

## CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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### INSTITUTIONAL CORRESPONDENCE

The agency policy is to ensure preparation of responsive, timely replies to all correspondence requiring action by the Commission. While the Chairman, as official spokesman of the agency, is principally responsible for carrying out this policy, this also demands personal attention by staff managers as well as priority action by Commissioners. Staff offices with relevant expertise may be tasked with the initial drafting of agency correspondence. Procedures regarding the preparation of Congressional testimony and procedures for tracking commitments made in Congressional hearings and for forwarding responses to Congress are set forth in Chapter VII.

#### INCOMING CORRESPONDENCE

##### 1. Receipt and Review by the Office of the Secretary

- a. External correspondence addressed to the Chairman, the Commission, or the Secretary, and all Congressional correspondence addressed to the Chairman, the Commission, or the Secretary is delivered to the Office of the Secretary. Correspondence addressed to individual Commissioners is handled according to procedures established by each Commissioner.
- b. SECY reviews the incoming correspondence and makes an initial determination as to:
  - o whether a response is necessary;
  - o who should prepare the response and how much preparation time will be allowed;
  - o who should sign the response if one is required;
  - o whether the response will require Chairman review or collegial Commission review;
  - o whether an acknowledgment is required and who should prepare it; and
  - o whether the communication is ex parte as defined by the Commission's Rules of Practice (10 CFR 2.347), and requires special handling.
- c. If an incoming communication is believed to be ex parte, SECY consults with OGC and OCAA, as necessary, before the correspondence is assigned to an action office. (See further discussion of the ex parte rule in this Chapter.)

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- d. With the exception of Congressional correspondence, incoming correspondence that is not sensitive (i.e., does not contain proprietary information, personally identifiable information, controlled unclassified information, etc.) can be made publicly available by the assigned lead office, 24 hours after distribution to the addressee. Incoming Congressional correspondence that is not sensitive and that has been publicly released by the initiating member of Congress or Congressional Committee will be released by the NRC with, and under the same time schedule as, the outgoing Commission response to the Congressional correspondence. If the incoming Congressional correspondence does not require a Commission response, it will be released by the NRC only after the initiating member of Congress or Congressional Committee has publicly released the correspondence. In response to a request submitted under the Freedom of Information Act, prior to releasing incoming Congressional correspondence that has not been previously released in accordance with this paragraph, the NRC will consult with the initiating member of Congress or Congressional Committee. However, if the incoming correspondence is an *ex parte* communication as defined by the Commission's Rules of Practice (10 CFR 2.347), the incoming letter, regardless of the source, and any response thereto will be served on the participants to the proceeding and made public on the Electronic Hearing Docket, provided the incoming correspondence or response do not contain sensitive information. (See Section 1.f, "Ex Parte Communications" under "Guidelines for Commission Response" later in this chapter.)

### GUIDELINES FOR COMMISSION RESPONSE

#### 1. Action Assigned by the Office of the Secretary

##### a. Action Office

Depending upon the subject matter and the issues addressed in the incoming letter, the responsibility for preparing an appropriate response will be assigned to the Chairman, Executive Director for Operations (EDO), or Director of a Commission level office.

##### b. Action Assignment Sheet

A customized action assignment sheet is produced for each incoming letter containing such information as the author, date of the letter, subject matter, date logged, and due date along with a specific control number for tracking.

All incoming correspondence addressed to the Chairman or Commission is initially reviewed by the Office of the Secretary in coordination with the Office of the Chairman, as necessary, to determine whether the response

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will require collegial Commission review or only review by the Chairman. This determination is specified on the action assignment sheet.

c. Signature Level

The following factors are considered in determining whether correspondence will be reviewed and/or signed at the Commission level:

- o does the correspondence involve substantive new policy or legal issues;
- o is the communication an official transmittal to Congress of reports, studies, or other communications expressly required by law;
- o is it correspondence from/to Congressional Committees, Senators, or Representatives;
- o is it correspondence from/to the White House, State Governors, or heads of Federal agencies and departments;
- o does the communication involve Office of Management and Budget (OMB) requests for comments on proposed Executive Orders or legislative proposals requiring collegial Commission review;
- o does the communication involve Government Accountability Office (GAO) final reports that require action by NRC in response to GAO recommendations; and
- o is the incoming correspondence an executive communication as determined by the signatory's present position or previous relationship with NRC and/or urgency or gravity of the subject content of the communication?

