

<b>FEDERAL ELECTION COMMISSION</b>		
<b>MANUAL OF DIRECTIVES</b>	<b>COMMISSION DIRECTIVE</b>	
	<b>REVOKES</b>	<b>NO. 52</b>
	Revision dated September 10, 2008, as amended October 28, 2015 to add Part V	<b>EFFECTIVE DATE:</b>  December 1, 2016
<b>Circulation Vote Procedure</b>		

The purpose of this directive is to provide written guidelines on circulation votes at the Federal Election Commission. It is intended to supplement other Commission documents and clarify procedures when matters circulated for a vote are subsequently addressed at a Commission meeting.<sup>1</sup>

**I. CIRCULATION VOTE POLICIES**

A. General. Matters requiring formal Commission action that have not been placed on a meeting agenda will be circulated for a vote. Vote circulations requiring certification shall be made by the Commission Secretary. In certain instances, the Staff Director, the General Counsel or the Chief Financial Officer may determine that direct circulation by his or her office is warranted for administrative matters not requiring certification. All documents circulated to the Commission for a vote shall include a ballot.

B. Objection and Withdrawal. If a Commissioner objects to a document by the voting deadline, the matter will be added to the agenda for a meeting<sup>2</sup> unless the Commissioner formally withdraws the objection before the meeting by notifying the Commission Secretary in writing or by e-mail communication. An objection that is “for the record” does not cause a matter to be added to the agenda for a meeting. The General Counsel shall be consulted in appropriate instances on matters that have Sunshine Act implications.

Before the Commission discusses at a meeting a document to which there is an objection, the originating office may withdraw the document. A notice of withdrawal shall be emailed simultaneously to the Commission Secretary and the Commission. Withdrawal of the document by the originating office nullifies votes previously submitted.

C. Impact of Revisions. If a Commissioner suggests revisions to a circulated document: (1) Commissioners can indicate their agreement with the suggested revisions in their vote submissions (e.g., “I approve subject to the revisions proposed by Commissioner X”); or (2) the Commission can discuss the matter at a Commission meeting. Nothing in this paragraph precludes the originating office or division from withdrawing, revising, and recirculating a document on its own initiative to correct material errors or revise its analyses or recommendations.

D. Timing of Votes; Changing of Votes. A Commissioner may amend, withdraw, or cast a vote at any point up to the official certification (which normally takes place as soon as possible after the voting deadline for any

<sup>1</sup> See also Directive No. 10, Rules of Procedure of the Federal Election Commission.

<sup>2</sup> See also Directive No. 17, Agenda Deadline Procedures and Sunshine Act Regulations.

matter that has received the requisite four votes and has not received an objection). Any vote so amended, withdrawn, or cast will have the same effect as a vote cast by the voting deadline (e.g., an objection to a matter not previously objected to anytime prior to the official certification would place the matter on a meeting agenda<sup>3</sup> or, conversely, the withdrawal of a previously cast objection would negate the need for a meeting discussion if the withdrawal results in no objection remaining and, in the case of a tally vote, at least four approvals).

For any circulated matter that is discussed at a Commission meeting, any Commissioner may cast or change his or her vote at the meeting. Prior votes of individual Commissioners will stand unless changed at the meeting. If an intervening motion is adopted, prior votes are superseded.

E. Certification of Votes. Certifications of tally votes and no-objection items will be prepared by the Commission Secretary as soon as possible after the vote deadline has passed. The original certification will be kept in the Commission Secretary's office and a copy with the official seal will be delivered to the Staff Director, the General Counsel and the Chief Financial Officer.

F. Suspension of Voting Deadlines. Voting deadlines may be suspended by Commission approval of such a recommendation circulated on a 24-hour no-objection basis with the following exceptions: Title 26 certification matters, publication of Non-filers, and setting of filing dates for special elections. The normal voting deadlines for these exceptions shall prevail.

## II. CIRCULATION VOTE PROCEDURES

A. Tally Votes. Sensitive matters shall be circulated on green paper and non-sensitive matters on white paper. Matters for tally votes shall generally be circulated daily and shall have a voting deadline of 4:00 P.M. the second Wednesday following the day of circulation, unless the matter is circulated on a Wednesday, in which case the voting deadline will be the Wednesday following the date of circulation. Public funding certification matters will have a voting deadline of 4:00 P.M. one full business day ("24-hour deadline") from the day of circulation. In the Administrative Fines Program, reason to believe recommendations and final determination recommendations where the respondents do not challenge the reason to believe finding also may be circulated on a 24-hour deadline.

An office or division may request for cause a compression or an extension of the timeframe for matters circulated for tally vote (such as certain expedited advisory opinions and special election notices). If the Staff Director, the General Counsel or the Chief Financial Officer approves the request, the matter shall be circulated with the appropriate deadline indicated on the ballot sheet. Offices should be diligent in submitting matters that conform to established deadlines and only request modifications for exceptional circumstances.

