

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: AFFIRMATION/DISCUSSION AND VOTE

Location: ROCKVILLE, MARYLAND

Date: JUNE 1, 1989

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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AFFIRMATION/DISCUSSION AND VOTE

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Thursday, June 1, 1989

The Commission met in open session, pursuant to notice, at 4:00 p.m., Lando W. Zech, Jr., Chairman, presiding.

COMMISSIONERS PRESENT:

Lando W. Zech, Jr., Chairman of the Commission
Thomas M. Roberts, Commissioner
Kenneth M. Carr, Commissioner
Kenneth C. Rogers, Commissioner
James R. Curtiss, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

P-R-O-C-E-E-D-I-N-G-S

4:00 p.m.

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen.

This is an affirmation session. We have one item to come before us this afternoon.

Before I ask the Secretary to walk us through the item, do any of my fellow Commissioners have any comments to make?

If not, Mr. Chilk, you may proceed.

SECRETARY CHILK: One paper, Mr. Chairman, is SECY-89-154, the NRC Advisory Committee regulations. The Commission is being asked in this paper to approve revisions to 10 CFR Part 10 to make it consistent with the current Agency practice and GSA's Federal Advisory Committee Management regulations.

All Commissioners have approved the revised regulations with the suggested modification by Commissioner Carr.

Would you please affirm your votes?

COMMISSIONER ROBERTS: Aye.

COMMISSIONER CARR: Aye.

COMMISSIONER ROGERS: Aye.

COMMISSIONER CURTISS: Aye.

1 CHAIRMAN ZECH: Anything else to come before
2 us this afternoon?

3 SECRETARY CHILK: I have nothing.

4 CHAIRMAN ZECH: If not, we stand adjourned.

5 (Whereupon, at 4:02 p.m., the affirmation
6 meeting was adjourned.)

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CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: AFFIRMATION/DISCUSSION AND VOTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JUNE 1, 1989

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.

Carol Lynch

Reporter's name: Peter Lynch

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May 11, 1989

RULEMAKING ISSUE SECY-89-154

(Affirmation)

For: The Commission

From: William C. Parler
General Counsel

Subject: NRC ADVISORY COMMITTEES REGULATIONS

Summary: Part 7 of Title 10, Code of Federal Regulations, defines the policies and procedures to be followed by the Nuclear Regulatory Commission in the establishment, utilization, and termination of advisory committees. OGC proposes to revise part 7 to make it consistent with current agency practice and Federal Advisory Committee Management regulations of the General Services Administration.

Discussion: The Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) was enacted in 1972 to regulate the formation and operation of advisory committees by federal agencies. The Act requires the Administrator of General Services¹ to prescribe administrative guidelines and management controls on a government-wide basis (§ 7(c)), and directs the head of each federal agency to establish uniform administrative guidelines and

Contact:
S. Fonner, OGC
x-21632

¹The Act actually vests this function in the Director of the Office of Management and Budget, but Executive Order 12024 (Dec. 1, 1977), 42 Fed. Reg. 61445, transferred advisory committee functions under the Act from the Office of Management and Budget and its Director to the Administrator of General Services.

management controls for advisory committees established by that agency (§ 8(a)).

In 1975, NRC implemented the requirements of the Act by issuing 10 C.F.R. Part 7. Most of these regulations have not been revised since that time. Therefore, they do not reflect the administrative and management changes that have taken place in the intervening years.² They also do not reflect the most recent rule issued by the General Services Administration, effective January 4, 1988, providing administrative and interpretive guidelines and management controls for federal agencies concerning the implementation of the Act.³

While GSA's rule and NRC's current regulations contain many similar provisions, the GSA rule contains a number of requirements not found in NRC's regulations. For example, the GSA rule makes it clear that whenever an agency proposes to establish an advisory committee, it is required to submit a written request for review of the proposal to GSA's Committee Management Secretariat, and the letter of request must contain certain prescribed information. While NRC's current regulations contain references to consultation with the Secretariat, the form of consultation appears to be at the Commission's option. The GSA rule also amplifies a number of other provisions applicable to advisory committee management, such as those relating to closing of advisory committee meetings, termination of advisory committees, and amendment and filing of advisory committee charters.⁴

²They do not, for example, reflect the current operational responsibilities of the Chairman of the Commission.

³GSA issued an interim final rule in 1983 (48 Fed. Reg. 19324), and that served as the controlling rule in the area until the final rule was issued in late 1987. Many of the provisions contained in the final rule were foreshadowed in the interim final rule.

