

INTERNAL COMMISSION PROCEDURES



U.S. NUCLEAR REGULATORY COMMISSION

March 24, 2016

TABLE OF CONTENTS

<u>CHAPTER</u>		<u>PAGE</u>
	FOREWORD	i
I	COMMISSION RESPONSIBILITIES	I-1
	❖ Collegial Functions	I-1
	• Policy, Rulemaking, and Adjudication	I-1
	• Appointments	I-3
	• Personnel Appointment Process	I-5
	❖ Chairman Duties	I-5
	• Emergency Response	I-8
	• Emergency Response Training	I-10
	❖ Individual Commissioner Responsibilities	I-11
	❖ Commission Administrative Procedures	I-13
	❖ Changes to or Waiver of Commission Procedures	I-13
II	DECISION DOCUMENTS	II-1
	❖ SECY Papers	II-1
	❖ Format for Staff Papers and Action Memoranda to the Commission	II-4
	❖ Action Memoranda (COMs and COMSECYs)	II-6
	❖ Staff Requirements Memoranda	II-8
	❖ Release of Documents Under FOIA	II-9
	❖ Management and Disposition of Commissioner Records	II-9
III	VOTING	III-1
	❖ Votes on SECY Papers	III-2
	• Action Dates	III-2
	• Submission of Votes to the Secretary	III-4
	• Recording of Commissioner Votes While Away from the Office	III-5
	• Handling of Separate Views on Commission Documents Published in the Federal Register	III-6
	• Handling of Separate Views in Commission Adjudicatory Decisions	III-6
	❖ Comments on Draft Congressional Letters and Press Releases Associated with Decision Documents	III-6
	❖ Votes on Action Memoranda (COMs and COMSECYs)	III-7
	❖ Votes at Commission Meetings	III-8
	❖ Continuances and Extensions of Time	III-9
	❖ Closure Process	III-10
	• Commission Voting Record	III-12

TABLE OF CONTENTS

	❖ Tracking of Requirements and Tasks	III-12
	❖ Motions for Reconsideration of a Decision	III-13
	❖ Return or Withdrawal of Papers Submitted to the Commission	III-14
IV	COMMISSION MEETINGS/HEARINGS	IV-1
	❖ Government in the Sunshine Act	IV-1
	❖ Development of Commission Schedule	IV-1
	• Guidelines for Stakeholder Participation In Commission Meetings	IV-3
	❖ Format for Commission Meetings	IV-5
	• Open/Public Commission Meetings	IV-5
	• Closed Commission Meetings	IV-6
	• Non-Sunshine Act Discussions	IV-8
	❖ Conduct of Commission Meetings	IV-8
	❖ Meeting-Related Documents	IV-9
	• Documents in Advance of Meetings	IV-9
	• Documents at Meetings	IV-10
	❖ Staff Requirements Memoranda (SRM)	IV-10
	❖ Briefings of the Commission Assistants	IV-10
	❖ Conduct of Mandatory Hearings on Applications for Combined Licenses and Construction Permits for Medical Isotope Production and Utilization Facilities	IV-11
	• Before the Hearing	IV-11
	• The Hearing	IV-14
	• Commission Decision after the Hearing	IV-15
	• Schedule for Uncontested Hearings	IV-15
	• Template	IV-16
V	INSTITUTIONAL CORRESPONDENCE	V-1
	❖ Incoming Correspondence	V-1
	• Receipt and Review by the Office of the Secretary	V-1
	❖ Guidelines for Commission Response	V-2
	• Action Assigned by the Office of the Secretary	V-2
	• Requests for Additional Response Preparation Time	V-4
	❖ Commission Daily Reading File	V-5
	❖ Outgoing Correspondence	V-5
	• Procedures for Commission Correspondence	V-6
	• Procedures for Chairman's Correspondence	V-8
	• Dispatch of Outgoing Correspondence and Information Copies	V-9

TABLE OF CONTENTS

VI	TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS	VI-1
	❖ Guidelines and Procedures	VI-1
VII	CONGRESSIONAL HEARINGS	VII-1
	❖ Preparation of Testimony and Supporting Information	VII-1
	• Planning Meetings	VII-1
	• Preparation of Testimony and Supporting Information	VII-2
	❖ Commitments and Post-Hearing Questions	VII-3

APPENDICES

1	Process for Obtaining Nominations for NRC's Advisory Committees
2	Procedures for Handling Withheld Documents in Commissioners' Offices Under FOIA
3	Sample Vote Sheet
4	Basis for Determining Voting Results
5	Resolution of 2-2 Vote
6	Specialized Procedures when Commission Review Time for Adjudicatory Actions is Limited
7	Staff Requirements Memorandum and Commission Voting Record
8	Procedures for Staff Presentations at Commission Meetings
9	Nuclear Regulatory Commission Issuances
10	Security Procedures for Conducting Classified Meetings/Hearings
11	Record of Non-Sunshine Act Discussion
12	Correspondence Response Sheets
13	Commission Office and Staff Instructions for Processing Congressional Request for Documents
14	The Budget Process
15	List of Positions for Which the Commission is the Awarding Authority for Performance Awards

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FORWARD

FOREWORD

This document sets forth the procedures governing the conduct of business at the Commission level of the Nuclear Regulatory Commission. It provides an overview of the Commission's responsibilities, Commission's decision-making process, including procedures governing formal Commissioner voting, the conduct of Commission meetings, Commissioner involvement in institutional correspondence, transmittal of sensitive documents to Congress, and Commission testimony. These procedures may be changed or waived by a majority of the Commission and questions regarding implementation and interpretation are decided by the Commission as a collegial body, consistent with existing law.

The Office of the Inspector General (OIG) is a statutorily established office conducting independent audits and investigations within the agency. The OIG has a statutory responsibility to communicate with the Congress, separate and apart from communication between the Commission and Congress. Accordingly, unless specifically stated, the requirements of these procedures with respect to Commission review and processing of documents, testimony, and personnel do not apply to the OIG.

At the request of any member of the Commission, or on the Secretary's own initiative, the Secretary may review the procedures, with assistance from the Office of the General Counsel, to determine whether they should be updated to reflect approved reorganizations or other changes, amended to improve efficiency or effectiveness, or amended to ensure conformity with legal requirements and Commission policy. Changes should be proposed by the Secretary as a COMSECY voting paper. Any member of the Commission may propose changes to any provision or aspect of the procedures as a COM voting paper.¹

Annette L. Vietti-Cook
Secretary of the Commission

¹ For a discussion of COMSECY and COM voting papers, see Chapter II of these procedures.

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CHAPTER I – COMMISSION RESPONSIBILITIES

COMMISSION RESPONSIBILITIES

The Nuclear Regulatory Commission, as established by the Energy Reorganization Act of 1974, is responsible for licensing and regulating nuclear facilities and materials and for conducting research in support of the licensing and regulatory process. The President's Reorganization Plan No. 1 of 1980 (Reorganization Plan) clarified and strengthened the duties of the Chairman as the NRC's principal executive officer and more specifically defined the responsibilities of the Commission members acting as a collegial body. Consistent with the requirements of Reorganization Plan No. 1 of 1980, on May 18, 1988, the Commissioners approved COMLZ-88-10, which made more explicit the operational responsibility of the Chairman of the Commission, as the principal executive officer of the Commission, and the other members of the Commission. Each Commission member has equal authority in all Commission decisions and equal (prompt and full) access to all agency information pertaining to Commission responsibilities.

COLLEGIAL FUNCTIONS

1. **Policy, Rulemaking, and Adjudication**

Functions pertaining to policy formulation, rulemaking (with certain exceptions), adjudications, and orders are reserved for the Commission itself (Reorganization Plan No. 1 of 1980, Section 1(a)). The Commission also must approve the appointment and the removal of certain senior agency officials. All other functions are vested in the Chairman (*Id.*, Section 2(a)). In an area of doubt, a Commissioner may request that SECY poll¹ the Commission on whether any matter, action, question, or area of inquiry pertains to one of the Commission's functions (*Id.*, Section 1(a)). The outcome will be determined by majority vote. As a recommended best practice, a Commissioner should consider use of a COM as the appropriate vehicle for raising more substantive policy issues that might require more detailed explanation of a Commissioner's views on a matter of Commission policy. For minor matters, however, a Commissioner may request that SECY poll the Commission. In either case, SECY will document the voting in an agency record.

The Commission's collegial functions also include:

- a. approval of outgoing agency correspondence that formulates a new, revised, or expanded policy position (pertains to policy formulation function -- See id., Section 1(a)(1));
- b. revising budget estimates and determining the distribution of appropriated funds according to major programs and purposes (Energy Reorganization

¹ For this purpose, and in other instances where the Secretary polls the Commission, e-mail may be used.

CHAPTER I – COMMISSION RESPONSIBILITIES

Act of 1974, Section 201(a)(5); Reorganization Plan No. 1 of 1980, Section 2(b)) (See Appendix 14);

- c. being informed of all significant reallocation and reprogramming actions at a threshold of \$500,000 in contract costs or 4 FTE; and approval of all resource reallocations/reprogramming actions that establish or modify policy consistent with SRM-COMSECY-10-0020;
- d. approval of formal responses to Government Accountability Office (GAO) reports and review of formal responses to GAO draft reports that the Commission has designated require Commission review of staff comments before they are sent to GAO (COMSECY-03-0035). The staff should provide the Commission a draft copy of staff's comments 3 business days in advance of the EDO's signature;
- e. review of draft Orders that may be signed pursuant to the Secretary's authority under 10 CFR 2.346 or 110.88. Draft orders will be circulated to the Commissioners' Legal Counsel by e-mail 3 business days in advance of the Secretary's action on the Order, unless a shorter time period is specified because of the need for prompt action. The Secretary will issue the order as circulated unless a majority of the Commission instructs otherwise. Commissioner input may be submitted via e-mail;
- f. approval of proposals for the reorganization of the major offices within the Commission. The Commission will approve reorganizations for all offices that report to the Commission as well as NRR, NRO, NMSS, RES, NSIR, EDO, and CFO (Reorganization Plan, Section 2(b));
- g. approval of nominations for the NRC's Distinguished and Meritorious Service Awards, Edward McGaffigan Jr. Public Service Award, all (OPM) Presidential Rank Awards, and approval of Senior Executive Service (SES) performance awards for those positions for which the Commission is the final rating authority;
- h. approval of responses to Petitions for Rulemaking by notation vote, except where the matter has been delegated to the EDO. Where the EDO intends to sign a Petition for Rulemaking response under his or her delegated authority, a "Notice of Resolution of Petition for Rulemaking signed by EDO" should be provided for inclusion in the Commission's daily reading file 5 business days before being forwarded to the *Federal Register*. This practice provides the Commission with an opportunity to review the action before it is issued as an official agency action. The EDO will issue the resolution of the Petition for Rulemaking as drafted unless a majority of the Commission instructs otherwise. Commissioner input may be submitted via e-mail;

CHAPTER I – COMMISSION RESPONSIBILITIES

- i. the Chairman shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make. (Energy Reorganization Act of 1974, Section 201(a)(3); and Reorganization Plan No. 1 of 1980, Section 2(c));
- j. advises the Office of the Secretary or appropriate Office Director regarding initial decisions on FOIA requests for documents submitted by the Commission-level offices or by the EDO or office directors reporting to the EDO to the Commission. Documents determined by OGC to be legally withholdable require Commission review prior to release (COMLZ-88-10);
- k. with regard to agency actions pursuant to initial requests under the Freedom of Information Act, the Commission reviews the proposed release of Commission documents determined by OGC to be legally withholdable. In addition to noting which documents are legally withholdable, OGC, in consultation with the appropriate technical staff, should provide the Commission with a recommendation on whether to withhold any documents or portions of documents. The release of Commission documents on appeal, other than those generated in individual Commissioner offices, also requires Commission review; and
- l. approval of changes to the Management Directives directly related to policy formulation or the functions of the Commissioners or their personal offices.

2. **Appointments**

The roles of the Commission and the Chairman in the appointment of certain officers are detailed in Reorganization Plan No. 1 of 1980. Statutes enacted subsequent to the Reorganization Plan that created or redefined senior agency positions include the Chief Financial Officers Act of 1990 and the Information Technology Management Reform Act of 1996.

The Chairman shall initiate the appointment of the following positions subject to the approval of the Commission:

- Executive Director for Operations;
- Chief Financial Officer;
- Deputy Chief Financial Officer;
- General Counsel;
- Secretary of the Commission;
- Director, Office of International Programs;
- Director, Office of Commission Appellate Adjudication; and
- Chief Administrative Judge and Members of the Atomic Safety Licensing Board Panel.

CHAPTER I – COMMISSION RESPONSIBILITIES

The Chairman or a member of the Commission may initiate the removal of these officers subject to approval of the Commission.

After consultation with the Executive Director for Operations, the Chairman shall initiate the appointment of the following positions subject to the approval of the Commission:

- Director of Nuclear Reactor Regulation (NRR);
- Director of Nuclear Material Safety and Safeguards (NMSS);
- Director of Nuclear Regulatory Research (RES);
- Director of Nuclear Security and Incident Response (NSIR); and
- Director of Office of New Reactors (NRO).²

The Chairman or a member of the Commission may initiate the removal of these officers subject to approval of the Commission.

Appointments of the Members of the Advisory Committee on Reactor Safeguards (ACRS) are subject to the approval of the Commission. Appointments of members of the NRC's other Federal Advisory Committees are also subject to consultation with or approval of the Commission.³

Commission guidance on the process for obtaining nominations for NRC's Federal Advisory Committee positions (previously approved in COMIS-94-003 dated May 4, 1994, and COMSECY-94-0018 dated June 20, 1994) is contained in Appendix 1.

The Chairman is responsible for developing the initial detailed performance appraisals and ratings for officials whose appointing authority is the full Commission. The Commission, as the appointing authority, is responsible for approving the Final Annual Summary Rating Determination after the performance review board has reviewed the appraisal and ratings developed by the Chairman. As a best practice the Chairman will solicit the input of the other Commissioners in developing the initial performance appraisals and ratings. In any event, upon request of a Commissioner, that Commissioner shall have the opportunity to provide input to the Chairman for the development of the appraisal and shall be afforded access to the completed performance plan and appraisal for these positions as needed to inform the decision process for approval of the Final Annual Summary Rating Determination.

² Reorganization Plan at Section 1(b)(2).

³ As to the ACRS, see *id.* at 1(b)(3). As to other Advisory Committees, it is the Commission's policy that appointments of Members of the NRC's other Federal Advisory Committees (except for the LSN Advisory Review Panel, see 10 CFR 2.1011(e)(1)) are also subject to consultation with or approval of the Commission.

CHAPTER I – COMMISSION RESPONSIBILITIES

3. Personnel Appointment Process

When filling positions initiated by the Chairman and subject to the Commission's approval, the following process is generally used:⁴

- a. The Chairman at his/her discretion conducts interviews with potential candidates. When providing his/her recommendation to the Commission, the Chairman will include a summary of the basis for his/her recommendation and relevant background information on the recommended candidate. In addition, if requested by a Commissioner, individual background information on the other candidates who were considered shall be provided to the Commission.
- b. Individual Commissioners may, at their discretion, interview the recommended candidate.⁵ Each Commissioner provides to the Chairman his/her approval/disapproval of the Chairman's recommendation for the position along with any additional comments.

The process to be used for Advisory Committee members is set forth in Appendix 1 of these Procedures.

CHAIRMAN DUTIES

The Chairman is the official spokesman for the Commission and appoints, supervises, and removes, without further action by the Commission, the Directors and staff of the Offices of Public Affairs and Congressional Affairs, who report to the Chairman. The Chairman is also the principal executive officer of the Commission and is responsible to the Commission for developing policy planning and guidance for consideration by the Commission. The Chairman shall be governed by the general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission may by law be authorized to make. (Reorganization Plan, Section 2(c)). The Chairman, on behalf of the Commission, shall see to the faithful execution of the policies and decisions of the Commission and shall report thereon to the Commission from time to time or as the Commission may direct. (Energy Reorganization Act of 1974, Section 201(a)(1)). The Chairman is responsible to the Commission for ensuring that the Executive Director for Operations and the agency staff (other than the officers and staff referred to in Sections

⁴ The Chairman may also elect to fill a position that he or she initiates through the use of a competitive process. To the extent that a competitive process is being used to fill a position, the position will be formally posted and noticed and the Office of the Chief Human Capital Officer will provide the Chairman with a list of qualified candidates.

⁵ Nothing in this procedure would authorize the initiation of these appointments by anyone other than the Chairman, as provided in Reorganization Plan No. 1 of 1980.

CHAPTER I – COMMISSION RESPONSIBILITIES

(1)(b)(4), (1)(c), and (2)(a) of the Reorganization Plan) are responsive to the requirements of the Commission in the performance of its functions. The Chairman determines the use and expenditure of funds of the Commission, in accordance with the distribution of appropriated funds according to major programs and purposes approved by the Commission. The Chairman presents to the Commission for its consideration proposals for the reorganization of the major offices within the Commission and the budget estimates for the Commission. (Reorganization Plan, Section 2(b))

The Chairman and the Executive Director for Operations, through the Chairman, are responsible for ensuring that the Commission is fully and currently informed about matters within its functions (Id., Section 2(c)).⁶ The Chairman shall ensure prompt and full delivery of original information with any changes thereto, including draft SECYs and COMs. This does not include preliminary information for development of proposals for the reorganization of major offices within the Commission, the budget estimate for the Commission, and the proposed distribution of appropriated funds, (Id., Section 2(b)). The Executive Director for Operations reports for all matters to the Chairman (Id., Section 4(b)).

In carrying out his or her duties, the Chairman:

- approves the internal reorganization of offices, except for those that the Commission must approve under Section 2(b) of the Reorganization Plan or those that have been delegated to the NRC staff (Id., Section 2(b)(3)(j)).
- takes all personnel actions and makes appointments, except for those described above which have been given to the Commission or to individual Commissioners under the Reorganization Plan and those which have been delegated to individual Office Directors by the Commission or to the EDO by the Chairman (Id., Section 2(b));
- ensures that nominations for NRC Distinguished and Meritorious Service Awards, Edward McGaffigan Jr. Public Service Award, all Presidential Awards, and SES performance awards for those positions for which the Commission is the final rating authority are submitted to the Commission for approval;^{7 8}

⁶ For example, the Commission has found the "Daily NRC Notes," and the "One Week Look Ahead" very useful. The Commission recommends at least this level of information sharing.

⁷ See Exhibit 1 to the *Senior Executive Performance Management System Handbook*, 10.137 for a list of positions for which the Commission is the awarding authority for performance awards. (See Appendix 15.)

⁸ The General Counsel has found that these performance award determinations bear on management policy and it is reasonable to conclude that how well senior

CHAPTER I – COMMISSION RESPONSIBILITIES

- establishes and appoints members to task forces, except for those established by the EDO or Office Directors and those established to review policy matters. All Commissioners are consulted when task forces involve either policy or highly sensitive matters. Establishment of task forces that include non-NRC employees or advisory committees, or tasking memoranda to such task forces or advisory committees, including the ACRS, are approved by the Commission (COMLZ-88-10);
- initiates the update of the agency Strategic Plan and the Commission's annual review of the Performance Budget; presents the Strategic Plan, Performance Budget, and Congressional Budget Justification to the Commission for its review and approval; and proposes to the Commission the distribution of appropriated funds according to the agency's major programs and purposes (COMLZ-88-10);
- as a best practice provides high-level planning objectives for budget development and prioritization of planned activities to the Commission for review and approval, to inform the annual budget formulation process;
- presents the agency's testimony at Congressional hearings (Section 2 of Reorganization Plan No. 1 of 1980);
- makes, or delegates as appropriate, decisions relative to, and is responsible for, the administrative and logistical support services for the agency, including physical consolidation of the agency and individual offices. Commissioners must approve matters that directly affect their individual offices (COMLZ-88-10);
- transmits to the Commission 3 business days in advance draft speeches, remarks, or presentation materials to be delivered in his or her capacity as Chairman to afford the Commission the opportunity to review any discussion of existing Commission policy;⁹
- consults with Commissioners on draft tasking memoranda concerning policy issues and obtains Commission input to ensure that the tasking memoranda are consistent with existing Commission policy before the memoranda are issued to staff. Copies of all final tasking memoranda will be provided to the Commission at the same time the memoranda are forwarded to the staff for action. If a Commissioner believes an issued

NRC officials respond to Commission decisions and requirements can be a management policy issue.

