



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, L. C. 20555-0001

September 13, 1993

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The NRC has sent to the Office of Federal Register for publication the enclosed proposed Policy Statement on Open Staff Meetings. The proposed policy statement, if adopted, will clarify NRC's policy on opening its staff meetings relating to regulatory matters to public attendance and observation. It also will establish a central location in the agency to collect information regarding meetings open to the public announcing those meetings to the public.

The Commission is issuing the proposed policy statement for public comment and has specifically requested comments on concerns raised by the American Mining Congress regarding an interim policy statement that was similar to the proposed policy statement.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Representative Barbara Vucanovich

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 13, 1993

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

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Enclosure: As stated

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

September 13, 1993

The Honorable Joseph Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

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cc: Senator Alan K. Simpson

September 13, 1993

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Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

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Sincerely,

Original signed by/

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: As stated

cc: Senator Alan K. Simpson

Identical letters sent to Subcommittee on Environment and Public Works and Subcommittee on Energy and Mineral Resources.

OFC :D:DFIPS	:D:ADM	:EDO	:OCA	:	:
NAME: DGransley	: PGNorby	: JTaylor	: DRathbun	:	:
DATE: 8/16/93	: 8/10/93	: 8/31/93	: 8/10/93	:	:

NUCLEAR REGULATORY COMMISSION

Staff Meetings Open to the Public; Proposed Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed policy statement; Request for comment.

SUMMARY: This proposed policy statement presents the guidance which the Nuclear Regulatory Commission (NRC) staff proposes to follow in opening meetings between the NRC staff and one or more outside persons to public observation. The proposed policy statement applies solely to NRC staff-sponsored and conducted meetings and not to meetings conducted by outside entities that NRC staff members might attend and participate in. This policy also announces proposed central agency services available to the public for obtaining schedules for the staff meetings that are open to public attendance. The policy will be issued to the NRC staff as a management directive. Comments are invited on this policy and on the specific concerns raised by the American Mining Congress set forth in this document.

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DATE: Comment period expires 60 days from date of publication in the Federal Register. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555. Attn: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone: (301) 492-7211.

SUPPLEMENTARY INFORMATION:

Proposed Statement of Policy

A. Introduction

The NRC has a longstanding practice of providing the public with the fullest information practicable on its activities and of

conducting business in an open manner, while balancing the need for the NRC staff to exercise its regulatory and safety responsibilities without undue administrative burden. This policy is wholly a matter of NRC discretion and can be and will be departed from as NRC convenience and necessity may dictate. This policy supersedes the policy approved by the Executive Director for Operations that was published in the Federal Register on June 28, 1978 (43 FR 28058).

B. Definition of Public Meeting:

1. A public meeting is a planned, formal encounter between one or more NRC staff members and one or more outside persons with the expressed intent of discussing substantive issues that are directly associated with NRC's regulatory and safety responsibilities. This policy applies solely to NRC staff-sponsored and conducted meetings and not to meetings conducted by outside entities that NRC staff members might attend and participate in.

2. An outside person is any individual who is not
- a. An NRC employee;
 - b. Under contract to the NRC;
 - c. Acting in an official capacity as a consultant to the NRC;

d. Acting in an official capacity as a representative of an agency of the executive, legislative, or judicial branch of the U.S. Government (except when the agency is subject to NRC regulatory oversight);

e. Acting in an official capacity as a representative of a foreign government.

C. Exemptions:

1. This definition applies to meetings between the NRC staff and outside persons. It does not apply to the Commission or offices that report directly to the Commission. Similarly, it does not apply to meetings between the NRC staff and representatives of State governments, including Agreement State representatives, relating to NRC Agreement State activities or to State regulatory actions or to other matters of general interest to the State or to the Commission, that is, matters other than specific NRC licensing or regulatory actions involving specific licensees. Also, the definition of a public meeting is not intended to apply to or supersede any existing law, rule, or regulation that addresses public attendance at a specific type of meeting. For example, 10 CFR Part 7 specifically addresses public attendance at advisory committee meetings; 10 CFR Part 2, Appendix C, addresses public attendance at enforcement

conferences; and 10 CFR Part 9, Subpart C, addresses public attendance at Commission meetings.