⁴It is expected that there will be a need for delegation of some of the functions covered by the regulations after they have
(Footnote Continued on next page)

The GSA regulations do not resolve all of the difficult issues in this area. In particular, they do little to clarify the requirements for balancing the membership of advisory committees and they do not address the extent to which the regulations apply to pre-existing committees that are "utilized" by an agency. However, since NRC's Advisory Committee regulations are badly out-of-date, we believe that it is appropriate for the Commission to issue a revision of the regulations at this time, even though these issues remain unresolved.⁵ The Executive Director for Operations, the Executive Director for the Advisory Committee on Reactor Safeguards, and the Advisory Committee Management Officer have concurred in the proposed revision.

We submitted a copy of the proposed revision to the GSA Committee Management Secretariat for their review. They have advised us that they see no difficulty with the revision we have drafted.⁶


(Footnote Continued from previous page)
been published. For example, we understand that some of the responsibilities that the GSA regulations require to be assigned to the Chairman of the Commission are actually carried out by the Advisory Committee Management Officer (ACMO). If that arrangement is to continue, a written delegation of such responsibilities to the ACMO will have to be executed by the Chairman after the revised rule is issued.

⁵On December 30, 1988, GSA published proposed amendments to its Federal Advisory Committee Management regulations. Upon inquiry, we were advised by GSA staff that this should not cause us to delay issuance of the revision of NRC's Advisory Committees regulations because there is little in the proposed rule that will have a significant effect on our regulations.

In addition, a bill has been introduced in the Congress that would revise the Federal Advisory Committee Act (S. 444). We also do not consider that to be a reason for delay of the issuance of a revision of NRC's regulations since there is no indication that the bill will be passed in this session.

⁶Neither the Federal Advisory Committee Act nor GSA's rule requires GSA approval of agencies' advisory committee regulations.
(Footnote Continued on next page)

Recommendation: Authorize the Secretary to issue the attached Federal Register notice revising the Nuclear Regulatory Commission's Advisory Committee regulations.


William C. Parler
General Counsel

Attachment:
Federal Register Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, May 26, 1989.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, May 19, 1989, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of May 29, 1989. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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(Footnote Continued from previous page)
The Committee Management Secretariat has, however, requested that agencies submit their regulations to the Secretariat before publication so that the Secretariat can assure that the rules are consistent with GSA guidelines.

NUCLEAR REGULATORY COMMISSION
10 CFR Part 7
Advisory Committees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that define the policies and procedures to be followed by the Nuclear Regulatory Commission in the establishment, utilization, and termination of advisory committees.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Susan Fonner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-1632.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) was enacted in 1972 to regulate the formation and operation of advisory committees by federal agencies. Pursuant to authority provided by section 7(c) of the Act and Executive Order 12024 (42 FR 61445), the General Services Administration has the responsibility for providing government-wide guidelines on the subject. In implementation of this responsibility, GSA issued a final rule in late 1987 (effective January 4, 1988) providing administrative and interpretive guidelines and management controls for federal agencies concerning the implementation of the Act.

Section 8(c) of the Federal Advisory Committee Act directs the head of each federal agency to establish uniform administrative guidelines and

management controls for advisory committees established by that agency. In 1975, the Nuclear Regulatory Commission implemented this requirement by issuing NRC's Advisory Committee regulations (10 CFR Part 7). The present revision of NRC's regulations is intended to reflect administrative and management changes that have taken place since NRC's regulations were published in 1975 and to maintain consistency between NRC regulations and those issued by the General Services Administration in 1987.

Because these amendments relate to matters of agency management or personnel, good cause exists for omitting notice of proposed rulemaking and public procedures thereon, as unnecessary, and for making the amendments effective upon publication in the Federal Register.

Environmental Impact: Categorical Exclusion

The action required under this final rule is administrative and would not impact the environment. The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

REGULATORY ANALYSIS

In 1972, the Congress enacted the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.) to regulate the formation and operation of advisory committees by federal agencies. Section 8(a) of the Act directs the head of each federal agency to establish uniform administrative guidelines and management controls for advisory committees established by that agency. NRC implemented this requirement by issuing Advisory Committee regulations (10 CFR Part 7) in 1975.

The Act also requires the establishment of administrative guidelines and of management controls on a government-wide basis (§ 7(c)). In implementation of this requirement, the General Services Administration issued a final rule, effective January 4, 1988, providing administrative and interpretive guidelines and management controls for federal agencies concerning the implementation of the Act.