⁹ Additionally, the Commission finds useful the circulation of press releases at least one hour in advance of issuance. The Commission recommends this as a collegial practice.

CHAPTER I – COMMISSION RESPONSIBILITIES

tasking memorandum is not consistent with existing Commission policy, he or she should notify the Chairman. If not satisfied with the Chairman's explanation, the Commissioner may seek through the COM process or through polling Commissioner views on whether the tasking memorandum is consistent with previous Commission policy decisions. As a recommended best practice, a Commissioner should consider use of a COM as the appropriate vehicle for raising whether the tasking memorandum is consistent with previous Commission policy and/or whether the staff should defer action during the Commission's deliberation on the matter. At the request of the Commissioner who raised the issue, SECY will also poll the Commission. If polling is used, the results will be addressed through the SRM process. The Chairman will direct the staff to defer action if agreed to by a majority of the Commission. Action on any remaining issue(s) will go forward;

- as a recommended best practice informs the Commission of direction or guidance provided to the NRC Staff on significant issues relating to administration of the agency or execution of Commission policy;
- The Chairman, at his or her discretion, may exercise his or her authority under Section 201(a)(1) of the Energy Reorganization Act of 1974 to designate an Acting Chairman. An Acting Chairman shall have only those duties the Chairman specifically delegates, which may include all or only some of the Chairman's responsibilities. The Chairman may delegate the emergency response functions described below. If the Chairman is unavailable and circumstances require actions to carry out NRC Priority Mission Essential Functions, then the order of succession procedures set forth in the NRC's Continuity of Operations Plan will be followed.

Emergency Response

The Chairman is responsible for all the functions pertaining to an actual emergency concerning a particular facility or materials licensed or regulated by the Commission, including the functions of declaring, responding, issuing orders, determining specific policies, advising the civil authorities and the public, directing, and coordinating actions relative to such emergency incident (Section 3(a) of the Reorganization Plan). The terrorist acts of September 11, 2001, as well as the Nation's and the NRC's responses to those acts, added dimensions to the consideration of emergency management. It is understood that the Chairman's authority includes situations when an emergency threat is generic to a group or category of facilities licensed or regulated by the NRC or NRC regulated materials and thus involves an emergency pertaining to the specific facilities or materials within the group or category.

The Reorganization Plan gives the Chairman sole discretion to determine when to declare an emergency triggering the Chairman's emergency authority under section 3(a). The Chairman may also delegate the authority to perform emergency functions, in whole or in

CHAPTER I – COMMISSION RESPONSIBILITIES

part, to any other members of the Commission (Id., Section 3(b)). While normally such delegations are expected to be made to other members of the Commission, such authority may at the discretion of the Chairman also be delegated or re-delegated, in whole or in part, to the agency staff (Id., Section 3(b)). No later than 1 day after the Chairman (or delegate) begins performing functions under the authority of Section 3 of the Reorganization Plan, the Chairman shall provide notice to the other Commissioners, the NRC staff, and to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Environment and Public Works of the Senate. The notice must include an explanation of the circumstances warranting the exercise of the Chairman's emergency authority. Such notice informs the Congressional Committees and the Commissioners and allows the staff to be cognizant that they should follow the directives of the Chairman (or delegate) rather than await the normal Commission decision-making processes.

Consistent with the Reorganization Plan, the Chairman (or delegate) shall, to the maximum extent possible under emergency conditions, keep the Commission informed of actions taken relative to the emergency (Id., Section 3(c)). To that end, the Chairman is expected, to the extent it does not interfere with other ongoing emergency actions, to inform the other Commissioners of the expected length of the ongoing emergency situation and the Chairman's proposed plan, if any, for returning the agency to a non-emergency status. Further, the Chairman shall report to the aforementioned Congressional Committees at least once per week on the actions related to the emergency taken by the Chairman (or delegate) under such authority until the emergency authority is relinquished.

When acting under the authority to perform all functions pertaining to an emergency, the Chairman (or delegate) shall conform to the policy guidelines of the Commission (Id., Section 3(c)). The Chairman has clear authority to take actions during an emergency without any consultation with the other Commissioners. But, it is expected that, where it will not interfere with the Chairman's ongoing emergency actions, the Chairman will seek insights from other Commissioners before taking actions related to the emergency that do not require an immediate response.

Following the conclusion of the emergency and the relinquishment of his or her emergency authority, the Chairman (or delegate) shall notify the Congressional Committees within one day. Further, the Chairman (or delegate) shall render a complete and timely report to the Commission on the actions taken during the emergency (Id., Section 3(d)). The Chairman shall submit this report to the appropriate Congressional Committees not later than 1 day after it was submitted to the Commission.

The terrorist events of September 11, 2001, led to fuller recognition of various kinds of emergencies and to consideration of various levels of general threat condition that counsel additional protective action measures. As a result, for example, the DHS and the NRC employ threat advisory systems that counsel additional protective action measures in connection with changes in threat condition. As changes occur in the general threat

CHAPTER I – COMMISSION RESPONSIBILITIES

condition and alert status, it is expected that customary decision-making procedures will normally apply, or will be applied within a reasonably short period following such changes, unless the circumstances lead the Chairman to invoke his or her authority to exercise all emergency functions in accordance with Reorganization Plan No. 1 of 1980.

Emergency Response Training

All Commissioners shall become cognizant of the agency emergency procedures and responses in a continuing process. The Chairman should participate in at least one full participation exercise each calendar year, including a mock press conference. This exercise should be tailored to the Chairman's needs and schedule in order for the Chairman to remain as completely up-to-date as possible in any process changes or problems and to maintain proficiency in emergency response functions. In addition, the Chairman should serve as the Director of the Executive Team for any full field exercise due to its broad scope, the significant involvement of Federal agencies, and the infrequent scheduling of this type of exercise. Each Commissioner should have the opportunity for refresher training, including participation as Director of the Executive Team, on an annual basis.

A preliminary schedule for NRC participation exercises shall be developed in accordance with the Performance Plan. Commissioner participation in scheduled exercises as Director of the Executive Team shall then be established by NSIR after consultation with individual Commissioners to determine availability and interest in participation. Schedules of emergency planning exercises will be routinely reported to the Commission during Agenda Planning meetings and discussed, as necessary.

In the event more than one Commissioner expresses timely interest in participating in an exercise and the Commissioners cannot work out a solution among themselves, priority should be given first, to the Chairman receiving his or her first training; second, to a Commissioner receiving his or her first training in order of seniority; third, to the Chairman receiving refresher training; and fourth, to Commissioners receiving refresher training in order of seniority.

A Commissioner who has not received his or her first training will not be given preference over the Chairman if doing so will prevent the Chairman from meeting the minimum goal established above of participating in one full participation exercise each calendar year or from sitting as Director of the Executive Team for the infrequent full field exercise. Timely interest in participation in emergency exercises will normally be expressed in Agenda Planning meetings. Once scheduled to participate in an exercise, no Commissioner will be involuntarily replaced as head of the emergency exercise executive team. In the event a Commissioner becomes unavailable after scheduling, NSIR will be responsible for contacting Commissioners to determine interest and availability of other Commissioners (COMNJD-98-002).

CHAPTER I – COMMISSION RESPONSIBILITIES

INDIVIDUAL COMMISSIONER RESPONSIBILITIES

- Each Commissioner shall appoint, remove, and supervise the personnel employed in his or her immediate office (Reorganization Plan, Section 1(c)).
- Each Commissioner, including the Chairman, has equal responsibility and authority in all Commission decisions and actions, has full and equal access to all agency information pertaining to Commission responsibilities, including the considered judgments of the staff as represented by the Executive Director for Operations, and has one vote (Energy Reorganization Act, Section 201(a)(1)). Except for Reorganization Plan, Section 2(b) proposals and estimates for which the Chairman is specifically responsible for developing proposals for Commission review, documents, including draft documents, will be provided to all Commissioners, including the Chairman, simultaneously. However, upon request of a Commissioner, following submission of the Chairman's budget proposal, the Commission shall be provided the budgetary input provided to the Chairman or otherwise used for the purpose of formulating the Chairman's budget proposal.
- The Chairman and the Executive Director for Operations, through the Chairman, are responsible for ensuring that Commissioners are fully and currently informed about matters within the Commission's functions (Reorganization Plan, Section 2(c)). Significant individual Commissioner requests for information or analyses from the NRC staff shall be directed by Commissioners to the Chairman or to the EDO, CFO, or Commission-level offices (action offices) with copies to the Chairman and SECY. After receipt of the request, if questions of priority arise because staff has identified the request as requiring significant resources to fulfill, the action office is to discuss the request with the Commissioner who originated it. The purpose of that discussion is to ensure that the scope of the request is fully understood. Following that discussion, if the Commissioner or the action office still believes there is an issue regarding either the nature of the request or its priority, the action office notifies the Chairman. The Chairman will then be the initial arbiter of the matter. If the Chairman's decision is not satisfactory to the Commissioner making the request, that Commissioner can then bring the matter to the full Commission for a vote through polling by the Secretary.
- In response to FOIA requests forwarded to Commission offices, each Commissioner is responsible for identifying pertinent records in his or her files and for making the necessary disclose/withhold determinations for documents originated by his or her office. Commissioners are responsible for making similar determinations, if necessary, at the appeal stage.
- Commissioners will testify at Congressional hearings when invited to do so by the Congress and may elect to attend at other times.
- Each Commissioner, including the Chairman, may maintain office working files to the extent necessary for the conduct of daily business. The Office of the Secretary

CHAPTER I – COMMISSION RESPONSIBILITIES

maintains current paper files of SECY Papers, COMs and correspondence. The Office of the Secretary also provides an opportunity for storage of Commissioners' personal files upon expiration of his/her term of office as defined in NRC Management Directive 3.53.

- Each Commissioner, including the Chairman, may have on the NRC website an individual webpage, the content of which is controlled by that Commissioner.
- The Commission shall approve the budgets for each Commissioner's Office, including the Chairman's Office, as part of the budget development process. Until such time as the budget cap on the Commissioner's accounts is removed in the annual NRC appropriations act, the CFO should establish accounts for salaries and benefits, travel, and other costs for each Commissioner's Office that reflects actual salaries and benefits for each office. A separate account will be established for each Commissioner's Office for Representation Funds, which shall remain separate from these other three Commissioner Office accounts.

Commissioner Offices may redistribute the allocated funds within their accounts and transfer funds to other Commissioner Office accounts by providing written notification to the CFO.

The CFO should provide each Commissioner Office with biweekly cost projection reports for his or her individual office to allow appropriate monitoring of expenses.¹⁰ (SRM COMSECY-13-0012).

- Commissioners approve requests for official travel (domestic and foreign) for themselves and their immediate staff. The Office of International Programs (OIP) informs the Chairman of Commissioners' planned foreign travel to ensure adequate coordination and to avoid scheduling conflicts. OIP immediately disseminates to the Commission all invitations for foreign travel addressed to the Commission. As the official spokesman for the agency, the Chairman responds to foreign travel invitations addressed to the Commission and, if he/she does not intend to personally accept the invitation on behalf of the Commission, may request another Commissioner or high-ranking agency official to accept the invitation on behalf of the Commission. If the Chairman declines an invitation addressed to the Commission and does not request an alternate representative for the Commission, the opportunity to respond to the invitation as an individual Commissioner is handled in order of seniority on the Commission. Invitations for foreign travel addressed to an individual Commissioner will be evaluated and decided by that Commissioner.

¹⁰ Specific expenditures from the representation fund must be approved and managed in accordance with the substantive criteria in M.D. 5.4, and any specific expenditures for travel must comport with applicable provisions of M.D. 14 on Travel and the Federal Travel Regulations.

CHAPTER I – COMMISSION RESPONSIBILITIES

OIP will inform the Commission of the status of all pending international agreements through memoranda, twice a year.

COMMISSION ADMINISTRATIVE PROCEDURES

In order to perform its business efficiently and expeditiously, the Commission has established mechanisms for obtaining information and for conducting its decision-making activities. The following chapters describe the various Commission guidelines and procedures. In accordance with these procedures, when due dates are established, the Commission must be given the full allotted time established for response. Day 1 for any of the timeframes provided in these procedures will begin on the next full business day. Guidelines and procedures for the execution of responsibilities reserved to the Chairman are established by the Office of the Chairman. Guidelines and procedures for the execution of the Commission's responsibilities shall be approved by the Commission.

CHAPTER II describes the decision documents utilized by the Commissioners and the staff to obtain Commission consideration, guidance, and decisions.

CHAPTER III outlines the Commission voting process.

CHAPTER IV contains a description of the development of meeting agendas and decision-making in meetings. To a large extent NRC's meeting procedures are governed by statute, both in the Government in the Sunshine Act and in the Energy Reorganization Act's requirement that a **"quorum for the transaction of business shall consist of at least three members present"** and that **"[a]ction of the Commission shall be determined by a majority vote of the members present."** (Energy Reorganization Act, Section 201(a)(1).) Chapter IV also contains the procedures for the Commission conduct of mandatory hearings on applications for combined licenses.

CHAPTER V sets forth the process of obtaining collegial review of significant institutional correspondence.

CHAPTER VI contains guidelines for providing sensitive Commission/staff information to Congress.

CHAPTER VII contains guidance regarding the preparation of agency testimony for Congressional hearings and procedures for responding to commitments made to Congress at Congressional hearings.

CHANGES TO OR WAIVER OF COMMISSION PROCEDURES

A majority of the Commission members (as described in the voting procedures in Chapter III and Appendix 4) may change or waive its procedures at any time consistent with existing law. If a Commissioner or Commissioners request a change or waiver, the Office

CHAPTER I – COMMISSION RESPONSIBILITIES

of the Secretary will put the question into writing and poll the Commission. Any change or waiver will be based on written vote of the majority.

CHAPTER II – DECISION DOCUMENTS

DECISION DOCUMENTS

The primary decision-making tool of the collegial Commission is the written issue paper submitted by the Office of the Executive Director for Operations (EDO), the Chief Financial Officer (CFO), or other Office Directors reporting directly to the Commission. Best known as SECY papers, they are described below. The development of Commission decision documents may be initiated by the Chairman through a tasking memorandum; by the Commission through direction in a Staff Requirements Memorandum (SRM)¹¹; or by the EDO, CFO, or other Office Director reporting directly to the Commission. If the EDO or CFO identifies a policy issue that he or she determines is appropriate for collegial review by the Commission, and the Chairman concludes that preparation of a paper is not warranted, the Chairman will promptly inform the other Commissioners of the issue raised by the staff and his/her reasons for not bringing the matter to the Commission at that time.

An additional vehicle for Commission decision-making is the written exchange of memoranda between Commissioners. In these action memoranda (called COMs), one Commissioner recommends a particular course of action to the other Commissioners. The Commission also receives memoranda from the staff. Most of these documents provide information on current topics and do not require any Commission action. At times, however, a staff memorandum may contain a recommendation or seek guidance from the Commission. In that event, the memorandum will be circulated in the COM system as a “COMSECY.” A description of the process used to obtain Commission action on such memoranda is detailed later in this chapter under the section “Action Memoranda (COMs and COMSECYs).”

Copies of draft and final SECY papers or COMSECYs delivered to the Chairman shall be delivered simultaneously to the other Commissioners.

SECY PAPERS

Policy, rulemaking, and adjudicatory matters, as well as general information, are provided to the Commission for consideration in a document style and format established specifically for the purpose. Such documents are referred to as SECY papers. A SECY paper gains its nomenclature through the designation (e.g., SECY-16-0089) assigned to it by the Office of the Secretary (SECY). In addition to its numerical designation, each paper has two other distinctive markings. **First**, a heading on the first page designates whether the subject matter relates to the formulation of policy (Policy Issue papers), the promulgation of agency rules (Rulemaking Issue papers), or the issuance of adjudicatory orders (Adjudicatory Issue papers). Subject matter relating to Federal Court litigation is also presented in Adjudicatory Issue papers. **Second**, a color band on the top and bottom

¹¹ SRM is the abbreviation for the Secretary’s memorandum of decision, known as a Staff Requirements Memorandum, in which the Secretary records the results of collegial action on each paper. The SRM is described in greater detail at the end of this Chapter and in Chapter III.

CHAPTER II – DECISION DOCUMENTS

of the first page further indicates the type of action expected of the Commission. SECY, in consultation with the Staff office submitting the paper, will designate the color band. If a Commissioner disagrees with a paper's color band designation, SECY will poll the Commission and the color band designation will be determined by a majority of the Commission. However, for black band Information papers, a single Commissioner may direct SECY to convert the paper to a Notation Vote paper. A description of the color bands used by the Commission is as follows:

- A **red band** (Commission Meeting paper) indicates an issue that lends itself to brief discussion, deliberation, and a possible vote at a Commission meeting, usually in a public session. Should a vote on the paper not occur at the initial or a subsequently-held Commission meeting, the Commission will conclude action on the matter through the written notation vote process. (See also Chapter IV, Commission Meetings).
- A **blue band** (Notation Vote paper) indicates a policy or proposed rulemaking issue requiring a decision by the Commission or consultation with the Commission prior to action by the staff that lends itself to a written notation vote process.
- A **green band** (Affirmation paper) indicates Commission business that by law must be voted by the Commissioners in the presence of each other but for which voting at a deliberative meeting is not anticipated. Such green-band designations **indicate actions (i.e., approval of final rules or orders) that legally bind those the NRC regulates or have a significant legal effect on persons outside the Commission.** The Affirmation process is administered through a notation voting system and a subsequent formal declaration of votes by Commissioners in a public session dedicated to this purpose.
- A **black band** (Information paper) indicates a paper that provides information on policy, rulemaking, or adjudicatory issues. Information Papers are purely informational and should not assume or request any action by the Commission. If the paper does touch upon major policy issues, the paper should conspicuously note the policy issue. A single Commissioner, however, may direct SECY to convert an Information paper to a Notation Vote paper. As a recommended best practice, a Commissioner should consider use of a COM as the appropriate vehicle for raising whether the described staff action should be stayed until the voting process on the Notation Vote paper is concluded. Alternatively, the Commissioner requesting conversion may request that SECY poll the Commission. If polling is used, the results will be addressed through the SRM process. The action will be stayed if approved by a majority of the Commission. Weekly Information papers describing recent agency activities are issued without any color band.

As a general policy, SECY papers will be released to the public in accordance with the guidelines set forth later in this section unless they contain specific, limited types of information that warrant protection, as described below:

CHAPTER II – DECISION DOCUMENTS

- SECY papers involving matters that the Commission has specifically decided should be withheld (Classified, Safeguards Information; Allegation, Investigation, Security-Related, Proprietary, Privacy Act Information; Federal/State/Foreign Government and International Agency-Controlled Information; and Sensitive Internal Information, which includes adjudicatory, enforcement, attorney-client or attorney work product) should be marked in accordance with M.D. 12.2, 12.6, and 12.7, which govern Classified, Sensitive Unclassified Non-Safeguards Information (SUNSI), and Safeguards Information.
- SECY papers that involve particularly sensitive matters and contain a specific withhold recommendation by the originating office together with supporting justification will be issued with the following statement, which restricts any future release determination to the Commission:

OFFICIAL USE ONLY - SENSITIVE INTERNAL INFORMATION - LIMITED
TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

Because the Commission's general policy is to release papers whenever possible, the use of this withholding category should be limited and, when used, requires adequate justification for withholding on a case-by-case basis. The originating office must include in the supporting justification statement reasons that are sufficiently persuasive to set aside the release policy. The withhold recommendation and justification statement should be included as a separate paragraph at the end of the SECY paper. For voting papers, the staff should include the withhold recommendation as a specific recommendation. Papers withheld from the public in this category are internal NRC documents and may not be given to any outside sources (licensees, industry working groups, etc.) without Commission authorization. If requested, SECY will poll the Commission on release of such papers. SECY papers will be released if a majority of the Commission approves release.