2. In general, meetings between the NRC staff and outside parties will be classified as public meetings unless the NRC staff determines that--

The subject matter to be discussed

- a. Is specifically authorized by an Executive Order to be kept secret in the interests of national defense or foreign policy (classified information);
- b. Contains trade secrets and commercial or financial information (proprietary information);
- c. Contains safeguards information;
- d. Is of a personal nature where such disclosure would constitute a clearly unwarranted invasion of personal privacy;
- e. Is related to a planned, ongoing, or completed investigation and/or contains information compiled for law enforcement purposes;

- f. Could result in the inappropriate disclosure and dissemination of preliminary, unverified information;
- g. Has no direct, substantive connection to a specific NRC regulatory decision or action;
- h. Indicates that the administrative burden associated with public attendance at the meeting could result in substantially interfering with the NRC staff's execution of its safety and regulatory responsibilities.

3. It is important to note that whether or not a meeting should be open for public attendance is dependent primarily on the subject matter to be discussed, not on whom within the NRC staff is participating (e.g., staff level versus senior management).

D. Notice to the Public

Normally, meeting announcement information is to be provided by the staff to the agency's meeting announcement coordinator at least ten days in advance of the date of the meeting so that adequate notice can be made to the public. Public notice will be provided weekly via a press release and posting in the agency headquarter's Public Document Room, 2120 L Street (Lower Level)

NW., Washington, DC. The public may obtain a schedule of agency staff meetings via a toll-free telephone recording and toll-free electronic bulletin board (telephone numbers to be announced when the final policy statement is announced).

Meetings which are scheduled for the next 60 days will be announced to the public. Meeting announcements will include the date, time, and location of the meeting, as well as its purpose, the agency and outside organizations in attendance, and the name and telephone number of the agency contact for the meeting. Information about canceled, rescheduled, and open meetings scheduled on short notice will be updated daily or as needed via the posting at the agency Public Document Room, the telephone recording, and the electronic bulletin board.

Discussion of the Policy

The purpose of revising the open meeting policy is to further the goal of giving meaningful opportunities for the public to be informed of NRC activities without unduly affecting open and candid discussions between licensees and the NRC staff or interfering with the staff's ability to exercise its regulatory and safety responsibilities without undue administrative burden. The policy also provides staff guidance regarding what types of meetings should be open to

public observation. The meeting policy is wholly a matter of NRC discretion and can be and will be departed from as NRC convenience and necessity may dictate.

The policy distinguishes between a planned, formal encounter from one that occurs informally, such as when an NRC official finds that an opportunity comes available while at a licensee's site to meet with a new plant manager or with a corporate official who is visiting the site, or when a licensee official attending an open meeting at an NRC office finds the Regional Administrator has time to visit with him for a short period. Such informal meetings are limited to those that do not have the express intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities.

The policy excludes meetings where the express intent is not to discuss substantive issues that are directly associated with NRC's regulatory and safety responsibilities. Such meetings could include training, conferences, and association meetings where both NRC staff and applicant/licensee officials participate. The policy also excludes meetings the NRC staff has with its own employees, contractors, and consultants, other Federal government agencies where the matter does not relate to a specific activity for which NRC has oversight, and with

representatives of foreign governments and State representatives on matters other than relating to specific NRC licensing or regulatory actions involving specific licensees.

The exceptions to staff meetings that will be open to the public permit meetings to be closed to ensure that classified, commercial or financial proprietary, safeguards, personal privacy and investigative information protected by statute or otherwise requiring protection is not disclosed to the public. The final three exceptions ensure that the staff has sufficient flexibility to carry out their responsibilities without being inhibited by the need to announce the meeting as one open to the public where it would interfere with the performance of the Commission's safety and regulatory responsibilities.

A meeting to discuss preliminary, unverified information is not an open meeting under the policy. The purpose of this exception is to ensure that licensees and applicants will not be inhibited in bringing to the Commission information that is preliminary in nature or is not verified or sufficiently analyzed to draw firm conclusions. It also ensures that discussions about potential implications of this information occur candidly and openly without fear that they may be misunderstood by the public as fact or as final conclusions.

A meeting where the subject matter has no direct, substantive connection to a specific NRC regulatory decision or action is not an open meeting under this policy. The purpose of this exception is to ensure that routine administrative matters relating to regulatory activities can be carried out efficiently. Meetings to discuss the status of actions, schedules for NRC action, an applicant's or licensee's activities, or general issues not directly related to a decision or action before the staff would not be open meetings under this exception.

