



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

AGENDA DOCUMENT NO. X23-28
AGENDA ITEM
For the meeting of August 8, 2023

MEMORANDUM

TO: The Commission

FROM: Neven F. Stipanovic *NFS by RMK*
Associate General Counsel for Policy

SUBJECT: Policy Division Quarterly Report for FY 2023 Q3 (4/01/2023 — 6/30/2023)

This report provides the Commission with the status of projects in the Policy Division of the Office of the General Counsel during the third quarter of FY 2023 (4/01/2023 — 6/30/2023). The report assesses the Division's work on advisory opinion requests ("AORs"), rulemaking projects, and compliance advice projects during the quarter. The tables set out in Appendices A, B, and C provide specific data regarding AORs, rulemakings, and compliance advice projects, respectively, for the third quarter of FY 2023. The chart in Appendix D contains information on consultations and reviews conducted by the Division during the third quarter of FY 2023.

The Commission issued two advisory opinions during the third quarter and had two AORs pending at the end of the quarter. The Commission also had 20 active pre-AORs pending during the third quarter. Please see Appendix A.

The Commission had 28 open rulemaking matters in Quarter 3 of FY 2023. Of those, 8 were pending rulemakings initiated by the Commission and 20 were rulemaking matters initiated by one or more petitions for rulemaking. Please see Appendix B.

The Division completed a total of 12 formal compliance advice assignments during the third quarter of FY 2023, completing them within an average of 19 days. Please see Appendix C.

The Division routinely and actively engaged in work on other types of matters. Most notably, the Division provided legal advice and assistance to the Commission in the ongoing Audit process revision project. These other types of matters include, but are not limited to, drafting answers to questions from the Ranking Member of the House Administration Committee, consultations for MURs, RAD reporting, Special Election Notices, Information Division communications, and proposed changes to various Commission procedures. Please see Appendix D.

ADVISORY OPINIONS

The Policy Division evaluates its processing of advisory opinion requests (“AORs”) based on the following performance measures:

Internal Performance Measures

- *Screen all advisory opinion requests for completeness within 10 days of receipt and obtain additional information as warranted*
- *Distribute internal and public drafts in a timely manner so that the Commission may issue advisory opinions within the 60-day or 20-day statutory timeframes, or within such other timeframes as may be requested by the Commission*

Performance and Accountability Report and Budget Performance Measures

- *Issue advisory opinions within 60-day and 20-day statutory deadlines 100% of the time*
- *Issue expedited advisory opinions for time-sensitive highly significant requests within 30 days of receiving a complete request, or a shorter time when warranted, 100% of the time*

Advisory Opinion Work in Quarter 3

The tables that follow provide quantitative data regarding the disposition of advisory opinion requests during the most recent fiscal quarter. Table 1 provides the number and disposition of active AORs. Table 2 shows the average number of days that it took from the receipt of complete AORs to a Commission vote. Table 3 provides data on screening pre-AORs.

Table 1 — Active Advisory Opinion Requests

	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23 Q1	FY23 Q2	FY23 Q3
Active AORs	28	27	17	21	9	13	26	6	4	4 ¹
AOs Issued	17	21	11	14	3	9	23	5	2	2 ²
AORs Resulting in Split Decisions³	1	4	2	2	0	2	1	0	0	0
AORs Withdrawn By Requestor	2	1	1	2	1	1	0	0	0	0
AORs Pending at End of FY/Q	8	1	3	3	2	1	3	1	2	2 ⁴
Completed Within Deadline	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

¹ AORs 2023-01 (U.S. Rep. Nannette Diaz Barragan), 2023-03 (Colorado Republican State Central Committee), 2023-04 (Guy for Congress) & 2023-05 (Alamo PAC).

² AORs 2022-01 (U.S. Rep. Nannette Diaz Barragan) & 2023-03 (Colorado Republican State Central Committee).

³ As used in this report, the term “split decision” means that a closeout letter was issued instead of an AO because no AO draft was approved by a vote of four or more Commissioners.

⁴ AORs 2023-04 (Guy for Congress) & 2023-05 (Alamo PAC).

Table 2 — Average Number of Days from Receipt of Complete AOR to Commission Vote

	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23 Q1	FY23 Q2	FY23 Q3
60-Day AORs⁵	48	43	39	44	n/a	49	43	53	48	44 ⁶
60-Day AORs (Deadline Extended)	37	40	29	127	270	164	88	85	n/a	76 ⁷
20-Day AORs⁸	20	22	n/a	20	n/a	n/a	16	n/a	n/a	n/a
20-Day AORs (Deadline Extended)	n/a	n/a	n/a	n/a	n/a	n/a	22	27	n/a	n/a
Expedited AORs	n/a	22	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

⁵ This data does not include 60-day AORs. Any such AORs are noted separately.

⁶ AOR 2023-03 (Colorado Republican State Central Committee) (44 days from receipt of a complete AOR to Commission vote).