Correspondence not requiring signature by the Chairman is assigned to the appropriate Commission level office or the EDO or CFO offices to prepare a response for the signature of an individual designated by the EDO, CFO, or Office Director responsible for the action.

Communications of a routine nature to Members of Congress, Congressional Committees, and their respective staffs may be signed by the Office of Congressional Affairs.

d. Suspense Date

If possible, it is the intent of the Commission to answer Commission correspondence requiring a response within 21 business days of initial

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receipt by the agency. As a general rule, therefore, all incoming correspondence requiring signature of the Chairman is assigned a suspense date that allows the action office fifteen (15) business days to draft a proposed reply. The remaining time (6 business days) is assigned for Commission review and SECY preparation of the proposed reply.

e. Acknowledgment Requirements

The assignment sheet will indicate whether the correspondence requires an acknowledgment. The following correspondence will be acknowledged by the office indicated on the assignment sheet within 48 hours of receipt:

- o Congressional correspondence (by OCA);
- o All other correspondence designated for a reply, including correspondence from the White House, the head of a Federal agency, state and local government officials, and Indian Tribe representatives (by SECY).

f. Ex parte Communications

The Commission's ex parte rule (10 CFR 2.347) provides in part that "...(a) Interested persons outside the agency may not make or knowingly cause to be made to any Commission adjudicatory employee, any ex parte communication relevant to the merits of the proceeding..." Ex parte or separate communications to a Commission adjudicatory employee (including Chairman/Commissioners) on an active adjudicatory matter are strictly prohibited by this regulation. If SECY determines that a piece of correspondence is subject to the Commission's ex parte rule, it is normally assigned to the appropriate action office; information copies of the incoming letter are given to the Commission and the appropriate Licensing Board; "service" copies are sent to all parties to the proceeding involved and to the communicator; and a copy is made available to the public in ADAMS.

The Commission has directed that, as a matter of practice, ex parte communications about pending adjudications should be served on the parties promptly when they are received, regardless of their source. The Office of the Secretary will issue a standard-format response to the sender explaining that in conformity with the NRC's rules on handling of such communications, the letter has been served on the parties to the proceeding. If a further staff response is called for, this letter can tell the writer to expect the staff to respond shortly to the merits of the incoming letter.

Ex parte communications include those received from parties to the proceeding, participants under 10 CFR 2.315, other public officials,

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competitors, nonprofit or public interest organizations, and associations with a special interest in the proceedings. Communications received from a member of the public at large who makes a casual or general expression of opinion about a pending proceeding are not considered ex parte communications under NRC regulations. See 51 Fed. Reg. 10,393, 10,396 (March 26, 1996). (NRC staff communications to the Commission are governed by separation of functions rules found at 10 CFR 2.348.)

### 2. **Requests for Additional Response Preparation Time**

As previously noted, if possible, it is the intent of the Commission to respond to correspondence action items within 21 business days of initial receipt of the correspondence by the agency. There may be a subset of Commission correspondence that is complex, a substantial request for information, dependent on intergovernmental coordination, etc., where it is necessary and appropriate to establish a longer due date. Where this is the case, there will be close coordination between SECY, EDO, and OCA, as appropriate, and an appropriate due date will be established as early as possible. Coordination with the Congress on acceptable due dates will be made through OCA after consultation with the Commission.

## COMMISSION DAILY READING FILE

SECY (Correspondence and Records staff (C/R)) prepares an electronic Daily Reading File (Commission E-Reader), which is the primary means for distributing incoming and outgoing correspondence to the Commissioners, Commission level offices, and the Office of the Inspector General. Urgent correspondence is emailed or hand carried. Information such as the routing, suspense date, signature level, action to be taken, and review level are indicated in the Reading File Index. If a Commissioner wishes to change routing, signature level, or suspense date, he/she should direct his/her request to SECY. SECY will poll the Commission, and the request will be granted upon approval of a majority of the Commission. If a Commissioner wishes to provide for collegial review of the letter prior to dispatch, he/she should direct his/her request that it be treated as Commission correspondence to SECY. The Commissioner's request will be granted if a majority of the Commission approves the request in response to polling by SECY.

The Daily Reading File contains important correspondence that is either relevant to the Commission's business or has the likelihood of generating media or public attention. It also contains correspondence concerning the known interests of individual Commissioners. In addition, the Daily Reading File regularly contains:

1. **Reading File Index** -- summaries of external correspondence received and outgoing Chairman and Commission Correspondence; and
2. **SECY Daily Report** -- summaries of the previous day's internal memoranda.