Since most of NRC's regulations on the subject have not been revised since their issuance in 1975, they do not incorporate all of the requirements of the GSA rule. For example, GSA's regulations make it clear that whenever an agency proposes to establish an advisory committee, it is required to submit a written request for review of the proposal to GSA's Committee Management Secretariat, and the letter of request must contain certain prescribed information. While NRC's current regulations contain references to consultation with the Secretariat, the form of consultation appears to be at the Commission's option.

NRC's current regulations also do not reflect many of the administrative and management changes that have taken place since 1975. For example, the NRC regulations do not reflect the fact that the principal functions of guiding and coordinating the administration of the Act, which the Act vested in the President and the Director of the Office of Management and Budget, were transferred to the Administrator of the General Services Administration by Executive Order 12024 of December 1, 1977 (42 FR 61445). They also do not reflect the current operational responsibilities of the Chairman of the Commission in such matters as personnel appointments and administrative support services.

In view of the above, the Commission has determined that NRC's Advisory Committee regulations should be revised to make them more consistent with current administrative and management practices and the Federal Advisory Committee Management regulations of the General Services Administration. The Commission believes that this alternative is to be preferred to the unrevised Part 7.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required for this final rule because these amendments do not involve an provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

LIST OF SUBJECTS IN 10 CFR PART 7

Advisory committees, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 41 CFR Part 101-6, and 5 U.S.C. 553, the NRC is amending 10 CFR Part 7 as set forth below.

1. 10 CFR Chapter I is amended by revising Part 7 to read as follows:

PART 7 - ADVISORY COMMITTEES

Sec.

7.1 Policy.

7.2 Definitions.

7.3 Interpretations.

7.4 Establishment of advisory committees.

- 7.5 Review of establishment of advisory committees by GSA Secretariat; Advisory committee charters.
- 7.6 Amendments to advisory committee charters.
- 7.7 Termination, renewal, and rechartering of advisory committees.
- 7.8 Charter filing requirements.
- 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.
- 7.10 The NRC Advisory Committee Management Officer.
- 7.11 The Designated Federal Officer.
- 7.12 Public participation in and public notice of advisory committee meetings.
- 7.13 Minutes of advisory committee meetings.
- 7.14 Public information on advisory committees.
- 7.15 Procedures for closing an NRC advisory committee meeting.

7.16 Annual comprehensive review.

7.17 Reports required for advisory committees.

7.18 Compensation and expense reimbursement of advisory
committee members, staffs, and consultants.

7.19 Handicapped members of advisory committees.

7.20 Conflict of interest reviews of advisory committee
members' outside interests.

7.21 Costs of duplication of documents.

7.22 Fiscal and administrative responsibilities.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201,
88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92-463, 86 Stat. 770 (5
U.S.C. App.).

§ 7.1 Policy.

The regulations in this part define the policies and procedures to be
followed by the Nuclear Regulatory Commission in the establishment,

utilization, and termination of advisory committees. In general, it is the policy of the Commission that--

(a) Except where there is express legal authority to the contrary, the function of NRC advisory committees shall be advisory only.

(b) Each NRC advisory committee shall function in compliance with the Federal Advisory Committee Act and this part.

(c) The number of NRC advisory committees shall be kept to the minimum necessary, and the number of members of each NRC advisory committee shall be limited to the fewest necessary to accomplish committee objectives.

(d) An NRC advisory committee shall be established only when establishment of the committee is required by law or when the Commission determines that the committee is essential to the conduct of NRC business. In making such a determination, the Commission shall consider whether committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business; whether the information to be obtained is available through another source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission.

(e) Except where otherwise required by law, an NRC advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished, the subject matter or work of the committee has become obsolete, the committee's main functions have been assumed by another entity within the Federal Government, or the cost of operating the committee has become excessive in relation to the benefits accruing to the Federal Government from its activities.

(f) NRC advisory committees shall be balanced in their membership in terms of the points of view represented and the functions to be performed.

(g) The Congress shall be kept informed of the number, purpose, membership, activities, and cost of NRC advisory committees.

(h) NRC advisory committee meetings shall be open to the public, except where closure is determined to be justified under section 7.15 of this part.

§ 7.2 Definitions.

As used in this part:

(a) "Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

(b) "Administrator" means the Administrator of General Services.

(c)(1)"Advisory committee" means any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof, that is established by statute for the purpose of providing advice or recommendations on issues of policy to an official, branch, or agency of the Federal Government, or that is established or utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities; except that the term "advisory committee" shall not include the groups listed in subparagraph (3) of this paragraph.

