ANNUAL REPORT FOR 1978 ON ADMINISTRATION OF GOVERNMENT IN THE SUNSHINE ACT OF 1976

398 282

UNITED STATES
NUCLEAR REGULATORY COMMISSION

7907250276

TABLE OF CONTENTS

		Page
1.	Agency Reporting	1
2.	Year Being Reported	1
3.	Total Number of Meetings	1
4.	Reasons for Closing Meetings	1
	Budget Meetings	1
	Congressional Testimony Meetings	2
	Briefings by Agency Staff	2
5.	Description of Litigation	3
6.	Notation Voting	3
7.	Public Observation	5
8.	Public Notice	6
9.	Public Interest	7
10.	Releasing of Meeting Records	8
	Transcripts	8
	Tapes	8
	Minutes	9
	Availability of Records	10
	Index Systems	10
	Requests for Records	10
11.	Requests to Open	10
12.	Formal Complaints	11
13.	Ex Parte Communications	11
14.	Additional Information	11

APPENDIX A - Definition of Meetings

APPENDIX B - Tabulation of Open and Closed Meetings by Month

APPENDIX C - Tabulation of Meetings by Days Notice

APPENDIX D - NRC Regulations as Amended Implementing the Sunshine Act

APPENDIX E - NRC Ex Parte and Separation of Functions Regulations

APPENDIX F - Sample Page of Index

ANNUAL REPORT

GOVERNMENT IN THE SUNSHINE ACT

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

2. CALENDAR YEAR: 1978

3. MEETINGS: (See definitions in Appendix)

A. Total Number of Open.....203 (67%)

B. Total Number of Closed.....101 (33%)

C. Total Number of Partially Closed..... 1

Total Number of Meetings.....305

4. REASONS FOR CLOSING OR PARTIALLY CLOSING MEETINGS

A. Exemption 1..... 32*

Exemption 4..... 1

Exemption 6..... 33

Exemption 9..... 7

Exemption 10..... 22

Exemption 6 and 10..... 4

Exemption 1, 6, and 9..... 1

Exemption 4 and 9..... 1

Exemption 2 and 6..... 1

TOTAL.....102*

B. NRC's policy regarding the closing of meetings pertaining to the budget, Congressional testimony and briefings of agency members by staff is as follows:

(1) Budget meetings. Presentations by NRC staff on budgetary matters, including initial presentations on staff recommended budget

* Includes one meeting held partially closed to the public.

levels, are generally held in open session. Markup and recall sessions of the Commission are closed under Exemption 9. During these closed sessions, the Commission considers budget strategies and priorities, and reaches decisions regarding future interactions and negotiations with the Executive Branch and the Congress with respect to funding levels for NRC's licensing research and regulatory activities. It is the belief of the Commission that the premature release of these discussions would be likely to significantly frustrate its future interactions and preempt those of the Executive Branch to whom the budget is submitted in confidence. The Commission's policy is to release transcripts of these closed meetings after the Commission's appropriations become law. A full description of the release policy is contained in Section 10 below. In 1978, five budget meetings were held in open session and six meetings were held in closed session (Exemption 9). Transcripts of the five open meetings are in the PDR and those for the six closed meetings will be released to the PDR when NRC FY 1980 appropriations has been approved. In accordance with this policy, transcripts of all closed budget meetings held in 1977 are currently available in the PDR.

(2) Meetings at which Congressional testimony is discussed. The Commission believes that, in appropriate circumstances, Exemption 9(B) of the Sunshine Act may properly be employed to close Commission meetings dealing with testimony to be given to Congress or options to be followed in negotiations on pending legislation. Nevertheless, during 1978, the Commission did not choose to close any of the seven meetings held for the purpose of discussing Congressional testimony.

(3) Briefings of agency members by NRC staff. All briefings by NRC staff of a quorum of the Commission are considered to result in the joint conduct of official Commission business and are therefore treated as meetings under provisions of the Act. A further description of the Commission's definition of meetings is contained in Appendix A to this report. In 1978, there were approximately

187 staff briefings; 143 were held in public session and 44 were in closed session. Of the closed sessions, 11 were closed or partially closed under Exemption 1 since classified information was integral to the discussion; 22 were closed under Exemption 10 for the discussion of cases in formal adjudication; and the remainder were closed under other exemptions, primarily Exemption 6.

The transcripts of all public briefings were placed in the PDR; meeting records of closed briefings are subject to review for retention/release as described in Section 10 below. For open sessions, copies of viewgraphs and principal staff papers are also made available at the briefing and placed in the Public Document Room after the briefing along with the transcript.

5. DESCRIPTION OF LITIGATION.

One Sunshine action was initiated against the Commission in 1978. Hunt v NRC, Civ. No. 79C-122-C (ND Okl). The plaintiff in that case contended that the Sunshine Act applies to meetings of the Commission's Atomic Safety and Licensing Boards, which are subordinate NRC adjudicatory tribunals not composed of members of the Commission. The Commission's position, in common with every other agency of which we are aware, is that the Act applies only to meetings of the Commission members themselves. On February 22, 1979, the Court denied plaintiff's request for a temporary restraining order. On April 19, 1979, the Court decided the case in the Commission's favor and dismissed the suit on the merits.

6. NOTATION VOTING.

Pursuant to Section 201(a)(1) of the Energy Reorganization Act, 42 USC 5841(a)(1), certain action of the Commission can only be taken in actual meetings. Accordingly, the Commission has adopted practices which have certain similarities to notation voting and which deserve mention. First, the Consent Calendar system is utilized to obtain Commission decisions on agency business which, by nature, does not require detailed discussion among the Commissioners, but nevertheless requires action by the Commission in a meeting. Such business is generally limited to administrative matters (such as

appointments and reappointments to advisory committees, delegations of authority and security clearance waivers when access to Restricted Data is required), matters of relatively minor policy significance (such as FOIA appeals, minor rule changes, responses to certain petitions and review of ALAB decisions) and non-controversial policy matters if all Commissioners have agreed that no discussion is necessary. This system is also used to obtain a final Commission vote on policy matters, such as those resulting in publication of interim rules, amendments to rules or policy statements, in cases where the substance of the issue has been previously discussed at an open meeting, and where no Commissioner has indicated a desire for further Commission discussion.

All affirmation sessions are noticed in the Federal Register and announced in accordance with the other announcement methods of public notification described in Section 8, Public Notice, below.

The Consent Calendar is administered by means of a system of written preliminary notation "votes". Subsequently, the Commissioners formally vote in public "affirmation" sessions, without discussion of the subject before them. If discussion is required, the item is no longer an affirmation item and will be scheduled as a discussion item with appropriate public notification. In 1978, there were 40 such sessions, all open.

At each scheduled affirmation session open to the public, copies of the staff paper(s) being voted on are made available to public attendees at the meeting; these staff papers constitute the principal written materials which provide the basis for decisions and include staff recommendations. These papers and a transcript of the meeting are later placed in the Public Document Room (1717 H Street, N.W., Washington, D.C.), as is the Record-of-Decision Memorandum of the meeting, recording the vote and any other Commission instructions.

Second, for matters which do not involve formal rulemaking, adjudication or licensing activity, the Commission employs procedures under which individual Commissioners comment on and approve staff actions in writing to the Secretary. Examples of matters handled under these procedures are approval of outgoing Commission correspondence and notation of actions being taken or about to be taken under delegations of authority to the staff.*

---

* The Commission has before it for consideration the release to the Public Document Room of additional categories of records, including documents circulated under these procedures together with the record of the Commissioners' action on them.