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The Daily Reading File is distributed to the Commissioners and to Commission level offices. Copies of correspondence contained in the Daily Reading File that are assigned to the EDO are also provided to the EDO.

### **OUTGOING CORRESPONDENCE**

Outgoing correspondence prepared for the Chairman's signature is forwarded to SECY by the action office.

Normally, correspondence that addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy, will be handled as Chairman Correspondence on behalf of the Commission.

Correspondence in which new, revised, or expanded policy positions are formulated will be handled as Commission Correspondence as well as correspondence concerning matters pending Commission decision, items relating to the performance of Commission duties and responsibilities, and items of high Commission interest.

Correspondence that formulates policy or expands, revises, or interprets current policy should be signed by the Chairman only after Commission review and approval. On occasion, there is correspondence to be signed by the staff that does not require formulation of policy, but nevertheless, because the correspondence concerns matters pending Commission decision, items relating to the performance of Commission duties and responsibilities, or items of high Commission interest, needs to be reviewed and approved by the Commission. This type of correspondence should also be forwarded to the Office of the Secretary by the action office for Commission review and approval.

The concurrence page of the draft letter will contain a statement prepared by the action office advising whether the proposed response requires the Commission to formulate a policy position, involves matters pending Commission decision, items relating to the performance of Commission duties and responsibilities, or involves items of high Commission interest. SECY will consider this statement in determining whether to reevaluate the initial determination of whether to handle a reply as Commission Correspondence or Chairman Correspondence.

If a Commissioner requests the letter be treated as Commission correspondence, he/she should direct his/her request to SECY. Any Commissioner's request that correspondence be collegially reviewed as Commission Correspondence will be granted absent an objection by a majority of the Commission.

#### **1. Procedures for Commission Correspondence:**

- a. When the draft reply is received from the staff, SECY will route it concurrently to the Commission, OGC, and OCA (if a Congressional response) for a 5 business day review and comment period, unless the correspondence requires special (e.g., expedited) handling.

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Simultaneously, OGC and OCA will have 3 business days to provide their comments through SECY to the Commission for review. Special requirements will be identified on a case-by-case basis when the proposed reply is routed to the Commission Office. Commission Correspondence being circulated is covered by a **Yellow** cover, which also serves as each Commissioner's Response Sheet. A **Red** cover is used for Congressional correspondence to bring additional attention to these items.

- b. Commissioners note their approval, or comments and changes, if any, on the **Yellow** or **Red** Commission Response Sheet and return it to SECY with information copies to other Commissioner offices. Modifications to the draft may be handwritten or, if practical, should be noted by the line-in, line-out method. Comments and changes suggested by Commissioners are referred to the Chairman for consideration. Comments and changes supported by a majority of the Commission will be incorporated by the Chairman.
- c. If required, up to an additional 2 business days for review and comment will be granted to a Commissioner who is on short-term absence from the office. If a Commissioner is unavailable for comment for an extended period of time, and has delegated authority for his or her staff to respond in his or her absence, Commissioner staff comments will be taken into consideration.
- d. Any Commissioner who does not concur in the substance of the letter may write a separate letter stating his or her views. Copies of the separate letter should be provided to the other members of the Commission after dispatch. The letter may state that Commissioner(s) \_\_\_\_\_ has(have) differing views and will submit them separately.
- e. Under certain circumstances a Commissioner may wish to recuse himself/herself from participation in a particular matter in order to avoid any actual or apparent conflict of interest or may wish to not participate. If a Commissioner has recused himself/herself from a specific subject, or has chosen to not participate, the letter will state "Commissioner \_\_\_\_\_ did not participate in the preparation of this response."
- f. The Chairman will incorporate changes and comments supported by a majority of the Commission and may incorporate changes and comments from individual Commissioner's votes. The Chairman will forward the correspondence to SECY for incorporation into a final signature package. If substantive changes (i.e., changes other than grammar or syntax) have been made to the final draft, the Chairman, in consultation with SECY, will determine whether additional consultation with the EDO, OGC, and/or OCA is required. The Chairman should, prior to dispatch of the correspondence, inform a Commissioner if a substantive comment in the Commissioner's vote sheet will not be incorporated into the final letter. Any letter with

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substantive changes will be recirculated to the Commission for a 3-business-day period prior to dispatch to ensure that a majority view of the Commission continues to be reflected. If necessary as determined by a majority of the Commission, Commissioners may supplement their votes on the original letter to formally record their views on the recirculated letter or may provide views to the Chairman and SECY informally via e-mail.