(2) For purposes of the definition of "advisory committee" in subparagraph (1) of this paragraph, a group shall be considered to be "utilized by the President or any agency official to obtain advice or recommendations on issues or policies that fall within the scope of his or her responsibilities" if (i) the group is composed in whole or in part of other than full-time officers or employees of the Federal Government, (ii) the group has an established existence outside the agency seeking the advice, (iii) the group is a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of the President's or agency official's responsibilities, and (iv) such advice or recommendations are obtained in the same manner as advice or recommendations obtained from established advisory committees.

(3) The following advisory meetings or groups are not included in the definition of "advisory committee" in subparagraph (1) of this paragraph:

(i) Any group composed wholly of full-time officers or employees of the Federal Government;

(ii) Any group specifically exempted from the Act or these regulations by an Act of Congress;

(iii) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to any State or local government unit or an official thereof;

(iv) Any group that performs primarily operational functions specifically provided by law, as opposed to advisory functions;

(v) Any meeting initiated by the President or one or more Federal officials for the purpose of obtaining advice or recommendations from one individual;

(vi) Any meeting that is initiated by a Federal official and that is held with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations, except where the agency accepts the group's deliberations as a source of consensus advice or recommendations;

(vii) Any meeting initiated by a group with the President or one or more Federal officials for the purpose of expressing the group's view, provided that

the President or Federal official does not use the group recurrently as a preferred source of advice or recommendations;

(viii) Any meeting of two or more advisory committee members convened solely to gather information or conduct research for a chartered advisory committee, to analyze relevant issues and facts for a chartered advisory committee, or to draft proposed position papers for deliberation by a chartered advisory committee; and

(ix) Any meeting with a group initiated by the President or by one or more Federal officials for the purpose of exchanging facts or information.

(d) "Agency" means an agency of the Government of the United States as defined in 5 U.S.C. § 551(1).

(e) "Commission" means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. § 5841 (88 Stat. 1242).

(f) "Committee member" means an individual who is appointed to serve on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

(g) "Designated Federal Official" means a Government employee appointed, pursuant to section 7.11(a) of this part, to chair or attend each meeting of an NRC advisory committee to which he or she is assigned.

(h) "GSA" means the General Services Administration.

(i) "NRC" means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. § 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

(j) "NRC Advisory Committee Management Officer" means the individual appointed, pursuant to section 7.10(a) of this part, to supervise and control the establishment and management of NRC advisory committees.

(k) "NRC Public Document Room" means the Public Document Room maintained by the NRC at 2120 L Street, N.W., Washington, D.C.

(l) "Presidential advisory committee" means an advisory committee that advises the President.

(m) "GSA Secretariat" means the Committee Management Secretariat of the General Services Administration, which was established pursuant to the Act.

(n) "Staff member" means any individual who serves in a support capacity to an advisory committee.

§ 7.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an NRC officer or employee, other than a written interpretation by the General Counsel, shall be binding upon the Commission.

§ 7.4 Establishment of advisory committees.

(a) An NRC advisory committee may be established under this part only if its establishment--

(1) is specifically directed or authorized by statute or by Executive Order of the President; or

(2) has been determined by the Commission to be in the public interest and essential to the performance of the duties imposed on the Commission by law.

The determination required by subparagraph (2) of this paragraph shall be a matter of formal record, and shall include a statement of a clearly defined purpose for the advisory committee.

§ 7.5 Review of establishment of advisory committees by GSA Secretariat;
Advisory committee charters.

(a) Whenever the NRC proposes to establish or utilize an advisory committee, a letter requesting review of the proposal and transmitting a proposed charter for the committee shall be submitted to the GSA Secretariat by the Commission. The letter shall contain the following information:

(1) An explanation of why the committee is essential to the conduct of NRC business and is in the public interest;

(2) An explanation of why the committee's functions cannot be performed by NRC, another existing NRC advisory committee, or other means (such as a public hearing); and

(3) A description of NRC's plan to attain balanced membership on the committee.

For purposes of attaining balance in an NRC advisory committee's membership, the Commission shall consider for membership interested persons and groups with professional, technical, or personal qualifications or experience to contribute to the functions and tasks to be performed.

