

Nuclear Regulatory Commission

10 CFR Part 7

RIN 3150-AH02

Federal Advisory Committee Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on the Federal Advisory Committee Act (FACA) to conform with General Services Administration regulations. In this final rule, the Commission clarifies its practices regarding Federal advisory committee exemptions from the FACA requirements.

EFFECTIVE DATE: (INSERT DATE 30 DAYS AFTER PUBLICATION)

FOR FURTHER INFORMATION CONTACT: John Szabo, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone 301-415-1610, e-mail JLS@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Voluntary Consensus Standards
- III. Finding of No Significant Environmental Impact: Categorical Exclusion

- IV. Paperwork Reduction Act Statement
- V. Regulatory Analysis
- VI. Regulatory Flexibility Certification
- VII. Backfit Analysis
- VIII. Small Business Regulatory Enforcement Fairness Act

I. Background

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by Federal agencies. Section 7(c) of the Act requires the Administrator of the General Services Administration (GSA) to establish administrative guidelines and management controls applicable to advisory committees. Section 8(a) of the Act directs the head of each Federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. Agency guidelines and management controls must be consistent with GSA's directives.

In 1975, the NRC promulgated its Advisory Committee regulations as 10 CFR part 7 (40 FR 8774; March 3, 1975). A revision of Part 7 was published on June 27, 1989 (54 FR 26947), in order to maintain consistency between NRC and GSA FACA regulations, which had been issued on December 2, 1987 (52 FR 45929). The GSA issued a revision of its regulations, effective August 20, 2001 (66 FR 37728; July 19, 2001), providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act. GSA's new regulations reflect recent legislative changes, shifts in Federal policy, and Federal court decisions issued since the GSA regulations were issued in 1987.

The Commission determined that NRC's advisory committee regulations should be revised to make them more consistent with the new GSA FACA regulations. On August 8, 2002, the Commission published for public comment a proposed rule revising its FACA Regulations (67 FR 51501). The NRC received no comments and is now publishing its proposal as a final rule.

The following are the most significant changes that are made to current NRC regulations by this final rule:

1. The meetings of NRC advisory committee subcommittees are exempted from FACA requirements unless the subcommittee reports and makes recommendations directly to the agency or its recommendations are adopted by its parent advisory committee without full deliberations by the parent committee.

2. There is an exemption from FACA requirements for meetings composed only of Federal employees and officials or employees of State, local, and tribal governments to exchange views, information, or advice on the management or implementation of Federal programs in which they share responsibilities, as provided in section 204(b) of the Unfunded Mandates Act of 1995.

3. There is an exemption from FACA requirements for meetings between NRC employees and committees or groups not actually managed or controlled by the Government which were created by a non-Federal entity and meetings with NRC contractors, applicants, or licensees to discuss specific matters involving the contract or the Commission's efforts to ensure compliance with regulations.

4. The definition of a “utilized” committee is amended to mean a group or committee not established by the Federal Government but whose operations are managed or controlled by a Federal agency.

5. There is a de-emphasis of the goal of achieving “consensus” as an important factor in determining whether an advisory group is subject to FACA. Instead, the final rule provides that whether there is a group deliberative process is a more important consideration than whether the group seeks to achieve consensus.

6. The definition of an “operational committee” is amended to mean a group performing operational functions specifically authorized by statute or Presidential directive, such as making or implementing Governmental decisions or policy, as long as the group does not become primarily advisory in nature.

7. New definitions of “discretionary” and “non-discretionary” committees are created. “Non-discretionary” committees are defined as advisory committees required by statute or Presidential directive, while “discretionary” committees are defined as those established under the authority of an agency head or authorized by statute, but not required by Congress.

8. The definition of advisory committee meeting is amended to include a gathering of advisory committee members through electronic means, such as by teleconference, video conference, or the Internet.

9. A provision is added to the effect that the Commission may periodically invite feedback from the public regarding the effectiveness of NRC advisory committees.

10. The amendments provide that the NRC is required to consult with the GSA Committee Management Secretariat prior to the establishment, renewal, or reestablishment of

an advisory committee, in addition to current requirements on seeking the Secretariat's review.