7. PUBLIC OBSERVATION.

The Commission has continued its policy of providing meaningful public observation and understanding of open meetings through the following measures:

a. The Commission's main conference room, with a seating capacity of 130, and an adjoining conference room, which seats 50 people, are provided with multiple overhead speakers and with a closed circuit television system to ensure that every person desiring to attend a meeting can see and hear as well as any other attendee.

b. Copies of any viewgraphs to be used in the course of meetings are made available to meeting attendees at the entrance to the conference room prior to the commencement of the meeting.

c. Copies of the principal staff papers scheduled to be considered at the meeting are also provided to public attendees in the conference room. This includes copies of the staff papers that are to be approved in an affirmation session without detailed discussion. These papers are also placed in the Public Document Room at the conclusion of the meeting, along with viewgraphs and other material handed out at the meeting. Additionally, copies of other papers referenced at the meeting are normally released. During 1978, 162 meeting-related documents were released.

d. Public attendees are permitted to tape record Commission discussions of open meetings.

e. Transcripts are taken of all open Commission meetings. These are unofficial transcripts which are not edited by the Commissioners or by the staff and are placed in the Commission's Public Document Room within 48 hours of the conclusion of the meeting. Transcripts of the 203 open Commission meetings and briefings are available in the PDR.

f. A pamphlet entitled "Guide to NRC Open Meetings" is available in the Commissioners' Conference Room and in the Public Document Room. The guide describes for public attendees the normal seating arrangement for participants at the conference table, the general functional responsibilities of these participants, Commission procedures for voting on agenda items, general rules for public conduct at Commission meetings, and sources of additional information on the Commission and its meetings.

g. A list of abbreviations and acronyms has been placed in the Public Document Room to further help the public in understanding the many technical terms discussed in Commission papers.

h. It is the Commission's practice to allow camera and television coverage of open meetings and briefings without prior notification. Recently, such coverage has been very extensive for discussions regarding actions being taken as a result of the March 28, 1979 accident at the Three Mile Island Nuclear Power Plant. The use of cameras, including television coverage, at open licensing proceedings conducted by NRC's licensing and appeal boards is also permitted. Our regulations are being updated accordingly.

8. PUBLIC NOTICE.

Each meeting is publicly announced by the methods listed below. In addition, the NRC is exploring the use of a toll free telephone number for interested persons to use when seeking current information about the Commission's meeting schedule.

a. Publishing in the Federal Register the time, date and location of the meeting, the topic(s) to be discussed, whether it is open or closed, and the name and telephone number of a contact.

b. Publicly posting in the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, a copy of the announcement at the time it is sent to the Federal Register.

c. Mailing a copy of the announcement to those persons on a mailing list maintained for that purpose (currently 80 names and addresses) at the time it is sent to the Federal Register.

d. Submittal of a copy of the Federal Register Notice to the news media (AP, UPI, Energy Daily, Nucleonics Week, the Washington Post, Washington Star, and Nuclear Industry Magazine) at the time it is sent to the Federal Register.

e. Telephoning interested parties when a public meeting is announced with less than a week's notice.

Appendix C contains a tabulation of the number of days notice for NRC meetings. In summary, more than three-fourths of all meetings (85% of the open meetings) were announced with seven or more days notice. The remaining meetings (32 open and 39 closed) were held with less than seven days notice. Our record in this regard is improving, but we continue to be faced with problems caused by the need to consider without delay subjects of a very urgent nature, such as consideration of problems concerning operating nuclear power plants, and to reschedule other items which are displaced by the more urgent ones.

9. PUBLIC INTEREST.

The Commission, in adopting its Sunshine Regulations, explained how it would employ the public interest criterion in exercising agency discretion to open meetings when an exemption is available:

"Section 9.104(a) of the rules, like the proposals of several other agencies, gives presumptive but not conclusive force to the determination than an exemption is available in deciding the public interest question. The fact that a meeting does come within a specific provision of § 9.104(a) indicates that the Congress recognized a public interest in closing, not opening, meetings of this character. The Commission staff has been instructed to consider the public interest in recommending to the Commission whether or not to close particular meetings. The Commission believes that this internal procedure and the awareness of the Commissioners themselves and their advisors of public interest concerns will ensure adequate consideration of the public interest before any decision to close a meeting is made, without need for a formal procedure of the type proposed."
42 Fed. Reg. 12876 (March 7, 1977)

In the implementation of its rules, the Commission calls upon the staff to consider the public interest factors in any recommendations to the Commission for closed meeting discussions. The Commissioners review staff's recommendations for closed meetings, consider the advice of the General Counsel as to whether the item is properly closeable, and discuss among themselves the necessity for precluding public attendance, including the interest of the public in the subject matter. Implicit in this procedure is the understanding that a vote to close represents the Commission's determination that the public interest does not require an open meeting.

10. RELEASING OF TRANSCRIPTS, RECORDINGS AND MINUTES OF CLOSED MEETINGS.

The Commission's policy is to release to the public transcripts of all open meetings within 48 hours of meeting time. There are presently 316 transcripts of open meetings available to the public in the Public Document Room. Transcripts of closed meetings are released as soon as it is determined by the Commission, upon review, that there is no justification for continued withholding. The public can review these documents in the PDR, and purchase copies if they desire. Details regarding NRC's procedures and indexing system are set forth below.

a. Closed Meetings Recorded by Transcript.

Most of the Commission's closed meetings (except those described in b. and c. below) are recorded by transcript. The transcript, or portions thereof, is made available to the public unless a determination has been made to withhold the entire text. The procedure for determining which transcripts, or portions of transcripts, should be publicly disclosed includes three levels of review: 1) by the office presenting the briefing or discussion for a determination of classification and sensitivity of subject matter; 2) by the Office of the General Counsel for review of classification, sensitivity, compliance with Sunshine Act requirements and advising the Commission on ultimate disposition of the transcript; 3) by the Commission for a final determination regarding public disclosure. For the information of the public, a statement is filed in the Public Document Room identifying the portions being withheld and the reason for withholding. Withheld transcripts are also reviewed again after 18 months after the date of the meeting to determine whether the basis for withholding continues to apply. For closed meetings held during 1978, the Commission has released 11 transcripts in whole or in part; has withheld 4 in their entirety; has eight currently in review; and has agreed to release eight additional transcripts after appropriate Legislative/Executive Branch actions have been completed.

b. Closed Meetings Recorded by Tape Only.

The Commission on occasion conducts meetings on subjects which are so sensitive that the presence of the staff and a court reporter has been deemed

to be inhibiting. These meetings generally involve the exchange of highly classified information with representatives of other agencies not subject to the Government in the Sunshine Act, or highly sensitive discussions of the Commissioners on personnel/organizational matters. The latter discussions involve matters such as the filling of organizational positions, the performance of key employees, and significant organizational and management alignments. Meetings of this type are recorded by magnetic tape only. The Commissioners determine immediately at the conclusion of the meeting whether any portion of the tape should be released. Withheld tapes are again subject to review either after 18 months after the date of the meeting to determine whether the basis for initial withholding actions continues to apply, or on the submission of an FOIA request. During 1978, 34 tapes of the 46 meetings in this category have been withheld. Withheld tapes of these limited attendance meetings, because of their much greater degree of sensitivity, are retained in locations other than those utilized for other withheld records. The 12 tapes that have been determined to be releasable were subsequently transcribed and released to the Public Document Room in transcript form with the tapes available on request.

c. Closed Meetings Recorded in Long Form Minutes.

Meetings closed to public attendance pursuant to Exemption 10 have been recorded in minutes, as authorized by the Act. During 1978, there were 24 such meetings. The minutes are prepared by the Office of the Secretary and reviewed by the Office of the General Counsel and by the Commissioners as a matter of policy. Minutes are not immediately made available to the public in view of the adjudicative character of these meetings; however, they are reviewed on an annual basis, to determine whether the bases for the initial withholding action continue to apply. The General Counsel's office has recently begun a reexamination of the minutes of all closed adjudicatory sessions held in 1977 and 1978 to see if any may be released.

d. Index Systems and Tabulation of Requests for Transcripts, Recordings and Minutes (Open and Closed)

The Nuclear Regulatory Commission indexes and abstracts all documents placed in the Public Document Room including transcripts of open and closed meetings and meeting summaries. A daily accession listing of this material, with weekly and monthly cumulations, is made publicly available in the Commission's Public Document Reading Room and mailed out to interested parties and citizens. Appendix F is a sample page from the system used to index these documents and identifies the data elements used.