If the staff is recommending the paper be withheld, a date or time frame upon which the paper could be released should be specified where a time frame can be established. SECY will issue such papers with the following statement:

OFFICIAL USE ONLY - SENSITIVE INTERNAL INFORMATION - LIMITED
TO NRC UNTIL (X DAYS/MONTHS OR EVENT) UNLESS THE
COMMISSION DETERMINES OTHERWISE

SECY will issue adjudicatory information with the following statement, which limits distribution of the paper to only adjudicatory employees:

OFFICIAL USE ONLY - SENSITIVE ADJUDICATORY MATERIAL -
LIMITED TO AUTHORIZED COMMISSION ADJUDICATORY
EMPLOYEES UNLESS THE COMMISSION DETERMINES OTHERWISE

CHAPTER II – DECISION DOCUMENTS

Classified and Safeguards Information will be marked in accordance with M.D. 12.2 and 12.7.

Papers that do not involve matters discussed above will be released using the following guidelines:

- **Information papers** will be made publicly available 10 business days after issuance of the paper by SECY. This allows the Commissioners time to become familiar with the paper and decide whether they would like to convert it to a Notation Vote paper before it is made publicly available.
- Except as otherwise noted, **Affirmation papers on Final Rules and Notation Vote papers** will be released 10 business days after receipt by the Commission. An exception to this procedure will be made if a paper contains correspondence or a report to Congress. In these cases the paper will be released 5 days after the letter/report is issued, and the SRM will be issued with a statement that reads:

TO BE MADE PUBLICLY AVAILABLE 5 BUSINESS DAYS AFTER THE
[LETTER TO... OR REPORT] IS DISPATCHED

- If the Chairman or a Commissioner proposes within 10 business days of receipt by the Commission that a paper be withheld, the reason for withholding should be documented and the Commission will be polled. A majority vote is needed to withhold a document not claimed to be sensitive or to release a document that is considered sensitive. In the event of a split Commission with no majority view, a document that is considered sensitive will not be released.
- The Commission may authorize release of a SECY paper to the public at an earlier time than the normal practice to allow earlier public access to the SECY paper. This can occur when there is a request made for early release of the paper from individuals either inside or outside the agency. When SECY receives a request for early release of a SECY paper, SECY will poll Commission offices. If a majority of the Commission agrees with the request, the SECY paper will be made publicly available at a time to be determined by the Commission.

SECY will publicly release the document and notify the appropriate staff that it is a public document. SECY will also notify the Commission's Advisory Committee on Reactor Safeguards (ACRS) or other appropriate advisory committees, which may conduct open meetings on the subject.

FORMAT FOR STAFF PAPERS AND ACTION MEMORANDA TO THE COMMISSION

The following guidance concerns format for SECY papers and action memoranda which are forwarded to the Commission for approval of a policy, a significant course of action, rulemaking, or an adjudicatory matter.

CHAPTER II – DECISION DOCUMENTS

1. If the text of the paper or action memorandum is more than 5 typed pages, single spaced, the paper should include a concise summary which sets forth the major issues (e.g., technical, policy, legal), the recommendation of the office sending the paper, and a statement concerning dissenting views (if any).
2. If the subject of the paper has had a prior history before the Commission, the paper should provide the reference (staff paper numbers, meeting dates, memoranda, etc., and Commission actions on them) in a preliminary background paragraph.
3. If the paper recommends revised text in a document the Commission has been asked previously to approve, the additions and the deletions to that text should be clearly identified.
4. If the paper involves State issues, the staff should address States' views in the coordination section of the paper either by noting the Organization of Agreement States and/or Conference of Radiation Control Program Directors views or describing the interactions, if any, that have taken place. In a small number of cases information cannot be shared with the States before it is provided to the Commission for deliberation. In these cases, a brief statement as to why it was not coordinated with the States would be appropriate.
5. Any policy issues should be clearly identified in a separate section of the paper.
6. A thorough assessment of resource implications (FTE and dollars) of actions proposed in the paper should be provided under a "Resource" enclosure.
7. A schedule should be included, in business days or months, of when the proposed actions will be completed, including key milestones.
8. If applicable, SECY papers should include a section that details staff commitments.
9. All SECY papers should include a section indicating coordination with the CFO for resource implications and OGC for legal considerations.
10. SECY papers and action memoranda coming to the Commission should include discussion of any significant differing opinions that arose during the process.
11. The staff should include as a specific recommendation for Commission decision its recommendation to withhold a paper from public release for any period of time beyond those established by the normal Commission policies outlined on pages II-2 through II-5.
12. Staff coordinates with the Office of Congressional Affairs and the Office of Public Affairs to develop draft Congressional letters and draft Press Releases that require Commission approval in the context of a decision document pertaining to policy formulation, rulemaking, or adjudication. Draft Congressional letters and Press

CHAPTER II – DECISION DOCUMENTS

Releases are then forwarded separately with the associated SECY paper (or COMSECY) to SECY. These documents are provided to the Commission with the SECY paper (or COMSECY) as supplemental material, but are not part of the SECY paper (or COMSECY). In the case of a COM, any draft Congressional letters and Press Releases are forwarded to SECY and provided to the Commission for its review and approval once voting on the related SRM has concluded.

ACTION MEMORANDA (COMS AND COMSECYS)

Action Memoranda may be (1) written exchanges between Commissioners on issues before the agency or on matters a Commissioner wants to bring to the attention of his or her fellow Commissioners (COMs) or (2) memoranda from the Executive Director for Operations (EDO), the Chief Financial Officer (CFO), or other Commission-level office seeking guidance from the Commission (COMSECYs). The use of this system allows Commissioners to develop preliminary views, explore options and proposed direction to the staff, and to initiate activities prior to staff offices becoming involved. In addition, this system allows the staff to obtain Commission views on matters that do not warrant development of a SECY paper. The Chairman has also used the system to obtain Commissioner concurrence on personnel appointments (e.g., appointment of Atomic Safety and Licensing Board judges). An attempt has been made to keep the system as informal as possible; however, the usual method of response is via the electronic response sheet sent by e-mail and the original signed copy of the response sheet provided to SECY for the official record.

Each action memorandum is forwarded to the Office of the Secretary by the initiating Commissioner or office with the notation “SECY please track”; processed with a distinctive control and identification number, similar to the SECY paper numbering system; and assigned a due date (normally 10 business days). The numbering system for Commissioner action memoranda consists of a three-letter Commissioner identification, year of issuance, and a consecutive number (e.g., COMABC-YY-0001). Staff action memoranda are identified with a “COMSECY” identification number, year of issuance, and a consecutive number (COMSECY-YY-0001). Distribution of the action memoranda is normally set by the originating office. Distribution can be limited to Commissioners only or more broadly to OGC, the EDO, the CFO, or other offices. Detailed procedures and voting requirements for action memoranda are found in Chapter III. SECY tracks each Commissioner’s response.

COMSECYs coming to the Commission should include any significant differing opinions that arose during the process.

As a general policy, COM documents developed by a Commissioner and COMSECY documents are released to the public as a package (COM, SRM, responses) after completion of the Commission’s action, unless they contain specific, limited types of information which warrant protection, as described below:

CHAPTER II – DECISION DOCUMENTS

- COM and COMSECY documents involving matters that the Commission has specifically agreed should be withheld (Classified, Safeguards Information; Allegation, Investigation, Security-Related, Proprietary, Privacy Act Information; Federal/State/Foreign Government and International Agency-Controlled Information; and Sensitive Internal Information, which includes adjudicatory, enforcement, attorney-client or attorney work product) should be marked in accordance with M.D. 12.2, 12.6, and 12.7, which govern Classified, Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information. COMSECYs that involve particularly sensitive matters and which contain a specific withhold recommendation by the originating office together with supporting justification will be issued with the following statement, which restricts any future release determination to the Commission:

OFFICIAL USE ONLY - SENSITIVE INTERNAL INFORMATION - LIMITED
TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE

Because the Commission's general policy is to release decision documents whenever possible, the use of this withholding category should be limited and, when used, requires solid justification for withholding on a case-by-case basis. For COMs, the Commissioner initiating the COM should communicate to SECY the sensitivity of the particular COM. For COMSECYs, the originating office must include in the supporting justification statement reasons that are sufficiently persuasive to set aside the release policy. The justification statement should be included as a separate paragraph at the end of the COMSECY. Documents withheld from the public in this category are internal NRC documents and may not be given to any outside sources (licensees, industry working groups, etc.) without Commission authorization. If requested, SECY will poll the Commission on release of such documents. COMSECYs will be released if a majority of the Commission approves release. The COMs of individual Commissioners will be released only upon approval of the originating Commissioner(s).

If the staff is recommending a COMSECY be withheld, a date or time frame upon which the document could be released should be specified where a time frame can be established. SECY will issue such document with the following statement:

OFFICIAL USE ONLY - SENSITIVE INTERNAL INFORMATION - LIMITED
TO NRC UNTIL (X DAYS/MONTHS OR EVENT) UNLESS THE
COMMISSION DETERMINES OTHERWISE

SECY will issue adjudicatory COMs and COMSECYs with the following statement, which limits distribution of the document to only adjudicatory employees:

OFFICIAL USE ONLY – SENSITIVE ADJUDICATORY MATERIAL -
LIMITED TO AUTHORIZED COMMISSION ADJUDICATORY
EMPLOYEES UNLESS THE COMMISSION DETERMINES OTHERWISE

CHAPTER II – DECISION DOCUMENTS

Classified and Safeguards Information will be marked in accordance with M.D. 12.2 and 12.7.

Similar to an Information paper, a Commissioner may direct SECY to convert any memorandum from the Staff to the Commission to a COMSECY if the Commissioner wants formal comment on the topic reported in the memorandum. As a recommended best practice, a Commissioner should consider use of a COM as the appropriate vehicle for raising whether the described staff action should be stayed until the voting process on the converted memorandum is concluded. Alternatively, the Commissioner requesting conversion may request that SECY poll the Commission. If polling is used, the results will be addressed through the SRM process. The action will be stayed if approved by a majority of the Commission.

STAFF REQUIREMENTS MEMORANDA

The Secretary records the results of the Commission action on each SECY Paper and action memorandum (COM or COMSECY) in a “Staff Requirements Memorandum (SRM).” (The process for developing and approving SRMs is described in Chapter III, “Voting,” “Closure Process.”)

The SRM includes:

- (a) a concise statement of the Commission’s decision on the recommendation of the SECY paper, COM, or COMSECY, noting specifically any approved modifications to the recommendation;
- (b) a clear statement of any additional requirements or tasks to be performed by the staff together with appropriate action due dates and designation of high priority, if appropriate; these dates are assigned by SECY, if not directed by the Commission, and confirmed through the circulation of the draft SRM;
- (c) any exceptions to immediate public release of the SRM will be clearly indicated in a statement at the bottom of the first page; and
- (d) if applicable, in the case of a SECY or COMSECY where the Commission was unable to reach a decision on an issue not delegated to the staff because of a 2-2 split vote, the Secretary’s SRM will advise the staff that the proposed action is “not approved.”

In the case of a Commissioner COM where the Commission was unable to reach a decision on the proposed action because of a 2-2 split vote, no SRM will be issued. The Secretary will issue a memorandum to the initiating Commissioner(s) that the proposal was “not approved.”

CHAPTER II – DECISION DOCUMENTS

RELEASE OF DOCUMENTS UNDER FOIA

The Commission's decision-making documents, including the private intra-office exchanges between a Commissioner and his or her personal staff, are subject to review for possible release under the Freedom of Information Act (FOIA). Upon receipt of a FOIA request for Commissioner records, SECY will provide each Commissioner office an action notice in hard copy with a specified due date. Upon receipt of the FOIA notice, Commissioner offices are expected to identify and review all responsive records by the due date and provide their response to SECY. SECY will track this process. SECY performs a search for documents and forwards the search results along with the incoming FOIA request to OGC for a release/withhold recommendation and then to individual Commissioner offices for a final release/withhold review. In addition to noting which documents are legally withholdable, OGC, in consultation with the appropriate technical staff, should provide the Commission with a recommendation on whether to withhold any documents or portions of documents. Commissioner offices are expected to identify and review all records within the scope of the request in their office files within the 20 business day statutory review period for FOIA requests. Release/withhold decisions are made by the individual offices. (See Appendix 2 for detailed procedures for handling withheld documents in Commissioners' offices under FOIA.) If withheld documents are subject to later FOIA appeal, a second review is conducted and final reviews are conducted by the individual offices with the advice of the General Counsel.

Commissioner offices are consulted prior to the release or withholding under the FOIA of other Commission decision-making documents after review by the General Counsel's office and SECY. If a FOIA appeal is received, the Secretary is authorized to grant or deny the appeal after consultation with the Commissioners. If no documents are to be released on appeal, the Secretary should consult with the Commission regarding the proposed withholding.

MANAGEMENT AND DISPOSITION OF COMMISSIONER RECORDS

The Federal Records Act requires maintenance of all records of each Commissioner's activities and decisions during his or her term of office. Most records generated by a Commissioner's office are permanent records to be transferred to the legal and physical custody of the National Archives and Records Administration (NARA). The NRC has a management directive and NARA approved records retention schedules covering records accumulated by Commissioners during their terms of office.

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CHAPTER III – VOTING

VOTING

Commission decision-making is done through notational voting on prescribed vote sheets,¹² by affirming a notational vote at an Affirmation session, by responding to action memoranda, or through voting at scheduled Commission meetings. Generally, following the Commission vote and Commission review of the draft Staff Requirements Memorandum (SRM), the Office of the Secretary issues a final SRM. In the case of Affirmation votes, before the Affirmation Session the Secretary circulates, for Commission review and approval, a draft Affirmation Statement that the Secretary will read at the Affirmation Session, and immediately following the Affirmation Session the Secretary issues a final SRM. (See section below on “Closure Process”).

A majority Commission position is needed for action.¹³ On vote sheets supplied electronically by the Secretary, Commissioners vote "Approve," "Disapprove," "Abstain," or "Not Participating." The vote sheet also provides space for Commissioners to provide views and propose modifications for consideration by other Commissioners. The majority is determined by counting the "Approve" votes and the "Disapprove" votes. Non-responding Commissioners are recorded as “Not Participating” and are not included in the majority determination.

For meeting activities, a quorum is required for the transaction of business. The quorum is determined by including only the number of Commissioners participating who are voting to "Approve" or "Disapprove" or have chosen to "Abstain."

Under certain circumstances, a Commissioner may wish to recuse himself/herself from participation in a particular matter in order to avoid any actual or apparent conflict of interest. When this occurs, the determination of a quorum and the majority vote will be based upon the number of other Commissioners voting.¹⁴ The recused Commissioner is not included for purposes of determining a quorum.

As a general matter, requests for Commission action will be denied if the Commission vote is 2-2 or there is a lack of quorum;¹⁵ however, in those instances where the staff has authority to act on a matter, but must first consult with the Commission before taking a proposed action, the staff may, at its discretion, proceed with its proposed action after it has been informed by the Secretary that the Commission has been unable to act on the staff's proposal either because of a lack of a quorum or an evenly divided vote.

¹² A sample vote sheet is in Appendix 3.

¹³ The "Basis for Determining Voting Results" is described in Appendix 4.

¹⁴ See Chapter IV, Format for Commission Meetings, footnote 22.

¹⁵ See Appendix 5, Resolution of 2-2 Votes.

CHAPTER III – VOTING

VOTES ON SECY PAPERS

Electronic vote sheets are prepared by the Secretary for each SECY voting paper. They are e-mailed to each Commissioner's office when the paper is issued, and a signed original of each Commissioner's vote is returned to SECY by each office. Specific guidance for voting is as follows:

1. **Action Dates**

- a. The Commission's goal is that Commission action on the majority of the papers be completed within 18 business days.
- b. Commissioners are expected to complete voting within the first 10 business days on the recommendation of a paper in most cases. After evaluation of the action required, the Office of the Secretary will, in some cases, set a shorter or longer time frame for Commission response (e.g., the substance of the paper, and/or a scheduled Commission meeting may require that a longer time frame for Commission response be set). The Office of the Secretary will poll the Commission if there is a need to set a shorter time frame for Commission response. The Office of the Secretary generally sets longer voting due dates for rulemakings: 30 business days for proposed rules and 60 business days for final rules. For papers that are the subject of Commission meetings, the Office of the Secretary generally sets the voting due date as 10 business days after the Commission meeting. (Commission-level offices may comment on the recommendation within the first 5 business days.) Commissioners are urged to vote early and to request any necessary extensions of time as early as possible, particularly if they are expected to be out of town or unavailable to vote by the end of the 10 business day voting period.
- c. With respect to Adjudicatory SECY papers, Commissioners are expected to vote no later than 10 business days after the issuance of the paper. When a majority of the Commission has voted and it is within 3 business days of the voting due date, SECY will notify the Commissioners who have not voted. A request for extension of time to vote beyond the 10 business day voting period or a request to delay the affirmation of the vote on a matter shall be granted only by a majority of the Commission.
- d. SECY will poll the Commission on scheduling the affirmation of a paper as soon as a majority position on the paper has been established and all extensions have expired. The Commission should strive to schedule affirmation at the earliest opportunity giving at least 7 calendar days public notice (unless a majority of the Commission agrees to short notice) following either the establishment of a majority position of the Commission and expiration of all extensions, or direction from a majority of the Commission that affirmation should be scheduled.

CHAPTER III – VOTING

- e. For non-adjudicatory SECY papers, a Commissioner may obtain an automatic extension of voting time of 5 days.
- f. At the completion of voting, SECY will draft an SRM that reflects the majority position of the Commission and forward it to the Commission for review.
- g. In urgent cases, when a majority of the Commission has weighed in and agreed, Commission action should not be held for a Commissioner who is unavailable. SECY would note that the Commissioner was unavailable in the Commission Voting Record (CVR). That Commissioner could then create a vote and place it on the record once he/she returned so that his/her opinion on the topic would be known.
- h. Three (3) business days are allowed for circulation and review of the Secretary's SRM by the Commission.
- i. Commissioner requests for extensions of review time on an SRM will be granted up to 2 business days, unless a majority of the Commission objects.
- j. If Commissioners propose modifications to the SRM, SECY will poll the other Commissioners and determine a majority position with regard to inclusion of the changes. However, SECY may make non-substantive syntax, grammatical, or formatting changes to an SRM without formal Commission voting on such changes. Subsequent revisions on an SRM will normally be circulated for a 2-business-day review period with no more than a 2-business-day extension on each version, unless a majority of the Commission objects to the extension.
- k. SECY shall promptly transmit to the Commissioners any comments on a draft SRM that a Commission-level or staff office transmits to SECY.
- l. Absent an objection from a majority of the Commission, extensions on the due date will be granted for voting papers and SRMs, and the extensions will apply to all Commissioners, without requiring subsequent requests from each Commissioner office.
- m. SECY will issue an SRM when a majority view exists and all extensions have expired. The SRM should be issued by noon on the next business day after SECY notifies all Commissioner offices that an SRM will be issued.
- n. In instances where SECY polls the Commission, a Commissioner shall have 2 business days to respond or request an extension of time once a majority position has been established in response to polling. If a Commissioner does not respond or request an extension of time within this two-day period, the action subject to the polling will proceed according to the Commission majority's decision. An extension of time of up to 2 business days will be

CHAPTER III – VOTING

granted unless a majority of the Commission objects. Further extensions must be approved by the majority of the Commission.