11. There is added a requirement for reasonable access for persons with disabilities to attend advisory committee meetings.

II. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the Commission is clarifying its practices regarding Federal advisory committees. This action does not constitute the establishment of a technical standard that requires consideration of the use of voluntary consensus standards developed by voluntary consensus standards bodies.

III. Finding of No Significant Environmental

Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the proposed regulation.

IV. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

V. Regulatory Analysis

In 2001, the General Services Administration (GSA) published amended Federal Advisory Committee Act (FACA) regulations providing administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Act (66 FR 37728; July 19, 2001). This final rule conforms NRC regulations with the amended GSA regulations issued in 2001. The final rule does not have a significant impact on state and local governments, particular geographical regions, or health, safety and the environment; nor does it impose substantial costs on licensees, the NRC or other Federal agencies. This constitutes the regulatory analysis for this final rule.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule does not impose any obligation or have any financial impact on entities, including any regulated entities that may be "small entities,"

as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)), or under the size standards established by the NRC in 10 CFR 2.810.

VII. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter 1.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 7

Advisory committees, Government in the Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 7.

PART 7–ADVISORY COMMITTEES

1. The authority citation for part 7 continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App.).

2. In § 7.1, paragraph (d) is revised and paragraphs (e)(1), (e)(2) and (i) are added to read as follows:

§ 7.1 Policy.

* * * * *

(d)(1) An NRC advisory committee shall be established only:

(i) When establishment of the committee is required by law;

(ii) When the Commission determines that the committee is essential to the conduct of NRC business; or

(iii) When the information to be obtained is not available through an existing advisory committee or a source within the Federal Government.

(2) Before establishing an advisory committee, the Commission shall consider whether:

(i) Committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business;

(ii) The information to be obtained is available through another source within the Federal Government;

(iii) The committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(iv) The committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission. The advice or recommendations of an advisory committee should be the result of the advisory committee's independent judgment.

(e) * * *

(1) An advisory committee not required to be established by statute terminates no later than two years after its establishment or last renewal, unless renewed.

(2) An advisory committee required to be established by statute terminates upon the expiration of the time explicitly specified in the statute or implied by operation of the statute.

* * * * *

(i) The Commission may periodically invite feedback from the public regarding the effectiveness of NRC advisory committees.

3. Section 7.2 is revised to read as follows:

§ 7.2 Definitions.

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Administrator means the Administrator of General Services.

Advisory committee means any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, that is established by statute for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government, or that is established or utilized by the President or any agency official to obtain advice or recommendations on issues

or policies that fall within the scope of his or her responsibilities, except that the term “advisory committee” does not include the following advisory meetings or groups:

(1) Any group composed wholly of full-time officers or employees of the Federal Government;

(2) Any group specifically exempted from the Act or these regulations by an Act of Congress;

(3) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to any State or local government unit or an official thereof;

(4) Any group that performs primarily operational functions specifically provided by law. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy, as long as the group does not become primarily advisory in nature;

(5) Any meeting initiated by the President or one or more Federal employees for the purpose of obtaining advice or recommendations from one individual;

(6) Any meeting between an NRC employee with a non-governmental individual or group where advice or recommendations are provided by the attendees on an individual basis and are not sought from the group as a whole;

(7) Any meeting with a committee or group created by a non-Federal entity that is not managed or controlled by the President or a Federal employee;

(8) Any meeting of two or more advisory committee members convened solely to:

(i) Discuss administrative matters relating to the operation of their advisory committee;

(ii) Receive administrative information from a Federal employee;

(iii) Gather information or conduct research for a chartered advisory committee to analyze relevant issues and facts for their advisory committee; or

(iv) Draft proposed position papers for deliberation by their advisory committee;

(9) Any meeting with a group initiated by the President or by one or more Federal employees for the purpose of exchanging facts or information;

(10) Any meeting attended only by full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their own behalf), acting in their official capacities. However, the purpose of the meeting must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration;

(11) Any meeting of an NRC contractor, applicant, or licensee with an NRC employee to discuss specific matters involving the solicitation, issuance, or implementation of a contract or the Commission's effort to ensure compliance with its regulations; and

(12) Any meeting of a subcommittee or other subgroup of an advisory committee where the subgroup's recommendations will be reviewed by its parent advisory committee.