The Chairman, after consultation with the other Commissioners, may extend the voting deadline for a particular matter circulated for tally vote if it appears that a majority of the Commissioners will not have an adequate opportunity to review the material.

B. No-Objection Matters. Sensitive no-objection matters shall be circulated on yellow paper and non-sensitive matters on white paper. No-objection matters shall generally have a 24-hour deadline. An office may request for cause a compression or an extension of the timeframe. If the Staff Director, the General Counsel or the Chief Financial Officer approves the request, the matter shall be circulated with the appropriate deadline indicated on the ballot sheet.

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<sup>3</sup> Subject to deadlines established in Directive No. 17.

The Staff Director, or the Staff Director and the Chief Financial Officer,<sup>4</sup> shall circulate recommendations to the Commission on a 24-hour no-objection basis for competitive selections (including initial appointments, transfers, and temporary and permanent promotions) for all positions at the Senior Level (SL), as well as certain pay matters for SL employees.<sup>5</sup>

Additionally, items that have no substantive recommendations of first impression for consideration by the Commission or documents to which the Commission has given prior acceptance subject to certain modifications may be circulated on a 24-hour no objection basis.

Matters circulated on a 24-hour no-objection basis shall be deemed approved unless an objection is received in the Commission Secretary's Office before the vote is certified. An objection will result in the matter being placed on the agenda of an Open Meeting or Executive Session, whichever is appropriate, according to the deadlines provided in Directive 17. If a vote is taken during the meeting, it supersedes all previous no-objection ballots cast.

C. Non-Filer Circulation. Reports Analysis Division (RAD) recommendations regarding publication of non-filer information will be circulated on goldenrod paper in accordance with Directive 1 immediately upon receipt in the Commission Secretary's Office. Publication will occur immediately after the vote deadline if no Commissioner objects by the vote deadline or as soon as there are four affirmative votes, whichever occurs earlier.

D. Inspector General's Semiannual Report. Section 5 of the Inspector General Act of 1978 (as amended) requires Inspectors General to report to Congress on a semiannual basis for the 6-month periods ending March 31 and September 30. Section 5(b) specifies that the Head of Agency shall be provided the semiannual reports by April 30 and October 31 for "any comment such head determines appropriate" and other information as appropriate. The reports are to be transmitted by the Head of Agency to the Congress within 30 days.

To preserve the independent expression of the Inspector General while assuring the opportunity for any Commissioner to comment, the following circulation procedures are established:

The Inspector General shall circulate his or her final report to the Commission, the Staff Director, the General Counsel and the Chief Financial Officer.

The Staff Director, in coordination with the Chief Financial Officer, will draft the Head of Agency report containing substantive comment on the Inspector General's Report. This report will be prepared for the Chairman's signature and shall be circulated for a tally vote.

In order to include the Head of Agency report in the published Inspector General's semiannual report, the Staff Director shall provide the Inspector General the approved Head of Agency report at least two business days prior to the transmittal of the report to Congress. The Inspector General's Office will then provide the published semiannual report to the Staff Director for his or her transmittal.

### III. DELIVERY AND PHOTOCOPYING OF DOCUMENTS

A. Delivery of Circulation Materials. Matters circulated for tally vote will be delivered to each Commissioner's office and other recipients by the Commission Secretary's Office at 11:00 A.M. daily. Other

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<sup>4</sup> Recommendations for personnel actions that **do not** have budget implications are placed into circulation by the Staff Director; recommendations for personnel actions that **do** have budget implications are placed into circulation jointly by the Staff Director **and** the Chief Financial Officer. See Directive 17.

<sup>5</sup> See Personnel Instruction 319.1, Senior Level Pay.

matters will be delivered to each Commissioner's office and other recipients by the Commission Secretary's Office at 11:00 A.M. and 4:00 P.M., Monday through Thursday. On Friday, there will be a circulation of documents at 12:00 P.M. Expedited or emergency circulations may be made when warranted by special circumstances.

To assure that matters circulated for tally vote are included in the 11:00 A.M. daily circulation, documents are due at the Secretary's Office by 3:00 P.M. the previous working day. For other matters, to assure inclusion in the 11:00 A.M. circulation, documents are due at the Secretary's Office by 5:00 P.M. the previous working day. To assure inclusion in the 4:00 P.M. circulation, documents are due at the Secretary's office by 1:00 P.M. the same day. To assure inclusion in the Friday circulation, documents are due in the Secretary's Office by 10:00 a.m. that day. Documents received after these times will only be included in a circulation at the Commission Secretary's discretion subject to workload constraints.

