



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-000

OFFICE OF THE
INSPECTOR GENERAL

June 9, 2010

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: *Stephen D. Dingbaum*
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SUBJECT: MEMORANDUM REPORT: AUDIT OF NRC'S PROCESS
FOR CLOSED MEETINGS (OIG-10-A-14)

The Office of the Inspector General (OIG) conducted an audit to determine if the Nuclear Regulatory Commission's (NRC) process for conducting meetings that are closed to the public hinders the transparent transaction of nuclear regulation. To increase accountability and promote informed public participation, the Federal Government promotes openness and transparency in the sharing of information. NRC is implementing these concepts into its nuclear regulatory activities. NRC has a policy and process in place to share information regarding closed meetings between staff and external stakeholders (referred to in this report as closed staff meetings). Based on this audit, OIG found that openness and transparency in NRC's process for closed meetings can be enhanced by:

- A. Defining what constitutes a "meeting."
- B. Making closed staff meeting notices and summaries accessible by the public.
- C. Issuing closed staff meeting notices and summaries in a timely manner.

These improvements would remove the ambiguity in NRC's guidance for closed staff meetings. Lack of clarity in the guidance may impede agency staff from effectively and consistently complying with the agency's openness goal. Moreover, without these improvements, the agency risks a public perception that NRC does not regulate in an open and transparent manner. This report makes two recommendations aimed at enhancing NRC's process for closed meetings.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this report. Actions taken or planned are subject to OIG followup as stated in Management Directive (MD) 6.1.

BACKGROUND

In 1977, Congress enacted the *Government in the Sunshine Act* (the Sunshine Act) with the goal of enhancing openness in the decisionmaking process of Federal Government agencies. The Sunshine Act states that when Federal agency heads deliberate on behalf of their respective organizations, these meetings must be open to the public. However, the Sunshine Act provides exemptions allowing for certain meetings to be closed to the public. Each Federal agency is required to document the reasons why a meeting was closed; give notice of the closed meeting; keep transcripts, electronic recordings, or minutes of the closed meeting; and report to Congress annually on compliance with these requirements. The Sunshine Act provisions apply to meetings in which NRC Commission members participate; currently, the agency is meeting the reporting requirements of the act.

In addition to meetings between Commission members and stakeholders, NRC staff meet regularly with various external stakeholders (e.g., NRC licensees, license applicants) to discuss agency regulatory activities. These exchanges take place in various forums, including in-person, teleconference, videoconference, phone conversations, and Web-based meetings. These meetings are not governed by the Sunshine Act.

NRC strives to be open and transparent in the transaction of nuclear regulation, and NRC's Commission members promote this goal. In a recent speech, the current NRC Chairman stated that NRC must conduct itself openly and transparently in fulfilling the agency's core mission and preparing for new issues and challenges. A former NRC Chairman also affirmed that transparency and public involvement must be key elements of NRC's licensing and oversight, and a prior NRC Commissioner stated that for NRC to fulfill its mission, it must do so in an open and transparent regulatory environment.

RESULTS

Although NRC strives for a transparent closed meeting process, the public availability of closed staff meeting notices and summaries is inconsistent. According to Federal guidance, the agency's regulatory process should be open and transparent. However, ambiguity in NRC's guidance for closed staff meetings may impede agency staff from effectively and consistently complying with the agency's openness goal. Moreover, NRC risks the public perception of not regulating in an open and transparent manner.

Open and Transparent Regulatory Process

A recent Federal initiative encourages Government agencies to provide more information to the public about their activities. On December 8, 2009, the Office of Management and Budget (OMB) issued Directive M-10-06, *Open Government Directive*, which identifies the openness and transparency goals for the entire Federal Government. This directive states that transparency is a key principle for an open Government; transparency promotes accountability by providing the public with information about what the Government is doing. Furthermore, OMB Directive M-10-06 states that an essential component of transparency is the timely publication of information.

To demonstrate how NRC is addressing OMB's directive, the agency issued its *Open Government Plan* on April 7, 2010. NRC's *Open Government Plan* aligns the agency's *Organizational Values* and *Principles of Good Regulation* with the recent Federal Government initiative on openness and transparency.

NRC's *Organizational Values* and *Principles of Good Regulation* highlight the agency's openness goal. One of NRC's organizational values is openness in communications and decisionmaking, which highlights that NRC's regulatory process should be transparent and forthright. Furthermore, NRC's principles of good regulation underscore openness by stating that "nuclear regulation is the public's business, and it must be transacted publicly and candidly."