(b) Each proposed committee charter submitted for review pursuant to paragraph (a) shall contain the following information:

- (1) the committee's official designation;
- (2) the committee's objectives and the scope of its activity;
- (3) the period of time necessary for the committee to carry out its purposes;
- (4) the NRC official to whom the committee will report;
- (5) the NRC office responsible for providing support for the committee;
- (6) a description of the duties for which the committee will be responsible, and if such duties are not solely advisory, a specification of the authority for the functions that are not advisory;
- (7) the estimated annual operating costs, in dollars and man-years, for the committee;
- (8) the estimated number and frequency of committee meetings; and
- (9) the committee's termination date, if less than two years from the date of the committee's establishment.

The date the charter is filed pursuant to section 7.8 of this part shall be added to the charter when such filing takes place.

(c)(1) A subcommittee that does not function independently of its parent advisory committee shall be subject to the requirements of this part, except that it shall not be subject to the requirements of paragraphs (a) and (b) of this section. Such a subcommittee shall not, however, be subject to the requirements of this part with respect to any meeting of its members devoted solely to a function described in section 7.2(c)(3)(viii) of this part.

(2) The requirements of this part, including the requirements of paragraphs (a) and (b) of this section, shall apply to any subcommittee that functions independently of the parent advisory committee (such as by making recommendations directly to the agency rather than to the parent advisory committee), regardless of whether the subcommittee's members are drawn in whole or in part from the parent advisory committee.

(d) After the GSA Secretariat has notified the Commission of the results of its review of a proposal to establish or utilize an NRC advisory committee, submitted pursuant to paragraph (a), the Commission shall notify the Secretariat in writing whether the advisory committee is actually being established. Filing of the advisory committee charter pursuant to section 7.8 of this part shall be deemed to fulfill this notification requirement. If the advisory committee is not being established, the Commission shall so advise the GSA Secretariat in writing, stating whether NRC intends to take any further action with respect to the proposed advisory committee.

(e) The date of filing of an advisory committee charter pursuant to section 7.8 of this part shall appear on the face of the charter and shall

constitute the date of establishment, renewal, or reestablishment of the committee.

§ 7.6 Amendments to advisory committee charters.

(a) Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission.

(b) Any proposed minor technical changes made to a current charter for an NRC advisory committee whose establishment is required or authorized by statute or by Executive Order of the President shall be coordinated with the General Counsel to ensure that they are consistent with the applicable statute or Executive Order. When the statute or Executive Order that directed or authorized the establishment of an advisory committee is amended to change the language that has been the basis for establishing the advisory committee, those sections of the current charter affected by the statute or Executive Order shall also be amended, and the amended charter shall be filed as specified in section 7.8 of this part.

(c) (1) The charter of an NRC advisory committee established under general agency authority may be amended when the Commission determines that the existing charter no longer reflects the objectives or functions of the committee. Such changes may be minor (such as revising the name of the advisory committee or modifying the estimated number or frequency of meetings), or they may be major (such as revising the objectives or composition of the

committee). The procedures specified in paragraph (b) of this section shall be used in the case of charter amendments involving minor changes.

(2) In the case of a major amendment to the charter of an advisory committee established under general agency authority, a letter requesting review of the proposed amendment and transmitting the proposed amended charter shall be submitted to the GSA Secretariat. The letter shall explain the purpose of the changes and why they are necessary.

(3) A committee charter that has been amended pursuant to this paragraph is subject to the filing requirements set forth in section 7.8 of this part.

(4) Amendment of an existing advisory committee charter pursuant to this paragraph does not constitute renewal of the committee for purposes of section 7.7 of this part.

§ 7.7 Termination, renewal, and rechartering of advisory committees.

(a) Except as provided in paragraph (b)(1) of this section, each NRC advisory committee shall terminate two years after it is established, reestablished, or renewed, unless--

(1) it has been terminated sooner;

(2) it has been renewed or reestablished before the end of such period in accordance with the procedures set forth in paragraph (b) of this section; or

(3) its duration has been otherwise designated by law.

The NRC Committee Management Officer shall notify the Secretariat in writing of the effective date of termination of any advisory committee that has been terminated by the NRC.

(b) (1) An NRC advisory committee that is established by statute shall require rechartering by the filing of a new charter every 2 years after the date of enactment of the statute establishing the committee. If a new charter is not filed, the committee is not terminated, but it may not meet or take any actions.

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in section 7.5 of this part at least 30 and not more than 60 days before the committee would otherwise terminate; except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

§ 7.8 Charter filing requirements.

(a) Except as provided in paragraph (b) of this section, an NRC advisory committee may not operate, meet, or take any action unless a copy of the committee's charter has been filed with (1) the Committee on Environment and Public Works of the United States Senate, and the Committee on Interior and Insular Affairs and the Committee on Energy and Commerce of the United States House of Representatives; (2) the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and (3) the GSA Secretariat. The copy filed with the GSA Secretariat shall indicate the Congressional filing date.