- g. SECY will incorporate changes, prepare the final signature package (approved outgoing response, concurrence sheet, incoming correspondence, and any pertinent background information), obtain final OCA concurrence if correspondence is a Congressional letter, and forward it to the Chairman for signature. The Chairman will then sign the letter, which will then be returned to SECY for dispatch. Congressional correspondence is dispatched as indicated below in Section 3.a.
- h. SECY distributes to Commission offices a copy of the signed Commission correspondence, along with the incoming letter, in the Commission's Daily Reading File.
- i. SECY publicly releases all non-sensitive outgoing Commission correspondence approximately 5 business days after dispatch. The 5-business day delay allows for the correspondence to reach the recipient before the letter is made publicly available.
- j. Non-sensitive correspondence from the Commission to Congress and other Federal agencies will be automatically posted on the NRC's public website under the Commission's document collection, "Commission Correspondence." In addition, for the convenience of the NRC staff, Congressional correspondence is placed in a specific "Congressional Correspondence" folder in ADAMS.
- k. Correspondence will be returned to the staff if a majority of the Commission agrees to that course of action. Correspondence will also be returned to the staff if the Chairman approves that course of action, unless a majority of the Commission objects. SECY will poll the Commission on any request to return correspondence to the staff.

### **2. Procedures for Chairman's Correspondence:**

- a. When the draft reply is received from the staff, SECY prepares the final signature package (approved outgoing response, concurrence sheet, incoming correspondence, and any pertinent background information), obtains final OCA concurrence if it involves a Congressional correspondence, and forwards it to the Chairman for signature. Concurrently, a copy of the final is also forwarded to OGC for any comments.

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- b. The Chairman reviews the signature package and any OGC or OCA comments, makes revisions, if necessary, and returns the package to SECY. SECY will incorporate any changes and return the signature package back to the Chairman's office. When the Chairman signs the letter, it will be returned to SECY for dispatch. Congressional correspondence is dispatched as indicated below in Section 3.a. SECY will also forward a copy of the final signature package to the Commission concurrently with dispatch if the correspondence could involve policy formulation.

Congratulatory letters, responses to requests for the Chairman's participation in an event, periodic reports of statistical information, and requests to State officials to appoint liaisons to the NRC are examples of classes of documents that do not involve policy formulation. If a Commissioner wishes to provide for collegial review of the letter prior to dispatch, he/she should immediately direct his/her request to SECY that it be treated as Commission correspondence. To facilitate collegial review, the incoming document should appear in the Commission's e-reader as soon as possible. In recognition of the collegial process, the Commissioner's request will be granted if a majority of the Commission approves the request in response to polling by SECY.

- c. SECY places a copy of the signed Chairman correspondence, along with the incoming letter, in the Commission's Daily Reading File.
- d. SECY publicly releases all non-sensitive outgoing Chairman correspondence approximately 5 business days after dispatch. The 5-business day delay allows for the correspondence to reach the recipient before the letter is made publicly available.
- e. Non-sensitive Chairman correspondence to Congress and other Federal agencies will be automatically posted on the NRC's public website under the Commission's document collection, "Commission Correspondence." In addition, for the convenience of the NRC staff, Congressional correspondence is placed in a specific "Congressional Correspondence" folder in ADAMS.

### **3. Dispatch of Outgoing Correspondence and Information Copies**

- a. Letters to Congressional Offices

Signed Congressional correspondence is delivered by SECY to OCA. OCA arranges for the outgoing correspondence to be delivered to the appropriate Congressional office.

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b. Non-Congressional Letters

SECY processes and dispatches non-Congressional letters signed by the Chairman. Letters are dispatched by express mail, courier, e-mail, fax machine, or U.S. mail, depending upon urgency.

Replies to correspondence assigned for direct reply by SECY to the EDO, CFO, an EDO staff office, or a Commission level office are processed and dispatched by the appropriate office. Copies of the signed responses are forwarded to SECY. SECY will distribute individual replies to the Commissioners or place them in the Daily Reading File when, in their judgment, the nature of the response so requires.

4. Special procedures for the transmittal of documents containing sensitive information to Congress are set forth in Chapter VI.