Agency means an agency of the Government of the United States as defined in 5 U.S.C. 551(1).

Commission means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. 5841, (88 Stat. 1242).

Committee Management Secretariat means the organization established within the General Services Administration, pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator of the General Services Administration under the Act and Executive Order 12024 (42 FR 61445; December 1, 1977).

Committee member means an individual who is appointed to serve on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

Committee meeting means any gathering of advisory committee members (whether in person, by telephone, or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Designated Federal Officer means a government employee appointed, pursuant to § 7.11(a), to chair or attend each meeting of an NRC advisory committee to which he or she is assigned.

Discretionary advisory committee means any advisory committee that is established, but not required to be established, under the authority of an agency head, and its establishment or termination is within the legal discretion of an agency head.

GSA means the General Services Administration.

Non-discretionary advisory committee means any advisory committee either required by statute or Presidential directive. A non-discretionary committee required by statute generally is identified specifically in a statute by name, purpose, or functions and its establishment is mandated.

NRC means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

NRC Advisory Committee Management Officer means the individual appointed, pursuant to § 7.10(a), to supervise and control the establishment and management of NRC advisory committees.

NRC Public Document Room means the Public Document Room maintained by the NRC at 11555 Rockville Pike, Rockville, Maryland 20852-2738.

Presidential advisory committee means an advisory committee established by statute or directed by the President to advise the President.

Staff member means any individual who serves in a support capacity to an advisory committee.

Subcommittee means a subgroup of an advisory committee, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized committee means a committee or group not established by the Federal Government, but whose operations are managed or controlled by a Federal agency.

4. Section 7.5 is revised to read as follows:

§ 7.5 Consultation with Committee Management Secretariat on establishment of advisory committees; advisory committee charters.

(a) Before establishing a discretionary advisory committee, the NRC shall consult with the Committee Management Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Committee Management Secretariat may share its knowledge and experience with the NRC on how best to make use of the

proposed committee, alternate methods of attaining the agency's purpose, or whether a pre-existing advisory committee performs similar functions. Such consultation should include the transmittal of the proposed committee charter and the following information:

(1) A request for a review of the proposed charter;

(2) An explanation stating why the committee is essential to the conduct of NRC business and is in the public interest;

(3) An explanation stating why the committee's functions cannot be performed by the NRC, an existing NRC advisory committee, or other means (such as a public hearing); and

(4) A description of NRC's plan to attain balanced membership on the committee. The plan must ensure that, in the selection of members for the advisory committee, the NRC will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. For purposes of attaining balance in an NRC advisory committee's membership, the Commission shall consider for membership interested persons and groups with professional, technical, or personal qualifications or experience that will contribute to the functions and tasks to be performed.

(b) Each proposed committee charter submitted for review pursuant to paragraph (a) of this section shall contain the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The NRC official to whom the committee will report;

(5) The NRC office responsible for providing support for the committee;

(6) A description of the duties that the committee will perform, and if such duties are not solely advisory, a specification of the authority for the functions that are not advisory;

(7) The estimated annual operating costs, in dollars and person years, for the committee;

(8) The estimated number and frequency of committee meetings; and

(9) The committee's termination date, if less than two years from the date of the committee's establishment.

(c) The requirements of this part, including the requirements of paragraphs (a) and (b) of this section, shall apply to any subcommittee that functions independently of the parent advisory committee (such as by making recommendations directly to the agency rather than to the parent advisory committee), regardless of whether the subcommittee's members are drawn in whole or in part from the parent advisory committee.

(d) After the Committee Management Secretariat has notified the Commission of the results of its review of a proposal to establish or utilize an NRC discretionary advisory committee, submitted pursuant to paragraph (a) of this section, the Commission shall notify the Committee Management Secretariat whether the advisory committee is actually being established. Filing of the advisory committee charter pursuant to § 7.8 shall be deemed to fulfill this notification requirement. If the advisory committee is not being established, the Commission shall so advise the Committee Management Secretariat, stating whether NRC intends to take any further action with respect to the proposed advisory committee.