To ensure that members of the public have the opportunity to enhance their understanding of the agency's regulatory process, NRC issued MD 3.5, *Attendance at NRC Staff Sponsored Meetings*,¹ as the agency guidance for meetings between NRC staff and external stakeholders. MD 3.5, like the Sunshine Act, provides exemptions that allow for certain meetings between NRC staff and stakeholders to be closed to the public.

Inconsistent Public Availability of Closed Staff Meeting Information

Although NRC strives for a transparent closed meeting process, the public availability of closed staff meeting notices and summaries is inconsistent. Specifically:

- There is uncertainty as to what constitutes a "meeting."
- Closed staff meeting information is not always accessible by the public.
- The timeframe in which closed staff meeting notices and summaries are issued varies.

¹ MD 3.5 was issued on September 26, 1994, and last revised on April 10, 2007.

Uncertainty About What Constitutes a "Meeting"

There is uncertainty as to what constitutes a "meeting," leading to inconsistencies in the recording of closed staff meeting information. For example, stakeholders expressed concerns about certain phone conversations between NRC and licensees/applicants that could have been construed as closed staff meetings and, therefore, should have been announced and summarized. One agency official questioned whether visits from NRC employees to licensee/applicant sites can be interpreted as "meetings," and added that NRC needs better guidance in this area. In this era where there are many means by which NRC staff can have conversations with external stakeholders, it is important for the agency to clearly define what constitutes a "meeting." Without a clear definition of what constitutes a "meeting," it is hard for agency staff and external stakeholders to know how many closed staff meetings actually occur.

Closed Staff Meeting Information Is Not Always Accessible By the Public

Agency guidance states that staff are encouraged to post closed staff meeting information in the Agencywide Documents Access and Management System (ADAMS);² thus, this information is not always accessible by the public. Although the public cannot attend closed staff meetings, notices of when the meetings take place can be made available to the public. While sensitive issues are discussed in closed staff meetings and the details are not appropriate to be made public, NRC can issue generic summaries that can be made public.

Notices Are Not Always Accessible By the Public

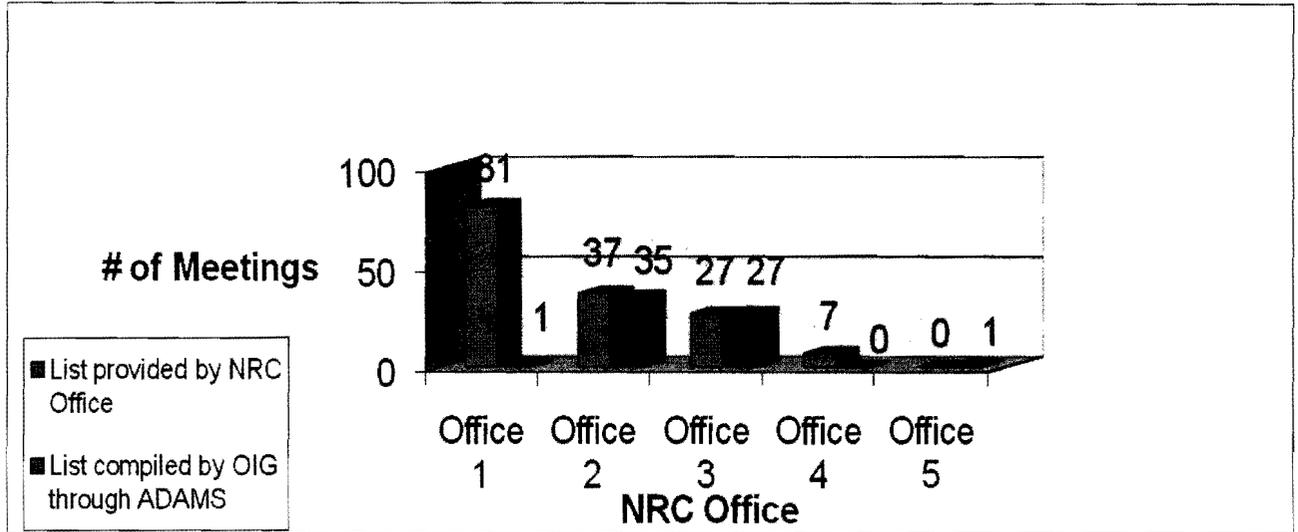
Notices of closed staff meetings are not always accessible by the public. When agency staff enter a document into ADAMS, they can profile the document as either public or non-public. A document designated as "public" allows NRC internal and external stakeholders access to that document, whereas a document designated as "non-public" prevents external stakeholders from accessing that document through ADAMS. OIG identified 375 closed staff meeting notices posted in ADAMS for calendar years 2007 through 2009. Of those 375 closed staff meeting notices, only about 67 percent are accessible by the public.