2. **Submission of Votes to the Secretary**

- a. Commissioners select the appropriate expression of their position and mark the vote sheet accordingly ("Approved," "Disapproved," "Abstain," or "Not Participating").
- b. Commissioners may also use the vote sheet to propose revisions to any course of action discussed in the paper, to propose a course of action not discussed in the paper, or to record comments on the issue.
- c. Commissioners' staff prepare the vote in the Secretariat Tracking and Reporting System (STARS); attach any comments; then register the vote, which automatically e-mails the vote to SECY and other Commissioner offices. SECY will then forward the electronic vote to OGC, EDO, CFO, and Commission-level offices as appropriate. In the case of hand written remarks or edits in the vote, the edits should be digitally scanned and attached to the vote in STARS, if possible. If not possible, the original and 7 hard copies should be provided to SECY for distribution. Similarly, votes containing Classified or Safeguards Information cannot be transmitted electronically and hard copies need to be delivered to SECY for further distribution to the other Commissioners and appropriate offices.
- d. Commissioners' staff forward the original signed paper copies of completed votes to the Secretary as soon as they are available.
- e. Further distribution of non-adjudicatory vote sheets within the staff is permissible upon issuance of the vote, but distribution outside the agency is permissible only after the final collegial decision is recorded by the Secretary in an SRM to the action office and the votes have been released to the public. For votes that are not made publicly available, specific permission of each Commissioner is required prior to distribution of his or her own vote outside the NRC. Staff actions are not to be based upon individual Commissioner votes; the staff's actions are controlled by a majority vote of the Commission as directed in the SRM when issued. SECY shall promptly transmit to the Commission any comments that a Commission-level or staff office submits to SECY. Nothing in this section precludes a Commissioner from releasing his/her own vote outside of the agency at any time, as long as the vote does not contain Classified Information, Safeguards Information, or other information the Commissioner deems sensitive.

CHAPTER III – VOTING

- f. If a Commissioner proposes modifications to the course of action recommended in the paper, or proposes revisions to a document on which voting is taking place, other Commissioners may indicate in their vote their agreement/disagreement with the proposed changes. SECY transmits all votes/comments to other Commissioners and determines, through the SRM process and discussions with Commissioner offices, whether individual modifications to the initial proposal receive support by a majority of the Commission.
- g. The Office of the Secretary will handle the release of the SRM and CVR, which includes individual Commissioner votes, as a unit, based upon the releasability of the SECY paper. As a matter of collegiality, a Commissioner should inform SECY and his or her fellow Commissioners promptly if he or she makes a decision to release his or her vote prior to release of the SRM and CVR by SECY. SECY will then inform appropriate staff offices.

3. **Recording of Commissioner Votes While Away from the Office**

The following are some methods for recording Commissioner votes while a Commissioner is away from the office:

- The Commissioner votes either through telephone or e-mail contact with his or her staff. The Commissioner's Assistant registers the vote in STARS. (This continues to allow the Commission's action to be taken and the SRM drafted on the issue without delay.) Upon the Commissioner's return, he or she should sign and date on that date an additional vote sheet and forward it to SECY. The additional vote sheet should note the date of the original vote. SECY will use this vote sheet for placement in the official record, and, if appropriate, release it to the public in the CVR.
- The Commissioner faxes the signed vote to his or her office from the off-site location for processing and forwarding to SECY.
- The Commissioner uses an overnight mail service to transmit the vote to his or her office for processing and forwarding to SECY.

SECY will ensure that no delay is incurred while waiting for the actual Commissioner-signed vote sheet in the issuance and public release of SRMs and the CVRs. If a Commissioner-signed vote sheet is not available at the normal time of public release of an SRM and the CVR, SECY will include a note in the CVR stating that the missing Commissioner-signed vote sheet will be added to the CVR when it is available.

CHAPTER III – VOTING

4. **Handling of Separate Views¹⁶ on Commission Documents Published in the Federal Register**

Individual Commissioner decisions to have his or her separate views to be appended to the end of a *Federal Register* notice being issued by the Commission should be provided in the Commissioner's response to the draft SRM. The separate views will be noted in the SRM, and the other Commissioners will be afforded the opportunity to consider them. The other Commissioners may submit responding individual or majority views to also be included in or appended to the *Federal Register* notice.

Including a separate view in response to an SRM will automatically generate a new version of the SRM. Commissioners will have 3 business days, as opposed to the usual 2 business days, to respond to versions of SRMs that were generated as a result of the inclusion of separate views.

The SRM, CVR, and SECY paper (or COM) will be released in accordance with guidance noted in Chapter II, Decision Documents.

5. **Handling of Separate Views in Commission Adjudicatory Decisions**

A Commissioner must circulate his or her separate, additional views on adjudicatory orders subject to affirmation to his/her fellow Commissioners. If affirmation of the adjudicatory order has already been noticed, the Commissioner's views must be distributed no later than 3 business days before affirmation. Should a majority desire to make substantive changes to the order to be affirmed, or submit additional views in response to the additional views already submitted, and requires more than 3 business days to do so, a majority of the Commission may determine that "extraordinary circumstances" exist such that the Commission may cancel the announced Affirmation Session and reschedule it to a later date. The Commission may waive this 3-business-day rule if agreed to by a majority of the Commission.

COMMENTS ON DRAFT CONGRESSIONAL LETTERS AND PRESS RELEASES ASSOCIATED WITH DECISION DOCUMENTS

1. Draft Congressional letters and Press Releases associated with a decision document on policy formulation, rulemaking, or adjudication require Commission approval. These drafts are forwarded separately from the associated SECY paper or action memoranda to SECY.
2. SECY attaches a cover sheet that indicates the supplemental material is being forwarded in support of the relevant SECY/COMSECY paper and circulates it with

¹⁶ Separate views may include, for example, dissents, concurrences, or additional views.

CHAPTER III – VOTING

the associated SECY/COMSECY paper to the Commission for review and approval. In the case of a COM, any draft Congressional letters and Press Releases are forwarded to SECY and provided to the Commission for its review and approval once voting on the related SRM has concluded.

3. Commission comments are returned to SECY separately from votes on the associated SECY/COMSECY/COM paper. SECY provides any comments on Congressional letters and draft Press Releases to the Chairman, Commissioners, OGC, OCA, OPA, and originating office point of contact for the SECY/COMSECY paper.
4. Editorial comments to Congressional letters are incorporated by SECY. Substantive comments are considered by the Chairman. SECY provides support to finalize letters and provides the final letters to Program Offices and OCA as appropriate.
5. The Chairman reviews the comments on the draft Press Release and coordinates with OPA any changes to the Press Release. OPA finalizes the Press Release and publishes it.
6. Comments on Congressional letters or press releases that are supported by a majority of the Commission will be incorporated into the final version of the letter or press release by the Chairman, and the Chairman may incorporate changes suggested in individual Commissioner's comments.

VOTES ON ACTION MEMORANDA (COMS AND COMSECYS)

1. When a Commissioner sends an action memorandum to his or her fellow Commissioners and requests their views or when the staff sends a memorandum requesting Commission views, it is forwarded to the Office of the Secretary with the notation: "SECY, please track."
2. SECY assigns a specific reply date of 10 business days or less, depending upon the subject matter (or the date requested by the originator), and assigns a distinctive control and identification number (e.g., COMABC-YY-XXXX if Commission originated memorandum, or COMSECY-YY-XXXX if originated by the staff, see Chapter II-Decision Documents, "Action Memoranda (COMs and COMSECYS)"). If the memorandum is related to a SECY paper, a projected response date will be assigned in conjunction with the date assigned to the SECY paper (including any approved extensions).
3. A copy of the memorandum is circulated to each Commissioner's office, and SECY tracks each Commissioner's response. If the memorandum is related to a SECY paper, the Secretary tracks the comments in conjunction with the SECY paper.

CHAPTER III – VOTING

4. Commissioners may respond on COMs and COMSECYs by electronic submission of the COM or COMSECY response sheet, in writing by separate memorandum to SECY, or by handwritten or typed comments directly on their copy (or photocopy) of the COM or COMSECY memorandum.
5. SECY transmits all responses to other Commissioners for information. (See section on “Closure Process” later in this chapter.)
6. After all Commissioner responses are received, SECY develops an SRM. For COMSECYs, an SRM is generated. For Commissioner-generated COMs, a memorandum reporting the outcome is addressed to the individual Commissioner initiating the COM, and an SRM is prepared if tasking or guidance to the staff is the result. When Commissioners' responses differ and there is not a majority position, SECY may meet with Commissioner assistants, the staff, OGC, and/or Commissioners to resolve differing points of view. If necessary, a Commission meeting may be scheduled to resolve the issue.
7. Normally, SECY will handle the release of the COM or COMSECY, the SRM, and individual Commissioner responses as a unit after Commission action has been completed, based upon the releasability of the COM or COMSECY paper. This procedure, however, does not preclude a Commissioner from withholding his or her response when the COM or COMSECY has been released or releasing his or her response when the COM or COMSECY has been withheld. A Commissioner should inform SECY and their fellow Commissioners promptly if they make a release/withhold determination on their response that is different from the release/withhold determination made for a COM or COMSECY.

VOTES AT COMMISSION MEETINGS

If an opportunity for voting occurs at a Commission meeting, the Chairman may identify the need for a formal vote. If a majority of the Commission agrees to vote at the meeting, the Chairman may call for a vote and Commissioners may vote orally. At an Affirmation Session, the Secretary describes the item on which formal voting is to take place; reviews the outcome of the notational voting and any agreed-to modifications which have occurred on the issue, noting the position taken by the Commission; and asks the individual Commissioners to declare formally that they affirm the positions as described. Commissioners normally "affirm" their votes by declaring "aye" or "yes" in unison.¹⁷ Separate, individual views of Commissioners on matters to be affirmed must be circulated to the other Commissioners no later than 3 business days before affirmation. Should a majority desire to make substantive changes to the matter to be affirmed or submit additional views in response to the views already submitted, and requires more than 3

¹⁷ The Affirmation Statement will follow this template in describing the outcome of the notation voting: “The Commission, with Commissioner(s) [insert names(s)] [disapproving] [disapproving in part] [dissenting] [dissenting in part] [concurring] [concurring in part] [offering additional views] has voted to [approve]....”

CHAPTER III – VOTING

business days to do so, a majority of the Commission may determine that “extraordinary circumstances” exist such that the Commission may cancel the announced meeting and reschedule it to a later date. (See Chapter IV, Commission Meetings, Development of a Commission Schedule, paragraph 5). The Commission may waive this 3-business-day rule if agreed to by a majority of the Commission.

CONTINUANCES AND EXTENSIONS OF TIME¹⁸

1. When a majority of the Commission has voted, SECY notifies the remaining Commissioners in writing. The Commissioners who have not responded are advised that they have 3 additional business days to vote.¹⁹ If there are more than 3 business days remaining of the original 10 business day voting period, their votes would not be due until the end of that period.
2. If a Commissioner is unable to meet an original due date, he or she may request an extension of time to vote on a SECY Notation or Affirmation paper or on a COM or COMSECY. The Secretary will honor requests submitted within the 10 business day voting period and within the additional 3 business day period, if needed, when Commissioners who have not yet responded are advised that a majority of the Commission has voted. Extensions of voting time are normally limited to 5 business days. Any extension after the initial request will be granted unless a majority of the Commission objects.
3. When voting papers are issued, Commission-level offices are normally asked to provide any comments within 5 business days. If a Commission level office wishes to comment but cannot meet the 5 business day deadline, it should inform SECY in writing of the reason(s) for the delay and provide the approximate date that comments will be submitted. SECY will inform the Commissioners.
4. If a Commissioner has requested that additional information or analyses be received from the staff before voting, it is incumbent upon the staff to fulfill the request expeditiously to avoid delay in completing the voting process.
5. If a Commissioner requests and is granted an extension of voting time, all Commissioners who have not yet responded on a matter will be given the same amount of time.

¹⁸ Appendix 6 contains procedures for assuring that the Commission will have sufficient voting time when its formal review time for adjudicatory actions is limited by NRC regulations.

¹⁹ If a majority of Commissioners has not voted by the end of the 10 business day voting limit, no action can be taken. SECY may institute the closure process only after a majority of the Commission votes have been received.

CHAPTER III – VOTING

6. With respect to Adjudicatory SECY papers, if a Commissioner requests an extension of the voting time beyond the 10 day voting period or requests a delay in the affirmation of the vote on a matter, such requests shall be granted only by a majority of the Commission.

CLOSURE PROCESS

1. After at least a majority of the Commission has voted and all extensions of time have expired, SECY records the decision in an SRM.²⁰
2. After voting is complete on a Commission decision document, SECY will circulate a draft SRM to the Commission for its review and approval. SECY will transmit the draft SRM via e-mail. SECY will incorporate only those decisions that are supported by a majority into the main body of the draft SRM. For those comments that are not supported by a majority of the Commission and do not conflict with the majority position, SECY will include them as “Additional Commissioner Comments” in an attachment to the main body of the draft SRM. Once voting is complete on the draft SRM, SECY will prepare a final SRM reflecting the decisions supported by a majority of the Commission. SECY shall consult with the applicable Commissioner office if there are questions on how an individual Commissioner’s decisions or comments should be incorporated into the SRM.
3. In the case of an affirmation action, the SRM is issued immediately after the formal vote has been taken at the Commission meeting scheduled for that purpose (see Chapter IV, “Affirmation Sessions”, pages IV-5 and 6).
4. If the Commission is unable to reach a decision on an issue not delegated to the staff because of a 2-2 split vote, the Secretary’s SRM will advise the staff that the proposed action is “not approved.” The staff may resubmit the issue for Commission consideration when the reason for the inability to reach a decision has been removed or when new or additional information is provided to the Commission. In cases where the staff has authority to act but discretion requires it to first consult with the Commission before taking a proposed action (e.g., an enforcement matter), the SRM will advise the staff that it may proceed with its action even though the Commission has been unable to act either because of a lack of a quorum or an evenly-divided vote.
5. With the exception of SRMs on affirmation items (see 10 below), draft SRMs are circulated to the Commission, OGC, EDO, CFO, and others as appropriate, for a 3 business day review period. Commissioner requests for extensions for review will be granted up to 2 business days unless a majority of the Commission objects. OGC, EDO, CFO, etc. are afforded an opportunity to review the draft SRM to ensure that the Commission decision is clear and understandable and that resource, schedular, and legal constraints are properly considered. SECY shall

²⁰ A sample SRM is located at Appendix 7.

CHAPTER III – VOTING

promptly transmit to the Commission any comments on a draft SRM that a Commission-level or staff office transmits to SECY. If Commissioners propose substantive modifications to the draft SRM, SECY will issue a subsequent version for the purpose of establishing a majority position. In order to conclude the decision-making process in a timely manner, subsequent versions of SRMs will normally be circulated for a 2 business day review period or less with no more than a 2 business day extension granted on each version. However, SECY may make non-substantive syntax, grammatical, or formatting changes to an SRM without formal Commission voting on such changes.

6. Absent an objection from the other Commission offices, extensions of 2 business days from the due date will be granted for SRMs, and the extensions will apply to all Commissioners, without requiring subsequent requests from each Commission office.
7. When the SRM is based upon a unanimous vote, without comment, SECY will issue the SRM without circulating a draft for Commission review.
8. When the Commission must act on a matter quickly, SECY will poll the Commission on waiving the normal review period. Waiver action will be determined by a majority of the Commission.
9. After voting is complete on a Commission adjudicatory order, the Office of Commission Appellate Adjudication (OCAA) or OGC, as appropriate, will circulate a draft of the final order to the Commission for its review and approval. OCAA or OGC will submit the draft final order to SECY and the Commission Legal Counsel via e-mail. The draft final order will incorporate edits from the Commissioner votes that are clearly supported by a majority. If an edit does not have clear majority support, OCAA or OGC will mark it as such in the draft final order and request Commission views to establish a majority position. However, OCAA or OGC may make non-substantive syntax, grammatical, or formatting changes to the draft final order without formal Commission voting on such changes. If a Commissioner wishes to make substantive changes to the draft final order, including a request to incorporate additional views into the order, those changes should be identified in the Commissioner's response to OCAA or OGC.
10. The 3-business-day Commission review does not apply to SRMs on items requiring affirmation. Since these SRMs restate the Commission's formal position affirmed in a public Affirmation Session (see item 3 above), they are issued immediately following the affirmation.
11. After the Commission issues an SRM that has not been designated for public release, SECY will review the SRM, as well as the underlying SECY paper, COM or COMSECY, to determine whether the document must be released, in whole or in part, in accordance with the disclosure provisions of 5 U.S.C. 552 (a)(1) or (a)(2) of the Freedom of Information Act. OGC and NRC staff as appropriate, will

CHAPTER III – VOTING

participate in this review when requested by SECY. These shall include all instances where SECY believes the documents could fall within the purview of one of those subsections.

12. **Commission Voting Record (CVR)**

When the final SRM is issued, the Secretary will issue a CVR package (see Appendix 7), which will include:

- a. an indication of affirmative votes, negative votes, abstentions, non-participation, and individual views of all Commissioners; and
- b. a copy of each Commissioner's vote sheet.

Copies of the CVR will be sent to OGC and the originating office and publicly released when appropriate.

TRACKING OF REQUIREMENTS AND TASKS

All requirements and tasks identified in SRMs are entered into the Commission Tracking System maintained by SECY. The system also tracks staff commitments made in Notation Vote and Information papers, staff memoranda to the Chairman and Commissioners, and memoranda from the Chairman to staff. The Tracking System is a module of STARS (Secretariat Tracking and Reporting System) that enables SECY to provide the Commission and the action offices with pertinent status information to assist in focusing management attention and setting priorities for the completion of tasks on schedule.

The Commission Tracking System is available online to Commissioner Offices through STARS.

The SECY Tracking Officer provides the following periodic reports in hard copy:

- Weekly status report to the Commissioners' Chiefs of Staff of action items expected to be provided to the Commission
- Weekly status report to the Commissioners' Chiefs of Staff on overdue tasks and tasks with revised due dates
- Quarterly reports of open tasks for the Commissioners
- Annual review of timeliness of task closure to the Chairman

The Tracking System includes a feature to identify high-priority tasks for which due dates are particularly important. When a requirement needs to be expedited or is designated

CHAPTER III – VOTING

high-priority in an SRM, it is coded to indicate that all due date extensions are subject to Commission review.

For high-priority tasks and extension requests for non-high-priority tasks that will alter the due date more than 90 calendar days beyond the original due date, the action office must notify the SECY Tracking Officer in writing, or by e-mail, as soon as the staff becomes aware that additional time is needed but no later than 10 business days prior to the date due to the Commission, explaining the reason for the delay and providing a revised due date. The SECY Tracking Officer will poll the Commission to determine if the proposed revised date is acceptable.

Upon responses from the Commission with a majority indicating approval of the extension request, SECY will extend the due date. Minority views will be provided to staff for information. If a majority of the Commission disapproves a new due date, SECY will request the action office to re-evaluate the revised due date.

For non-high-priority tasks, due date extensions will be accepted by SECY, provided that there is a reasonable explanation for the change and the revised due date is not more than 90 calendar days beyond the Commission requested due date, or the original due date confirmed by the staff if the Commission has not specified a due date.

For requests to change a task, including the description or frequency, or close a task that was specifically directed in an SRM, the action office must submit the request to the Commission via a COMSECY.

MOTIONS FOR RECONSIDERATION OF A DECISION

Any Commissioner may request the Commission to reconsider a decision. Such requests are addressed to SECY in writing and contain a brief explanation of the reason for the request. The subject should be entitled "Request for Reconsideration." Except as noted below (3), such a request does not prevent the implementation of the decision or the Commission Order that recorded the initial decision.

1. SECY distributes the request to the other Commissioners with an attached vote sheet soliciting Commissioner votes within 5 business days.
2. If a majority of participating Commissioners votes to reconsider, SECY notifies the appropriate action office. The issue then is again presented to the Commission in the same format as the original vote, i.e., if the original decision was reached at a Commission meeting, another meeting will be scheduled for reconsideration. If a different resolution method is preferred, the Commissioners should so indicate on their response sheets. Selection of the resolution method will be determined by a majority of the Commission.
3. As a recommended best practice, a Commissioner should consider use of a COM as the appropriate vehicle for raising whether the earlier decision should be stayed pending Commission reconsideration of the matter. Alternatively, a Commissioner

CHAPTER III – VOTING

may request that SECY poll the Commission. If polling is used, the results will be addressed through the SRM process. Unless a majority supports a stay, the earlier decision remains in effect while the Commission reconsiders the matter. If a majority of the Commission supports a stay, SECY will notify the appropriate action office that the earlier Commission decision has been stayed pending reconsideration. In some instances this requires a letter or "withdrawal" order, which in turn may require a separate affirmation vote. Copies of these notifications are provided to all Commissioners and appropriate staff offices.

