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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

March 24, 1994

The Honorable Albert Gore, Jr.  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

In accordance with Section 3(j) of Public Law 94-409  
(5 U.S.C. 552b(j)), I am enclosing the Nuclear Regulatory  
Commission's Annual Report of the Administration of the  
Sunshine Act for Calendar Year 1993.

Sincerely,

Kenneth C. Rogers  
Acting Chairman

Enclosure:  
As stated

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

March 24, 1994

The Honorable Thomas S. Foley  
Speaker of the United States  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

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(5 U.S.C. 552b(j)), I am enclosing the Nuclear Regulatory  
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ANNUAL REPORT

GOVERNMENT IN THE SUNSHINE ACT

1. AGENCY NAME: U.S. Nuclear Regulatory Commission
2. CALENDAR YEAR: 1993
3. MEETINGS: (See definitions in Appendix A)
  - A. Total Number of Open ..... 95 (81%)
  - B. Total Number of Closed ..... 23 (19%)
  - C. Total Number of Partially Open/Closed ..... 0 (0%)

Total Number of Meetings ..... 118

The above meetings are counted by the number of separate agenda topics discussed as described in Appendix A. The same number of topics counted by the method used by Common Cause results in the following number of meetings (see definitions in the Appendix):

- D. Total Sessions Open ..... 67
  - E. Total Sessions Closed ..... 13
  - F. Total Sessions Partially Open/Closed ..... 9
- Total Number of Sessions ..... 89

Appendix B contains a tabulation of open and closed meetings per month for CY 1993, using both the Nuclear Regulatory Commission (NRC) and the Common Cause (CC) methods of counting. Throughout this report, meeting numbers quoted are counts of individual items.

4. EXEMPTIONS USED FOR CLOSING OR PARTIALLY CLOSING MEETINGS (NUMBER OF TIMES USED)
  - A. Exemption 1 ..... 9
  - Exemption 2 ..... 4
  - Exemption 9 ..... 1
  - Exemptions 2 & 6 ..... 4
  - Exemptions 5 & 7 ..... 3
  - Exemptions 2, 6 & 10 ..... 1
  - Exemptions 2, 5, 5 & 7 ..... 1

Total ..... 23

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

- (1) Budget Meetings. The U.S. Court of Appeals for the District of Columbia Circuit concluded in Common Cause v. NRC, 674 F.2d 921 (D.C. Cir. 1982), that there was no exemption under the Sunshine Act authorizing automatic closure of budget meetings. After Common Cause, the Commission has not convened any meetings to discuss the budget.
- (2) Meetings at which Congressional testimony is discussed. In 1993, there were no Commission meetings held to discuss Congressional testimony.
- (3) Briefings of agency members by NRC staff. All briefings attended by a quorum of Commissioners are treated as "meetings." Of the 118 meetings held by the Commission in 1993, 72 were staff briefings, 54 of which were held in public session and 18 in closed session. The 18 closed staff briefings were held to discuss matters involving classified information, pending investigations and enforcement actions, management and personnel matters, and litigation activities. Meeting records of closed briefings are reviewed for retention/release as described in Section 10 below.
- (4) Meeting subjects required to be held in closed session. Certain information (e.g., classified information) is required under law or executive order to be protected. Nine of the 23 closed Commission meetings dealt with matters which could not by law be discussed in public session.

## 5. DESCRIPTION OF LITIGATION

There were no Government In the Sunshine Act cases involving NRC filed or otherwise in litigation during 1993.

## 6. NOTATION VOTING

The Commission uses the notation voting process to decide issues which do not require interactive discussion among all Commissioners in the presence of each other. In this type of decision-making, individual Commissioners provide views in writing to the Secretary (approval and/or comments) on actions proposed by the staff or by individual Commissioners. Typical examples include responses to Congress on GAO reports, budget matters, agreements with the Executive Branch agencies, export licenses, outgoing Commission correspondence, proposed

rulemaking actions, appointments and reappointments to advisory committees, and review of actions being taken or about to be taken under delegations of authority to the staff.

The Commission also uses notation voting to obtain Commissioners' views on agency business which by law requires a formal vote in an open meeting but is not of such a complex nature as to require interactive conversation between Commissioners in the presence of each other. After all participating Commissioners have first expressed their views in writing, public Commission meetings entitled Affirmations are scheduled for the purpose of a formal vote (ratification of Commissioners' views on the issue), with or without discussion as desired. Examples of matters which are decided in this manner include final rulemakings, responses to certain petitions, and adjudicatory decisions.