(b) When either the President or the Congress establishes an advisory committee that advises the President and for which NRC is responsible, the Commission shall--

(1) File the committee's charter with the Secretariat;

(2) File a copy of the committee's charter with the Library of Congress at the address listed in paragraph (a) of this section; and

(3) If specifically directed by law, file with the Congressional Committees listed in paragraph (a) of this section a copy of the charter that shows its date of filing with the GSA Secretariat.

(c) For purposes of the filing requirements established by this section, the filing date of an advisory committee charter shall be the date on which the charter, or a copy of the charter where appropriate, is offered for filing at the office in which it is required to be filed (in the case of hand delivery), or on which it is deposited in the mail (in the case of delivery by mail).

(d) The charter filing requirements established by this section are subject to the public notice requirements of section 7.9 of this part.

§ 7.9 Public notice of advisory committee establishment, reestablishment, or renewal.

(a) After the Commission has received the GSA Secretariat's response to a request (in accordance with section 7.5 of this part) for review of a proposal to establish, reestablish, renew, or utilize an NRC advisory committee, the Commission shall publish a notice in the Federal Register that the committee is being established, reestablished, renewed, or utilized. In the case of a new committee, the notice shall also describe the nature and purpose of the committee and shall include a statement that the committee is necessary and in the public interest. This notice requirement does not apply to any committee whose establishment is required by statute or which is established by Executive Order of the President.

(b) Notices required to be published pursuant to paragraph (a) of this section shall be published at least 15 calendar days before the committee

charter is filed pursuant to section 7.8 of this part, except that the GSA Secretariat may approve less than 15 days for good cause shown. The 15-day advance notice requirement does not apply to committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 7.10 The NRC Advisory Committee Management Officer.

(a) The Chairman of the Commission shall appoint an NRC Advisory Committee Management Officer to carry out the functions specified in paragraph (b) of this section.

(b) The NRC Advisory Committee Management Officer shall--

(1) Carry out all responsibilities relating to NRC advisory committees delegated to such officer by the Commission;

(2) Ensure that administrative guidelines and management controls are issued that apply to all NRC advisory committees;

(3) Exercise control and supervision over the establishment, procedures, and accomplishments of NRC advisory committees;

(4) Assemble and maintain the reports, records, and other papers of any such committee during its existence;

(5) Carry out, on behalf of NRC, the provisions of the Freedom of Information Act (5 U.S.C. § 552) and NRC's Freedom of Information Act Regulations (Part 9, Subpart A of this chapter) with respect to such reports, records, and other papers;

(6) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, copies of the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each NRC advisory committee shall be available for public inspection and copying at the NRC Public Document Room until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act Regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

(8) Ensure that NRC keeps such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees and the nature and extent of their activities; and

(9) Ensure that NRC keeps such other records and provides such support services as are required by section 7.22 of this part.

(b) For purposes of paragraph (a) of this section, the term "records" includes (but is not limited to):

- (1) A set of approved charters and membership lists for each NRC advisory committee;
- (2) Copies of NRC's portion of the President's annual report to the Congress on Federal advisory committees required by section 6(c) of the Act;
- (3) NRC guidelines on committee management operations and procedures as maintained and updated; and
- (4) NRC determinations to close advisory committee meetings made pursuant to section 7.15 of this part.

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission shall appoint a Designated Federal Officer for each NRC advisory committee and its subcommittees. The individual holding this position must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) All meetings of an NRC advisory committee must be convened or approved by the committee's Designated Federal Officer, and the agenda for each committee meeting (except a meeting of a Presidential advisory committee) must be approved by that individual.

(c) An NRC advisory committee may not hold a meeting in the absence of its Designated Federal Officer.

(d) It shall also be the responsibility of the Designated Federal Officer to--

(1) Attend all meetings of the committee for which he or she has been appointed;

(2) Adjourn the meetings of the committee when such adjournment is in the public interest;

(3) Chair the meetings of the committee when so directed by the Commission;

(4) Ensure compliance with the requirements of section 7.13 of this part regarding minutes of meetings of the committee; and

(5) Provide to the NRC Public Document Room copies of committee documents required to be maintained for public inspection and copying pursuant to section 7.14(b) of this part.

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public. The size of the meeting room must be sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public; except that, the provisions of this paragraph shall not apply where an entire NRC advisory committee meeting has been closed pursuant to section 7.15 of this part.