The number of requests for meeting-related documents in 1978 was 522. The number of documents reproduced for the public was 146. All requests for these documents are mailed immediately. This is a very small fraction (less than 1%) of all documents requested by the public through the PDR.

During 1978, NRC received 24 requests for transcripts of closed meetings. Of these, 19 requests were granted, four were denied in part, and one was a request for a transcript of a meeting that was cancelled. These requests are processed in the NRC Division of Rules and Records and are reviewed first by the staff responsible for the subject meeting, second by the General Counsel, then by the Commission. The average time from date received to date responded for all items was 54 days.

11. REQUESTS TO OPEN.

The Commission's rules describe the procedure to be followed by a person who wishes to request a change in the status of a closed meeting. 10 CFR 9.106(b) and (c) provide that "any person" may ask the Commission to reconsider its decision to close a meeting by filing a petition for reconsideration. Any such petition must specifically state the grounds on which the petitioner believes the Commission decision is erroneous, and the public interest in opening the meeting. Filing such a petition does not automatically act to stay the effectiveness of the Commission decision or to postpone the meeting in question. However, in practice any request, formal or informal, is referred to the Commission for decision.

12. FORMAL COMPLAINTS.

No formal complaints were received in 1978 on NRC's Sunshine procedures and practices.

13. EX PARTE COMMUNICATIONS.

A copy of the current ex parte and separation of functions regulations (10 CFR 2.719 and 2.780) are attached at Appendix E. The Commission has published proposed revisions to those regulations (March 7, 1979 Federal Register). The General Counsel's office is studying the question of communications between the Commission and the staff and may submit recommendations relevant to the Commission's ex parte and separation of functions regulations.

14. 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 are invited and should be addressed to:

Office of the Secretary
Nuclear Regulatory Commission
1717 H Street, N. W.
Washington, D. C. 20555

Telephone inquiries can be made to the Office of the Secretary on (202) 634-1469.

APPENDICES

A. Definition of Meetings
B. Tabulation of Open and Closed Meetings by Month
C. Tabulation of Meetings by Days Notice
D. NRC Regulations as Amended Implementing the Sunshine Act
E. NRC Ex Parte and Separation of Functions Regulations
F. Sample Page of Index (Sec. 10e)

APPENDIX A

Definition of Meetings

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 assuring the protection of the public health and safety through the licensing and regulation of the uses of nuclear materials. The Commission is required by the Energy Reorganization Act to take action only through meetings. Section 201(a)(1) of the Act, 42 U.S.C. 5841(a)(1), states that "action of the Commission shall be taken by a majority vote of members present."

In keeping with its significant and substantial public health and safety responsibilities, this Commission has emphasized the participation of each Commissioner in its decision-making activities. Commission meetings are therefore generally scheduled at times when all Commissioners can be present so that each may participate in and contribute to the deliberations.

Meetings Defined by Sunshine Act

With enactment of the Government in the Sunshine Act and in compliance with its provisions, NRC had adopted regulations clearly defining meetings of the Commission which are subject to the announcement and record keeping requirements of the Sunshine Act. In summary, a meeting is defined as the deliberation of at least a quorum of Commissioners where such deliberation determines or results in the joint conduct or disposition of official Commission business. Gatherings of a social or ceremonial nature and certain informational discussions which are conducted without specific reference to any particular matter pending before the Commission are considered exempt from the provisions of the Sunshine Act. A complete definition of the term "meeting" is contained in Section 9.101 of NRC's Sunshine Regulations (Appendix D).

For purposes of tabulating meetings in this report, each separate item scheduled for discussion or briefing is counted as a meeting. Additionally, each session at which one or more matters were scheduled for affirmation under the limited notation voting procedure described elsewhere is counted as a meeting.

APPENDIX B

TABULATION OF OPEN AND CLOSED MEETINGS BY MONTH

CY 78

	OPEN	CLOSED	OPEN/CLOSED	TOTAL
Jan.	19	9	0	28
Feb.	20	6	0	26
Mar.	7	2	0	9
SUBTOTAL	46 (73%)	17 (27%)	0	63
Apr.	15	3	1	19
May	24	6	0	30
Jun.	22	12	0	34
SUBTOTAL	61 (73%)	21 (26%)	1 (1%)	83
Jul.	18	16	0	34
Aug.	10	7	0	17
Sep.	15	8	0	23
SUBTOTAL	43 (58%)	31 (42%)	0	74
Oct.	8	8	0	16
Nov.	24	12	0	36
Dec.	21	12	0	33
SUBTOTAL	53 (62%)	32 (38%)	0	85
GRAND TOTAL	203 (67%)	101 (33%)	1	305

A.	Total Number of Open	203
B.	Total Number of Closed	101
C.	Total Number of Partially Closed	1
	Total Number of Meetings	305

398 296

APPENDIX C

TABULATION OF MEETINGS BY DAYS NOTICE

DAYS NOTICE	OPEN	CLOSED	CLOSED/OPEN	TOTAL
14	--	1	--	1
13	--	1	--	1
12	1	0	--	1
11	2	1	--	3
10	3	3	--	6
9	7	3	--	10
8	20	6	--	26
7	138	47	1	186
SUBTOTAL	171	62	1	234
6	2	1	0	3
5	4	7	0	11
4	3	6	0	9
3	0	3	0	3
2	1	1	0	2
1	5	6	0	11
Less than 1	17	15	0	32
SUBTOTAL	32	39	0	71
TOTAL	203	101	1	305

Number of times less than seven days notice given -- 71

Subpart C—Government in the Sunshine Act Regulations

§ 9.100 Scope of Subpart.

This subpart prescribes procedures pursuant to which NRC meetings shall be open to public observation pursuant to the provisions of 5 U.S.C. Sec. 552b. This subpart does not affect the procedures pursuant to which NRC records are made available to the public for inspection and copying which remain governed by subpart A, except that the exemptions set forth in § 9.104(a) shall gover in the case of any request made pursuant to § 9.8 to copy or inspect the transcripts, recordings or minutes described in § 9.108. Access to documents considered at NRC meetings shall continue to be governed by subpart A of this Part.

§ 9.101 Definitions.

As used in this subpart:

(a) "Commission" means the collegial body of five Commissioners or a quorum thereof as provided by section 201 of the Energy Reorganization Act of 1974, or any subdivision of that collegial body authorized to act on its behalf, and shall not mean any body not composed of members of that collegial body.

(b) "Commissioner" means an individual who is a member of the Commission.

(c) "Meeting" means 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, but does not include deliberations required or permitted by §§ 9.105, 9.106, or § 9.108(c), gatherings of a social or ceremonial nature, or briefings of the Commission by representatives of other agencies or departments of the United States government, or representatives of foreign governments or international bodies where such briefings or discussions are informational in nature and are not conducted with specific reference to any particular matter then pending before the Commission.

(d) "Closed meeting" means a meeting of the Commission closed to public observation as provided by § 9.104.

(e) "Open meeting" means a meeting of the Commission open to public observation pursuant to this subpart.

(f) "Secretary" means the Secretary to the Commission.

(g) "General Counsel" means the General Counsel of the Commission as provided by section 25(b) of the Atomic Energy Act of 1954 and section 201(f) of the Energy Reorganization Act of 1974, and, until such time as the offices of that officer are in the same location as those of the Commission, any member of his office specially designated in writing by him pursuant to this subsection to carry out his responsibilities under this subpart.

§ 9.102 General requirement.

Commissioners shall not jointly conduct or dispose of Commission business in Commission meetings other than in accordance with this subpart. Except as provided in § 9.104, every portion of every meeting of the Commission shall be open to public observation.

§ 9.103 General provisions.

The Secretary shall ensure that all open Commission meetings are held in a location such that there is reasonable space, and adequate visibility and acoustics, for public observation. No additional right to participate in Commission meetings is granted to any person by this subpart. An open meeting is not part of the formal or informal record of decision of the matters discussed therein except as otherwise required by law. Statements of views or expressions of opinion made by Commissioners or NRC employees at open meetings are not intended to represent final determinations or beliefs.

