

Date of Meeting: 2/6/80
Date Issued: 2/7/80

MINUTES OF ACRS PROCEDURES SUBCOMMITTEE MEETING
February 6, 1980
Washington, D.C.



Summary

I) Proposed Procedures for ACRS Participation in NRC Rulemaking Process

The Subcommittee endorsed Attachment 1 as the basis for a change in NRC regulations to cover ACRS participation in the rulemaking process.

II) Proposed Procedures for ACRS Handling of Dissenting Professional Opinions

The Subcommittee endorsed Attachment 2.

III) Proposed Procedures for Management of the ACRS Fellowship Program

The Subcommittee endorsed Attachment 3.

Proposed use of a Brazilian national as an ACRS Fellow as part of an International Exchange Program was discussed. It was agreed that his professional qualifications will be considered to determine if he can contribute to the program.

A policy for annual review of performance and related salary was discussed.

IV) Comments by ACRS Members Mathis and Ebersole (Attachments 4 and 5) Regarding ACRS Procedures

With respect to procedures regarding improved conduct of ACRS meetings (Mathis) and review of Supplementary SER's (Ebersole) the members endorsed the following:

- . Meeting notices should state the specific purpose and objectives of meetings.
- . ACRS consultants should be more clearly informed regarding what is expected of them at meetings.
- . Specific minimum limits should be set regarding receipt of documents prior to meetings (A target of 2 weeks and an absolute minimum of 1 week was suggested.)

- . A method is needed to provide for input from all Committee meetings earlier in the Subcommittee review. Several alternatives were suggested:
 - Members should identify areas of concern/interest during the discussion of Anticipated Subcommittee Meetings which is scheduled during each full Committee meeting. In order to facilitate this discussion a list of topics and meeting objectives should be provided.
 - An initial session would be held with the full Committee and the Subcommittee would pursue those areas identified as needing further attention.

- . Discussion during full Committee meetings should give more recognition to the work done during Subcommittee meetings. If a member has not identified topics to be explored by the Subcommittee and has not attended the related Subcommittee meetings, he should refrain from extensive detailed questioning during the full Committee sessions.

- . Members should do adequate homework prior to ACRS meetings so they are better able to focus their questions during meetings.

- . The ACRS Subcommittee Chairman with the assistance of the cognizant ACRS Staff engineer should examine Supplementary SER's and inform the Committee of areas where the NRC Staff is not implementing ACRS recommendations adequately. The Committee will then take appropriate action.

V) Proposed Reorganization of the ACRS Technical Staff to Provide Improved Support of Committee Activities

Based on the assumption that ten additional permanent, full-time technical staff members, as requested by the Committee is approved, a proposed reorganization of the ACRS technical staff was discussed. Attachment 6 was endorsed.

VI) Proposed Procedures for Improved Interface Between the ACRS and the Commission

To improve the opportunity for better contact/discussion with the Commission and EDO the NRC Chairman and the EDO should both be invited to ACRS meetings each month to discuss regulatory policy, problems, objectives, etc. All of the other Commissioners should be invited to attend sessions with the Chairman where they may have an interest.

Consideration should be given to a practice where the Chairman's Technical Assistant attends ACRS meetings as an observer.

VII) Recommendations of Special Inquiry Group Regarding ACRS Activities

The suggestion that five ACRS members should be the members of a full-time, independent Nuclear Safety Board was discussed. The Subcommittee agreed that a joint ACRS/NSB should not be supported by the Committee.

A proposal to review the recommendations of the Rogovin Report which have safety significance and compare them with the Kemeny Report and ACRS Report on the Regulatory Process (NUREG-0642) was not endorsed.

VIII) Sustained Performance Award for the ACRS Technical Staff

The Subcommittee endorsed a Sustained Superior Performance Award accompanied by a cash award for members of the ACRS technical staff.

IX) Miscellaneous

- . Dr. Carbon suggested that the Committee should designate a Planning Subcommittee to organize future ACRS activities (e.g., time devoted to generic, cosmic, specific issues, research facilities).
- . Dr. Plesset noted the inquiry of Mr. Paul Leventhal (Senate Subcommittee on Nuclear Regulation) regarding areas where the ACRS could assist the Subcommittee. The ACRS Executive Director was asked to follow-up regarding this matter.