(b) Any member of the public who wishes to do so shall be permitted to file a written statement with an NRC advisory committee regarding any matter discussed at a meeting of the committee. The committee chairman may also permit members of the public to speak at meetings of the committee in accordance with procedures established by the committee.

(c) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, at least 15 days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the Federal Register:

- (1) The exact name of the advisory committee as chartered;
- (2) The time, date, place, and purpose of the meeting;
- (3) A summary of the agenda of the meeting; and

(4) Whether all or part of the meeting is open to the public.

If any part of the meeting is closed, the notice shall provide the reasons for the closure, citing the specific matter that has been determined to justify the closure under section 7.15 of this part.

(d) In exceptional circumstances, less than 15 days notice of an advisory committee meeting may be given, provided that there is as much prior notice as possible and the reasons for the shorter time are included in the committee meeting notice published in the Federal Register.

(e) In addition to the notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as public releases and notice by mail, to inform the public of advisory committee meetings. To that end, the Designated Federal Officer of each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

§ 7.13 Minutes of advisory committee meetings.

(a) Detailed minutes shall be kept of each NRC advisory committee meeting. The minutes shall include the following information:

(1) The time, date, and place of the meeting;

(2) A list of the attendees at the meeting who are advisory committee members or staff, agency employees, or members of the public who presented oral or written statements;

(3) An estimate of the number of other members of the public who were present;

(4) The extent of public participation; and

(5) An accurate description of each matter discussed during the meeting and its resolution, if any, by the committee.

(b) The minutes of an NRC advisory committee meeting shall include a copy of each report or other document received, issued, or approved by the committee in connection with the meeting. If it is impracticable to attach a document to the minutes, the minutes shall describe the document in sufficient detail to permit it to be identified readily.

(c) The chairperson of an NRC advisory committee shall certify to the accuracy of the minutes of each of the committee's meetings. In the case of a subgroup of an advisory committee, the chairperson of the subgroup shall certify to the accuracy of the minutes.

(d) A verbatim transcript of an advisory committee meeting may be substituted for minutes required by this section, providing that the use of

such a transcript is in accordance with the requirements of paragraphs (a), (b), and (c) of this section.

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) of this part shall be maintained for public inspection in the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. § 552) and NRC's Freedom of Information Act Regulations (Part 9, Subpart A of this chapter), copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying in the NRC Public Document Room.

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the committee shall submit a written request for closure to the Chairman of the Commission, citing specific matter listed in the Government in the Sunshine Act (5 U.S.C. § 552b), as implemented by section 9.104 of this chapter, to justify

the closure. The request shall provide the Chairman sufficient time for review in order to make a determination prior to publication of the meeting notice pursuant to section 7.12 of this part.

(b) The General Counsel shall review all requests to close meetings of NRC advisory committees.

(c) If the Chairman of the Commission agrees that the request is consistent with the policies of this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing.

(d) Except when the President or his designee determines in writing that no notice should be published for reasons of national security, the Chairman of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request, and shall state the reasons why all or part of the meeting is closed, citing the specific matter listed in the Government in the Sunshine Act (as implemented by section 9.104 of this chapter) in the meeting notice published in the Federal Register pursuant to section 7.12 of this part.

(e) The Chairman of the Commission may delegate the Chairman's functions under paragraphs (c) and (d) of this section to such officer of the Commission as the Chairman considers appropriate. The General Counsel shall review any determination to close a meeting made by a delegate.

§ 7.16 Annual comprehensive review.

(a) The Chairman of the Commission shall conduct an annual comprehensive review of the activities and responsibilities of each NRC advisory committee to determine whether the committee--

(1) is carrying out its purposes or, consistent with the provisions of applicable statutes, its responsibilities should be revised.

(2) should be merged with another advisory committee.

(3) should be terminated.

(b) The comprehensive review required by paragraph (a) of this section shall include consideration of such information regarding the committee as is required for the Commission's annual report to the GSA Secretariat pursuant to § 7.27(a) of this part and such other information as may be requested from the Committee by the NRC Advisory Committee Management Officer. The results of such review shall be included in the annual report to the GSA Secretariat.

(c) If, as a result of the review required by this section, the Commission determines that an advisory committee is no longer needed, the committee shall be terminated; except that in the case of an advisory committee established by an Act of Congress or the President, the committee's termination shall be recommended to the President or the Congress, as the case may be.