In connection with the notation voting process, the Commission in late 1989 expanded its policy on "openness" by deciding to place, except in relatively rare circumstances, all issue papers voted on by the Commission in the notation vote process, as well as the votes sheets of individual Commissioners, in its Public Document Room (PDR). The papers are released at the time the Secretary's decision memorandum for final action on the paper is released, unless they involve matters which the Commission has specifically agreed should be withheld (material containing adjudicatory, enforcement or investigatory, classified or proprietary, and personal privacy information). Papers may also be withheld on rare occasions if they involve particularly sensitive matters and if justification for withholding exists.

## 7. PUBLIC OBSERVATION

The Commission 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 150, is provided with multiple overhead speakers and with a closed-circuit television system to ensure that every person attending a meeting can see and hear.
- B. A pamphlet entitled "Guide to NRC Open Meetings" is available in the Commissioners' Conference Room and in the PDR. 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.



- C. Copies of viewgraphs and the principal staff papers scheduled to be considered at the meeting are normally made available to meeting attendees at the entrance to the conference room prior to the commencement of the meeting. These papers are also placed in the PDR at the conclusion of the meeting, along with viewgraphs and other material handed out at the meeting. Additionally, copies of all papers referenced at the meeting are normally released to the public. During 1993, 131 such documents were released.
- D. The "NRC Collection of Abbreviations" (NUREG-0544, Rev. 3) is available in the Commission Conference Room and the PDR to further help the public in understanding the many technical terms discussed in Commission papers.
- E. Public attendees are permitted to tape record Commission discussions at open meetings.
- F. It is the Commission's practice to allow camera and television coverage of its open meetings and briefings without prior notification. The use of cameras, including television coverage, at open licensing proceedings conducted by NRC's licensing boards is also permitted. In both Commission meetings and adjudicatory hearings, however, camera equipment must be operated in a manner that is not disruptive to the proceedings.
- G. Transcripts are made of all public Commission meetings. These are unofficial transcripts which are not edited by the Commissioners or by the staff and are generally placed in the Commission's PDR within 72 hours of the conclusion of the meeting. Transcripts of all 95 open meetings in 1993 are in the PDR, where they may be read or copied as desired. A fee is charged for copying services.
- H. In 1993, the Commission began on an experimental basis to make available in the PDR electronic copies of the transcripts of Commission meetings as well as a number of NRC documents for which electronic files exist. The experiment will continue and be expanded as the PDR's capability to handle electronic documents grows.
- I. The Commission has agreed to allow installation of a commercial telephone system in its main conference room which, when installed, will allow interested persons to call into a central telephone number to listen to Commission meetings.

8. PUBLIC NOTICE

Each meeting is publicly announced by the methods listed below.

- A. Use of an automatic telephone answering machine, which provides a daily recorded message describing the meetings scheduled for the Commission over a four week period. Members of the public desiring such information dial (301) 504-1292 to hear the pre-recorded message.
- B. Publishing weekly in the Federal Register the time, date, and location of all meetings scheduled for the next four weeks; the topic(s) to be discussed, whether the meetings are open or closed; and the name and telephone number of contact persons who are prepared to respond to questions about the meeting schedule.
- C. Posting in the NRC Public Document Room, 2120 L Street, N.W., Washington, D.C. 20555, a copy of the Federal Register Notice at the time it is sent to the Federal Register.
- D. Mailing a copy of the Federal Register Notice to those persons on a mailing list maintained for that purpose (currently over 175 names and addresses) at the time it is sent to the Federal Register.
- E. Submittal of a copy of the Federal Register Notice to the Office of Public Affairs for dissemination to the national wire services (AP, UPI) and Reuters, and to other news media as applicable.
- F. Use of a closed circuit television to project the meeting schedule to headquarters building visitors. The Commission's current and projected schedule of meetings for the period covered by the weekly Federal Register Notice is available for viewing on one channel of the NRC's internal cable television system. Television monitors are available in the lobby of the One White Flint North headquarters building near the entrance to the Commission meeting area and in other public areas of the building.
- G. Telephoning known interested parties when public meetings of particular interest are scheduled with less than seven days' notice.