RETURN OR WITHDRAWAL OF PAPERS SUBMITTED TO THE COMMISSION

Upon request by a Commissioner or the NRC staff, a SECY paper or COMSECY will be returned to the staff without action if a majority of the Commissioners participating agree to that course of action. Once the staff provides a SECY paper or COMSECY to SECY, if the staff subsequently recommends withdrawal or substantial revision of the SECY paper or COMSECY, the staff must explain to the Commission the basis for its recommendation in writing. SECY will poll the Commission on a staff request to withdraw or substantially revise the paper or on a Commissioner's request to return the paper to the staff without Commission action. For COMs issued by a Commissioner or Commissioners, the initiating Commissioner may withdraw the COM at any time and inform SECY.

COMMISSION MEETINGS/HEARINGS

GOVERNMENT IN THE SUNSHINE ACT

The Government in the Sunshine Act (PL 94-409) (Sunshine Act) requires the collegial agencies of the Federal Government, including the NRC, to open meetings of their Commissioners to public observation except where the subject matter falls within one of the specific categories of exemption. The law is based on the premise that "the public is entitled to the fullest practicable information regarding the decision-making process of the Federal Government." The Sunshine Act applies to meetings of at least a quorum of Commissioners where deliberations determine or result in the joint conduct or disposition of official Commission business. This Chapter describes procedures for Commission meetings that are governed by the Sunshine Act, and briefly covers the scope of Non-Sunshine Act discussions.

The Sunshine Act favors open meetings. An agency, however, is allowed to close a meeting or portions of a meeting or to withhold information about a meeting or portions of a meeting if the agency determines that the meeting or portions thereof, if opened, or the information, if released, would likely disclose exempted information protected from disclosure under one or more of the 10 exemptions authorized by the Sunshine Act. A list of these exemptions is contained in 10 CFR Part 9. Determinations to close a meeting require a recorded majority vote of the entire Commission membership.

The Sunshine Act further requires NRC and similar agencies to publicly announce, at least 7 calendar days prior to each meeting, its time, place, and subject matter, and whether it is to be open or closed. The agency can provide less than 7 calendar days notice of a meeting, provided a majority of the Commission determines by recorded vote "that agency business requires" less notice.

DEVELOPMENT OF COMMISSION SCHEDULE

1. SECY prepares a schedule of Commission meetings from an assessment of the following considerations:
 - a. a projection of anticipated meeting subjects from the EDO;
 - b. projections and requirements known to SECY;
 - c. input from Commissioners, OGC, OCA, OIP, CFO;
 - d. availability of all Commissioners;
 - e. readiness of affirmation items;

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

- f. requests for meetings with the Commission by outside agencies or organizations; and
 - g. requests for a meeting by any Commissioner.
- 2. First priority is given to the scheduling of meetings on days when all Commissioners are available.
- 3. Factors such as holidays, Congressional hearings, availability of staff, and the conflicting schedules of individual Commissioners influence the dates and times available for meetings. As part of the data-gathering process, Commissioners' staffs record periods when the Commissioner will not be available for Commission meetings into an on-line automated calendaring system that provides an integrated daily schedule of Commissioner availability.
- 4. SECY meets at pre-agenda sessions with the Chairman and representatives of OGC and EDO. The results of the pre-agenda meeting form the basis for the Chairman's proposed agenda to the other Commissioners.
- 5. SECY provides to the Commission a package of materials in preparation for the Agenda Planning Session at least 5 business days prior to the Agenda Planning Session. The package containing the proposed Commission schedule, as approved by the Chairman, consists of: a future meetings list out to 26 weeks, the current Commission calendar for each month out to 3 months, final or proposed scheduling notes for Commission meetings out to 3 months, periodic meetings list, a list of items coming to the Commission for review (including staff-generated items), and an NRC Exercise Schedule.
- 6. The purpose of the Agenda Planning Session, conducted by the Chairman and typically held monthly, is for the Commission to review, discuss, and approve the proposed meeting schedule, as well as any other agenda-related matters that the Chairman or individual Commissioners wish to address. Commissioners, their staff, and representatives from EDO, OGC, CFO, OIP, OCAA, and SECY normally attend and participate as appropriate. The Chairman presents a proposed agenda for collegial Commission discussion, but if a Commissioner desires that a meeting be scheduled, he or she should raise it at Agenda Planning or should inform SECY in writing, and provide copies of the notice and a proposed meeting scheduling note to all Commissioners. In recognition of the collegial process, an individual Commissioner's request that a meeting be scheduled will be granted unless a majority of the Commission disapproves the request.
- 7. The approved schedule of upcoming Commission meetings is disseminated within NRC by SECY in the form of the Commission calendar, with approved scheduling notes. A summary of the schedule limited to the coming 6-week period is also released to the *Federal Register* for publication and posted to the NRC external web site. The Commission will cancel or delay announced meetings only when

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

required by extraordinary circumstances and will provide as much notice as feasible in the event of a cancellation or delay. SECY will poll the Commission on whether to cancel or delay an announced meeting. In determining whether to cancel or delay an announced meeting, the Commission will consider inclement weather, government operating status, and any other relevant information. Cancellation or delay of an announced meeting requires support by a majority of the Commission.

8. **Guidelines for Stakeholder Participation in Commission meetings:**

- a. In planning Commission meetings, the Commission may determine that it would be useful and practical to obtain additional information or views through stakeholder participation. Emphasis will be given to meeting topics where a decision by the Commission on the topic is required (e.g., a notation vote paper is or will be before the Commission for action). In its discretion, the Commission may also schedule meetings with stakeholders covering a broad range of issues.
- b. In preparing draft scheduling notes, SECY in coordination with the staff will prepare a list of stakeholders that could be considered for invitation to brief the Commission. The staff should identify to SECY the stakeholders that have shown interest in the particular meeting topic along with its views for participation that could assist the Commission in making its decision (e.g., particularly active stakeholders).
- c. The Commission will decide who will participate in Commission meetings through its approval of draft scheduling notes. SECY will poll the Commission on draft scheduling notes that are not resolved at Agenda Planning Sessions. Commissioners may respond to SECY's poll by proposing alternate or additional participants or topics. These proposals will be incorporated into scheduling notes if approved by a majority of the Commission. If necessary, SECY will poll the Commission to determine whether majority support exists for such proposals. In addition, if a Commission-approved participant is unavailable, SECY will poll the Commission to determine whether majority support exists for an alternate participant.
- d. The Commission will decide as part of Agenda Planning who will participate in the Commission meeting. If outside participants are invited, priority consideration will be given to other Federal agencies, states, elected officials, tribal governments, organizations, and persons that represent a broad spectrum of views, have specific interest in the meeting topic and bring a unique perspective to the briefing, and are experts on the subject matter. To the extent practical, the Commission will attempt to achieve a balance in the points of view represented at the meeting. The Commission's goal of including stakeholders in Commission meetings is to

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

give the Commission information on a range of views on a given topic. It is not the Commission's intent, nor is it realistic, to try to have every different view on a given topic represented at a meeting. Other organizations and individuals who express an interest in speaking will be encouraged to submit written comments for Commission consideration, which will be included as part of the record, and/or coordinate common interests with presenters who have agreed to participate. The Commission will not normally reconsider a decision on stakeholder participation. Should a stakeholder ask to be added to the list of participants, the Commission reserves the option to consider whether the stakeholder's participation in the meeting would be helpful to the Commission. Such a request should be made in writing to the Secretary of the Commission 3 weeks in advance of the announced briefing. The written request should be clear as to who the stakeholder is representing and the unique perspective that would be provided at the briefing. Normally, the Commission will approve a final list of the participants for a Commission briefing at least 2 weeks in advance of the meeting.

- e. The Office of the Secretary will arrange the briefings and invite the participants that have been agreed to by the Commission. Only one speaker will be permitted per organization unless the Commission determines that broader participation is desirable or necessary. Outside participants will be grouped into panels as appropriate. The letter of invitation from the Secretary will state that participants should summarize their key points at the Commission meeting in 5-10 minutes. The specific amount of time for each speaker may be discussed at the Agenda Planning Session and is reflected in the scheduling note. Typically, the letter will also state that participants should submit written material no later than 5 business days in advance of the meeting. Notice will also be given that the Commission reserves the right to withdraw an invitation to speak if the written material on the presentation is not provided 5 business days in advance of the meeting date.
- f. NRC staff will submit to the Commission pertinent SECY Papers or other documents 15 business days in advance of the scheduled Commission meeting. The Commission will be given at least 2 business days to review the staff's meeting materials to determine if they should be released to the outside meeting participants and the public. It is the goal of the Commission to make documents that the Commission determines should be released available to meeting participants and publicly released at least 10 business days in advance of the Commission meeting. The Commission expects to receive meeting materials in a timely manner in the absence of an advance request from the staff for an extension of the due date. If meeting materials are not received in a timely manner, the Commission meeting may be rescheduled. Rescheduling an announced meeting requires support by a majority of the Commission.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

FORMAT FOR COMMISSION MEETINGS

The Commission has conducted business in both open and closed meetings and in several different meeting formats over the years. Adjustments in style, format, and conduct are made to best suit the information gathering and decision-making needs of the Commission.

The majority of Commission meetings are open for public observation. Members of the public may attend meetings held in the Commission's main conference room, observe the presentations and discussions, and obtain copies of NRC documents released at the meeting. They may not address the Commission or other meeting participants without prior Commission approval. Most meetings are also webcast over the internet.

Under certain circumstances allowed by the Sunshine Act, the Commission may meet in closed session. A separate conference room is normally utilized for this purpose.

1. Open/Public Commission Meetings

As previously noted, the Sunshine Act presumes that most Commission meetings will be conducted in public. Open meetings are held to enable the Commission to gather information in briefings by NRC staff members,²¹ the regulated industry, and members of the public in fulfillment of the Commission's responsibilities. In addition to gathering information in staff briefings, the Commission may utilize its meetings to provide the staff with guidance on future activities and/or vote on specific issues such as restart of a nuclear plant. Commission voting and decision-making activities may occur at the end of briefings by the staff, industry, and/or public, or voting may occur at a later date after the Commission has had the opportunity to consider the information received during the briefing or from other documents and views.

Voting may also occur at short meetings (Affirmation Sessions) held to affirm final orders or rules developed in the notation voting process (see Chapter II for a description of Affirmation Papers and Chapter III "Votes at Commission Meetings"). Affirmation Sessions, which may involve a short 5-10 minute discussion of issues, are required by law²² and enable the Commissioners, in the presence of each other, to formally ratify

²¹ The procedures for staff presentations at Commission meetings are in Appendix 8.

²² The provisions of the Energy Reorganization Act of 1974 require that a "quorum for the transaction of business shall consist of at least three members present" and that "[a]ction of the Commission shall be determined by a majority vote of the members present" (42 USC 5841). The Commission has determined that the requirement of "presence" does not preclude the Commission from meeting with the participation of a Commissioner who is "present" by speaker phone, so long as there is no impairment of the Commissioner's ability to hear and be heard by all

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

votes previously cast by notation vote. Affirmation Sessions are generally scheduled to obtain a formal vote of the Commission on recommended actions that legally bind those the NRC regulates or have a significant legal effect on persons outside the Commission. Such actions usually involve the issuance of final rules or adjudicatory orders. SECY will poll the Commission on scheduling the affirmation as soon as a majority position on the proposed action has been established and all extensions have expired. The Commission should strive to schedule affirmation at the earliest opportunity, giving at least 7 calendar days public notice (unless a majority of the Commission agrees to short notice) following either the establishment of a majority position of the Commission and expiration of all extensions, or direction from a majority of the Commission that affirmation should be scheduled. Significant orders of the Commission (and its Licensing Boards) are printed in a cumulative compilation of NRC adjudicatory decisions, NUREG-0750, "Nuclear Regulatory Commission Issuances."²³

The Commission may also hold occasional open meetings for a collegial discussion of a variety of matters of current interest to individual Commissioners. These meetings, while open to the public, do not usually have a formal agenda, do not involve the active participation of the NRC staff, and do not result in a Commission decision on any particular issue discussed.

All open meetings are transcribed by a stenographic reporter. In addition most open Commission meetings are webcast over the Internet providing real-time viewing of the meeting. These webcasts are also archived to provide for viewing at a later time. Other than stenographic edits made by SECY, transcripts are not edited or altered. SECY edits the stenographic transcripts for accuracy, maintains the transcripts, and releases them to the public. Transcripts contain a disclaimer stating that it is not a part of the formal or informal record of decision of matters discussed and that expressions of opinion in the transcript do not necessarily reflect final determinations or beliefs.

2. **Closed Commission Meetings**

Under certain limited circumstances, the Commission may meet in closed session. The Sunshine Act allows the Commission to hold discussions in closed session when the discussion includes classified information, Safeguards Information, proprietary information, investigation and enforcement matters, internal management and personnel matters, certain adjudicatory/litigation matters, and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action. A detailed set of "Security Procedures for Conducting Classified Meetings/Hearings" has been issued by the Division of Security and Facilities Support,

those in the room and no effect on the public rights of attendance and observation under the Sunshine Act.

²³ Appendix 9 contains a description of the orders published in the Nuclear Regulatory Commission Issuances.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

Office of Administration, in consultation with the Office of the Secretary. See Appendix 10 for the procedures.

As with open meetings, closed meetings are also used to provide the Commission with information in briefings by the staff and allow the Commission to make decisions, i.e., vote, on issues requiring a decision if a majority of the Commission agrees to vote at the meeting.

The most common types of closed Commission meetings are:

Management and Personnel – the Commission considers management, organization, and personnel issues requiring collegial attention. Attendance is very limited -- often only the Commissioners attend.

Security Issues – briefings are held in closed session to discuss matters relating to the security and safeguards of nuclear material and facilities.

Executive Branch – briefings are held at the request of the Commission in closed session to permit representatives of Executive Branch Departments and Agencies to brief the Commission. These briefings are typically on sensitive, pre-decisional foreign policy issues, classified security matters, controlled unclassified information, and classified matters related to the Commission's responsibilities for the common defense and security of U.S. nuclear facilities and U.S.-origin facilities, equipment and materials overseas, and implementation of U.S. foreign and nonproliferation policies regarding import and export of nuclear materials and production and utilization facilities.

Investigative Matters – on occasion, the Commission is briefed in closed session by the Inspector General and/or the Office of Investigations on pending investigative matters.

Adjudicatory/Litigation – on occasion, the Commission is briefed in closed session by the General Counsel, the Solicitor, or the Office of Commission Appellate Adjudication on current adjudicatory/litigation matters.

As required by the Sunshine Act, the NRC maintains a complete verbatim transcript or electronic recording of all closed meetings, except certain adjudicatory meetings, which may be recorded by detailed minutes. For every closed meeting, the General Counsel must certify that the meeting may be properly closed. The agency must maintain a copy of the General Counsel's certification along with a statement of the presiding officer of the meeting (the Chairman) stating the time and place of the meeting and listing the persons actually present. The Secretary prepares this statement for the Chairman.

The records of closed meetings (transcripts, notes, and/or tape recordings) are normally retained by SECY, the Division of Nuclear Security in NSIR, or the Office of the Chairman, depending on the classification and sensitivity of the meeting. These records may be

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

released to the public following review and approval by the Commission. The reviews are conducted by the originators, other agencies if involved, NSIR as needed, OGC, and the Commissioners. SECY coordinates the review.

3. Non-Sunshine Act Discussions

Non-Sunshine Act discussions among three or more Commissioners are appropriate and legally permissible only when discussions are preliminary, informal, informational, or “big picture.” If such a discussion begins to focus on discrete proposals or issues, such as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency, the discussion should be halted and continued only in the context of a Sunshine Act meeting, scheduled in accordance with the requirements of that statute. The Office of the Secretary maintains a record of the non-Sunshine Act meeting, which includes the date, time, topic and attendees (see Appendix 11). Unless determined otherwise by a majority of the Commission, the General Counsel and the Secretary of the Commission shall attend all non-Sunshine Act discussions to ensure that all legal requirements are met. If non-Sunshine Act discussions take place via email amongst a quorum of the Commission, the General Counsel and the Secretary of the Commission should be copied on the messages.

CONDUCT OF COMMISSION MEETINGS

1. The Commission desires to start its meetings promptly at the time scheduled. The Chairman can begin a meeting as soon as a quorum of Commissioners is present. A Commissioner may request that the start of a meeting be briefly delayed, which the Chairman may grant at his or her discretion.
2. Meetings are generally informal in nature; the Chairman or Acting Chairman presides at all meetings and assures equal opportunity for participation and questions by all Commissioners present.²⁴ (Energy Reorganization Act, Section 201(a)(1)).
3. On occasion the Commission conducts formal sessions at which representatives of the parties in a particular adjudicatory proceeding are invited to present their positions in an oral argument before the Commission. Procedural arrangements are established by a majority of the Commission in advance to determine the issues for discussion and to specify time limits for each party's presentation and for Commissioner questions.

²⁴ For example, the Commission recommends following the current practice, which rotates the sequence in which Commissioners are recognized to question participants so that each member of the Commission has equal opportunity to rotate through each position in the sequence over the course of multiple meetings.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

4. A Commissioner who is unavoidably absent, such as because of medical leave or official travel, may take part in any Commission meeting, as described in this Chapter, provided that he or she is in two-way communication with the other Commissioners in the meeting by a device (e.g., a speaker phone) that allows the voice of the absent Commissioner to be heard by all present in the meeting room and allows the absent Commissioner to hear the entire discussion in the meeting. This procedure applies whether or not the participation of the absent Commissioner is needed to create a quorum for the transaction of business. A Commissioner participating in a meeting by speaker phone has the same rights of voting possessed by every other Commissioner. When this procedure is employed, the Secretary will ensure that voices are properly identified.

MEETING-RELATED DOCUMENTS

1. Documents in Advance of Meetings

In order to prepare for matters to be discussed at meetings, the following documents are required in advance so that the Commissioners may familiarize themselves with the purpose and content of matters to be presented:

- a. For staff-only briefings of the Commission, pertinent SECY papers, documents, or briefing outlines by the staff involved must (except in extraordinary circumstances) be available to Commissioners at least 10 business days before a meeting on a particular subject is held. The staff should advise the Commission, as early as possible, of any anticipated failure to meet the due date for submission of meeting materials and request approval for any necessary extension of the due date. If the document is not available 10 business days in advance, the originating office must explain the reason to the Commission in a cover memorandum. Commissioners may request postponement of a meeting if they do not have sufficient time to review late arriving documents. When such requests are made, SECY discusses the issue with the Chairman and polls the other Commissioners to determine whether the meeting will be postponed. A meeting will be postponed if agreed to by a majority of the Commission.
- b. Slides, if they are to be used, should also be received by the Commission at least 5 business days prior to meetings. Slides are routinely posted to the NRC's external web site for open meetings for use by the public when viewing a webcast Commission meeting over the Internet.
- c. Staff scripts or speaker notes, if used, should be provided to the Commission at least 24 hours in advance of the meeting.
- d. Any memoranda by Commission-level offices pertinent to the subject matter should be available at least 10 business days prior to the meeting.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

- e. For Commission meetings at which stakeholders have been invited to speak, pertinent SECY papers, documents, or briefing outlines should be forwarded to the Commission for review at least 15 business days in advance of the meeting. This will allow the Commission time to review the documents prior to release to the meeting participants and the public. Public release will occur generally at 10 business days prior to the meeting.

