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COMMISSION MOVES TO REVISE RULES GOVERNING PRIVATE VERSUS PUBLIC MEETINGS

The Nuclear Regulatory Commission, in a move aimed at improving efficiency and collegiality, has decided to propose a final rule to allow certain meetings of three or more of the NRC's five Commissioners to be held in private.

Under current practice, no more than two Commissioners may meet to discuss business in most instances unless the meeting is open to the public.

What is contemplated is to exclude from the provisions of the Government in the Sunshine Act of 1976 such things as: technical, informational briefings in which the Commissioners do not deliberate on any particular proposal for action; generalized "big picture" discussions; preliminary, exploratory discussions to generate ideas; spontaneous, casual discussions of mutual interest; discussions of business-related matters not linked to any specific proposal for action; and discussions to enhance the effectiveness of communications among the Commissioners and their offices.

As one example of what is done now, a Commissioner might ask the staff to provide a closed-door technical briefing on a particularly complex issue. One other Commissioner would be allowed to attend without making it open for public observation. Other Commissioners, if they desired the same briefing, would have to arrange separate sessions.

It is not the Commission's intention to treat any public meetings currently being held under the Sunshine Act as non-public sessions.

In 1985, the agency advanced an interim rule that would have permitted certain meetings of three or more Commissioners in private. That move followed a unanimous 1984 Supreme Court ruling that opened the way to such an interpretation of the requirements of the Sunshine Act. Among other things, the Court declared: "Congress...recognized that the administrative process cannot be conducted entirely in the public eye."

In promulgating an interim rule in 1985, the Commission said: "The ability to hold preliminary briefings can help assure that Commissioners are well informed about subject areas well before any particularized proposal reaches them for consideration. The ability to hold free-flowing discussions of a variety of problems likely to face the agency, or to get together for brainstorming sessions, can foster both collegiality and sound management."

The Commission decided not to implement the interim rule when concerns arose in Congress.

The Commission now has decided the time is right to revisit the issue and propose a final rule. It would provide Congress with written implementation procedures that explain, with concrete examples, what kind of gatherings would be closed, and with assurances that Commission policy decisions would not be made at such gatherings. Furthermore, for six months, a record would be kept of the date, subject and participants in all non-Sunshine Act informal sessions of three or more Commissioners. After six months, the Commission will consider whether the record-keeping practice might usefully continue.

The Commission directed the NRC General Counsel to prepare a final rule consistent with this decision. It is to be published in the Federal Register within 30 days, with the public to have 30 days to comment before a final rule goes into effect..

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