The Commission is sensitive to the need for reasonable advance notice of Commission meetings. Its policy is to reduce scheduling changes to a minimum and to avoid short notice meetings if possible. However, the Commission continues to be confronted with the requirement to consider urgent matters in a timely manner. The meeting schedule is constantly adjusted to

ensure that the business of the Commission is not delayed, taking into account Commissioner availability and the urgency and significance of the meeting topic. Appendix C contains a tabulation of the number of days' notice for NRC meetings. In summary, 82 percent of the 1993 Commission meetings (97 of 118) were announced with 7 or more day's notice while the remaining 18 percent (21 of 118) were announced with less than 7 days' notice. The following observations are made concerning the 21 "short notice" Commission meetings held during 1993:

- There were 11 open and 10 closed "short notice" meetings.
- Nine of the 11 "short notice" open meetings were affirmation sessions at which the Commission ratified (affirmed) Commission orders or final rules, based upon the previously declared views of individual Commissioners, with little or no discussion. In each case the Commission had announced the affirmation session more than 7 days in advance but had not announced a specific topic to vote on. The remaining two meetings were briefings of the Commission by NRC staff which were moved up by one day due to the absence of a Commissioner on the originally scheduled date. Notice had previously been made and the re-notices were done as expeditiously as possible with phone calls to all known interested parties.
- Holding 10 closed meetings (in which classified information, investigations, internal management and personnel matters, and litigation were discussed) on short notice did not affect public participation.

Whenever a short-notice meeting is added to the Commission's schedule, public notice is immediately provided through NRC's automatic telephone answering machine, the posting of a revised meeting notice in the PDR, displaying a revised notice on a television monitor in the lobby of One White Flint North, notification to the Offices of Public and Congressional Affairs, and, where appropriate, telephone notification to news media and to interested parties to advise them of the additional meeting. Notice is also promptly submitted to the Federal Register. Additionally, if the short-notice meeting was open, the transcript of the meeting is placed in the PDR shortly thereafter.

#### 9. PUBLIC INTEREST

The Commission, in adopting its Sunshine regulations (see Appendix D), explained, in the course of responding to a specific proposal, how it would employ the public interest criterion in exercising agency discretion to open meetings that could otherwise be closed under one of the exemptions authorized in the Act.



"Section 9.104(a) of the rules, like the proposals of several other agencies, gives presumptive but not conclusive force to the determination that an exemption is available in deciding the public interest question. The fact that a meeting does come within a specific provision of Section 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. 12875 (March, 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 and consider the advice of the General Counsel as to whether the item is properly closable. 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

- A. The policy of the Commission is to make available to the public the record of all meetings except for those portions the agency determines to contain information which may be withheld under the provisions of Section 552b(c), the Government in the Sunshine Act. To ensure that the determinations made are correct, the Commission, upon receipt of a request for a copy of a transcript or portion thereof previously withheld, conducts three independent levels of review for each transcript or electronic recording under consideration for release. An initial review is performed by the staff office presenting the briefing or discussion. The second review is accomplished by the Office of the General Counsel (OGC). Thirdly, the Commission reviews the record and makes the final determination regarding public disclosure.

The Commission's rules, in accordance with the Sunshine Act, permit records of closed meetings including litigation, to be kept in minutes (10 CFR 9.108(a)).

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

The Nuclear Regulatory Commission indexes transcripts of meetings and meeting summaries that are placed in the PDR. This information is included in a Daily Accession List, with monthly cumulations, and is made available in the Commission's Public Document Reading Room and mailed on a subscription basis to interested persons.

Appendix E contains a sample entry from the PDR Monthly Accession List. This example identifies and describes the factors that are indexed. Transcripts of all public Commission meetings are usually placed in the PDR within 72 hours following the meeting. During 1993, members of the public sought access to transcripts of Commission meetings on 1047 occasions; 97 transcripts were examined at the NRC's Public Document Room, 888 copies of transcripts were provided to requestors by the PDR's reproduction contractor, and 62 electronic copies were provided as the Commission started to release electronic versions of documents.

During 1993, the NRC continued its processing of an FOIA request from a former NRC Commissioner for the public release of a large collection of documents. In responding to this FOIA, 13 closed Commission meeting transcripts from 1979-1983 were partially released and 14 were withheld in their entirety. Public release of documents associated with this FOIA occurred throughout the 1993 calendar year; 5 of 11 responses during the year (March 18, April 22, June 8, June 14, and December 6, 1993) addressed these transcripts along with other documents.

11. REQUESTS TO OPEN MEETINGS

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. All requests, formal or informal, are referred to the Commission for decision. Filing such a petition does not automatically act to stay the effectiveness of the Commission decision or to postpone the meeting in question.

No requests to open a closed Commission meeting were received in 1993.

#### 12. FORMAL COMPLAINTS

There were no formal complaints filed in 1993 relating to closed Commission meetings.