In addition, there are discrepancies in the information obtained from NRC offices compared to the meeting notices that are available in ADAMS. NRC offices provided OIG with lists of closed staff meetings that occurred during calendar years 2007 through 2009. The office-provided lists of closed staff meeting notices do not match the notices in ADAMS. For example, one NRC office stated that it had 81 closed staff meetings during calendar year 2009. However, OIG was able to find a reference to only one of these closed staff meetings in ADAMS (see Figure 1). Based on this, OIG is not

² ADAMS is a document management system used by NRC to organize, process, manage, search, and retrieve agency records.

confident that the data available in ADAMS represents the entire universe of closed staff meetings. An NRC official noted that a possible reason for these discrepancies might be that some meetings are not noticed because the meeting titles are considered to be proprietary information.

Figure 1: Availability of ADAMS Information on 2009 Closed Meetings*



*Source: OIG-prepared graphic.

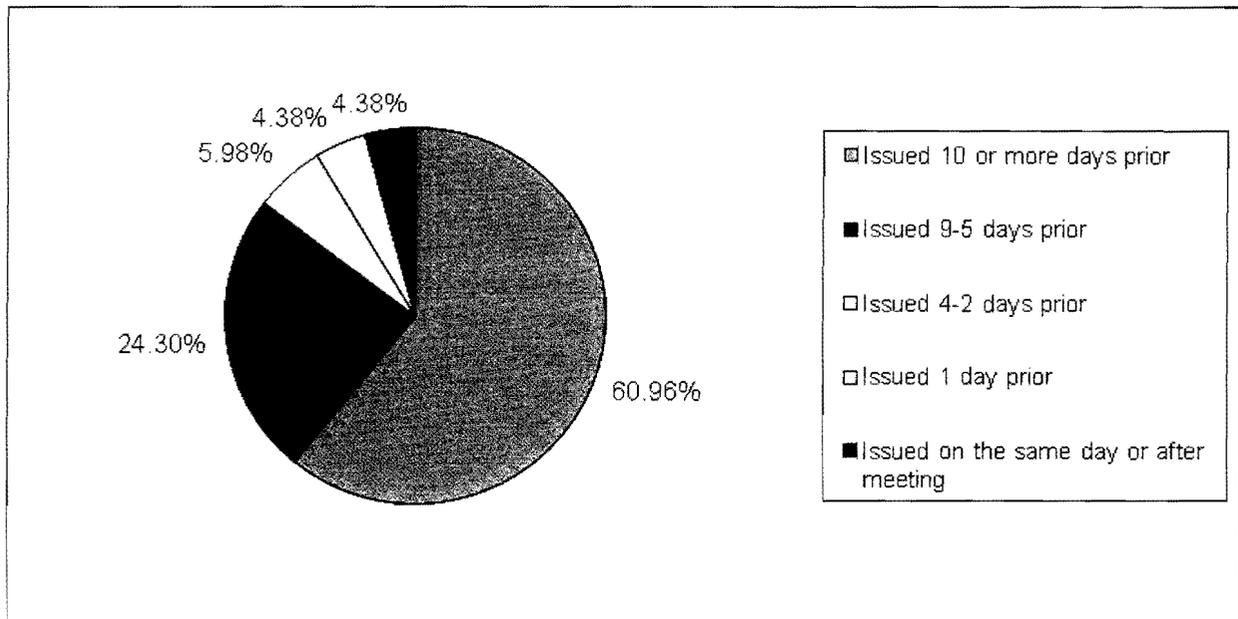
Summaries Are Not Always Prepared and Publicly Available

Summaries of closed staff meetings are not always prepared and publicly available in ADAMS. Of the 375 closed staff meeting notices in ADAMS, less than half have accompanying summaries. Furthermore, only 80 summaries were profiled as public documents, accessible to all stakeholders through ADAMS.