⁷ AOR 2023-01 (U.S. Rep. Nannette Diaz Barragan) (76 days from receipt of a complete AOR to Commission vote).

⁸ This data does not include 20-day AORs that received deadline extensions. Any such AORs will be noted separately.

Table 3 — Pre-AORs

	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23 Q1	FY23 Q2
# of Pending Pre-AORs	40	32	28	32	19	28	48	21	20 ⁹
Percentage Screened within 10-Day Deadline	100%	100%	100%	100%	100%	100%	100%	100%	100%
# Made into Complete AORs	22	19	16	16	6	11	32	4	2 ¹⁰

⁹ PreAORs 493 (Colorado Republican State Central State Committee), 536 (Guy for Congress),
540 (U.S. Representative Nanette Diaz Barragán),
, 550 (Alamo PAC)

¹⁰ AORs 2023-04 (Guy for Congress) & 2023-05 (Alamo PAC).

RULEMAKINGS

The Policy Division evaluates its work on rulemaking projects based on the following performance measures:

Internal Performance Measures

- *Draft and circulate NPRMs, Final Rules and Explanations & Justifications (E&Js), and other rulemaking documents within the timeframes determined by the Commission*
- *Coordinate with the Federal Register, the Internal Revenue Service, Small Business Administration, and the Office of Management and Budget (OIRA) to ensure timely compliance with all applicable statutory, regulatory, and other requirements*

Performance and Accountability Report and Budget Performance Measure

- *Complete rulemakings within specific time frames that reflect the importance of the topics addressed, proximity to upcoming elections, and externally established deadlines 100% of the time. External deadlines include those imposed by statute, court opinion, or the Commission.*

Rulemaking Projects in Quarter 3

The Commission had 28 open rulemaking matters in Quarter 3 of FY 2023. Of those, 8 were pending rulemakings initiated by the Commission and 20 were rulemaking matters initiated by one or more petitions for rulemaking. See Tables 1 and 2, below.

Table 1 — Status of Rulemaking Matters – Commission-Initiated

Rulemaking Name (REG #) [Status]	Start Date	ANPRM	NPRM	Public Hearing	Final Rules & E&J/ Documents Circulated to Commission
2. Internet Communication Disclaimers and Definition of “Public Communication” (REG 2011-02)	06/30/11	Approved (10/06/11) Published (10/13/11) Comment period reopened (09/29/16 & 10/03/17)	Approved (03/14/18) Published (03/26/18)	06/27/18- 06/28/18	Approved (12/01/22) Published (12/19/22)
3. Limited Liability Partnerships (REG 2012-02)	11/29/12	--	Approved (12/06/12) Published (12/13/12)	--	--

Rulemaking Name (REG #) [Status]	Start Date	ANPRM	NPRM	Public Hearing	Final Rules & E&J/ Documents Circulated to Commission
4. Technological Modernization (REG 2013-01)	01/18/13	Approved (04/25/13) Published (05/02/13)	Approved (09/29/16) Published (11/02/16) Supplemental Approved (12/01/22) Published (12/09/22)	--	Request for Additional Comment Approved (08/31/22) Published (09/08/22)

Rulemaking Name (REG #) [Status]	Start Date	ANPRM	NPRM	Public Hearing	Final Rules & E&J/ Documents Circulated to Commission
7. Contribution in the Name of Another (REG 2018-06)	11/28/18	--	--	--	Interim Final Rule Approved (05/19/23) Published (05/25/23)

Table 2 — Status of Rulemaking Matters – Petition-Initiated

Rulemaking Matter Name (REG #) [Status]	Petitioner(s)	Petition Received	NOA	Comment Period Closed	NOD	Vote to Initiate a Rulemaking/ Documents Circulated to Commission
1. Independent Expenditure Reporting (REG 2011-01)	Former U.S. Rep. Chris Van Hollen	04/21/11	Approved (06/15/11) Published (06/21/11)	8/22/11	--	Vote to approve NPRM on 12/15/11 (failed 3-3)

Rulemaking Matter Name (REG #) [Status]	Petitioner(s)	Petition Received	NOA	Comment Period Closed	NOD	Vote to Initiate a Rulemaking/ Documents Circulated to Commission
2. Segregated Party Accounts (REG 2014-10)	1. Perkins Coie LLP (Political Law Group) 2. Campaign Legal Center	01/08/16 08/05/19	Approved (09/15/16) Published (10/7/16)	01/30/17	--	Vote to refer to Regulations Committee for further work (approved 6-0) (12/17/15)
3. Administrative Fines and Forms (REG 2015-01)	Attorneys: Bob Bauer Allen Dickerson Ben Ginsberg Don McGahn Larry Gold Bob Lenhard Brad Smith	01/23/15	Approved (03/19/15) Published (03/30/15)	05/29/15	--	--