#### 13. EX PARTE COMMUNICATIONS

The Commission's regulations on ex parte communications and separation of functions were adopted in final form on March 23, 1988 (see Appendix F). The Commission's rules conform to the requirements of 5 U.S.C. 557(d). The separation of functions rule precludes private Commission communications with the NRC staff about a matter at issue in a formal adjudicatory proceeding only if the staff member participates in investigating or litigating functions in the proceeding. A prior version of the rule precluded the Commission from private communications with any member of the NRC staff whether or not the staff member was involved in a proceeding.

#### 14. ADDITIONAL INFORMATION

- A. In addition to the formal "Sunshine" meetings of the Commission, the NRC staff held close to 1000 meetings and workshops throughout the year with licensees, the press, representatives of State and local governments, and the public. The NRC's "Principles of Good Regulation" encourages an "Open" regulatory process, stating that:

"Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory process as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community."

On September 14, 1993 the Commission published a proposed Policy Statement (58 FR 48080) on "Staff Meetings Open to the Public" indicating NRC's "long standing 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." The Commission also embarked on a two year trial program of holding a limited number of enforcement conferences in open public session (57 FR 30762). During this two year trial period, the Commission's goal has been to hold 25 percent of enforcement conferences in open public session.

In order to alert the public to the upcoming meetings, recorded telephone announcements are available and the Commission lists future meetings in its weekly information report, which is placed in the PDR.

Along with the open meetings with licensees, the Commission staff held approximately 75 topical workshops with members of the regulated industry and the public invited to attend. The staff workshops involved technical discussions of a variety of subjects (e.g. Eastern U.S. Seismic Hazards, Erosion/Corrosion, Steam Generator Tube Nondestructive Examinations, Embrittlement of Reactor Pressure Vessels, etc.). In one case, the Commission in 1992 instituted an enhanced participatory rulemaking process for decommissioning and decontamination standards for nuclear facilities and invited a variety of public interest groups and members of the public to participate in a series of workshops. Eleven workshops were held around the U.S. and as a result of those workshops the staff expects to present a proposed rule on decommissioning and decontamination criterion to the Commissioners for their consideration later this year. Finally the Commission's Advisory Committees held 75 meetings that were open to the public.

- B. In addition to the Commission meeting transcripts and meeting related documents normally placed in the NRC Public Document Room in Washington, D.C., the NRC routinely places an average of 280 new documents each day on virtually every aspect of NRC's regulatory program for public inspection and copying in the Public Document Room. This extensive voluntary document release program has resulted in more than 1.9 million documents being made available in the Public Document Room and serves about 1300 users per month. Additionally, the NRC maintains extensive document collections relating to individual nuclear facilities in 88 Local Public Document Rooms located throughout the country.

- C. This report was prepared in the Office of the Secretary, U.S. Nuclear Regulatory Commission. Comments or inquiries on this report or related matters should be addressed to:  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Telephone inquiries can be made to the Office of the Secretary by dialing (301) 504-1963.

#### APPENDICES

- A. Definition of Meetings
- B. Tabulation of Open and Closed Meetings by Month
- C. Tabulation of Meetings by Days' Notice
- D. NRC Regulation as Amended Implementing the Sunshine Act (10 CFR Sections 9.100-9.109)
- E. Sample Entry from Index
- F. NRC Ex Parte (10 CFR Section 2.780) and Separation of Functions Regulations (10 CFR Section 2.781)



Definition of MeetingNRC'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 ensuring the protection of the public health and safety through the licensing and regulation of the uses of nuclear materials. Section 201(a)(1) of the Energy Reorganization Act, 42 U.S.C. 584(a)(1), provides that "action of the Commission shall be taken by a majority vote of members present."

Meetings Defined by Sunshine Act

Under NRC regulations, revised in 1985, a "meeting" is defined as "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; that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by Secs. 9.105, 9.106, or 9.108(c) do not constitute 'meetings' within this definition." 10 CFR Section 9.101(c) of NRC's Sunshine Regulations (see Appendix D). This revised definition has yet to be implemented. To date, the Commission has treated all discussions of agency business by a quorum of Commissioners as "meetings" for Sunshine Act purposes.