2. Documents at Meetings

At open Commission meetings, SECY ensures that copies of the principal documents referenced in the Commission schedule and slides are placed near the entrance of the Commission Conference Room for members of the public. Staff presenters are responsible for providing sufficient copies of the slides or other relevant written information for public availability and should ensure they arrive in the briefing room 30 minutes prior to the start of the meeting. SECY will ensure relevant SECY papers are publicly available in ADAMS and on the NRC external Web site prior to the Commission meeting. On occasion, additional copies of documents will be made available to members of the public at the meeting if it is anticipated that the discussion will draw upon information contained in the documents. SECY ensures that pertinent documents are publicly released prior to the meeting, subject to the agency's policy on the release of documents containing sensitive information.

STAFF REQUIREMENTS MEMORANDA (SRM)

After Commission meetings, SECY prepares a draft SRM to memorialize the Commission decisions or actions that took place in or may arise from the meeting, as well as the associated requirements placed on staff for implementing action. Recommendations or suggestions made by individual Commissioners should be captured in the draft SRM as Additional Commissioner Comments for Commission review and approval. Final SRMs are issued to the action addressee, with copies to the Commissioners and interested staff offices. Procedures for developing, reviewing, and issuing meeting SRMs are identical to those described in Chapter III for SRMs on voting matters.

BRIEFINGS OF THE COMMISSION ASSISTANTS

Briefings by the staff to the Commission Assistants (CAs) may be originated by the staff or requested by a Commissioner office. In most cases, the staff will initiate the request based on the need to inform or update the Commission staffs of progress in specific areas or ongoing events. Similarly, a Commissioner office may request a briefing to provide more information or clarification on a specific topic and will request that the appropriate staff office (such as EDO, OGC, or another office) or SECY propose briefing times. These meetings should be held as promptly as possible.

In either case, the staff office will coordinate with appropriate staff, including multiple offices if needed, to determine their availability and propose to SECY several dates and

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

times for the CA briefing. When an urgent CA brief is required, this should be explained in the request. CA briefings will normally be scheduled for 1 hour, unless otherwise noted. The CA briefing request to SECY should also include a description of what is to be conveyed to the CAs. In addition, the staff should highlight if the briefing relates to a SECY paper or COMSECY that is currently before the Commission, or a paper that is expected in the near future.

SECY will forward the request to the CAs after checking the availability of the times offered against other commitments such as conference room availability, other Commission meetings, or other CA briefings. The Commission CAs are expected to respond promptly and are encouraged to support times that are mutually-convenient to all offices in order to finalize the schedule.

CONDUCT OF MANDATORY HEARINGS ON APPLICATIONS FOR COMBINED LICENSES AND CONSTRUCTION PERMITS FOR MEDICAL ISOTOPE PRODUCTION AND UTILIZATION FACILITIES

1. Before the Hearing:

Notice: 10 CFR § 2.104(a) requires that the Secretary issue a notice of hearing for publication in the Federal Register as soon as practicable after a combined license (COL) or medical isotope production and utilization facility construction permit application has been docketed (or, in certain cases, tendered (see 10 CFR § 2.101(a)(2)). The Secretary will also issue a supplemental notice of hearing – specific to the uncontested or “mandatory,” portion of the proceeding – as soon as practicable after the staff submits to the Commission the Information Paper described below under “Pre-Filed Documents.”

This supplemental notice should state: (1) the time and place of the hearing, (2) the nature of the hearing, (3) the authority under which the hearing is to be held, (4) the matters of fact and law to be considered (i.e., whether the staff’s review has been adequate to support the applicable findings), (5) the schedule for submittal of the pre-filed documents, and (6) the designation of the Commission itself as the presiding officer for the hearing.

Pre-Filed Documents: Within one week of public issuance of the Final Safety Evaluation Report (FSER) or Final Environmental Impact Statement (FEIS)/Environmental Assessment (EA), whichever comes later, the NRC staff will submit an Information Paper to the Commission. This Information Paper will be made publicly available and should, at minimum:

(1) Address each of the findings necessary for issuance of a COL or construction permit, and provide an adequate basis for the Commission to conclude whether each of these findings can be made. The Information Paper should not recap all matters in the safety or environmental review process, particularly routine aspects of the review where there was no actual complication or controversy. Rather, the Information Paper should be focused on non-routine matters. The staff should also

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

include a discussion of issues raised by the ACRS, as well as the staff's responses thereto.

(2) In focusing on non-routine matters, the areas of particular importance in supporting the safety and environmental findings would be any unique features of the facility or novel issues that arose as part of the review process. The Information Paper should exclude discussion of admitted contentions that have been (or are being) addressed in a contested proceeding before the Licensing Board. Additionally, the staff's Information Paper should exclude matters that were previously addressed and resolved in the context of other reviews undertaken as part of the process, e.g., as part of an earlier Early Site Permit (ESP) review, an earlier reference COL review, or have been (or are being) addressed in the context of a rulemaking.

(3) Include other aspects of the staff's review that are important for the Commission to make its final decision but are not necessarily tied to specific findings. For instance, if an applicable design certification rulemaking is currently ongoing, the staff's Information Paper should include a brief summary of any significant technical or policy issues that the staff believes would be of significant Commission interest and an estimate of the completion date of that rulemaking.

This Information Paper shall serve as the staff's primary pre-filed testimony. In addition to this paper, the staff shall identify its witnesses for the hearing and answer any Commission pre-hearing questions. Answers to any pre-hearing questions and the witness list would be due 21 days prior to the scheduled hearing date, unless the Commission directs otherwise.

The following documents should be referenced in the pre-filed testimony and included as enclosures to the SECY paper or otherwise made available, for example, by providing ADAMS accession numbers:

- The license application and all supplements;
- The Final Safety Evaluation Report and all supplements;
- The Final Environmental Impact Statement or Environmental Assessment and all supplements;
- The pertinent letter from the Advisory Committee on Reactor Safeguards; and
- The proposed license or permit.

In addition to the Information Paper, the staff may submit pre-filed testimony of its planned individual witnesses as late as 5 days in advance of the hearing.

The applicant should also submit pre-filed written testimony, which would also be due 21 days prior to the scheduled hearing date, unless the Commission directs otherwise. This testimony should, at minimum, include answers to any pre-hearing questions issued by the Commission and identify the applicant's witnesses for the oral hearing. The applicant may also include in this pre-filed testimony any additional views that it wishes to provide.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

Interested States, local government bodies, and federally recognized Indian Tribes may also submit written statements to the Commission. Such statements should be filed 36 days prior to the scheduled hearing date.

No filings submitted in an uncontested (i.e., “mandatory”) proceeding, whether submitted by the staff, the applicant, or an interested State, local government body, or federally recognized Indian Tribe, may address substantive issues within the scope of the contentions that have been admitted in a contested adjudicatory proceeding for the same application. Such filings would include, for instance, the staff’s Information Paper, the applicant’s pre-filed testimony, answers to pre-hearing questions, question responses filed subsequent to the hearing, and any statements filed by interested States, local government bodies, or federally recognized Indian Tribes. Presentations made at the oral hearing also should not address issues within the scope of admitted contentions. However, key reference documents such as the license application and supplements, the FSER, the FEIS or EA and supplements, the Advisory Committee on Reactor Safeguards letter, and the proposed license or permit need not be redacted to remove references to contested issues before being made available to the Commission for the uncontested hearing.

Commissioners have the option of issuing written questions to the applicant or the staff before the hearing. Pursuant to his or her authority, the Secretary shall compile each Commissioner’s pre-hearing questions and issue them in the form of an order no later than 34 days before the scheduled hearing date. The order should specify the date by which responses to these questions must be filed (as indicated above, responses would generally be due 21 days prior to the scheduled hearing date and would be filed in conjunction with the witness list in the case of the staff and the witness list and any other pre-filed testimony in the case of the applicant). These questions could also serve to focus the parties’ presentations at the oral hearing.

All documents submitted by the staff, the applicant, and interested States, local government bodies, and federally recognized Indian Tribes should be filed in accordance with 10 CFR § 2.302, docketed by SECY in accordance with 10 CFR § 2.303, and made part of the hearing record.

No later than 14 days prior to the scheduled date of the oral hearing, the Secretary will also issue a scheduling order and note, which will provide additional logistical details regarding the hearing. If the Commission intends to invite an interested State, local government body, or federally recognized Indian Tribe to send a representative to the hearing, such an invitation will also be included in the scheduling order. Procedural arrangements are established by a majority of the Commission in advance to determine the topics for discussion and to specify time limits for each party’s presentation and for Commissioner questions.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

2. The Hearing:

Documents for the Hearing: A sufficient number of copies of slides or other relevant written information should be placed in the hearing room for the public 30 minutes before the start of the oral hearing.

Opening Remarks: The Chairman will call the hearing to order, describe the nature of the proceeding, under what statutes and rules it is taking place, what findings the Commission would have to make before authorizing issuance of the license or permit, what the general order of the hearing will be, and when a Commission decision might be expected.

Testimony: Witnesses for both the applicant and the NRC staff, as well as any representatives of interested States, local government bodies, or federally recognized Indian Tribes that the Commission has invited to participate, will be identified and sworn in by the Chairman. Before each hearing, the Commission will approve a scheduling note that specifies the order and composition of the witness panels for the hearing, states the topics the witness panels will discuss, and identifies the appropriate witness panel for Commissioner questions on relevant sections of the FSER and FEIS or EA (in responding to Commissioner questions, the witness panel may also invite other witnesses present at the hearing to answer). Any invited representatives of interested States, local government bodies, or federally recognized Indian Tribes will also participate as the Commission deems appropriate. Limited appearance statements will not be entertained.

The maximum allotted time for each Commissioner to ask questions and receive answers to questions at the hearing should be established by a majority of the Commission prior to the hearing. Each Commissioner will decide how to divide his or her time for questions and answers among the witness panels not to exceed the allotted time. Any requests to extend this time may be granted by a majority of the Commissioners present. The Commission does not anticipate, even with many complex issues, that a hearing would last more than three business days.

Post-hearing Responses to Follow-up Questions: If Commissioners, at the hearing, ask any follow-up questions that cannot be fully answered at the hearing itself, the staff, the applicant, and/or participating interested States, local government bodies, or federally recognized Indian Tribes, as appropriate, may file supplemental responses to such questions no later than 14 days after the hearing concludes (unless the Commission sets a different deadline for such responses).

Record: The oral hearing will be transcribed, and the transcription reviewed for errors, corrected, and made part of the hearing record. See 10 CFR § 2.327. The Commissioners, applicant, staff, or any participating government or Tribal representative may submit transcript corrections within 7 days after the availability of the transcript. Also to be made part of the record will be any presentation materials used by the applicant, the staff, or representatives of interested States, local government bodies, or federally recognized Indian Tribes at the hearing and any written responses from the applicant and

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

staff to orders or questions presented by the Commission. Except for the limited purpose of making any necessary transcript corrections, the record will close once the deadline for filing and post-hearing responses to questions posed at the hearing has passed or at the conclusion of the hearing if no such responses are filed.

3. Commission Decision after the Hearing:

The Commission adjudicatory decision after the oral hearing should address whether the staff's review has been adequate to support the findings set forth in Parts 50, 51, and 52, or imposed by Commission order, as appropriate, or if inadequate identify which findings were insufficient, provide the basis for the Commission's determinations, list the documents that comprise the entire record considered by the Commission and upon which it relied, and authorize the appropriate Office Director to issue, appropriately condition, or deny the combined license or construction permit, or order further actions, as appropriate. See 10 CFR § 2.344.

In the event that a contested adjudicatory proceeding regarding the application is ongoing or has already taken place, at the time the Commission issues its decision in the uncontested proceeding, the Commission will condition its uncontested hearing decision as appropriate to ensure no prejudice is done to the contested proceeding.

4. Schedule for Uncontested Hearings:

The Commission intends to issue adjudicatory decisions in mandatory hearings no later than 4 months after the FSER and FEIS or EA are both publicly issued, except that in the case of a COL proceeding, if an associated design certification rulemaking is still pending as of that date, the Commission will issue a decision immediately after affirming the final rule for the referenced design.

The Commission also intends, to the extent practicable, to adhere to the target dates listed below for the key milestones leading up to the Commission decision. The Commission recognizes, however, that circumstances may warrant occasional deviations from these target dates. It is not anticipated, however, that, absent extraordinary circumstances, such deviations would alter the Commission's overall objective of issuing its mandatory hearing decisions no later than 4 months from the public issuance of the later of the FSER, FEIS, or EA.

Milestone	Target Date
Staff submits Information Paper to Commission	Within one week of public issuance of FSER & FEIS or EA
Notice of mandatory hearing sent to Federal Register	As soon as practicable after staff's Information Paper is submitted to the Commission

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

Interested States, local government bodies, or federally recognized Indian Tribes file any written statements	36 days before the hearing
Commission issues any pre-hearing questions	34 days before the hearing
Applicant files pre-filed testimony, including witness list and answers to any pre-hearing questions	21 days before the hearing
Staff files witness list and answers to any pre-hearing questions	21 days before the hearing
Secretary issues scheduling order and note	14 days before the hearing
Mandatory hearing commences	51 days after staff's Information Paper is submitted to the Commission
Staff and applicant file responses to any follow-up questions	14 days after hearing is complete
Commission affirms adjudicatory decision	4 months after FSER & FEIS or EA are both publicly issued (In the case of a COL proceeding, affirmation at this stage takes place if the referenced design certification rulemaking is already complete. If the referenced design certification rulemaking is still pending as of 4 months after FSER & FEIS for COL are both publicly issued, affirmation takes place immediately after Commission affirms the final design certification rulemaking for the referenced design.)

TEMPLATE

Notice of Hearing

A template for drafting a mandatory hearing notice for a COL proceeding is provided below. This notice is to be used to provide specific information on the uncontested ("mandatory") portion of the hearing and will be issued by SECY after receipt of the Staff's SECY paper supporting the mandatory hearing for each COL application. Appropriate adjustments will be made to accommodate any case-specific circumstances (e.g., if the COL application contains an ITAAC closure request pursuant to 10 CFR 52.97(a)(2) or a

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

limited work authorization request). Notices of hearing for medical isotope production and utilization facility construction permit proceedings will follow the same format but will be tailored to the specific application at issue.

NUCLEAR REGULATORY COMMISSION

Docket No. **[Insert Docket Number]**

TITLE: In the Matter of **[Insert name of Applicant]**; Combined License for **[Insert site name and number of units]** Notice of Hearing

I. BACKGROUND

The Commission hereby gives notice that, pursuant to section 189a of the Atomic Energy Act it will convene an evidentiary session to receive testimony and exhibits in the uncontested portion of this proceeding regarding the **[Insert Date of Application]**, application of **[Insert Name of Applicant]** for a 10 CFR Part 52 combined license (COL), seeking approval to construct and operate a new nuclear power generation facility at **[Insert Site]**. This mandatory hearing will concern safety and environmental matters relating to the proposed issuance of the requested COL, as more fully described below. Participants in the hearing are not to address any contested issues in their written filings or oral presentations.

II. EVIDENTIARY UNCONTESTED HEARING

The Commission will conduct this hearing at the specified location and time:

1. Date **[Insert Date]** Time: **[Insert Time]** Location: **[Insert Location]**

The hearing on these issues will continue on subsequent days, if necessary.

III. PRESIDING OFFICER

The Commission is the presiding officer for this proceeding.

IV. MATTERS TO BE CONSIDERED

The matter at issue in this proceeding is whether the review of the application by the Commission's staff has been adequate to support the findings found in 10 CFR § 52.97 and 10 CFR § 51.107. Those findings are as follows:

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

(1) whether the applicable standards and requirements of the Act and the Commission's regulations have been met; (2) whether any required notifications to other agencies or bodies have been duly made; (3) whether there is reasonable assurance that

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations; (4) whether the applicant is technically and financially qualified to engage in the activities authorized; (5) whether issuance of the license will not be inimical to the common defense and security or the health and safety of the public.

Issues Pursuant to the National Environmental Policy Act (NEPA) of 1969, as Amended

(1) Determine whether the requirements of Sections 102(2) (A), (C), and (E) of NEPA and the applicable regulations in 10 CFR Part 51 have been met; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken; (3) determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values; (4) determine whether the NEPA review conducted by the NRC staff has been adequate.

V. SCHEDULE FOR SUBMITTAL OF PRE-FILED DOCUMENTS

No later than **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise, the staff and the applicant shall submit a list of its anticipated witnesses for the hearing.

No later than **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise, the applicant shall submit its pre-filed written testimony. The staff previously submitted its testimony on **[replace with date of staff testimony]**.

The Commission may issue written questions to the applicant or the staff before the hearing. If such questions are issued, an order containing such questions will be issued no later than **[replace with date 34 days before the scheduled hearing date]**. Responses to such questions are due **[replace with date that is 21 days prior to the scheduled hearing date]**, unless the Commission directs otherwise.

VI. INTERESTED GOVERNMENT PARTICIPANTS

No later than **[replace with date that is 36 days prior to the oral evidentiary hearing]**, any interested State, local government body, or federally recognized Indian Tribe may file with the Commission a statement of any issues or questions that the State, local government body, or Indian Tribe wishes the Commission to give particular attention to as part of the uncontested hearing process. Such statement may be accompanied by any supporting documentation that the State, local government body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

Commission using the agency's E-filing system²⁵ by the deadline indicated above will be made part of the record of the proceeding. The Commission will use such statements and documents as appropriate to inform its pre-hearing questions to the Staff and applicant, its inquiries at the oral hearing, and its decision following the hearing. The Commission may also request, prior to **[replace with date that is no later than 14 days prior to the oral hearing]**, that one or more particular States, local government bodies, or Indian Tribes send one representative each to the evidentiary hearing to answer Commission questions and/or make a statement for the purpose of assisting the Commission's exploration of one or more of the issues raised by the State, local government body, or Indian Tribe in the pre-hearing filings described above. The decision of whether to request the presence of a representative of a State, local government body, or Indian Tribe at the evidentiary hearing to make a statement and/or answer Commission questions is solely at the Commission's discretion. The Commission's request will specify the issue or issues that the representative should be prepared to address.

States, local governments, or Indian Tribes should be aware that this evidentiary hearing is separate and distinct from the NRC's contested hearing process. Issues within the scope of contentions that have been admitted in a contested proceeding for a COL application are outside the scope of the uncontested proceeding for that COL application. In addition, while States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to issues regarding the COL application or the NRC Staff's associated environmental review that do fall within the scope of the uncontested proceeding (i.e., issues that are not within the scope of admitted contentions), they should be aware that many of the procedures and rights applicable to the NRC's contested hearing process due to the inherently adversarial nature of such proceedings are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR § 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR § 2.315(c) (for interested States, local governments, and Indian Tribes] seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect a State's, local government's, or Indian Tribe's right to participate in the separate contested hearing process.

If necessary: The Commission recognizes that [a request] / [requests] to participate under 10 CFR § 2.315(c) in proceedings regarding this COL application [was] / [were] previously dismissed on mootness grounds by an NRC Atomic Safety and Licensing Board. Such dismissals apply solely to the contested portion of the proceeding, and do not affect any rights to participate in this uncontested portion of the proceeding.

²⁵ The process for accessing and using the agency's E-filing system is described in the [DATE] notice of hearing that was issued by the Commission for this proceeding. See Notice of Hearing [xx FR xx]. Participants who are unable to use the EIE, or who will have difficulty complying with EIE requirements in the time frame provided for submission of written statements, may provide their statements by electronic mail to hearingdocket@nrc.gov.

CHAPTER IV – COMMISSION MEETINGS/HEARINGS

If necessary: If the COL application contains an ITAAC closure request pursuant to 52.97(a)(2) or an LWA request, appropriate language should be inserted regarding the necessary findings for those items.