Timeframe in Which Notices and Summaries Are Issued Varies

The timeframe in which closed staff meeting notices and summaries are issued to the public varies. Based on the 375 closed staff meeting notices available in ADAMS, about 40 percent of the meeting notices publicly available in ADAMS were issued less than 10 days prior to the date of the meeting (see Figure 2).³ Summaries of closed staff meetings, when prepared, were publicly available in ADAMS between 1 and 60 days after the meeting took place.

³ An NRC official noted that some closed staff meetings are scheduled on a very short notice and, therefore, the agency is unable to provide advance notification of these meetings.

Figure 2: Closed Staff Meeting Notice Issuance Date Analysis (2007-2009)*

*Source: OIG-prepared graphic using ADAMS data.

Closed Staff Meeting Guidance Is Ambiguous

NRC guidance for documenting closed staff meetings is ambiguous, leading to inconsistencies in the reporting and public availability of closed staff meeting information. Specifically, MD 3.5 does not define what constitutes a “meeting.” Even though MD 3.5 provides definitions for open and closed staff meetings and provides examples of closed meetings, it does not define the word “meeting.” Without understanding what constitutes a “meeting,” NRC staff could be confused as to which activities should be considered public or closed meetings.

MD 3.5 also does not specify whether closed staff meeting notices and summaries should be posted publicly in ADAMS. Although MD 3.5 encourages agency staff to post closed staff meeting notices and summaries in ADAMS, it does not state whether this information should be public or non-public. This omission has led to inconsistencies in the public availability of closed staff meeting notices and summaries.

In addition, MD 3.5 and ADAMS Template NRC-001, *ADAMS Document Processing Instruction Template: Local Office Policy and Procedures for NRC Generated Documents*, present conflicting guidance regarding whether closed staff meeting notices are suggested or required. MD 3.5 states that closed staff meeting notices “*should*” be prepared and it refers to ADAMS template NRC-001 for additional guidance. ADAMS Template NRC-001 states that if a meeting is closed to the public, NRC staff is “*required*” to enter the notice into ADAMS. Adding to the conflicting guidance, ADAMS Template NRC-001 also states, in a separate section, that closed meeting notices “*should*” be entered into ADAMS.

Agency guidance also does not specify a timeframe for the issuance of closed staff meeting notices and summaries. The agency does not have a timeliness metric for closed staff meetings. External stakeholders stated that, in many cases, they learned about an NRC closed staff meeting only after the meeting occurred and that the summaries for those meetings were not easily found and, in many cases, were unavailable.

Risk of Not Operating in an Open and Transparent Manner

Ambiguity in NRC's guidance for closed staff meetings may impede agency staff from effectively and consistently complying with the agency's openness goal. Moreover, the agency risks the public perception that NRC does not regulate in an open and transparent manner, and that the agency gives preferential treatment to certain external stakeholders. Recent Federal Government initiatives require agencies to improve the openness and transparency of their activities with the public. Therefore, it is especially important for NRC to clarify its guidance to improve its communication regarding closed staff meeting information and thereby better meet its goal for an open and transparent nuclear regulatory process.

Recommendations

OIG recommends that the Executive Director for Operations:

1. Revise MD 3.5 to enhance NRC's closed staff meeting process. Specifically,
 - a. Clearly define what constitutes a "meeting."
 - b. Clarify guidance to ensure that closed staff meeting notices and summaries are appropriately available to the public through ADAMS.
 - c. Revise ADAMS Template NRC-001 and MD 3.5 to ensure that the guidance for preparing closed staff meeting notices is consistent.
2. Establish a timeframe for issuing closed staff meeting notices and summaries.

AGENCY COMMENTS

OIG held an exit meeting with NRC management on May 25, 2010. During the meeting, agency management provided informal comments to the draft report. OIG included these comments, as appropriate, and provided NRC with a revised draft report. Agency management generally agreed with the report's finding and recommendations and chose not to provide formal comments.

SCOPE AND METHODOLOGY

To accomplish the audit objective, the audit team reviewed Federal and internal NRC guidance such as the Sunshine Act, the *Code of Federal Regulations*, MD 3.5, and individual NRC program office procedures. In addition, the audit team analyzed lists of closed staff meetings as prepared by various NRC offices, and closed staff meeting notices and summaries obtained through ADAMS. The audit team also interviewed agency staff and external stakeholders.

OIG conducted this performance audit between November 2009 and March 2010 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective. OIG conducted this work at NRC's headquarters located in Rockville, Maryland.

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