For the purpose of tabulating meetings in this report, NRC follows the practice of the Commission in deciding whether to schedule topics for Commission discussions. Most of the Commission meeting sessions other than Affirmation Sessions and Collegial Discussions are scheduled to hear a briefing or to discuss a single topic at some length. Accordingly, each agenda item scheduled for discussion or briefing is counted as a separate meeting under the NRC method of tabulating meetings in this report even if several discussions or briefings occur on the same day. Each session at which one or more Commission papers were scheduled for affirmation under the limited notation voting procedure described in paragraph 6 is counted as a meeting.

Appendix B includes counts of meeting statistics reported using the above definition, and also using the "Common Cause method." The latter method counts all meetings held on the same day as a single meeting, whether that meeting lasts one hour or one day and irrespective of the number of agenda items considered. Both methods are reported here to allow comparisons of statistics by those who use the Common Cause method.

## APPENDIX B

TABULATION OF OPEN AND CLOSED  
MEETINGS BY MONTH

<u>CY 1993</u>	<u>Open</u>	<u>Closed</u>	<u>Open/Closed</u>	<u>Total</u>
Jan (NRC)	5	0	0	5
(CC)	4	0	0	4
Feb (NRC)	8	3	0	11
(CC)	5	1	2	8
Mar (NRC)	14	2	0	16
(CC)	11	2	0	13
Apr (NRC)	7	3	0	10
(CC)	3	1	1	5
May (NRC)	8	2	0	10
(CC)	5	0	2	7
Jun (NRC)	10	4	0	14
(CC)	7	3	1	11
Jul (NRC)	5	0	0	5
(CC)	5	0	0	5
Aug (NRC)	6	1	0	7
(CC)	4	0	1	5
Sep (NRC)	11	2	0	13
(CC)	7	2	0	9
Oct (NRC)	5	1	0	6
(CC)	5	1	0	6
Nov (NRC)	5	3	0	8
(CC)	2	1	2	5
Dec (NRC)	11	2	0	13
(CC)	9	2	0	11
YEAR TO DATE				
(NRC)	95	23	0	118
(CC)	67	13	9	89

TABULATION OF MEETINGS  
BY DAYS' NOTICE

CY 1993

<u>DAYS' NOTICE</u>	<u>OPEN</u>	<u>CLOSED</u>	<u>OPEN/CLOSED</u>	<u>TOTAL</u>
12 or more	68	6	0	74
11	3	0	0	3
10	1	0	0	1
9	0	0	0	0
8	4	2	0	6
7	<u>8</u>	<u>5</u>	<u>0</u>	<u>13</u>
Subtotal	84	13	0	97
6	1	0	0	1
5	1	0	0	1
4	2	1	0	3
3	0	1	0	1
2	0	0	0	0
1	1	1	0	2
Less than 1	<u>6</u>	<u>7</u>	<u>0</u>	<u>13</u>
Subtotal	11	10	0	21
GRAND TOTAL	<u>95</u>	<u>23</u>	<u>0</u>	<u>118</u>
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PART 9 • PUBLIC RECORDS

(8) To any person upon a showing of compelling circumstances affecting the health or safety of any individual;

(9) To either House of Congress or, to the extent of matter within its jurisdiction, to any committee or subcommittee thereof or to any joint committee of the Congress or to any subcommittee of such joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

§ 9.81 Notices of subpoenas.

When records concerning an individual are subpoenaed or otherwise disclosed pursuant to court order, the NRC officer or employee served with the subpoena shall be responsible for assuring that the individual is notified of the disclosure within five days after such subpoena or other order becomes a matter of public record. The notice shall be mailed to the last known address of the individual and shall contain the following information: (a) The date the subpoena is returnable; (b) the court in which it is returnable; (c) the name and number of the case or proceeding; and (d) the nature of the information sought.

§ 9.82 Notices of emergency disclosures.

When information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the NRC officer or employee who made or authorized the disclosure shall notify the individual at his last known address within five days of the disclosure. The notice shall contain the following information: (a) The nature of the information disclosed; (b) the person or agency to whom the information was disclosed; (c) the date of the disclosure; and (d) the compelling circumstances justifying the disclosure.

FEES

§ 9.85 Fees.

Fees shall not be charged for search for or review of records requested pursuant to this subpart or for making copies or extracts of records in order to make them available for review. Fees established pursuant to 31 U.S.C. 483c and 51 U.S.C. 552a(f)(3) shall be charged according to the schedule contained in 9.85 of this part for actual copies of records requested by individuals pursuant to the Privacy Act of 1974, unless the Director, Division of Freedom of Information and Publications Services waives the fee because of the inability of the individual to pay or because making the records available without cost, or at a reduction in cost, is otherwise in the public interest.

ENFORCEMENT

§ 9.90 Violations.