Such statements may not be pleaded, cited, or relied upon before the Commission or in any proceeding under part 2 of these regulations (10 CFR part 2) except as the Commission may direct.

Members of the public attending open Commission meetings may use small electronic sound recorders to record the meeting, but the use of other electronic recording equipment and cameras requires the advance written approval of the Secretary.

§ 9.104 Closed meetings.

(a) Except where the Commission finds that the public interest requires otherwise, Commission meetings shall be closed, and the requirements of §§ 9.105 and 9.107 shall not apply to any information pertaining to such meeting otherwise required by this subpart to be disclosed to the public, where the Commission determines in accordance with the procedures of § 9.105 that opening such meetings or portions thereof or disclosing such information, is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. Sec. 552) provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, including such information as defined in § 2.790(d) of this title;

(5) involve accusing any person of a crime, imposing a civil penalty on any person pursuant to 42 U.S.C. Sec. 2282 or 42 U.S.C. Sec. 5846, or any revocation of any license pursuant to 42 U.S.C. Sec. 2236, or formally censuring any person;

(6) disclose information of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory reports compiled for law enforcement purposes, including specifically enforcement of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Sec. 2011 et seq., and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. Sec. 5801 et seq., or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) [Reserved]

(9) disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this subparagraph shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding or an action or proceeding before a state or federal administrative agency, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal agency adjudication pursuant to 5 U.S.C. Sec. 554 or otherwise involving a determination on the record after an opportunity for a hearing pursuant to part 2 or similiar provisions.

(b) Examples of situations in which Commission action may be deemed to be significantly frustrated are (1) if opening any Commission meeting or negotiations would be likely to disclose information provided or requests made to the Commission in confidence by persons outside the Commission and which would not have been provided or made otherwise; (2) if opening a meeting or disclosing any information would reveal legal or other policy advice, public knowledge of which could substantially affect the outcome or conduct of pending or reasonably anticipated litigation or negotiations; or (3) if opening any meeting or disclosing any information would reveal information requested by or testimony or proposals to be given to other agencies of government, including the Congress and the Executive Branch before the requesting agency would receive the information, testimony or proposals. The examples in the above sentence are for illustrative purposes only and are not intended to be exhaustive.

§ 9.105 Commission procedures.

(a) Action under § 9.104 shall be taken

42 FR 12875 42 FR 12875 43 FR 13995 43 FR 13995 42 FR 12875 42 FR 12875

POOR ORIGINAL

only when a majority of the entire membership of the Commission votes to take such action. A separate vote of the Commissioners shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 9.104, or with respect to any information which is proposed to be withheld under § 9.105 (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a) or § 9.108(c) the Secretary shall make publicly available in the Public Document Room a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available in the Public Document Room a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(c) The notices and lists required by paragraph (b) of this section to be made public may be withheld from the public to the extent that the Commission determines that such information itself would be protected against disclosure by § 9.104 (a). Any such determinations shall be made independently of the Commission's determination pursuant to paragraph (a) of this section to close a meeting, but in accordance with the procedure of that subsection. Any such determination, including a written explanation for the action and the specific provision or provisions of § 9.104(a) relied upon, must be made publicly available to the extent permitted by the circumstances.

42 FR 12875

§ 9.106 Persons affected and motions for reconsideration.

(a) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of § 9.104, the Commission, upon request of any one Commissioner, shall vote by recorded vote whether to close such meeting.

(b) Any person may petition the Commission to reconsider its action under § 9.105(a) or paragraph (a) of this section by filing a petition for reconsideration with the Commission within seven days after the date of such action and before the meeting in question is held.

(c) A petition for reconsideration filed pursuant to paragraph (b) of this section shall state specifically the grounds on which the Commission action is claimed to be erroneous, and shall set forth, if appropriate, the public interest in the closing or opening of the meeting. The filing of such a petition shall not act to stay the effectiveness of the Commission action or to postpone or delay the meeting in question unless the Commission orders otherwise.

42 FR 12875

§ 9.107 Public announcement of Commission meetings.

(a) In the case of each meeting, the Secretary shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the Commission determines by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Secretary shall make public announcement of the time, place and subject matter of such meeting, and whether open or closed to the public, at the earliest practical time.

(b) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Secretary publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (1) a majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (2) the Secretary publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(c) Immediately following each public announcement required by this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

(d) The public announcement required by paragraph (a) of this section shall consist of the Secretary:

(1) publicly posting a copy of the document in the Public Document Room at 1717 H Street, N.W., Washington, D.C.; and, to the extent appropriate under the circumstances,

(2) mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(3) submitting a copy for possible publication to at least two newspapers of general circulation in the Washington, D.C. metropolitan area;

(4) any other means which the Secretary believes will serve to further inform any persons who might be interested.

(e) Action under the second sentence of paragraph (a) or (b) of this section shall be taken only when the Commission finds that the public interest in prompt Commission action or the need to protect the common defense or security or to protect the public health or safety overrides the public interest in having full prior notice of Commission meetings.

42 FR 12875

§ 9.108 Certification, transcripts, recordings and minutes.

(a) For every meeting closed pursuant to subparagraphs (1) through (10) of § 9.104(a) and for every determination pursuant to subsection 9.105(c), the General Counsel shall publicly certify at the time of the public announcement of the meeting, or if there is no public announcement at the earliest practical time, that, in his or her opinion, the meting may be closed to the public and shall state each relevant exemptive provision unless the Commission votes pursuant to § 9.105(c) that such certification is protected against disclosure by § 9.104(a). A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (10) of § 9.104(a), the Commission shall maintain such a transcript or recording or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(b) The Commission shall make promptly available to the public, in the Public Document Room, the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which

POOR ORIGINAL

398 299

the meeting or portion was held, whichever occurs later.

42 FR 62471

(c) In the case of any meeting closed pursuant to § 9.104, as the last item of business, the Commission shall determine which, if any, portions of the electronic recording, transcript or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which should be withheld pursuant to § 9.104; provided however, that should the Commission not make such determinations immediately following any such closed meeting, the Secretary of the Commission,* upon the advice of the Office of the General Counsel and after consulting with the Commission, shall make such determinations.

42 FR 12875

(d) If at some later time the Commission determines that there is no further justification for withholding any transcript, recording or other item of information from the public which has previously been withheld, then such information shall be made available.

§ 9.109 **Report to Congress.**

The Secretary shall annually report to the Congress regarding the Commission's compliance with the Government in the Sunshine Act, including a tabulation of the total number of open meetings, the total number of closed meetings, the reasons for closing such meetings and a description of any litigation brought against the Commission pursuant to the Government in the Sunshine Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

398 300

*Amended 43 FR 10.

POOR ORIGINAL

§ 2.718 Power of presiding officer.

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. He has all powers necessary to those ends, including the powers to:

(a) Administer oaths and affirmations.

(b) Issue subpoenas authorized by law.

(c) Rule on offers of proof, and receive evidence.

(d) Order depositions to be taken.

(e) Regulate the course of the hearing and the conduct of the participants.

(f) Dispose of procedural requests or similar matters.

(g) Examine witnesses.

(h) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose.

(i) Certify questions to the Commission for its determination, either in his discretion or on direction of the Commission.

(j) Reopen a proceeding for the reception of further evidence at any time prior to initial decision.

(k) Issue initial decisions, and

(l) Take any other action consistent with the Act, this chapter, and sections 551-558 of title 5 of the United States Code.

[27 FR 377]

§ 2.719 Separation of functions.

(a) A presiding officer shall perform no duties inconsistent with his responsibilities as a presiding officer, and will not be responsible to or subject to the supervision or direction of any officer or employee engaged in the performance of investigative or prosecuting functions.