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DRAFT 2
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2/7/80

MEMORANDUM TO: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Commissioner Bradford

SUBJECT: PROPOSED PROCEDURES FOR ACRS PARTICIPATION IN THE NRC RULEMAKING
PROCESS

This paper addresses three aspects of ACRS participation in the rule-
making process:

- . The first addresses the implementation of the recommendations of the President's Commission on TMI that:

The ACRS should have the power to initiate a rulemaking proceeding before the agency to resolve any generic safety issue it identifies.
- . The second addresses the procedures by which the ACRS can best participate in and contribute to the development and promulgation of NRC rules which are being formulated by the Commission (see memorandum from S. Chilk to Leonard Bickwit, Jr., dtd. January 16, 1980).
- . The third addresses ACRS participation in the hearing process itself which may accompany the development of a particular rule.

I. ACRS Participation in NRC Rulemaking - ACRS Recommendations Regarding Promulgation of Needed Rules

In a recent report to the Commission (Dr. Milton Plesset, ACRS Chairman, to Dr. John Ahearne, NRC Chairman dated January 15, 1980, "Recommendations of President's Commission on ACRS Role") the Committee proposed that this be implemented as follows:

The Committee agrees with the thrust of this recommendation but believes that the Commission would, as a matter of course, initiate a rulemaking proceeding when recommended by the ACRS.

This appears to be an appropriate interpretation of the recommendations of the President's Commission in view of the advisory nature of the Committee and the Committee's belief that the Commission will respond to specific recommendations in an appropriate manner within a reasonable period of time.

Recommendation - Appropriate followup procedures to deal with ACRS reports and recommendations will deal with this matter adequately. A rule change should be promulgated to indicate that the Commission will respond to such recommendations on the public record within a reasonable period of time (e.g., 30 days).

II) ACRS Participation in Rulemaking - Development of ACRS Comments and Recommendations Regarding Proposed Rules and Regulations.

Alternate 1 - ACRS comments on proposed final rule after public comments have been incorporated and the hearing process (if held) is complete.

Advantages

1. Makes available to the ACRS the input from public comment and the hearing processes in the preparation of ACRS recommendations.
2. Provides for a single step ACRS review at a time when it is considering a completed product.

Disadvantages

1. Could delay promulgation of the rule if significant changes resulting from ACRS comments must be resolved/ incorporated. Could require that the public/comment - hearing process be repeated.
2. Provides for ACRS comment at a time when a major investment in NRC resources has been expended and staff positions have been hardened as a result of extended debate and evaluation.

Alternate 2 - ACRS comment on proposed rule after public comments have been received and incorporated but before the hearing process begins.

Advantages

1. Makes public comments and staff reaction available to the ACRS in preparing its comments.
2. Provides for a single step ACRS review at a time when NRC staff thinking is well advanced but is still flexible with respect to proposed changes
3. Provides ACRS input at a time when Committee recommendations can be evaluated/discussed/etc., without undue delay in the process and the possible need for reopening the hearing process. Major changes resulting from ACRS comments at this stage could result in republication for public comment, however.

Disadvantages

1. Provides for ACRS input after a considerable amount of NRC manpower and resources have been expended.
2. Could result in a delay in promulgation of a final rule if the public comment phase must be redone because of major changes resulting from ACRS comments.

Alternate 3 - Provide ACRS comments during the same period when public comments are being accepted.

Disadvantages

1. Limits the time available for ACRS comments (30/60/90 days) and does not take into account priorities associated with other ACRS assignments.

2. ACRS does not have the benefit of public comments and staff reaction in developing its recommendations.
3. Does not appear to be an appropriate way to make use of an agency advisory committee.
4. Occurs at a time when considerable staff manpower and resources have been expended but the staff is still flexible with respect to changes.

Advantages

1. Would not result in any delay of the rulemaking process.
2. ACRS input would occur at a time when the staff position is responsive to suggestions.