(a) An injunction or other court order may be obtained pursuant to 5 U.S.C. 552a(g) (1-3) to compel NRC to permit an individual to review, amend or copy a record pertaining to him, or to be accompanied by someone of his own choosing when he reviews his record. A court order may be obtained for the payment of a civil penalty imposed pursuant to 5 U.S.C. 552a(g)(4) if NRC intentionally or willfully fails to maintain a record accurately, or fails to comply with any provision of 5 U.S.C. 552a, or any provision of this subpart, if such failure results in an adverse determination or has an adverse effect on an individual. Court costs and attorney's fees may be awarded in civil actions.

40 FR 44483

(b) Any officer or employee of NRC who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4), or who willfully discloses information knowing such disclosure to be prohibited by 5 U.S.C. 552a or by any rules or regulations issued thereunder, may be guilty of a criminal misdemeanor and upon conviction may be fined up to \$5000. Any person who knowingly and willfully requests or obtains any record concerning an individual from NRC under false pretenses may be convicted of a criminal misdemeanor and upon conviction may be fined up to \$5,000.

EXEMPTIONS

§ 9.95 Specific exemptions.

The following records, contained in the designated NRC Systems of Records (NRC-5, NRC-6, NRC-11, NRC-18, NRC-22, NRC-28, NRC-29, NRC-31, NRC-33, NRC-37, NRC-39, and NRC-40) are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (J) in accordance with 5 U.S.C. 552a(k). Each of these records is subject to the provisions of § 9.81:

- (a) Contracts Records Files, NRC-5;
- (b) Equal Employment Opportunity Records Files, NRC-6;
- (c) General Personnel Records (Official Personnel Folder and Related Records), NRC-11;
- (d) Investigative Offices Index, Files, and Associated Records, NRC-18;
- (e) Personnel Performance Appraisals, NRC-22;
- (f) Recruiting, Examining, and Placement Records, NRC-28;
- (g) Document Control System, NRC-29;
- (h) Correspondence and Records Branch, Office of the Secretary, NRC-31;
- (i) Special Inquiry File, NRC-33;
- (j) Information Security Files and Associated Records, NRC-37;
- (k) Personnel Security Files and Associated Records, NRC-39; and
- (l) Facility Security Support Files and Associated Records, NRC-40.

52 FR 12876

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. 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(e) shall govern in the case of any request made pursuant to § 9.23 to copy or inspect the transcripts, recordings, or minutes described in § 9.108. Access to records considered at NRC meetings shall continue to be governed by Subpart A of this part.

52 FR 49350

52 FR 12875

50 FR 20889

42 FR 12876

§ 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, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105, 9.106, or 9.108(c) do not constitute "meetings" within this definition.

(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. 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. 2282 or 42 U.S.C. 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. 2011 et seq., and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 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 arbitral, or the initiation, conduct or disposition by the Commission of a particular case of formal agency adjudication pursuant to 5 U.S.C. 554 or otherwise involving a determination on the record after an opportunity for a hearing pursuant to Part 2 or similar 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 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 which 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 determination 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.

§ 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 paragraphs (a) (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.

§ 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 2120 L 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.

§ 9.108 Certification, transcripts, recordings and minutes.

(a) For every meeting closed pursuant to paragraphs (a) (1) through (10) of § 9.104 and for every determination pursuant to § 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 meeting 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 fully and accurately reflect 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 (c)(10) of § 9.104, 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 the meeting or portion was held, whichever occurs later.

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(c) In the case of any meeting closed pursuant to § 9.104, the Secretary of the Commission, upon the advice of the General Counsel and after consultation with 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, in the event that a request for the recording, transcript, or minutes is received within the period during which the recording, transcript, or minutes must be retained, under paragraph (b) of this section.

(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 cost assessed against the Commission in such litigation (whether or not paid by the Commission).

Subpart D—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 9.200 Scope of subpart.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") for the production of NRC records or disclosure of NRC information, including testimony regarding such records, is issued by a court or other judicial or quasi-judicial authority in a proceeding, excluding Federal grand jury proceedings, to which the NRC is not a party. Information and documents subject to this subpart include:

- (1) Any material contained in the files of the NRC;
- (2) Any information relating to material contained in the files of the NRC.

(b) For purposes of this subpart the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.3 of this part, including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC Official.

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the appropriate NRC official. When the demand is for material contained in the files of the Office of the Inspector General or for information acquired by an employee of that Office, the Inspector General is the appropriate NRC official. In all other cases, the General Counsel is the appropriate NRC official.