(e) The date of filing of an advisory committee charter pursuant to § 7.8 shall be added to the charter when such filing takes place, shall appear on the face of the charter, and shall constitute the date of establishment, renewal, or reestablishment of the committee.

5. Section 7.6 is revised to read as follows:

§ 7.6 Amendment to advisory committee charters.

(a) Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission.

(b) Any proposed changes made to a current charter for an NRC advisory committee shall be coordinated with the General Counsel to ensure that they are consistent with applicable legal requirements. When a statute or Executive Order that directed or authorized the establishment of an advisory committee is amended, those sections of the advisory committee's charter affected by the amendments shall also be amended.

(c)(1) The charter of an NRC advisory committee established under general agency authority may be amended when the Commission determines that the existing charter no longer reflects the objectives or functions of the committee. Such changes may be minor (such as revising the name of the advisory committee or modifying the estimated number or frequency of meetings), or they may be major (such as revising the objectives or composition of the committee).

(2) The procedures in paragraph (b) of this section shall be used in the case of charter amendments involving minor changes. A proposed major amendment to the charter of an advisory committee established under general agency authority shall be submitted to the Committee Management Secretariat for review with an explanation of the purpose of the changes and why they are necessary.

(3) A committee charter that has been amended pursuant to this paragraph is subject to the filing requirements set forth in § 7.8.

(4) Amendment of an existing advisory committee charter pursuant to this paragraph does not constitute renewal of the committee for purposes of § 7.7.

6. In § 7.7, paragraphs (a)(3) and (b)(2) are revised to read as follows:

§ 7.7 Termination, renewal, and rechartering of advisory committees

(a) * * *

(3) Its duration has been otherwise designated by law.

The NRC Committee Management Officer shall notify the Committee Management Secretariat of the effective date of termination of any advisory committee that has been terminated by the NRC.

(b) * * *

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in § 7.5, except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

7. Section 7.8 is revised to read as follows:

§ 7.8 Charter filing requirements.

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer designated in accordance with § 7.10.

(a) To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The Commission;

(2) The Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, S.E., Washington, DC 20540-4172; and

(4) The Committee Management Secretariat, indicating the date the charter was filed with the congressional committees.

(b) Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) Subcommittees that report directly to a Federal employee or agency must comply with this subpart.

8. Section 7.9 is revised to read as follows:

§ 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.

(a) After the Commission has received notice from the Committee Management Secretariat that its review of a proposal to establish, reestablish, renew, or utilize an NRC discretionary advisory committee has been completed, the Commission shall publish a notice in the Federal Register that the committee is being established, reestablished, renewed, or utilized. In the case of a new committee, the notice shall also describe the nature and purpose

of the committee and shall include a statement that the committee is necessary and in the public interest.

(b) Notices required to be published pursuant to paragraph (a) of this section shall be published at least 15 calendar days before the committee charter is filed pursuant to § 7.8, except that the Committee Management Secretariat may approve publication for less than 15 days for good cause shown. The 15-day advance notice requirement does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

9. In § 7.10, paragraphs (a), (b)(5), (b)(6), (b)(7) and (c)(2) are revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

(a) The Chairman of the Commission or designee shall appoint an NRC Advisory Committee Management Officer to carry out the functions specified in paragraph (b) of this section.

(b) * * *

(5) Carry out, on behalf of the NRC, the provisions of the Freedom of Information Act (5 U.S.C. 552) and implementing NRC regulations (10 CFR part 9, subpart A) with respect to such reports, records, and other papers;

(6) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations at 10 CFR part 9, subpart A, copies of the records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public

inspection and copying at the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both, until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

* * * * *

(c) * * *

(2) Copies of NRC's portion of the Committee Management Secretariat Annual Comprehensive Review of Federal advisory committees required by section 7(b) of the Act;

* * * * *

10. Section 7.11 is revised to read as follows:

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission or designee shall appoint a Designated Federal Officer or alternate Designated Federal Officer for each NRC advisory committee. The individual holding either position must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) All meetings of an NRC advisory committee must be convened or approved by the committee's Designated Federal Officer or alternate, and the agenda for each committee

meeting (except a meeting of a Presidential advisory committee) must be approved by that individual.