(b) In any adjudication, the presiding officer may not consult any person other than a member of his staff on any fact in issue unless on notice and opportunity for all parties to participate, except (1) as required for the disposition of ex parte matters as authorized by law and (2) as provided in paragraph (c) of this section.

[35 FR 11459]

398 301

POOR ORIGINAL

(c) In any adjudication for the determination of an application for initial licensing, other than a contested proceeding, the presiding officer may consult (1) the staff, and (2) members of the panel appointed by the Commssion from which members of atomic safety and licensing boards are drawn: *Provided*, however, That in adjudications in which exceptions to the initial decision may be taken to the Atomic Safety and Licensing Appeal Board, the presiding officer shall not consult any member of the Atomic Safety and Licensing Appeal Board or any fact in issue.

(d) Except as provided in paragraph (c) of this section and § 2.780(e), in any case of adjudication, no officer or employee of the Commission who has engaged in the performance of any investigative or prosecuting function in the case of a factually related case may participate or advise in the initial or final decision, except as a witness or counsel in the proceeding. Where an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a consultation or communication authorized by paragraph (c) of this section or § 2.780(e), the substance of the communication shall be specified in the record in the proceeding and every party shall be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert such fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing an exception to the initial decision, or a petition for reconsideration of a final decision, clearly and concisely setting forth the information or argument relied on to show the contrary.

§ 2.720 Subpoenas.

(a) On application by any party, the designated presiding officer or, if he is not available, the Chairman of the Atomic Safety and Licensing Board Panel, the Chief Administrative Law Judge† or other designated officer will issue subpoenas requiring the attendance and testimony of witnesses or the production of evidence. The officer to whom application is made may require a showing of general relevance of the testimony or evidence sought, and may withhold the subpoena if such a showing is not made, but he shall not attempt to determine the admissibility of evidence.

(b) Every subpoena will bear the name of the Commission, the name and office of the issuing officer and the title of the hearing, and will command the person to whom it is directed to attend and give testimony or produce specified documents or other things at a designated time and place. The subpoena will also advise of the quashing procedure provided in paragraph (f) of this section.

(c) Unless the service of a subpoena is acknowledged on its face by the witness or is served by an officer or employee of the Commission, it shall be served by a person who is not a party to the hearing and is not less than eighteen (18) years of age. Service of a subpoena shall be made by delivery of a copy of the subpoena to the person named in it and tendering him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commission, fees and mileage need not be tendered, and the subpoena may be served by registered mail.

(d) Witnesses summoned by subpoena shall be paid, by the party at whose instance they appear, the fees and mileage paid to witnesses in the district courts of the United States.

(e) The person serving the subpoena shall make proof of service by filing the subpoena and affidavit or acknowledgement of service with the officer before whom the witness is required to testify or produce evidence or with the Secretary. Failure to make proof of service shall not affect the validity of the service.

(f) On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

(g) On application and for good cause shown, the Commission will seek judicial enforcement of a subpoena issued to a party and which has not been quashed.

(h)(1) The provisions of paragraphs (a) through (g) of this section are not applicable to the attendance and testimony of the Commissioners or NRC personnel, or to the production of records or documents in the custody thereof.

(2)(i) In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise: *Provided*, That the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnel with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, the presiding officer may require that the staff answer the interrogatories.

(iii) No deposition of a particular named NRC employee or answer to interrogatories by NRC personnel pursuant to paragraphs (h) (2) (i) and (ii) of this section shall be required before the matters in controversy in the proceeding have been identified by order of the Commission or the presiding officer, pursuant to § 2.751a, or after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer for good cause shown.

(iv) The provisions of § 2.740(c) and (e) shall apply to interrogatories served pursuant to this subparagraph.

(3) Records or documents in the custody of the Commissioners and NRC personnel are available for inspection and copying or photographing pursuant to §§ 2.744 and 2.790.

§ 2.721 Atomic safety and licensing boards.

(a) The Commission or the Chairman of the Atomic Safety and Licensing Board Panel may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission or the Chairman of the Atomic Safety and Licensing Board Panel deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may

398 302

(2) All facts officially noticed.

(3) The ruling on each material exception;

(4) The appropriate ruling, order, or denial of relief, with the effective date.

§ 2.771 Petition for reconsideration.

(a) A petition for reconsideration of a final decision may be filed by a party within ten (10) days after the date of the decision. No petition may be filed with respect to an initial decision which has become final through failure to file exceptions thereto.

(b) The petition for reconsideration shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the petition, and the relief sought. Within ten (10)* days after a petition for reconsideration has been filed, any other party may file an answer in opposition to or in support of the petition. However, the staff may file such an answer within twelve (12) days after a petition for reconsideration has been filed.

(c) Neither the filing nor the granting of the petition shall stay the decision unless the Commission orders otherwise.

§ 2.772 Authority of the Secretary to Rule on Procedural Matters.

When briefs, motions or other papers listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary are authorized to:

(a) Prescribe schedules for the filing of briefs, motions, or other pleadings, where such schedules may differ from those elsewhere prescribed in these rules or where these rules do not prescribe a schedule;

(b) Rule on motions for extensions of time;

(c) Reject motions, briefs, pleadings, and other documents filed with the Commission later than the time prescribed by the Secretary or the Assistant Secretary or established by an order, rule, or regulation of the Commission unless good cause is shown for the late filing;

(d) Prescribe all procedural arrangements relating to any oral argument to be held before the Commission;

(e) Extend the time for the Commission to rule on a petition for review under 10 CFR 2.786(b); (f) Extend the time for the Commission to grant review on its own motion under 10 CFR 2.786(a); and (g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c).

EX PARTE COMMUNICATIONS

§ 2.780 Ex parte communications.

(a) Except as provided in paragraph (e) of this section, neither (1) Commissioners, members of their immediate staffs, or other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions will request or entertain off the record except from each other, nor (2) any party to a proceeding for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit, or any officer employee, representative, or any other person directly or indirectly acting in behalf thereof, shall submit off the record to Commissioners or such staff members, officials, and employees, any evidence, explanation, analysis, or advice, whether written or oral, regarding any substantive matter at issue in a proceeding on the record then pending before the NRC for the issuance, denial, amendment, transfer, renewal, modification, suspension, or revocation of a license or permit. For the purposes of this section, the term "proceeding on the record then pending before the NRC" shall include any application or matter which has been noticed for hearing or concerning which a hearing has been requested pursant to this part.

(b) Copies of written communications covered by paragraph (a) of this section shall be placed in the NRC public document room and served by the Secretary on the communicator and the parties to the proceeding involved.

(c) A Commissioner, member of his immediate staff, or other NRC official or employee advising the Commissioner in the exercise of their quasi-judicial functions, to whom is attempted any oral communication concerning any substantive matter at issue in a proceeding on the record as described in paragraph (a) of this section, will decline to listen to such communication and will explain that the matter is pending for determination. If unsuccessful in preventing such communication, the recipient thereof will advise the communicator that a written summary of the conversation will be delivered to the NRC public document room and a copy served by the Secretary of the Commission on the communicator and the parties to the proceeding involved. The recipient of the oral communication thereupon will make a fair, written summary of such communication and deliver such summary to the NRC public document room and serve copies thereof upon the communicator and the parties to the proceeding involved.

(d) This section does not apply to communications authorized by paragraph (e) of this section to the disposition of ex parte matters authorized by law, or to communications requested by the Commission concerning:

(1) Its proprietary functions;

(2) General health and safety problems and responsibilities of the Commission; or

(3) The status of proceedings.

(e) In any adjudication for the determination of an application for initial licensing, other than a contested proceeding, Commissioners, members of their immediate staffs and other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions may consult the staff, and the staff may communicate with Commissioners, members of their immediate staffs and other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions.

(f) The provisions and limitations of this section applicable to Commissioners, members of their immediate staffs, and other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions are applicable to members of the Atomic Safety and Licensing Appeal Board members or their immediate staffs and other NRC officials and employees who advise members of the Appeal Board in the exercise of their quasi-judicial functions.

NOTE: [Deleted 40 FR 2973.]