The final exception is for meetings where the administrative burden associated with public attendance could result in substantially interfering with the NRC staff's execution of its safety and regulatory responsibilities. This exception ensures that the staff has the discretion to have a needed meeting on short notice where adequate public notice cannot be provided without placing an undue burden on the agency. The meeting could be necessary because of an urgent issue that needs addressing or where the opportunity becomes available on short notice to meet with an official of the applicant or licensee that would benefit the staff person in carrying out his or her duties. The meeting also might be in a location that does not have the facilities to easily accommodate the public, such as short morning meetings of resident inspectors with the plant manager, because such would require a daily effort to establish access authorization to

protected areas. The meeting may not be able to be scheduled with sufficient definiteness to permit adequate public notice, such as when an inspector conducts an exit meeting with an applicant/licensee official at the conclusion of a routine inspection. A meeting with an applicant/licensee where agency staff is responding to a significant safety or safeguards event would not be open under this exception because to open such a meeting would be an undue burden on inspectors in that it would interfere with their safety and regulatory responsibilities at a time when they are focused on understanding and resolving significant safety or safeguards problems. Similarly, NRC inspections are not public meetings under this policy.

The system planned for providing public notice of all NRC staff open meetings will have a single toll-free telephone recording and an electronic bulletin board for providing meeting notice information. Open staff meetings will also be announced by a weekly press release as well as being posted in the agency's Public Document Room, as is the current practice.

American Mining Congress Concerns

The American Mining Congress (AMC) has expressed concerns on the agency's interim policy on open staff meetings. The interim policy is similar to the proposed policy statement. It has been

used by the Office of Nuclear Reactor Regulation, Office for Analysis and Evaluation of Operational Data, and NRC regional offices since September 1992. The proposed policy statement differs from the interim policy statement in that several exemptions have been clarified. Several of these changes may have addressed the concerns of AMC. However, since the concerns raise issues that may still be applicable to the current policy statement, they are being presented and comments are invited on them.

First, the AMC expressed the concern that the policy definition is too broad and the exemptions are not adequate to provide licensees with a clear understanding on how the policy will be implemented.

Second, they expressed the concern that the policy adds little value to existing procedures and opportunities for meaningful and appropriate public participation and would create a substantial hindrance in important, ongoing communications between NRC and its licensees.

Third, the AMC believes that the policy is in conflict with 10 CFR 2.102, which permits staff to request applicants and licensees to confer informally with the staff and that the policy will likely discourage licensees from reporting and resolving

compliance issues with NRC staff because it mandates public notice and potential access to the meetings by third parties. Also, the AMC believes that resolution of technical and enforcement matters will be protracted and more contentious than under the present policy and may often result in more litigation because it would chill the free exchange of ideas and information, and, in effect, create a significant roadblock to fulfillment of the Commission's regulatory responsibilities.

Fourth, the AMC saw the need for meetings to be scheduled in advance to ensure adequate public notice as hindering the regulatory process because it could prevent meetings from being held on short notice to resolve issues of immediate concern and could delay resolution of routine matters such as those relating to schedules.

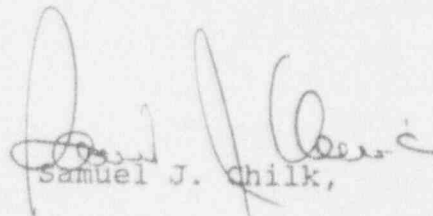
Fifth, the AMC expressed concern that the policy would require increased expenditures by NRC and licensees to organize and monitor the meetings and respond to public comments. Also it stated that licensee fees should not be charged to cover meeting expenses unless the outside party also pays.

Sixth, the AMC expressed concern that the meetings will be

used by outside parties to advance their personal agendas and stated that technical meetings between the NRC and licensees are not the proper forum for raising public policy issues.

Dated at Rockville, Maryland, this 8th day of September, 1993.

For the Nuclear Regulatory Commission.

A handwritten signature in dark ink, appearing to read "Samuel J. Chilk". The signature is stylized with a large initial "S" and a long horizontal stroke.

Samuel J. Chilk,
Secretary of the Commission.