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the Secretariat. The report shall be on a fiscal year basis. It shall contain such information regarding NRC advisory committees as is required by section 6(c) of the Act for the President's annual report to the Congress and shall be consistent with instructions provided by the Secretariat. A copy of the report shall be placed in the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. § 552b), as implemented by section 9.104 of this chapter. A copy of the report shall be placed in the NRC Public Document Room.

(c) Subject to the Freedom of Information Act (5 U.S.C. § 552) and NRC's Freedom of Information Act Regulations (Part 9, Subpart A of this chapter), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by consultants, shall be filed for public inspection and use with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

§ 7.18 Compensation and expense reimbursement of advisory committee members, staffs, and consultants.

(a) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(b) (1) Subject to the provisions of subparagraph (2) of this paragraph, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule (see ch. NRC-4130, NRC Manual), unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants (see ch. 4139, NRC Manual).

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the committee member; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent of the maximum rate for a GG-15 under NRC's General Salary Schedule, unless a higher rate is mandated by statute or the Commission itself has determined that a higher rate is justified and necessary. The Commission may not delegate the responsibility for making a determination that such a higher rate of pay is necessary and

justified for an NRC advisory committee member, and such a determination must be reviewed annually.

(3) An advisory committee member may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG-18 under NRC's General Salary Schedule.

(c) (1) Each NRC advisory committee staff member may be paid at a rate that is the daily equivalent of a rate of NRC's General Salary Schedule in which the staff member's position would appropriately be placed.

(2) A staff member of an NRC advisory committee may not be paid at a rate higher than the daily equivalent of the maximum rate for a GG-15 under NRC's General Salary Schedule, unless the Chairman of the Commission determines that the staff member's position would appropriately be placed at a grade higher than GG-15; provided that in establishing rates of compensation, the Chairman shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(3) A determination to set the rate of pay of a staff position at a grade higher than GG-15 under the NRC's General Salary Schedule rate of pay shall be reviewed annually by the Chairman of the Commission.

(4) A Federal employee may serve as a staff member of an NRC advisory committee only with the knowledge of the Designated Federal Officer for the committee and the approval of the employee's direct supervisor. A staff member

who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(d) The following factors shall be considered in determining an appropriate rate of pay for a consultant to an NRC advisory committee:

(1) The qualifications required of the consultant, and

(2) The significance, scope, and technical complexity of the work for which his services are required;

provided that the the rate of pay for an NRC advisory committee consultant may not be higher than the maximum rate of pay applicable to NRC consultants. In establishing such a rate of pay, NRC shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(e) A member or staff member of an NRC advisory committee engaged in the performance of duties away from his or her home or regular place of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, for persons employed intermittently in the Government service.

(f) Nothing in this section shall--

(1) Prevent any full-time Federal employee who provides services to an NRC advisory committee from receiving compensation at a rate at which he or she would otherwise be compensated as a full-time Federal employee.

(2) Prevent any individual who provides services to an NRC advisory committee, and who immediately before providing such services was a full-time Federal employee, from receiving compensation at a rate at which he or she was compensated as a full-time Federal employee.

(3) Affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Salary Schedule and evaluation system (see ch. NRC-4130, NRC Manual).

§ 7.19 Handicapped members of advisory committees.

An NRC advisory committee member who is blind or deaf or otherwise handicapped may be provided services by a personal assistant for handicapped employees while performing advisory committee duties, if the member--

(a) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); and

(b) Does not otherwise qualify for assistance under 5 U.S.C. § 3102 by reason of being an employee of NRC.

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The Designated Federal Officer of each NRC advisory committee and the General Counsel shall review the interests and affiliations of each member of the Designated Federal Officer's advisory committee annually, and upon the commencement and termination of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with the laws and regulations on conflict of interest applicable to that member.

§ 7.21 Costs of duplication of documents.

Copies of the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by an NRC advisory committee shall be made available to any person at the actual cost of duplication prescribed in Part 9 of this chapter. (For availability of information on advisory committees, see section 7.14 of this part.)

§ 7.22 Fiscal and administrative responsibilities.

(a) The Controller shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of NRC advisory committees.

(b) The Office of Information Resources Management shall keep ~~such records~~ as will fully disclose the nature and extent of activities of NRC advisory committees.

(c) NRC shall provide support services (including staff support and meeting space) for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to another agency in addition to NRC, only one agency shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

Dated at Rockville, Maryland, this ____ day of _____, 1989.

For the Nuclear Regulatory Commission,

Samuel J. Chilk
Secretary of the Commission