ATOMIC SAFETY AND LICENSING APPEAL BOARD

§ 2.785 Functions of Atomic Safety and Licensing Appeal Boards.

(a) The Commission has authorized Atomic Safety and Licensing Appeal Boards to exercise the authority and perform the review functions which would otherwise have been exercised and performed by the Commission, including but not limited to, those under §§ 2.760-2.771, 2.912, and 2.913 in (1) proceedings on applications for licenses under Part 50 of this chapter and (2) such other licensing proceedings under the regulations in this chapter as the Commission may specify.

598 303

*Amended 43 FR 17798

POOR ORIGINAL

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-01-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR Part 2900]

ESSENTIAL AGRICULTURAL USES OF NATURAL GAS

Availability of Draft Environmental Impact Statement

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of availability of draft environmental impact statement and request for comments.

SUMMARY: Notice is hereby given that the Office of Energy (OE) has prepared a Draft Environmental Impact Statement (DEIS) in accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) in connection with the proposed rule by the Secretary of Agriculture to certify the essential agricultural uses of natural gas to the Secretary of Energy under Section 401 of the Natural Gas Policy Act (Pub. L. 95-621). (43 FR 54938, November 24, 1978).

The Department of Agriculture earlier prepared a preliminary impact analysis of the proposed rule. In response to public comment, a draft environmental impact statement has been prepared which discusses the economic and environmental consequences of four alternative curtailment plans. This statement examines the impacts on agriculture, affected industries, air quality, water quality, and biological resources.

DATE: Comments must be received on or before April 23, 1979.

ADDRESS: Send comments to: Director, Office of Energy, U.S. Department of Agriculture, Room 226-E, Administration Building, 12th and Independence Ave., S.W., Washington, D.C. 20250. The Draft Environmental Impact Statement may be examined during regular business hours at the Office of Energy in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C. Room 5173. Copies of the OE DEIS may be obtained upon request to the OE at the above address.

FOR FURTHER INFORMATION CONTACT:

Additional information may be secured on request, submitted to Weldon V. Barton, Director, Office of Energy, Department of Agriculture, (202) 447-2455.

SUPPLEMENTARY INFORMATION: Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the OE Draft Environmental Impact Statement have been sent to various Federal, State and local agencies, as outlined in the Council of Environmental Quality guidelines.

Dated at Washington, D.C. this 27th day of February 1979.

WELDON V. BARTON,
Director, Office of Energy.

[FR Doc. 79-7106 Filed 3-6-79; 8:50 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[10 CFR Part 2]

RULES OF PRACTICE

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is amending its rule dealing with *ex parte* communications and the separation of adjudicatory and non-adjudicatory functions so that those rules will accord with the Government in the Sunshine Act, Pub. L. No. 94-409. The substance of the proposed rules is largely unchanged from the Commission's current rules and practices in the areas involved.

DATE: Comments must be received on or before April 23, 1979.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTN: Docketing and Service Branch. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Ostrach, Esq., Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (202) 634-3224.

SUPPLEMENTARY INFORMATION: These proposed amendments have two primary purposes. They are designed to adapt the Commission's rules to the terminology of the Government in the Sunshine Act and they are also designed to codify the practices the Commission now employs in its adjudicatory proceedings with regard to *ex parte* communications.

Both the separation of functions regulation, § 2.719, and the *ex parte* regulation, § 2.780, are based on the concept of "Commission adjudicatory employees." This term is new, but the principle it represents is embodied in the present regulations. It is intended to include all of those employees who participate in the making of the Commission's (or the subordinate adjudicatory panels') decisions in adjudicatory proceedings, and it should be broadly construed. Of course, it does not include those people whose participation in the decisionmaking process is limited to appearance as witnesses or counsel.

The Commission has requested the General Counsel's office to examine the extent to which direct communications between the Commissioners and the Commission staff may legally and practically be employed as management tools. In particular, the study will examine the extent to which Commissioners can, not on the record, communicate with staff on issues which arise in specific proceeding in adjudication without violating the *ex parte* provisions of the Administrative Procedure Act and without violating the "hearing" requirement of the Atomic Energy Act. This study, which is now scheduled to be completed in approximately two months, may lead to recommendations for modification of the regulations proposed below or for other modifications in the Commission's current regulations and practices. Public comment on the issue of such communications may be made now or may be made after the General Counsel's recommendations are made public.

Proposed § 2.719 is drawn from 5 U.S.C. 554(d) and the Commission's present regulation on separation of

298 304

POOR ORIGINAL

functions. Subsection (b) is designed to prevent adjudicatory employees from being subordinate to non-adjudicatory employees so that no situations can arise in which the independence of the Commission's adjudications may be suspect. Subsection (c) will prevent Commission staff personnel who have appeared as parties in adjudications from participating in making the decisions in those or factualy related adjudications. This provision does not apply to uncontested applications for initial licenses or to informal rulemakings conducted pursuant to 5 U.S.C. 553.

Section 2.780 is intended to cover all Commission adjudications. It does not apply to informal rulemakings or to decisions on requests for enforcement action pursuant to 10 CFR 2.206. It does apply once an enforcement proceeding has been instituted pursuant to 10 CFR 2.202. There are several specific exclusions from the definition of *ex parte* communication in subsection 2.780(b). The first exception involves requests for reports on the current status of a proceeding or upon scheduling matters. This exception permits the parties to obtain easily this necessary and routine information. The second exception is for *ex parte* communications which are specifically permitted by statute or regulation, such as requests for subpoenas or discussions of certain classified information (see 10 CFR 2.912). This exception simply recognizes that the policy against *ex parte* communications can be overcome by other policy considerations. Aslo excluded from the definition are communications by or to members of the Office of the General Counsel regarding matters pending before a court or another agency. Although in most cases issues are litigated in the courts only after they have been adjudicated by the Commission, there have been cases in which matters were pending in litigation at the same time that those or related issues were before the Commission or the Boards. In such cases it is sometimes necessary for members of the Office of the General Counsel to discuss the litigation with the parties who may also be parties to the Commission proceeding. Subsection 2.780(b)(3) recognizes this need and excludes such communications from the definition of *ex parte* communications so long as they are limited to discussions of the matters pending before the court (or other agency). The fourth exemption permits adjudicatory employees to communicate directly with the staff in uncontested licensing proceedings which, as defined by 10 CFR 2.4(n), are proceedings in which the only parties are the staff and the applicant and where there are no issues in dispute. This provision is carried over from 10 CFR 2.780(e) as it is presently written. The absence of any dispute involving the application ensures that this provision will not prejudice any party.

The final exclusion from the definition of *ex parte* communications involves generic issues. This exclusion takes account of the Commission's dual responsibilities as both an adjudicatory and a rulemaking body. The Commission often has before it generic rulemaking proposals which would alter Commission policy in broad areas of its responsibilities. In many cases such proposals, if adopted, would have an effect on adjudicatory proceedings and, in some cases, on matters currently in issue in such adjudications. To include these generic matters within the definition of *ex parte* communications would significantly impair the Commission's ability to resolve generic issues through rulemaking. Since the same generic issue may affect many adjudications, each with separate parties, resolution of these issues through adjudicatory or quasi-adjudicatory procedures might in some cases prevent the Commission from taking needed regulatory action in an expeditious fashion. The Commission believes that this policy accords with law and is justified for the policy reasons given above. However, the Commission recognizes that this provision cannot be used as a means of circumventing the adjudicatory process and will act to ensure that its use is limited to matters that are of generic rather than limited concern.