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INSTITUTIONAL CORRESPONDENCE

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

INCOMING CORRESPONDENCE

1. Receipt and Review by the Office of the Secretary

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

GUIDELINES FOR COMMISSION RESPONSE

1. Action Assigned by the Office of the Secretary

a. Action Office

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

b. Action Assignment Sheet

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

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

c. Signature Level

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

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

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

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

d. Suspense Date

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

e. Acknowledgment Requirements

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

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

f. Ex parte Communications

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

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

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

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

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

COMMISSION DAILY READING FILE

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

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

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

OUTGOING CORRESPONDENCE

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

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

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

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

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

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

1. Procedures for Commission Correspondence:

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

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

2. Procedures for Chairman's Correspondence:

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

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

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

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

3. Dispatch of Outgoing Correspondence and Information Copies

- a. Letters to Congressional Offices

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

CHAPTER V – INSTITUTIONAL CORRESPONDENCE

b. Non-Congressional Letters

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

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

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

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CHAPTER VI – TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS²⁶

Members of Congress, Members of Congressional Committees, and their staffs often request copies of classified, Safeguards Information and unclassified documents, referred to below as "sensitive" documents. The procedures set forth in this section are established to ensure that these Congressional requests are treated uniformly and responded to promptly.

GUIDELINES AND PROCEDURES

Specific guidelines and procedures governing the handling of incoming requests (both oral and written), the coordination of responses, and the transmittal of documents are set forth below:

1. Sensitive documents are documents within the agency's possession that have not been disclosed to the public and that may be withheld from public disclosure under the Freedom of Information Act (FOIA) or Privacy Act.
2. The Office of Congressional Affairs (OCA) is the proper office to handle requests from Members of Congress or Congressional committees and their staffs for sensitive documents. In the event such requests are received elsewhere in NRC, they should be referred to OCA for handling. OCA is to assure that all such requests are accorded uniform treatment and responded to promptly within the guidelines established by the Commission.
3. Sensitive documents will normally be provided only upon written request. When sensitive documents are requested orally by a Member of Congress or a Congressional staff person, OCA should inform the requestor that the document or documents requested contain sensitive information and ask that a written request be made to the Commission. In matters where time is of the essence, the written request of a Member of Congress or Congressional staff person may be dispensed with as long as the request is memorialized by OCA. Copies of all memoranda prepared by OCA which memorialize such requests are circulated to the Commission by OCA. The Commission's general practice is to provide sensitive documents requested by Members of its Congressional oversight committees. It will also provide sensitive documents to other Members of Congress when the documents address matters pertaining to his or her State or District. In other circumstances, OCA should advise the Member that the NRC

²⁶ Pursuant to Section 402 of the *Consolidated and Further Continuing Appropriations Act, 2015*, the July 5, 2011, version of this chapter is in effect and cannot be amended.

CHAPTER VI – TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

prefers that such requests be made through the full Committee or Subcommittee Chairman or ranking minority Member of an NRC oversight committee.

4. Documents relating to ongoing security activities, adjudications, pending enforcement actions, or ongoing investigations are particularly sensitive, and the Commission's preference is that these documents not be provided to Congress until after the agency has decided the matter at issue. When documents within these categories are requested, OCA will discuss the sensitivity of the document with the requester and ask to defer the request until after the agency has made its decision on the matter at issue. If the requester refuses to withdraw or defer his or her request, then OCA, after consultation with the Commission, will provide these documents to Congress pursuant to the procedures set forth below.
5. Unless otherwise directed by the Commission, sensitive documents are to be transmitted by the Director, OCA, under a cover letter that identifies their sensitive nature and requests that the documents be held in confidence with access limited to Members and committee staff. The cover letter should clearly identify the documents supplied. Where not previously established, the exact wording of the cover letter should be coordinated with the Office of the General Counsel (OGC). Each page of each sensitive document provided shall be marked "Not for Public Disclosure."
6. As with all other correspondence with Congressional Committees and Subcommittees, copies of the transmittal letter should be routinely provided to the Committee Chairman or Ranking Minority Member. If requested, the documents supplied as enclosures to the transmittal letter should be provided. Copies of all letters transmitting sensitive documents to Congress are circulated to the Commission by OCA.
7. All letters going to Congress transmitting Safeguards Information should have in the body of the letter the following:

Enclosure(s) XX contains Safeguards Information and must be handled and stored in accordance with 10 CFR 73.21 as noted and described in the cover sheet. Therefore, I request that access to this (these) enclosure(s) be limited to you and those of your staff who have a need-to-know. In addition, pursuant to Section 149 of the Atomic Energy Act of 1954, as amended, and 10 CFR 73.59, access to Enclosure(s) XX must be restricted to those members of your staff who have undergone fingerprinting for a prior U.S. government criminal history check.
8. Responses to requests for investigative records compiled for law enforcement purposes should be coordinated with the Executive Director for Operations (EDO), the Office of the General Counsel (OGC), and/or the Office of the Inspector General (OIG), depending upon the nature of the records requested.

CHAPTER VI – TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

9. Responses to requests for the following types of sensitive documents should be coordinated, as appropriate, with the EDO, CFO, and OGC:
 - a. classified documents (National Security Information and Restricted Data);
 - b. documents containing Proprietary Information;
 - c. agency files containing personnel or medical information, the public disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
 - d. documents containing Safeguards Information;
 - e. draft documents containing inspection and enforcement findings, either in their entirety or excerpts from them;
 - f. staff drafts, predecisional memoranda, and letters containing advice, recommendations, or opinions prepared in or by an office reporting to the Commission, EDO, or CFO, on matters pending agency review and decision; and
 - g. documents containing confidential commercial information relating to the awarding of grants, contracts, or other agency procurement actions, disclosure of which may jeopardize the agency's competitive position.
10. Responses to requests for documents containing classified or Safeguards Information should also be coordinated with the Office of Nuclear Security and Incident Response. Established procedures for handling and storing classified or Safeguards Information should be followed and delivery made only to Congressional staff persons with the appropriate clearance and need to know.
11. Classified documents originated by another agency will not be transmitted, and the requester will be advised to contact the originating agency directly, pursuant to Executive Order 13526. The possible release of NRC documents containing classified information originated by another agency will be coordinated with the originating agency. In addition, Sensitive Unclassified Non-Safeguards Information (SUNSI) documents (e.g. Homeland Security Information or other sensitive security related information) received from another Federal agency will not be transmitted.
12. Requests for lists of SECY papers and other administrative records relating to the deliberative, decision-making process of the Commission should be coordinated with the Office of the Secretary (SECY).
13. Responses to requests for sensitive documents used in the deliberative,

CHAPTER VI – TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

consultative, or predecisional activities of the Commission itself must be reviewed by the Commission. These documents include the following items:

- a. transcripts, electronic recordings, or meeting summaries of Commission meetings closed pursuant to the Government in the Sunshine Act (e.g., pending adjudications and enforcement actions, pending investigations, litigative strategy and frank discussion of individuals where release would invoke privacy issues);
 - b. interoffice communications between and among Commissioners and their personal staff containing predecisional advice, recommendations, or opinions;
 - c. documents containing predecisional staff advice, recommendations or opinions prepared by a member of a Commissioner's personal staff or a special consultant to a Commissioner; and
 - d. documents containing predecisional staff advice, recommendations, or opinions of an office reporting directly to the Chairman, Office of Congressional Affairs (OCA), and Office of Public Affairs (OPA), or to the Commission (OGC, SECY, OCAA, OIP, and the EDO). (These documents specifically include those subject to the attorney-client privilege and documents prepared by legal counsel which reveal the theory of a case or litigative strategy. They also include investigative reports prepared by OI pending Commission action).
14. In coordinating with Commissioner offices, OCA should first collect the requested documents in coordination with SECY and the relevant Commission-level offices. Once the documents have been compiled and a cover letter drafted, a listing of the documents and the draft cover letter, and a proposed date for transmittal should be provided to each Commissioner for his or her review. Unless otherwise advised by the Commission, the Director, OCA, may transmit the requested documents to the requesting party on the date proposed.²⁷
15. In some cases, where the nature of the documents is highly sensitive, the Commission may wish to consider alternatives to direct transmittal. For example, the Commission may wish to suggest retaining the documents on the premises and making them available to Congressional staff for their review. It is the responsibility of the Director, OCA, and of the EDO, CFO, or the relevant Office Director to call the attention of the Commission to especially sensitive

²⁷ Appendix 13 contains a checklist for use by relevant offices which, in coordination with OCA/OGC and SECY, are gathering Commission documents pursuant to Congressional document requests.

CHAPTER VI – TRANSMITTAL OF SENSITIVE DOCUMENTS TO CONGRESS

- documents which in their judgment may require special handling.
16. In cases where non-public documents requested by a Congressional source are also being requested under a FOIA request, they should be transmitted to the requesting Congressional committee under a cover letter signed by the Director, OCA, explaining that the documents are subject to a pending FOIA request and requesting that they be maintained in confidence pending a FOIA determination. In cases where there is no FOIA request pending, the cover letter should simply state that the document or documents are not publicly available and ask that they not be disclosed to the public.
 17. The originating office shall promptly advise OCA of any subsequent determination authorizing the public release of documents sent to Congress under sensitive handling procedures. OCA should then inform Congressional committees that have been given these documents of such a determination.

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CONGRESSIONAL HEARINGS

The Chairman, as official spokesman for the agency, or his designee, is responsible for presenting the agency's testimony for Congressional hearings. Commissioners will testify at Congressional hearings when invited to do so by the Congress and may elect to attend at other times.

PREPARATION OF TESTIMONY AND SUPPORTING INFORMATION

1. Planning Meetings

- Upon learning of a potential Congressional hearing where NRC may be asked to testify, either informally or through a letter of invitation, OCA will immediately notify the Commission and an initial planning meeting will be set up by the Director of Congressional Affairs with the Chairman or his/her designee. Attendees may also include the Executive Director for Operations (EDO) and the General Counsel (or their designees), as well as other office directors or their designees, as appropriate. A representative from each Commissioner's office may also be invited to attend.
- The purpose of the initial planning meeting is to identify and discuss: (1) the objective(s) of and key topics for the hearing; (2) who should testify for the NRC; (3) NRC's role in the hearing and key messages to be incorporated into the testimony; (4) what backup material is required (questions and answers, plant information summaries, etc.); (5) the role of other hearing panel participants, if applicable; and (6) relevant supporting documents (GAO reports, etc.) that might provide insight as to the scope and purpose of the hearing.
- Additional meetings may be scheduled by the Chairman and/or OCA to prepare the witness for the hearing. The topics to be covered at these briefings include: any last minute intelligence and logistics, questions the witness may be asked, and discussion of the oral statement by the witness. Typically attendance should be kept to a minimum subject to the needs of the witness, and may include the heads of OCA, OPA, EDO, OGC, CFO, or their designee, and a representative from the Chairman's Office (if he/she is not the NRC witness) should attend. Other office directors may be invited depending on the Congressional entity conducting the hearing and the subject matter. As a recommended collegial practice, a representative from each Commissioner's office may be invited to such a meeting for hearings at which the entire Commission will testify. OCA will also keep Commissioner offices informed through the Chiefs of Staff meetings.

CHAPTER VII – CONGRESSIONAL HEARINGS

2. Preparation of Testimony and Supporting Information

- The Director of OCA should establish, based on the outcome of the initial planning meeting, and with input from OEDO/OGC, the expected products and overall schedule, with specific milestones, to ensure the timely delivery of a high quality product to the Commission for review and approval and to the Congress for presentation.
- OCA and the staff shall designate the lead individuals for each hearing who will be responsible for coordinating preparation of the testimony and hearing materials utilizing NRC staff input. The EDO and/or General Counsel, as appropriate, will assign one staff individual (at the OEDO level) the responsibility, authority, and accountability for facilitating preparation of input materials for the hearing and providing them to OCA. This staff person must remain cognizant of the status of the prepared materials and assist OCA in the timely delivery of the required materials to the Commission for review and approval and to Congress, and any pre-hearing and post-hearing agency follow-up work. The final draft testimony must be timely so that the Chairman will be afforded enough time to review the document and allow the Chairman's Office to forward the testimony to the Commissioners for comment and approval at least 3 business days prior to the scheduled deadline for submittal to Congress. Time must also be provided for OMB review of draft testimony addressing budgetary needs (e.g., appropriations or authorization bills).
- OCA will provide information for the hearing as appropriate. The Questions and Answers (Q's and A's) must be concise; contain messages consistent with the testimony; address key areas of Congressional concern as we understand them; and address related GAO, IG, or other report findings. Any new information should be brought to the specific attention of the Commission. The information should be provided to the Chairman and Commissioner offices at least one week in advance of the hearing or earlier if directed by the Chairman.
- If a Commissioner wishes to have his or her separate views noted in the Chairman's testimony, he or she is urged to provide input to the Chairman and the other Commissioners when his or her comments are provided on the draft testimony. A Commissioner may provide his or her own written testimony or an oral statement at the hearing when the Commission is invited to testify in accordance with the committee's invitation letter. In general, the Commission submits only one written testimony that has been coordinated among all Commission offices.
- Under the Budget and Accounting Act of 1921 and implementing guidance issued by the Office of Management and Budget (OMB), budget-related

CHAPTER VII – CONGRESSIONAL HEARINGS

testimony must be submitted to OMB for clearance prior to its submission to Congress. Submission to OMB occurs after the Commission has reviewed and approved the testimony.

COMMITMENTS AND POST-HEARING QUESTIONS

During the course of a Congressional hearing, officials who testify on behalf of the NRC occasionally make commitments to provide additional information at a later date. Witnesses are also frequently asked to supply documents or information for the hearing record. In other situations, witnesses may promise to examine a particular matter and report back to an individual Member of Congress. Specific guidelines and procedures for tracking commitments made in Congressional hearings and forwarding responses to Congress are as follows:

- Typically OCA will receive correspondence from the Committee with the Questions for the Record (QFRs). These QFRs are directed typically to the Chairman for response on behalf of the Commission but may be directed to the Chairman for response in his or her individual capacity. Other members of the Commission may receive QFRs requesting their individual response. These QFRs will be assigned by SECY to the EDO, CFO, or the appropriate Commission-level office to develop responses to the QFRs. A suspense date is negotiated with the EDO or appropriate Commission-level office depending on the requested due date. Draft QFR responses will be circulated to the Commission for review and approval at least 5 business days before delivering them to Congress. For QFRs directed to the Chairman for response on behalf of the Commission, Commissioners note their approval, or comments and changes, if any, on the proposed responses and transmit them to OCA with information copies to other Commissioner offices. Comments and changes suggested by Commissioners are considered by OCA in consultation with the Chairman for incorporation. Comments or changes supported by a majority of the Commission will be incorporated into the responses. QFR responses with substantive changes (i.e., changes other than grammar or syntax) will be promptly recirculated to the Commission for a 3-business-day period prior to dispatch to ensure that a majority view of the Commission is reflected. If it is not possible to meet the 3-business-day deadline, OCA will promptly inform the Commission that the recirculated responses will be delayed and the Commission may determine, by majority, whether to seek an extension from Congress or to review the recirculated responses on a shortened time frame. Commissioners may provide views on the recirculated version of the responses to the Chairman and OCA. OCA distributes to Commissioner offices a copy of the final QFR responses transmitted to Congress.
- QFRs directed to an individual member of the Commission will be responded to by that member. Staff will provide draft responses and technical assistance as requested.

CHAPTER VII – CONGRESSIONAL HEARINGS

- If information requested during the hearing is to be provided in a form other than signed correspondence (e.g., documents intended as inserts for the hearing record), OCA will track the commitment and provide it to the Commission for information 5 business days before delivering it to Congress.
- Post-hearing communications with the Senate or House Appropriations Committees are handled jointly by the CFO and OCA and response time schedules are set by the CFO in coordination with the Chairman and OCA.
- Documents for Congress that are publicly available do not have to be cleared with the Commission before they are provided to Congress.
- Copies of hearing transcripts where the Commission has testified will be distributed to Commissioners by OCA for the purpose of each Commissioner editing his or her own testimony. OCA will compile Commissioner edits into the final edited transcript.
- Copies of hearing transcripts where the Staff has testified will be distributed to the appropriate EDO, CFO, and Commission-level offices by OCA for editing. OCA will prepare the final edited transcript.
- OCA will transmit inserts for the hearing record along with the edited hearing transcript. All items will be transmitted promptly to Congress.

APPENDIX 1

PROCEDURES FOR OBTAINING NOMINATIONS FOR NRC'S ADVISORY COMMITTEES

The NRC has one statutory advisory committee (the Advisory Committee on Reactor Safeguards (ACRS)) established by Section 29 of the Atomic Energy Act of 1954, as amended that reports directly to the Commission. Additional discretionary committees reporting to the Commission or other senior NRC management are established as needed.

At the current time the Commission has two advisory committees in addition to the ACRS. The Advisory Committee on the Medical Uses of Isotopes (ACMUI) reports to the Director of NMSS and the Licensing Support Network Advisory Review Panel (LSNARP) reports to the Chief Judge ASLBP.

For committees reporting to the Commission, the following procedures have been established. (SRM-COMIS-94-003, SRM-COMSECY-94-018, SRM-COMSECY-00-0032, SRM-SECY-06-0028)

1. The Executive Director of the advisory committee with the vacancy should prepare a draft *Federal Register* Notice and a Press Release for Commission approval and a list of the professional societies/technical organizations to which it would be sent for the solicitation of nominations. These documents will indicate what specific expertise/skills are being sought for the opening. The specific expertise/skills will be chosen in consultation with the advisory committee that has the opening. The Executive Director of the advisory committee will ensure that the nomination process considers and is consistent with the NRC's Comprehensive Diversity Management Program.
2. When the *Federal Register* Notice and Press Release are published, notification of the search for nominations will be given to appropriate professional societies/technical organizations. The advisory committee with the opening should be specifically invited to suggest candidates.
3. All nominations and resumes should be sent directly to the committee's Program Management, Policy Development and Analysis (PMDA) Branch contact or the Office of the Chief Human Capital Officer (OCHCO)
4. The committee's Executive Director should convene the appropriate screening panel for review of nominations and provide it with the necessary administrative support. The panel will be composed of:
 - a. a senior OGC attorney acting as Chair selected by the General Counsel;
 - b. the NRC Committee Management Officer; and

APPENDIX 1

- c. the Executive Director of the advisory committee, who will also serve as the Secretary of the panel and continue to staff all pertinent functions and activities.
- 5. Each screening panel will:
 - a. Review and rate the nominations for the selecting official using as benchmarks the specific expertise/skills being sought for the opening, as well as the individual's breadth of knowledge and ability/experience in applying his/her skills to problems outside of their specific field of expertise. The panel's report should list all of the qualified candidates, and it should rank at least the best qualified candidates. A brief narrative should be provided identifying the criteria and rationale for the best qualified rankings.
 - b. In carrying out the provisions of (a) above, the panel may seek the advice of other individuals whose views may be useful to the screening panel. Specifically, the panel should consult with an ethics counselor in the Office of the General Counsel on matters concerning potential conflicts of interest or prohibited financial holdings.
 - c. Submit a copy of the panel's assessment to the appropriate advisory committee for its independent recommendation on the nominees, as well as submit a COMSECY to the Commission (or recommendations to the designated selecting official for the particular advisory committee).
- 6. The advisory committee should submit its selection recommendations to the screening panel, and/or the Commission (or the designated selecting official) as they see fit.

At the current time the Commission has delegated the responsibility of appointing members of the ACMUI to the Director, NMSS after consultation with the Commission (SRM-SECY-06-0028). Consultation will take the form of an informational memorandum from the Director of NMSS to the Commission prior to appointing a member of the ACMUI. Members of the LSNARP are representatives of the parties and potential parties to the High Level Waste proceeding.

APPENDIX 2

PROCEDURES FOR HANDLING WITHHELD DOCUMENTS IN COMMISSIONERS' OFFICES UNDER FOIA

1. Each Commissioner's office will give SECY copies of all the documents covered by the FOIA request, including the documents to be withheld, with the applicable exemption number for each document to be withheld. The attached standard templates (Attachment 1 or 2) should be used when responding to SECY.
3. When a Commissioner does not want OGC or the FOIA office to see a document to be withheld, the Commissioner's office will provide to SECY, a "certification" (Attachment 2) to be forwarded to OGC. The "certification" will state that the Commissioner's Legal Counsel has reviewed the document and that the document may be withheld under a specific stated FOIA exemption.
4. The FOIA office will maintain the required files of documents that are withheld by the Commission offices. Maintenance of these files will be in accordance with required retention schedules.