(c) An NRC advisory committee may not hold a meeting in the absence of its Designated Federal Officer or alternate.

(d) It shall also be the responsibility of the Designated Federal Officer or alternate to--

(1) Attend all meetings of the committee for which he or she has been appointed;

(2) Adjourn the meetings of the committee when such adjournment is in the public interest;

(3) Chair the meetings of the committee when so directed by the Commission;

(4) Ensure compliance with the requirements of § 7.13 regarding minutes of meetings of the committee; and

(5) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) and ensure their availability at the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both.

11. In § 7.12, paragraphs (a), (c), and (e) are revised, and paragraph (f) is added to read as follows:

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public, including persons with disabilities. Any advisory committee meeting conducted in whole or part by teleconference, video conference, the Internet, or other electronic medium must comply with this section. The size of the meeting room must be sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public, except that the provisions of this

paragraph relating to the room size shall not apply to any part of an NRC advisory committee meeting that has been closed pursuant to § 7.15.

* * * * *

(c)(1) Except when the President or designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the Federal Register:

- (i) The exact name of the advisory committee as chartered;
- (ii) The time, date, place, and purpose of the meeting;
- (iii) A summary of the agenda of the meeting;
- (iv) Whether all or part of the meeting is open to the public; and
- (v) The name and telephone number of the Designated Federal Officer, alternate, or other responsible agency employee who may be contacted for additional information concerning the meeting.

(2) If any part of the meeting is closed, the notice shall provide the reasons for the closure, citing the specific matter that has been determined to justify the closure under §7.15. The Commission may publish a single notice announcing multiple meetings; however, a meeting may not be announced so far in advance as to prevent the public from being adequately informed of an NRC advisory committee's schedule.

* * * * *

(e) In addition to notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as press releases, posting the information on the NRC Web

site, <http://www.nrc.gov>, or notice by mail, to inform the public of advisory committee meetings. To that end, the Designated Federal Officer or alternate for each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

(f) Meetings of a subcommittee whose recommendations will not be reviewed by its parent advisory committee shall be conducted in accordance with all notice and openness requirements contained in this section and in §§ 7.13, 7.14, and 7.15.

12. In § 7.13, paragraph (c) is revised to read as follows:

§ 7.13 Minutes of advisory committee meetings.

* * * * *

(c) The chairperson of an NRC advisory committee shall certify the accuracy of the minutes of each of the committee's meetings.

* * * * *

13. Section 7.14 is revised to read as follows:

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both. To provide the public a meaningful opportunity to comprehend fully the work undertaken by an NRC advisory committee, advisory committee records should be available to the public as soon as practicable. Members of the public or other interested parties may review non-exempt advisory committee records without filing a request for these records under the Freedom of Information Act.

(c) Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (44 U.S.C. Chapters 21, 29-33) and regulations issued by the National Archives and Records Administration (see 36 CFR Parts 1220, 1222, 1228, and 1234), or in accordance with the Presidential Records Act (44 U.S.C. Chapter 22).

14. Section 7.15 is revised to read as follows:

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the committee shall submit a written request for closure to the General Counsel, citing specific exemptions listed in the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104, that justify the closure. The request shall provide the General Counsel sufficient time

for review in order to make a determination prior to publication of the meeting notice pursuant to § 7.12.

(b) If the General Counsel finds that the request for closure is consistent with the provisions of the Government in the Sunshine Act and this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing, citing the applicable exemptions in the Government in the Sunshine Act (as implemented by 10 CFR 9.104).

(c) Except when the President or designee determines in writing that no notice should be published for reasons of national security, the Secretary of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request. If such a determination has been issued, the meeting notice published in the Federal Register should comply with the provisions of § 7.12 applicable to closed meetings.

§ 7.16 [Amended].

15. In § 7.16, amend paragraph (b) by removing the reference to “7.27(a)” and adding, in its place, a reference to “7.17(a)”.