Subsections (c) and (d) of § 2.780 are the essential operative provisions of the *ex parte* rule. Together they bar *ex parte* communications either to or from Commission adjudicatory employees. The prohibitions apply to "interested persons" as that term is used in the Government in the Sunshine Act. The long-standing Commission policy against *ex parte* communications between adjudicatory and non-adjudicatory employees is also made explicit. Subsection (e) is a clarification of current procedures for dealing with *ex parte* communications. It provides that, to the extent possible, *ex parte* communications will be channeled to the Office of the Executive Director for Operations for handling by that office. Since the communications will not reach any adjudicatory employee, this means they will in most cases not have to be copied and circulated to the parties. This will result in a significant cost savings to the Commission which presently copies and circulates all *ex parte* communications regardless of the volume of such communications or whether they reached the Commission employee to whom they were sent. Subsections (f) and (g) provide how *ex parte* communications which are received or made by adjudicatory employees will be treated. They are modeled after the provisions of the Sunshine Act, and also provide that, in most cases, the Secretary of the Commission will send copies of the communication to all parties to the proceeding.

Subsection (h) explains how proceedings to impose sanctions for violations of the *ex parte* rule shall be commenced. The Commission expects that the sanctions imposed in any case will take into account the intent of the persons involved, the seriousness of the violation, the nature of the issues and their importance to the proceeding, the interests of other parties or persons, the public interest and other relevant factors. Subsection (i) defines when the prohibition against *ex parte* communications comes into effect. Subsection (j)(1) defines the term proceeding so as to exclude export and import proceedings from the definition, since those proceedings are separately treated in Part 110 of the Commission's regulations. Furthermore, consistent with current Commission policy, rulemaking proceedings conducted pursuant to Subpart H of 10 CFR Part 2 are also not included within the coverage of the *ex parte* prohibition except as the Commission may otherwise direct in particular rulemakings. Subsection (j)(2) defines the term "interested person" as that term is defined in the legislative history of the Sunshine Act. H.R. Rep. 94-880 Part I, 94th Cong. 2nd Sess. at 19-20 (1976).

Pursuant to section 161 of the Atomic Energy Act and 5 U.S.C. 553, notice is hereby given that adoption of the following amendments to 10 CFR Part 2 is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments should send them to the Secretary, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. All comments must be received by April 23, 1979. Copies of all comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. It is proposed to amend § 2.719 to read as follows:

§ 2.719 Separation of Functions: Commission Adjudicatory Employees.

(a) As defined in this section, Commission adjudicatory employees include:

(1) The Chairman and Commissioners and members of their personal staffs;

(2) Members of the Atomic Safety and Licensing Appeal Panel and members of the staff of that panel;

POOR ORIGINAL 398 305

(3) Members of the Atomic Safety and Licensing Board Panel and members of the staff of that panel;

(4) The General Counsel and employees of the Office of the General Counsel;

(5) The Director of the Office of Policy Evaluation and employees of that office;

(6) The Secretary and employees of the Office of the Secretary; and

(7) The Director of the Office of Inspector and Auditor and employees of that office.

(b) Commission adjudicatory employees shall perform no duties inconsistent with their adjudicatory responsibilities. In carrying out their adjudicatory responsibilities these employees will not be responsible to or subject to the supervision or direction of any Commission officer or employee except another Commission adjudicatory employee acting under this Subpart.

(c) Except as provided in § 2.780 of this Subpart and except in uncontested proceedings involving an application for initial licensing, no officer or employee of the Commission except a member of the Commission who has engaged in the performance of any investigative or prosecuting functions in that case or in any factually related case may participate or advise in the initial or final decision, except as a witness or counsel in the proceeding. Representation of the Commission in any court of law or before any agency other than the Commission does not constitute the performance of investigative or prosecuting functions for the purposes of this section.

2. It is proposed to amend § 2.780 to read as follows:

§ 2.780 Ex parte communications: Commission adjudicatory employees.

(a) As defined in this section, Commission adjudicatory employees include:

(1) The Chairman and Commissioners and members of their personal staffs;

(2) Members of the Atomic Safety and Licensing Appeal Panel and members of the staff of that panel;

(3) Members of the Atomic Safety and Licensing Board Panel and members of the staff of that panel;

(4) The General Counsel and employees of the Office of the General Counsel;

(5) The Director of the Office of Policy Evaluation and employees of that office;

(6) The Secretary and employees of the Office of the Secretary; and

(7) The Director of the Office of Inspector and Auditor and employees of that office.

(b) As used in this section, the term *ex parte* communication means an oral or written communication relevant to the merits of any proceeding on the record pending before the NRC which is not made on the public record and with respect to which reasonable prior notice to all participants in the proceeding is not given, but it shall not include:

(1) Requests for status reports;

(2) *Ex parte* communications specifically permitted by statute or regulation (for example, § 2.720 of this part);

(3) Communications made to or by members of the Office of the General Counsel regarding matters pending before a court or another agency;

(4) Communications between staff and any Commission adjudicatory employee in a proceeding involving an application for initial licensing other than in a contested proceeding as defined by § 2.4(n) of this Part; and

(5) Communications between the Commission and staff regarding generic issues involving public health and safety or other statutory responsibilities of the Commission not specifically related to any particular proceeding pending before the Commission.

(c) No Commission adjudicatory employee will make or knowingly cause to be made to any interested person outside the NRC or to any NRC employee engaged in the performance of investigative or prosecuting functions in that or in any factually related proceeding an *ex parte* communication.

(d) No interested person outside the NRC and no NRC employee engaged in the performance of investigative or prosecuting functions in that proceeding or any factually related proceeding shall make or shall knowingly cause to be made to any Commission adjudicatory employee an *ex parte* communication.

(e) To the extent possible, all *ex parte* communications directed to any Commission adjudicatory employee will be referred to the Office of the Executive Director for Operations for handling by that office, and such *ex parte* communications will not be transmitted to the Commission adjudicatory employee to whom they were directed. Such *ex parte* communications shall be placed in a file associated with but separate from the record of the proceeding to which the *ex parte* communication pertains. If a communication was made or solicited by a Commission adjudicatory employee, or if it is otherwise appropriate, the Executive Director for Operations will serve the *ex parte* communication on all parties to the proceeding to which it pertains.

(f) Any Commission adjudicatory employee who, despite paragraph (e) of this section, receives, makes or knowingly causes to be made a communication prohibited by this section will place in a public file associated with but separate from the public record of that proceeding:

(1) All such communications which are written;

(2) Memoranda stating the substance of any such communications which were oral; and

(3) All written responses, and memoranda stating the substance of all oral responses to the materials discussed in paragraphs (f)(1) and (f)(2) of this section.

(g) The Secretary will send copies of any communication of the kinds listed in paragraphs (f)(1), (2) and (3) of this section to all participants to the proceeding with respect to which it was made, and will notify the communicator of the provisions of this regulation prohibiting *ex parte* communications. If the communications are from persons other than participants to the proceedings or their agents, and the Secretary determines that it would be too burdensome to send copies of the communications to all participants because: (1) the communications are so voluminous, or (2) the communications are of such borderline relevance to the issues of the proceeding, or (3) the participants to the proceeding are so numerous, the Secretary may instead notify the participants that the communications have been received, placed in the file, and are available for examination, and will be sent upon request.

(h) Upon receipt of a communication knowingly made or knowingly caused to be made in violation of this section, a Commission adjudicatory employee may, to the extent consistent with the interests of justice and the policy of the underlying statutes, recommend to the appropriate Commission adjudicatory tribunal that the person making or causing the prohibited communication be made to show cause why his claim or interest in the proceeding should not be denied, disregarded, dismissed or otherwise adversely affected because of such violation.

(i) The prohibitions of this section shall apply when a proceeding is first noticed for a formal hearing on the record, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibition shall apply at the time he acquires such knowledge.

(j) As used in this section:

(1) The term proceeding shall not refer to any proceeding or proceedings governed by Part 110 of this chapter, and except as the Commission may otherwise direct, shall not refer to any proceeding for the adoption, amendment or repeal of any rule or regulation which is conducted pursuant to Subpart H of this Part, and

(2) The term interested person is intended to be a wide, inclusive term covering any individual or other

POOR ORIGINAL

person with an interest in the agency proceeding that is greater than the general interest the public as a whole may have. The interest need not be monetary, nor need a person be a party to, or intervenor in, the agency proceeding to come under this section. The term includes, but is not limited to, parties, competitors, public officials, and nonprofit or public interest organizations and associations with a special interest in the matter regulated. The term does not include a member of the public at large who makes a casual or general expression of opinion about pending proceedings.