• Alternate 4 - ACRS comments would be provided before the rule is published for public comment.

Advantages

1. ACRS input would occur at a time when minimum staff resources have been expended and the staff is most responsive to suggestions and guidance.
2. Any delays resulting from evaluation/resolution of ACRS comments could best be accommodated with minimum delays to eventual promulgation of the rule.

Disadvantages

1. ACRS would not actually comment on the proposed rule as it eventually evolves after public comments and/or the hearing process is complete.

Conclusion

All of the above have substantive advantages and disadvantages, however, Alternates 2, 3, and 4 appear to offer the opportunity for ACRS participation without the possibility of Alternate 1 that significant delay could result in the promulgation of a proposal if the ACRS were to make substantive comments so late in the process.

It appears that Alternates 2, 3, and 4 might be used to advantage depending on the substance, degree of public interest, degree of prior Committee participation regarding the subject at issue, etc. and any one or combination of more than one (e.g., Alternates 2 and 4 for example) should be selected by the NRC Staff with the concurrence of the Committee on a case-by-case basis. Input from the ACRS in a two-part proceeding could be at the Subcommittee level during the first phase (Alternate 2) and the full Committee during the second (final/Alt. 4) phase.

Recommendation

That an appropriate revision of NRC rules (10 CFR Part 2 Rules of Practice, 10 CFR Part 7 - Advisory Committees, and 10 CFR Part 50 Licensing of Production and Utilization Facilities) be promulgated reflecting the conclusions noted above.

III. ACRS Participation in NRC Rulemaking - Participation in NRC Rulemaking Hearings

The President's Commission on TMI has recommended that the ACRS should be authorized to raise any safety issue in rulemaking proceedings, to give reasons and arguments for its views, and to require formal response to any submission it makes. In addition, any member of ACRS should be authorized to appear and testify in hearings, but should be exempt from subpoena in any proceeding in which he has not previously appeared voluntarily or made an individual written submission.

In its comments regarding this recommendation (M. Plesset ltr. to Chairman J. Ahearne, dated January 15, 1980, "Recommendations of the President's Commission on ACRS Role") the ACRS has noted that with respect to its participation in licensing proceedings that:

While the ACRS agrees that additional emphasis should be given to ACRS recommendations during the hearing process, it believes that a more desirable method of achieving this purpose would be to alter the statute to require that all recommendations made by the ACRS on given licensing proceedings be treated as substantive issues during the hearing. In order to protect the advisory role and collegiality of the ACRS, the statute should also specify that neither the Committee nor its members should be involved as a party nor be subject to subpoena in connection with the hearings.

With respect to the proposal that, "Any member of the Committee should be authorized to appear and testify in hearings," the Committee has indicated that:

The Committee believes that one of its main strengths results from its collegial approach and that this would be jeopardized if members departed from the collegial forum. Although members can express disagreement with full Committee views by adding separate comments to our reports, we believe the collective aspect is overriding and we cannot support the recommendation. A member should be free, of course, to participate as an intervenor in his capacity as a private citizen.

It is the position of OGC that a similar rationale would apply to direct participation by the ACRS or its individual members in rulemaking proceedings. Instead of participation as parties to a proceeding, the technical capability of the Committee should be utilized to assist the Hearing Board or the Commission, as the case may be, in specifying issues to be considered in the hearing and judging of the final product of the proceeding. This kind of participation is reflected in the procedures recently established for ACRS participation in the proposed rulemaking on interim storage and ultimate disposal of radioactive waste. The procedures outlined in the attached letter from J. Ahearne to M. Plesset dated January 9, 1980 and Alternate 2 of Part 1 will provide for such ACRS contribution.

With respect to a formal response to ACRS recommendations regarding rulemaking, the response proposed under Item II would fulfill this requirement.

Recommendation

A revision of NRC rules (10 CFR, Part 2, Part 7, and 50) should be promulgated based on the procedures noted above.)

Conclusion

Proposed changes in NRC rulemaking procedures as noted should be implemented.