B. Photocopying. The Administrative Division shall give priority attention to the photocopying of circulation vote materials and shall immediately notify the Commission Secretary of any difficulty in accomplishing requested photocopying services in a timely manner. The Commission Secretary's Office will communicate as soon as practicable to the Administrative Division any known extraordinary circumstances that may affect the production schedule.

#### IV. DOCUMENT SIGNING AUTHORITY ON VOTING BALLOTS<sup>6</sup>

Votes on circulations may be made only via a signed ballot (which includes a ballot submitted electronically or an email indicating the Commissioner's vote) delivered to the Commission Secretary's Office. A Commissioner may not delegate to any person his or her vote or decision-making authority. However, a Commissioner may delegate to a member of his or her staff the authority to affix, including via email, the Commissioner's name to a circulation vote provided the Commissioner has given instructions to the staff member regarding the matter being acted on and the staff member is acting in accordance with those instructions. In this way, the Commissioner is actually casting the vote and the staff member is signing in a purely ministerial capacity. If a Commissioner expressly authorizes a staff member to sign ballots in a ministerial capacity on the Commissioner's behalf, the Secretary shall maintain any written authorization, instructions, or after-the-fact ratification that the Commissioner provides to the Secretary..

No proxy voting shall be permitted in Commission meetings.

#### V. TECHNICAL AND CONFORMING CHANGES

A. Grant of Authority to Originating Office. Whenever the Commission approves a document by majority vote (such as a factual and legal analysis in an enforcement matter, an advisory opinion, a submission to the *Federal Register*, a Final Audit Report of the Commission, etc.), the office handling the matter – in consultation with the offices of the Chair and Vice Chair – shall have authority to make technical and conforming changes to the document subsequent to Commission approval, without additional Commission action, before publishing or transmitting the document in its final form.

B. Grant of Authority to Commission Secretary. Whenever the Commission approves recommendations made by an originating office, or approves a motion in a Commission meeting, the Commission Secretary – in consultation with the office making the recommendations or the office of the Commissioner who makes the motion,

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<sup>6</sup> See Commission Memorandum No. 1247, from General Counsel William Oldaker entitled "Delegation of Document Signing Authority," discussed at the April 7, 1977 Commission Meeting.

as well as the offices of the Chair and Vice Chair – shall, when certifying the Commission's vote, have authority to make technical and conforming changes to the language of the recommendations or the motion without additional Commission action.

C. Definition. A 'technical and conforming change' means a change to the document, recommendation, or motion which -

1. corrects an unambiguous error of spelling, punctuation or grammar;
2. corrects an unambiguous typographical error or omission;
3. corrects an error in an arithmetic operation described in the document or motion itself, or in an accompanying document (e.g., a General Counsel's report describes a civil penalty calculation as 25% of a \$250,000 amount in violation, but then recommends a conciliation agreement with a civil penalty of \$72,500 instead of \$62,500, and the Commission approves the recommendation without further discussion);
4. corrects an unambiguously erroneous or obsolete citation or other reference to authority;
5. conforms the document, recommendation or motion to correct formatting or citation style, including, in the case of documents to be submitted for publication in the *Federal Register*, conformation to *Federal Register* formatting and style rules;
6. corrects words inadvertently omitted or repeated, or makes corrections such as changing 'foreign nation prohibition' to 'foreign national prohibition' when the context and other language in the document make unambiguously clear that 'national' was intended;
7. in documents to be submitted for publication in the *Federal Register*, updates the contact information, dates, and similar information required for publication;
8. conforms the document to edits approved by the Commission to another document in the same matter (for example, when the Commission approves edits to one Factual and Legal Analysis in a series with the clear intention that all other Factual and Legal Analyses in the series be similarly edited, or when the Commission approves edits to a Factual and Legal Analysis and corresponding edits are necessary to factual and legal recitations in a proposed conciliation agreement).

D. Scope. This section shall apply both to documents or recommendations approved on tally vote pursuant to the provisions of this directive and to documents, recommendations, or motions approved in a Commission meeting.

E. Withholding of Authority. The Commission may, in any particular matter, withhold the authority granted by this section by an affirmative vote of four members.

F. Interpretation. Any interpretation of this section that cannot be resolved by an originating office (or, in the case of a motion made in a Commission meeting, the Commissioner who made the motion), the Secretary, and the Office of General Counsel shall be brought to the personal attention of the Staff Director and General Counsel for resolution, except that if

1. the question concerns a motion made in a Commission meeting, or
2. the Staff Director and the General Counsel still cannot resolve the question of interpretation, the question shall be brought to the Chair and Vice Chair for resolution.

This Directive was adopted on December 1, 2016.

A handwritten signature in cursive script, reading "Alec Palmer", is written over a solid horizontal line.

Alec Palmer  
Staff Director