For the Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

Dated at Washington, DC, this 1st day of March 1979.

[FR Doc. 79-6674 Filed 3-6-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 211 and 212]

[Docket No. ERA-R-78-12]

AMENDMENTS TO IMPOSE THE ENTITLEMENT OBLIGATION ON THE FIRST PURCHASE OF PRICE CONTROLLED DOMESTIC CRUDE OIL

Proposed Rulemaking; Cancellation of Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Proposed rulemaking; cancellation of public hearing.

SUMMARY: On January 25, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) proposed to amend its domestic crude oil allocation (or entitlements) program to impose the entitlement purchase obligation on the first purchase of price-controlled domestic crude oil, regardless of whether the purchaser is a refiner, reseller, or some other user of crude oil. (44 FR 5296)

In the same notice, DOE announced that a public hearing would be held on March 8, 1979, in Denver, Colorado for the purpose of accepting oral comments on the proposed regulations. Because only two requests to speak were made, DOE has determined after consultation with the requesting parties that the public hearing will not be necessary. Accordingly, the hearing previously scheduled for March 8, 1979 is cancelled.

However, the public hearing in Washington, D.C. will be held as announced on March 13, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214B, Washington, D.C. 20461, (202) 254-4201.

Daniel J. Thomas (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2310, Washington, D.C. 20461, (202) 254-7477.

Issued in Washington, D.C., March 1, 1979.

DOUGLAS G. ROBINSON,
Assistant Administration, Regulations and Emergency Planning, Economic Regulatory Administrator.

[FR Doc. 79-6915 Filed 3-6-79; 8:45 am]

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 720]

PROTECTION OF PRIVACY OF INDIVIDUAL RECORDS

Proposed Rulemaking—Exemptions

AGENCY: National Credit Union Administration.

ACTION: Privacy Act Notice and Proposed Revisions to 12 CFR 720.35.

SUMMARY: NCUA proposes to amend 12 CFR 720.35, Exemptions, to give notice of another new system of records which is exempt from certain provisions of the Privacy Act of 1974 (5 U.S.C. 552a (1974)) (the "Privacy Act") pursuant to subsection (k)(2) of the Privacy Act (5 U.S.C. 552a(k)(2)).

DATES: Comments must be received on or before April 7, 1979.

ADDRESS: Send written comments to Robert S. Monteit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Beatrix D. Fields, Staff Attorney, Office of General Counsel, or telephone (202) 632-4870.

SUPPLEMENTARY INFORMATION: Subsection (k) of the Privacy Act (5 U.S.C. 552a(k)) sets forth specific exemptions for systems of records which may be exempted from certain provisions of the Privacy Act. Those NCUA systems of records which are exempt pursuant to subsection (k) are described in § 720.35(c) of its rules and regulations (12 CFR 720.35(c)). In accordance with the Privacy Act, NCUA is creating a new system of records that is considered to be an exempted system under subsection (k)(2) of the Privacy Act. The system is designated NCUA-31 and entitled Litigation Case Files. Thus, NCUA proposes to amend § 720.35 to reflect the existence of this new exempted system.

When a new system of records is proposed, subsection (o) of the Privacy Act (5 U.S.C. 552a(o)), requires that a Report on the New System of Records ("Report") be submitted for review to Congress and to the Office of Management and Budget. Additionally, an opportunity for public notice and comment on the proposed new system, NCUA-31: Litigation Case Files, is being provided concurrently with this proposed amendment.

NCUA-31 would be exempt from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act (5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), (I)(f)), insofar as this system of records contains investigatory materials compiled for law enforcement purposes. However, if any individual is denied any right, privilege or benefit to which the individual would otherwise be entitled by Federal law, or for which the individual otherwise would be eligible, as a result of the maintenance of such records, such records or information contained therein will be accessible to the individual: *Provided*, The identity of a confidential source is not disclosed.

The records contained in NCUA-31 are used in connection with the execution of NCUA's legal and enforcement responsibilities under the Federal Credit Union Act (12 U.S.C. 1786, 1789) and the Federal Tort Claims Act (28 U.S.C. 2671-2680). Records may contain unverified, unsolicited statements sometimes received from confidential sources. In addition, reports of investigations or other internal agency memoranda may be included in these files. NCUA believes that the disclosure of the existence of the information in this system or the identity of sources of information may seriously hamper and undermine effective enforcement of the Federal credit union laws. Such disclosure may prematurely alert individuals that they are under investigation or provide access to evidentiary information. Similary, an accounting as required by subsection (c)(1) of the Privacy Act (5 U.S.C. 522a(c)(1)) should not be disclosed, as it may indicate that records have been forwarded to the Justice Department for consideration of criminal proceedings. If such an accounting is disclosed, an individual may flee the jurisdiction or otherwise interfere with criminal prosecution. During litigation access to case file information is limited by the bounds of applicable discovery rules as to disclosure of investigatory materials. After the conclusion of an administrative or judicial proceeding, it is necessary to retain investigatory materials intact. Further legal

398 307 POOR ORIGINAL

ILE LEVELS	DOC. DATE				FILE LOCATION	
10CFR PT9.7	790111	79/01/11	ACCESSION NBR: 7901170380	TASK NBR:	10CFR PT9.7	790111
			DOC. TYPE: MEMO	FICHE NBR:	79011702998	
			NBR. PAGES: 1P.	NOTARIZED:		
			DOCKET DATE:	LPDR: NO		
			REPORT NBR:			
			AUTHOR: CHILK,S.J.	AFFIL: OFFICE OF THE SECRETARY OF THE COMMISSION		
			RECIP.:	AFFIL: OFFICE OF THE SECRETARY OF THE COMMISSION		
			SUBJECT: COMMISSION DETERMINATION RE PUBLIC DISCLOSURE UNDER THE GOVT IN THE SUNSHINE ACT OF TRANSCRIPT OF LICENSING REFORM DISCUSSION OF 771215.TRANSCRIPT WILL BE WITHHELD FROM PUBLIC DISCLOSURE: [illegible] RELEASED AFTER CONGRESS ADJOURNS.			
CFR PT9.7	790112	79/01/12	ACCESSION NBR: 7901250024	TASK NBR:	10CFR PT9.7	790112
			DOC. TYPE: MEMO	FICHE NBR:		
			NBR. PAGES: 1P.	NOTARIZED:		
			DOCKET DATE:	LPDR: NO		
			REPORT NBR:			
			AUTHOR: CHILK,S.J.	AFFIL: OFFICE OF THE SECRETARY OF THE COMMISSION		
			RECIP.:	AFFIL: OFFICE OF THE SECRETARY OF THE COMMISSION		
			SUBJECT: COMMISSION RELEASES "TRANSCRIPT OF COMMISSION DISCUSSION OF BUDGET MARKUP FY79:AUGUST 26,1977" IN ITS ENTIRETY.			
CFR PT9.7	790118	79/01/18	ACCESSION NBR: 7901290337	TASK NBR:	10CFR PT9.7	790118
			DOC. TYPE: LEGAL DOCUMENT	FICHE NBR:	7901290337	
			NBR. PAGES: 41PP.	NOTARIZED:		
			DOCKET DATE:	LPDR: NO		
			REPORT NBR:			
			AUTHOR: HENDRIE,J.M.	AFFIL: COMMISSION		
			AUTHOR: KENNEDY,R.T.	AFFIL: COMMISSION		
			AUTHOR: BRADFORD,P.A.	AFFIL: COMMISSION		
			SUBJECT: TRANSCRIPT OF A 790118 MEETING IN WASHINGTON,DC,RE SECY-78-624 & PIRG PETITION TO AMEND 10CFR100 RE POPULATION DENSITY CRITERIA AROUND NUCLEAR REACTOR SITES.PP1-41.			

POOR ORIGINAL

398 308