board Members may read the proposed regs and make suggestions to the Staff before the proposed regs are issued. The issuance of the proposed regs will not bind the Board to accept any provision of the proposed regs. The Board will be at liberty to make changes on its own and in response to public comment. Issuance of the proposed regs immediately will help put the Board in compliance with the Sunshine Act. In its next open meeting in New Orleans, the Board may deliberate on the proposed regs. The Board also will have the opportunity to deliberate on issues raised in the public comments at future open meetings. The Staff recommends that Board Members vote for Option 1.

Option 2 await issuance of the proposed Sunshine Act regs until after the Board has had an opportunity to deliberate on them. Adoption of this option would delay the Board's compliance with the Sunshine Act, but would give the Board added input into the text of the proposed regs. Under this option, the Board could deliberate on and make modifications to the proposed regs in its next open meeting in New Orleans.

Option 3: ?

Vote FOR Option 1 _____

Vote FOR Option 2 _____

Board Member _____ (please sign)

Date: _____

Voting Generally

What does law require on publishing voting rules

Draft Rules
Quorum

sunlist.01