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure shall serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b) (1) and (2) of this section. Except for employees in the Office of Inspector General, whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel. If the demand is made upon an employee in the Office of Inspector General, that employee shall immediately notify the Inspector General. The Inspector General shall immediately provide a copy of the demand to the General Counsel, and as deemed necessary, consult with the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by

the General Counsel in appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The Inspector General or the General Counsel will notify the employee and such other persons, as circumstances may warrant, of the decision on the matter.

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the Inspector General or the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

Appendix A (removed) 50 FR 50283

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 FOR MONTHLY ACCESSION LIST

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FILE LEVELS - 10CFR, Commission Meeting Records

FILE LOCATION

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Accession Number	Description	File Location	Date
9202120057	Staff requirements memo re SECY-92-011 "Request for Public Meeting to Discuss Agency Policy on Organizational Conflicts of Interest." CHILK, S. J. Office of the Secretary of the Commission. 92/01/30 TAYLOR, J. M. Ofc of the Executive Director for Operations. ip.	10CFR PT9 7 48X:60367 325 60367 323	92/01/30
9202240359	Staff requirements memo re SECY-92-009, "rev of NRC Policy Statement for Abnormal Occurrence Reporting." CHILK, S. J. Office of the Secretary of the Commission. 92/01/30 TAYLOR, J. M. Ofc of the Executive Director for Operations. ip.	10CFR PT9 7 48X:60703 320 60703 320	92/01/30
9202240382	Permits Executive Director for Operations, or designee, to revoke medical licenses for nonpayment of either Part 170 licensing & insp fees or Part 171 annual fees, w/o prior Commission approval. CHILK, S. J. Office of the Secretary of the Commission. 92/01/31 TAYLOR, J. M. Ofc of the Executive Director for Operations. ip.	10CFR PT9 7 48X:60680 072 60680 072	92/01/31
9202240256	Staff requirements memo re SECY-92-003, "Regulatory Impact Survey for Fuel Cycle & Metals Licenses - Commission did not agree w/staff conclusion that regulatory impact survey should be conducted." CHILK, S. J. Office of the Secretary of the Commission. 92/02/03 TAYLOR, J. M. Ofc of the Executive Director for Operations. 2pp.	10CFR PT9 7 48X:60680 01B 60680 01B	92/02/03
9202120063	Transcript of 920205 meeting in Rockville, MD re periodic briefing on operating reactors & fuel facilities Pp 1-96 K/ * Commissioners (Post 750119). 92/02/03. 107pp.	10CFR PT9 7 48X:60348 001 60348 106	92/02/03



## PART 2 • RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

2.781(a)

## FINAL DECISION

## § 2.770 Final decision.

(a) The Commission will ordinarily consider the whole record on review, but may limit the issues to be reviewed and consider only findings and conclusions that were briefed after the filing of a notice of appeal.

(b) The Commission may adopt, modify, or set aside the findings, conclusions and order in the initial decision, and will state the basis of its action. The final decision will be in writing and will include:

(1) A statement of findings and conclusions, with the basis for them on all material issues of fact, law or discretion presented;

(2) All facts officially noticed;

(3) The ruling on each material issue; and

(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 a notice of appeal.

(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);

(g) Extend time for Commission review on its own motion of a Director's denial under 10 CFR 2.206(c);

(h) Direct pleadings improperly filed before the Commission to the appropriate adjudicatory board for action;

(i) Deny a request for hearings, where the request fails to comply with the Commission's pleading requirements set forth in this part, and fails to set forth an arguable basis for further proceedings;

(j) Refer to the Atomic Safety and Licensing Board Panel or an Administrative Law Judge, as appropriate, requests for hearings not falling under § 2.104 of this part, where the requester is entitled to further proceedings; and

(k) Take action on minor procedural matters.

## Restricted Communications

## § 2.780 Ex parte communications.

In any proceeding under this subpart—

(a) Interested persons outside the agency may not make or knowingly cause, in or made to any Commission adjudication employee, any ex parte communication relevant to the merits of the proceeding;

(b) Commission adjudication employees may not request or entertain from any interested person outside the agency or make or knowingly cause to be made to any interested person outside the agency, and ex parte communication relevant to the merits of the proceeding;

(c) Any Commission adjudication employee who receives, makes, or

knowingly causes to be made a communication prohibited by this section shall ensure that it and any responses to the communication promptly are served on the parties and placed in the public record of the proceedings, in the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Commission or other adjudicatory employee presiding in a proceeding may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of the violation.