16. Section 7.17 is revised to read as follows:

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Committee Management Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees consistent with instructions provided

by the Committee Management Secretariat. A copy of the report shall be made available at the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both. The information provided by the Commission regarding its advisory committees is contained in the Committee Management Secretariat's report which is available on its Web site, <http://www.gsa.gov/committeemanagement>.

(b) Any NRC advisory committee holding closed or partially closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report shall be made available at the NRC Web site, <http://www.nrc.gov>, at the NRC Public Document Room, or both.

(c) Subject to the Freedom of Information Act (5 U.S.C. 552) and implementing NRC regulations (10 CFR part 9, subpart A), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by consultants, shall be filed for public inspection and use with the Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, S.E., Washington, DC 20540-4172.

17. Section 7.18 is revised to read as follows:

§ 7.18 Appointment, compensation, and expense reimbursement of advisory committee members, staffs, and consultants.

(a) Unless otherwise provided by law, advisory committee members serve at the pleasure of the Commission and their terms are at the sole discretion of the Commission.

(b) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants.

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the committee member; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate is expressly allowed by another statute. The Chairman may authorize a rate of basic pay in excess of the maximum rate of basic pay established for NRC's General Grade Salary Schedule. This maximum rate includes an applicable locality payment. The Commission may pay advisory committee members on either an hourly or a daily rate basis. The Commission may not provide additional compensation in any form, such as bonuses or premium pay. The Chairman may not delegate the responsibility for making a determination that a higher rate of pay than that established by NRC's General Grade Salary Schedule is necessary and justified for an NRC advisory committee member, and such a determination must be reviewed annually.

(d)(1) Each NRC advisory committee staff member may be paid at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule in which the staff member's position would appropriately be placed.

(2) A staff member of an NRC advisory committee may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG-15 under NRC's General Grade Salary Schedule, unless the Chairman of the Commission determines that the staff member's position would appropriately be placed at a grade higher than GG-15, provided that in establishing rates of compensation, the Chairman shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines. The Commission may provide advisory committee staff members with additional compensation, such as bonuses or premium pay, as long as the aggregate compensation does not exceed the rate of pay for Executive Schedule level IV.

(3) A Federal employee may serve as a staff member of an NRC advisory committee only with the knowledge of the advisory committee's Designated Federal Officer or alternate and the approval of the employee's direct supervisor. A staff member who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(e)(1) Subject to the limitations in paragraph (2), the following factors shall be considered in determining an appropriate rate of pay for a consultant to an NRC advisory committee:

(i) The qualifications required of the consultant, and

(ii) The significance, scope, and technical complexity of the work for which his services are required;

(2) The rate of pay for an NRC advisory committee consultant may not be higher than the maximum rate of basic pay established by NRC's General Salary Schedule (that is, the GG-15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate is expressly allowed by another statute. The appointment and compensation of NRC experts and consultants must be in conformance with applicable regulations issued by the United States Office of Personnel Management (see 5 CFR part 304).

(f) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

(g) Nothing in this section shall—

(1) Prevent any full-time Federal employee who provides services to an NRC advisory committee from receiving compensation at a rate at which he or she would otherwise be compensated as a full-time Federal employee.

(2) Prevent any individual who provides services to an NRC advisory committee, and who immediately before providing such services was a full-time Federal employee, from receiving compensation at a rate at which he or she was compensated as a full-time Federal employee.

(3) Affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Grade Salary Schedule and evaluation system.

18. Section 7.19 is revised to read as follows:

§ 7.19 Advisory committee members with disabilities.

An NRC advisory committee member who is disabled may be provided services by a personal assistant while performing advisory committee duties, if the member—

(a) Qualifies as disabled under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794) ; and

(b) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of NRC.

19. Section 7.20 is revised to read as follows:

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The Designated Federal Officer or alternate for each NRC advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

Dated at Rockville, Maryland, this 16th day of December 2002.

For the Nuclear Regulatory Commission.

/RA/

William D. Travers,
Executive Director for

Operations.G:\LC\Szabo\FACA FedReg FINAL