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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 29, 2000

CHAIRMAN

The Honorable Albert Gore, Jr.  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

In accordance with Public Laws 94-409 and 104-66 (5 U.S.C. 552b(j)), I am enclosing the U.S. Nuclear Regulatory Commission's Annual Report of the Administration of the Government in the Sunshine Act for Calendar Year 1999.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Meserve".

Richard A. Meserve

Enclosure: As stated

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The Honorable J. Dennis Hastert  
Speaker of the United States  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

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# ANNUAL REPORT

## GOVERNMENT IN THE SUNSHINE ACT

1. AGENCY NAME: U.S. Nuclear Regulatory Commission

2. CALENDAR YEAR: 1999

3. CHANGES IN POLICIES AND PROCEDURES DURING PAST YEAR

In May 1999, the Commission issued a notice that it intended to implement a rule published in 1985, to amend its regulations applying the Sunshine Act. The amendment changed the definition of "meeting" to incorporate the Supreme Court's verbatim definition from FCC v. ITT World Communications, 466 U.S. 364 (1984), to permit certain non-Sunshine Act discussions which had been foreclosed previously by the NRC's unduly restrictive interpretation of the Sunshine Act. Following receipt of public comment, the Commission published a Federal Register notice stating that it would implement the rule commencing in July 1999.

4. MEETINGS: (See definitions in Appendix A)  
(January 1, 1999 through December 31, 1999)

A.	Total Number of Open .....	75 (82%)
B.	Total Number of Closed .....	17 (18%)
C.	Total Number of Partially Open/Closed .....	0 (0%)
	Total Number of Meetings .....	92

The above meetings are counted by the number of separate agenda topics discussed as described in Appendix A. Appendix B contains a tabulation of open and closed meetings per month for CY 1999. Throughout this report, meeting numbers quoted are counts of individual items.

5. EXEMPTIONS USED FOR CLOSING OR PARTIALLY CLOSING MEETINGS:  
(Number of Times Used)

A.	Exemption 1 .....	6
	Exemption 5 & 7 .....	4
	Exemption 2 & 6 .....	5
	Exemption 9 .....	5
	Total .....	20

6. DESCRIPTION OF LITIGATION AND FORMAL COMPLAINTS

Litigation against the NRC is pending in the U.S. Court of Appeals for the D.C. Circuit. In September 1999, a petition for review was filed by the National Resources Defense Council, Inc., et al., challenging the Commission's decision to implement its 1985 rule changing the definition of "meeting." Briefs have been filed and Oral Argument is scheduled for May 2000.

7. ADDITIONAL INFORMATION:

This report was prepared in the Office of the Secretary, U.S. Nuclear Regulatory Commission. Comments or inquiries on this report or related matters should be addressed to:

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Telephone inquiries can be made to the Office of the Secretary by dialing (301) 415-1968.

APPENDICES:

- A. Definition of Meetings
- B. Tabulation of Open and Closed Meetings by Month
- C. Tabulation of Meetings by Days' Notice

ATTACHMENT:

- A. STAFF REQUIREMENTS - COMEXM-98-006/COMJSM-98-001 - SUNSHINE ACT PRACTICES
- B. FEDERAL REGISTER NOTICE - DATED MAY 10, 1999, GOVERNMENT IN SUNSHINE ACT REGULATIONS
- C. FEDERAL REGISTER NOTICE - DATED JULY 22, 1999, GOVERNMENT IN SUNSHINE ACT REGULATIONS

## APPENDIX A

### Definition of Meeting

#### NRC's Statutory Meeting Requirement

The Nuclear Regulatory Commission is a five-member independent regulatory commission established by the Energy Reorganization Act of 1974 (P.L. 93-408). It is responsible for ensuring the protection of the public health and safety through the licensing and regulation of the uses of nuclear materials. Section 201(a)(1) of the Energy Reorganization Act, 42 U.S.C. 5841 (a)(1), provides that "[a]ction of the Commission shall be determined by a majority vote of the members present." In order to conduct meetings under the Government in the Sunshine Act, a quorum must be present.

#### Meetings Defined by Sunshine Act

On May 10, 1999, the Commission issued a notice of its intent to implement a 1985 rule amending its regulations on the definition of "meeting" to incorporate the Supreme Court's verbatim definition from FCC v. ITT World Communications, 466 U.S. 364 (1984). See Attachments A and B. This would permit certain non-Sunshine Act discussions previously foreclosed by the NRC's unduly restrictive interpretation of the Sunshine Act. "Meeting" is defined as:

the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§9.105, 9.106, or 9.108(c) do not constitute 'meetings' within this definition.

(10 CFR Section 9.101(c) of NRC's Sunshine Regulations) This definition would properly allow some discussions among three or more Commissioners to be held in a non-public setting. The 1985 rule proved controversial, however, and since both the former Administrative Conference of the United States (ACUS) and the American Bar Association (ABA) had conducted studies on the Sunshine Act and the FCC decision, the Commission decided to withhold action on the matter and defer actual implementation until it had an opportunity to assess these views.

For CY 1999, the Commission had asked the NRC Office of the General Counsel to prepare a notice of intent to implement the 1985 Sunshine Act rule. Public comments were received and analyzed and on July 22, 1999 the Commission issued a Federal Register notice announcing its decision to implement the 1985 rule commencing in July 1999. See Attachment C.

#### Tabulation of Meetings Held Under the Sunshine Act

For the purpose of tabulating meetings in this report, generally one agenda item is scheduled for each meeting or briefing. Accordingly, each session is counted as a separate meeting under the NRC method of tabulating meetings in this report even if several sessions or briefings occur on the same day. Appendix B includes counts of meeting statistics reported using the above definition and methods.

APPENDIX B

**TABULATION OF OPEN AND CLOSED  
MEETINGS BY MONTH**

<u>CY 1999</u>	<u>Open</u>	<u>Closed</u>	<u>Open/Closed</u>	<u>Total</u>
Jan	7	1	0	8
Feb	6	3	0	9
Mar	13	5	0	18
Apr	5	1	0	6
May	6	2	0	8
Jun	9	1	0	10
Jul	7	1	0	8
Aug	3	2	0	5
Sep	5	0	0	5
Oct	4	0	0	4
Nov	5	1	0	6
Dec	5	0	0	5
Year to Date	75	17	0	92

APPENDIX C

**TABULATION OF MEETINGS  
BY DAYS' NOTICE**

January 1, 1999 - December 31, 1999

<u>DAYS' NOTICE</u>	<u>OPEN</u>	<u>CLOSED</u>	<u>OPEN/CLOSED</u>	<u>TOTAL</u>
12 or more	44	9	0	53
11	0	0	0	0
10	0	1	0	1
9	1	0	0	1
8	1	0	0	1
7	<u>6</u>	<u>1</u>	<u>0</u>	<u>7</u>
Subtotal	52	11	0	63
6	0	0	0	0
5	2	0	0	2
4	1	0	0	1
3	0	0	0	0
2	0	0	0	0
1	0	0	0	0
Less than 1	<u>20</u>	<u>6</u>	<u>0</u>	<u>26</u>
Subtotal	23	6	0	29
GRAND TOTAL	<u>75</u>	<u>17</u>	<u>0</u>	<u>92</u>