(e) (1) The prohibitions of this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(a)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(a)(2), 2.202(c), 2.204, 2.205(e), or 2.703.

(2) The prohibitions of this section cease to apply to ex parte

communications relevant to the merits of a full or partial initial decision when, in accordance with § 2.788, the time has expired for Commission review of the Atomic Safety and Licensing Appeal Board's decisions on the full or partial initial decision.

(f) The prohibitions in this section do not apply to—

(1) Requests for and the provision of status reports;

(2) Communications specifically permitted by statute or regulation;

(3) Communications made to or by Commission adjudicatory employees in the Office of the General Counsel regarding matters pending before a court or another agency; and

(4) Communications regarding generic issues involving public health and safety or other statutory responsibilities of the agency in public rulemaking, congressional hearings on legislation, budgetary planning not associated with the resolution of any proceeding under this subpart pending before the NRC.

## § 2.781 Separation of functions.

(a) In any proceeding under this subpart, any NRC officer or employee engaged in the performance of any

PART 2 • RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

investigative or litigating function in that proceeding or in a factually related proceeding may not participate in or advise a Commission adjudicatory employee about the initial or final decision on any disputed issue in that proceeding, except—

- (1) As witness or counsel in the proceeding;
- (2) Through a written communication served on all parties and made on the record of the proceeding; or
- (3) Through an oral communication made both with reasonable prior notice to all parties and with reasonable opportunity for all parties to respond.

(b) The prohibition in paragraph (a) of this section does not apply to—

(1) Communications to or from any Commission adjudicatory employee regarding—

- (i) The status of a proceeding;
- (ii) Matters with respect to which the communications specifically are permitted by statute or regulation;
- (iii) Agency participation in matters pending before a court of another agency; or
- (iv) Generic issues involving public health and safety or other statutory responsibilities of the agency (e.g., rulemaking, congressional hearings on legislation, budgetary planning) not associated with the resolution of any proceeding under this subpart pending before the NRC.

(2) Communications to or from Commissioners, members of their personal staffs, Commission adjudicatory employees in the Office of the General Counsel, and the Secretary and employees of the Office of the Secretary, regarding—

- (i) Initiation or direction of an investigation or initiation of an enforcement proceeding;
- (ii) Supervision of agency staff to ensure compliance with the general policies and procedures of the agency;
- (iii) Staff priorities and schedules or the allocation of agency resources; or
- (iv) General regulatory, scientific, or engineering principles that are useful for an understanding of the issues in a proceeding and are not contested in the proceeding.

(3) None of the communications permitted by paragraph (b)(2) (i)–(iii) of this section is to be associated by the Commission adjudicatory employee or the NRC officer or employee performing investigative or litigating functions with the resolution of any proceeding under this subpart pending before the NRC.

(c) Any Commission adjudicatory employee who receives a communication prohibited under

paragraph (a) of this section shall ensure that it and any responses to the communication are placed in the public record of the proceeding and served on the parties. In the case of oral communications, a written summary must be served and placed in the public record of the proceeding.

(d) (1) The prohibitions in this section apply—

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.204, 2.205(e), or 2.703.

(2) The prohibitions of this section will cease to apply to the disputed issues pertinent to a full or partial initial decision when, in accordance with § 2.786, the time has expired for Commission review of the Appeal Board a decision on the full or partial initial decision.

(e) Communications to, from, and between Commission adjudicatory employees not prohibited by this section may not serve as a conduit for a communication that otherwise would be prohibited by this section or for an ex parte communication that otherwise would be prohibited by § 2.780.

(f) If an initial or final decision is stated to rest in whole or in part on fact or opinion obtained as a result of a communication authorized by this section, the substance of the communication must be specified in the record of the proceeding and every party must be afforded an opportunity to controvert the fact or opinion. If the parties have not had an opportunity to controvert the fact or opinion prior to the filing of the decision, a party may controvert the fact or opinion by filing an appeal from an initial decision, or a petition for reconsideration of a final decision that clearly and concisely sets forth the information or argument relied on to show the contrary. If appropriate a party may be afforded the opportunity for cross-examination or to present rebuttal evidence.

2.785 Functions of Atomic Safety and Licensing Appeal Board.

(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 §§ 2.780 through 2.771, 2.912, and 2.913 in (1) proceedings conducted pursuant to Subpart C of this part and (2) such other proceedings as the Commission may specify.

ATOMIC SAFETY AND LICENSING APPEAL BOARD