Attachments

APPENDIX 2



UNITED STATES
NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555-0001

ATTACHMENT 1
TO APPENDIX 2

DATE

MEMORANDUM TO: FOIA/PA Caseworker, XXXXXXXX
FOIA/PA Section

FROM: XXXXXX
Legal Counsel
Office of XXXXXX

SUBJECT: FOIA/PA-13-XXXX

- ☐ No records subject to the request.
- ☐ Records already publicly available. (Appendix)
- ☐ Records being released in their entirety. (Appendix)
- ☐ Records being withheld in part. (Appendix)*
- ☐ Records being withheld in their entirety. (Appendix)*
- ☐ Records to be referred to other offices/agencies/companies. (Appendix)
- ☐ Ongoing investigation - 7A Certification attached.
- ☐ Attached is NRC Form 496, "Report of Staff Resources for Processing FOIA Requests."
- ☐ Place released records in PDR.
- ☐ Do not place released records in PDR.
- ☐ This is a partial response to this request.
- ☐ This is the final response to this request.
- ☐ This response contains sensitive security information. (Appendix)
- ☐ This response does not contain sensitive security information.

APPENDIX 2

___ *Foreseeable harm statement attached for Exemption 5. Provide a statement for Exemptions 1, 3, 4, 6, 7A and 7C only if not obvious.

___ A discretionary release of information was not made in a record(s) subject to this request.

___ A discretionary release of information was made in a record(s) subject to this request.

Information was released which would have qualified for withholding under:

Exemption 2

Exemption 5

(check all that apply)

___ OTHER COMMENTS:

Attachment(s):

As stated

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	10/14/94	9411040082	Enforcement Notification to Commissioners From Office of Enforcement, Subject: Proposed Imposition of Civil Penalty – \$8,000 (1 page) EXAMPLE

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	02/06/93	E-Mail from J Dyer, NRR to S Collins, RI, Subject: Schedule Conference Call (1 Page) EXAMPLE
2.	05/18/95	*Inside NRC (4 pages) EXAMPLE

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX
RECORDS LOCATED IN ADAMS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	04/27/04	MLxxxxxxxxx	Letter to Congressman Markey from Chairman N. J. Diaz, Subj: Response to Request for the Declassification of Documents relating to the TMI Accident (1 page) EXAMPLE

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX RECORDS BEING WITHHELD IN PART

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)/EXEMPTIONS</u>
1.	08/26/94	Memo to G. Beveridge, NMSS from J. Grobe, RIII, Subject: Voucher for Professional Services (3 pages) EX. 6 EXAMPLE

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX RECORDS BEING WITHHELD IN THEIR ENTIRETY

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)/EXEMPTIONS</u>
1.	10/13/94	OGC markup of draft Notice of Violation and Proposed Imposition of Civil Penalty (9 pages) EX. 5 EXAMPLE

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX RECORDS TO BE REFERRED TO OTHER OFFICE/AGENCY/COMPANY

<u>NO.</u>	<u>DATE</u>	<u>ENTITY</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	09/02/96	OE	Memo to L. Chandler, OGC from J. Lieberman, OE, Subject: NOV with attached draft NOV (4 pages) EXAMPLE
2.	10/22/96	Licensee	Letter to J. Smith, NMSS from M. Jones, DOE Subject: corrosion issues (25 pages) EXAMPLE

(Note to Legal Counsel: When a record is to be referred to a licensee you need to provide the FOIA office with the appropriate licensee contact information (i.e., name, title, company, address, and telephone number if available).

APPENDIX 2

Re: FOIA/PA-xxxx-xxxx

APPENDIX RECORDS CONTAINING SENSITIVE SECURITY INFORMATION

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/ (PAGE COUNT)</u>
1.	1/8/03	Registry of Radioactive Sealed Sources and Devices, Safety Evaluation of Device, Amended in its Entirety, CA0215D102G (7 pages) EXAMPLE

APPENDIX 2

ATTACHMENT 2 TO APPENDIX 2

CERTIFICATION

Upon review of the records subject to the Freedom of Information Act Request (FOIA)_____, the documents listed below, or the indicated portions thereof, should be withheld from release under the above reference FOIA request. The undersigned hereby certifies that each document or portion thereof is exempt from public disclosure for the exemption set forth below.

NAME AND OFFICE

DATE

WITHHELD DOCUMENTS

EXEMPTION

- 1.
- 2.
- 3.
- 4.
- 5.

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APPENDIX 3

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: SECY-15-0010: FINAL PROCEDURES FOR HEARING
ON CONFORMANCE WITH THE ACCEPTANCE
CRITERIA IN COMBINED LICENSES

Approved _____ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached _____ None _____

SIGNATURE

DATE

Entered in "STARS" Yes _____ No _____

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APPENDIX 4

BASIS FOR DETERMINING VOTING RESULTS

In determining the outcome of Commission votes, the following rules apply:

1. votes from at least a quorum of 3 Commissioners are required to act;
2. a vote to “abstain” may be counted to constitute a bare quorum if there are less than 3 **yes** votes plus **no** votes;
3. action is based on the majority of those participating (**yes** votes plus **no** votes plus the **abstain** votes used for establishing a quorum of 3 Commissioners).

Primary Examples:

	Votes		<u>Abstain</u>	<u>Not Particip.</u>	<u>Quorum</u>	<u>Results</u>
	<u>Yes</u>	<u>No</u>				
Case 1	3	0	0	2	Yes	Passes
Case 2	0	3	2	0	Yes	Fails
Case 3	2	2	0	1	Yes	No Action
Case 4	2	2	1	0	Yes	No Action
Case 5	2	1	2	0	Yes	Passes
Case 6	2	1	1	1	Yes	Passes
Case 7	2	1	0	2	Yes	Passes
Case 8	2	0	1	2	Yes	Passes
Case 9	2	0	0	3	No	No Action
Case 10	2	0	2	1	Yes	Passes
Case 11	1	0	2	2	Yes	No Action
Case 12	1	1	0	3	No	No Action
Case 13	2	0	3	0	Yes	Passes

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APPENDIX 5

RESOLUTION OF 2-2 VOTE

As a general matter requests for Commission action will be denied if the Commission vote is 2-2.¹ Therefore, a 2-2 vote will result in:

- a. denial of staff recommendations, except as noted below;
- b. denial of full power operating licenses;
- c. referral of export license applications to the President;
- d. denial of motions in adjudicatory proceedings;
- e. denial of motions for reconsideration challenging Commission adjudicatory orders or other Commission statements having a legal effect;
- f. denial of review of Licensing Board decisions and Director's Decisions under 2.206, even if staff recommends "review";
- g. denial of requests to close Commission meetings or to hold meetings on short notice; and
- h. denial of requests by members of the public to speak at Commission meetings.

Exceptions to this rule include:

- a. The Commission may alter policy decisions which have not been set forth in an adjudicatory order or policy statement. For example, if the Commission previously took the position that the Commission's export licensing responsibilities should be given to the Executive Branch, a 2-2 vote on this would result in a change of that policy to one of the Commission having no position on the matter. This permits the Commission to provide current views on policy matters before Congressional committees, etc.;
- b. If staff has been delegated authority to act by the Commission but as a matter of discretion seeks Commissioner views before taking action (e.g., an enforcement action), the staff may take its proposed course of action;
- c. Commissioner requests for extension of time to respond to staff papers will be granted because under the Commission's procedures such requests are granted unless a majority objects;

¹ Reference OGC Memorandum of May 25, 1988.

APPENDIX 5

- d. Sunshine Act transcripts will be released because a majority of the full Commission must support invocation of an exemption;
- e. FOIA appeals will be granted because a majority must support invoking an exemption.

In some cases rather than taking action on a matter that resulted in a 2-2 vote, the Commission may choose to defer a decision until a fifth Commissioner has been appointed.

SPECIALIZED PROCEDURES WHEN COMMISSION REVIEW TIME FOR ADJUDICATORY ACTIONS IS LIMITED

When Commission review time is limited by NRC rules in adjudicatory actions,¹ the following procedures are applied.

1. Prior to or concurrent with the submission of a SECY adjudicatory paper for the Commission's consideration, the originating office (usually the Office of Commission Appellate Adjudication (OCAA) but in some circumstances the General Counsel (OGC)) may seek an extension of time for research, analysis, and/or Commission review. SECY can grant requests for extensions via SECY order. OCAA (or OGC, as appropriate) will draft a SECY order extending the time for Commission review and will notify the Commission by circulating the draft order to the Commissioner Legal Counsel and SECY via e-mail. The Secretary will issue the order as circulated unless a majority of the Commission instructs otherwise. Notification should be made, and a draft order circulated to the Commissioners' Legal Counsel and Chiefs of Staff, and Commissioners directly, if they so elect, no later than 3 business days in advance of the Secretary's action on the Order. If a shorter time period is specified, SECY will ensure that all Commissioner offices have had an opportunity to review the order by contacting each office in person or by telephone prior to the order's issuance.

Extensions of review time requested by a Commissioner after formulation of a majority position will be granted subject to the approval of a majority of the Commission.

2. The Secretary issues an order informing the appropriate Board and the parties of the extension of time for which the Commission extends its review in accordance with 10 CFR 2.346.

¹ In accordance with the requirements of 10 CFR Section 2.341, within 120 calendar days after the date of a decision or action of a presiding officer or within 120 calendar days after a petition for review of a decision of a presiding officer has been served, whichever is greater, the Commission may review the decision or action on its own motion (*sua sponte*), unless the Commission, in its discretion, extends the time for its review.

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APPENDIX 7

STAFF REQUIREMENTS MEMORANDUM AND COMMISSION VOTING RECORD

February 3, 2016

MEMORANDUM TO: Victor M. McCree
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /**RA**/

SUBJECT: STAFF REQUIREMENTS – SECY-15-0129 – COMMISSION
INVOLVEMENT IN EARLY STAGES OF RULEMAKING

The Commission commends the staff for providing a timely and thorough response to the Commission's direction to provide a proposed plan for enhanced Commission involvement in the early stages of agency rulemaking. The Commission has approved the staff's specific recommendations that were summarized on page 10 of SECY-15-0129, with the exception of recommendation 8, and subject to the changes and comments below. With respect to recommendation 8, the Commission has neither approved nor disapproved reaffirming the current role of the Committee to Review Generic Requirements (CRGR).

During the pendency of the Commission's deliberations on SECY-15-0129, Congress passed and the President signed Public Law 114-113, including Division D, "Energy and Water Development and Related Agencies Appropriations Act, 2016." The Joint Explanatory Statement accompanying the Act stipulates that a rulemaking plan be prepared for all rulemakings except those exempted by the Commission and directs the minimum content of a rulemaking plan. Consistent with this, and upon its own deliberation, the Commission modifies the template and process proposed by the staff in SECY-15-0129, as follows.

Recommendation 1:

The new rulemaking plan requirement should apply to all rulemaking that is not already explicitly delegated to the staff as a staff delegated rulemaking (the modifier "nonroutine" should not be used).

The staff should make the following revisions to the streamlined rulemaking plan template:

- a. In addition to listing a preliminary priority, a brief discussion regarding the basis for the preliminary priority should also be provided.
- b. The "Description and Scope" section of the template should define the regulatory issue, describe the existing regulatory framework, identify regulatory options and alternatives to rulemaking, and discuss why rulemaking is preferable to these other alternatives.
- c. Include, as an enclosure a summary OGC analysis of legal matters.
- d. Include a section containing a preliminary backfit analysis.

APPENDIX 7

- e. Include a preliminary assessment of the cumulative effects of regulations (CER), to the extent known, including a description of any early stakeholder engagement upon which this assessment is based.
- f. Include a section on Agreement State considerations.
- g. Include an explicit question to the Commission, and recommendation if desired, on whether ACRS review of the proposed rule is warranted.

The staff should provide draft and final regulatory bases to the Commission for all rulemaking that is not already explicitly delegated to the staff via Commissioners Assistants Notes no less than 10 business days before publication to ensure the Commission is provided an opportunity to assess whether additional involvement is warranted. Consistent with the Joint Explanatory Statement accompanying P.L. 114-113, the staff must obtain prior Commission approval if it wishes to prepare a regulatory basis document before the Commission has approved a rulemaking plan.

Recommendation 2:

The staff should explore ways to minimize the resources necessary to discontinue rulemaking, such as not completing a full regulatory analysis once enough information is gained that a cost-benefit test would not be passed.

Recommendations 7 & 8:

The staff should provide the Commission the criteria and guidance it develops for triggering a Committee to Review Generic Requirements (CRGR) review of a proposed rule.

The staff should inform the Commission if it determines that further process enhancements regarding CRGR would be beneficial after it has been able to assess lessons-learned and feedback from the use of the new guidance and criteria.

Additional

The rulemaking process should include explicit guidance for the staff to raise potential policy issues to the Commission as early as practicable in the rulemaking process, especially in those instances where leadership is not able to resolve significant differences in approach.

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
OGC
CFO
OCA
OPA
ODs, RAs, ACRS, ASLBP (via E-Mail)
PDR

APPENDIX 7



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

February 3, 2016

COMMISSION VOTING RECORD

DECISION ITEM: SECY-15-0129

TITLE: COMMISSION INVOLVEMENT IN EARLY STAGES OF
RULEMAKING

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 3, 2016.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran
OGC
EDO
PDR

APPENDIX 7

VOTING SUMMARY - SECY-15-0129

RECORDED VOTES

	<u>APPROVED</u>	<u>DISAPPROVED</u>	<u>ABSTAINING</u>	<u>N/P*</u>	<u>COMMENTS</u>	<u>DATE</u>
Chrm. Burns	X				X	11/23/15
Comr. Svinicki	X				X	12/16/15
Comr. Ostendorff	X	X			X	10/30/15
Comr. Baran	X				X	12/02/15

*Not Participating

APPENDIX 7

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Burns
SUBJECT: SECY-15-0129: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING

Approved ☒ Disapproved ☐ Abstain ☐ Not Participating ☐

COMMENTS: Below ☐ Attached ☒ None ☐

Entered in STARS

Yes ☒
No ☐



Signature

23 November 2015

Date

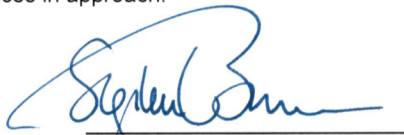
APPENDIX 7

Chairman Burns Comments on SECY-15-0129 “Commission Involvement in Early Stages of Rulemaking”

I commend the staff for providing a timely and thorough response to the Commission's direction. I approve the staff's recommendations in full. I support Commissioner Ostendorff's revisions to the staff's proposed streamlined rulemaking plan template, which would provide a more thorough discussion to inform the Commission's consideration of rulemaking plans.

Some stakeholders have expressed concerns about a perceived lack of involvement of the Committee to Review Generic Requirements (CRGR) in rulemaking activities and the level of rigor of the CRGR's review. I am sensitive to these concerns; however, I am not wholly convinced that expanding the CRGR's role will effectively address them. I do believe, however, that the staff's commitment to develop criteria and guidance for CRGR involvement in rulemaking packages will be a positive step. The staff should provide the Commission the CRGR criteria and guidance for information once they are developed. The staff has also committed to examining the need for further process enhancements regarding CRGR after it has been able to assess lessons-learned and feedback from the use of the new guidance and criteria. If the staff determines that further process enhancements would be beneficial, it should inform the Commission. While I am not convinced that expanding the CRGR charter is the most effective approach at this time, I am open to future enhancement of CRGR's role if warranted.

Finally, I support Commissioner Ostendorff's recommendation that the rulemaking process should include explicit guidance for the staff to raise potential policy issues to the Commission as early as practicable in the rulemaking process, especially in those instances where leadership is not able to resolve significant differences in approach.


Stephen G. Burns
23 November 2015

APPENDIX 7

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-15-0129: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING

Approved XX Disapproved Abstain Not Participating

COMMENTS: Below Attached XX None

Entered in STARS

Yes XX

No



Signature

12/16 /15

Date

APPENDIX 7

Commissioner Svinicki's Comments on SECY-15-0129 Commission Involvement in Early Stages of Rulemaking

I approve the broad elements of the staff's recommendation contained in the paper, subject to the amendments and exceptions noted in this vote. The staff's proposal is a solid foundation, but if we begin by thinking about what problems or gaps we are trying to address, it is apparent that some aspects of the staff's proposal fall a bit short. I also do not prioritize conducting rulemakings quickly over conducting them well. As Mahatma Gandhi said: "There is more to life than increasing its speed." Time added up front in the process that enhances informed decision making and results in the pursuit of only those rulemakings that are necessary and justified is time well spent.

I approve the institution of a streamlined rulemaking plan requirement in the form of a SECY paper that would request Commission approval to initiate any rulemaking not already explicitly delegated to the staff as a delegated rulemaking activity, but the modifier of "nonroutine" before "nondelegated" in the staff's proposal is not appropriate. This term is both undefined and scopes the requirement too narrowly. Under this rubric, the Commission would not have received a rulemaking plan SECY paper for the "routine" proposed incorporation by reference of IEEE Standard 603-2009, a matter members of the Commission have found so replete with policy issues that the Commission is conducting a public Commission meeting to explore them. The new rulemaking plan requirement should apply to all rulemaking that is not already explicitly delegated to the staff as a staff delegated rulemaking.

I approve the template for the rulemaking plan (Enclosure 2) subject to the addition of the following elements to the template. The template should include a section for a summary OGC analysis of legal matters. The template should include a section containing a preliminary backfit analysis, including a quantitative estimate of safety benefits. The template should include a section on Agreement State considerations. The template should also require, in the discussion or as separate sections, content explicitly addressing the NRC staff's definition of the regulatory issue, identifying why NRC rulemaking action is necessary, outlining alternatives to rulemaking, presenting any differing views that are currently dividing the staff on the issue, and providing the results of early stakeholder engagement. As the staff acknowledges in SECY-15-0129, these elements were historically contained in the rulemaking plans presented to the Commission and will serve to make the Commission's early involvement in the initiation of rulemaking a meaningfully informed deliberative process – not a ministerial ratification or "rubber stamping" of staff's proposed path forward. In this regard, the staff's definition of the regulatory issue (again, defining what problem we are fixing) and the presentation of possible alternatives to rulemaking (e.g., other regulatory instruments such as updating guidance) are essential to the Commission's decision making process. I further approve rescinding the existing delegations described on page 10 of SECY-15-0129, Items 1.b and 1.c of "Recommendations."

I approve the requirements that staff submit a SECY paper to request Commission approval to discontinue any rulemaking and for approval of any petition for rulemaking determination that recommends rulemaking. These elements flow naturally from, and are consistent with, the new requirement for Commission approval of rulemaking, described above.

I do not propose to disturb the list of currently approved agency rulemaking activities (Enclosure 1), which is unnecessary in light of the Commission's vote early next year on a staff proposal rebaselining the agency's entire scope of work, including ongoing rulemakings. However, I will comment on the repeated representation that the Commission has approved all current rulemaking activities "through the budgeting process." As I noted in my vote on COMSGB-15-

APPENDIX 7

0003, "I would be surprised if any of my colleagues could attest that the scant information we receive on proposed and ongoing rulemaking activities provided to us in the budget proposal provides anywhere near sufficient information to opine meaningfully on this question." I continue to hold to this view. I am encouraged, however, by the commitment of the NRC Chief Financial Officer to improving the quality of the agency's budget development process. I look forward to supporting her in this endeavor.

The Commission should not reaffirm the Commission's 2006 direction regarding CRGR and ACRS. With respect to review of rulemaking activities by the Advisory Committee on Reactor Safeguards (ACRS) and the Committee to Review Generic Requirements (CRGR), I agree that not all rulemaking activities should be subject to review by these bodies. It is my observation that the ACRS process with respect to rulemaking review is working reasonably well; at least, any modifications to the process beyond what the staff is already working on would not be a priority over addressing the deficiencies in the CRGR.

In the CRGR, the agency purports to have a process of rigorous internal challenge – a kind of "murder board" if you will – to maintain disciplined defense of, and adherence to, the backfit rule. In my observation, nothing of the kind is happening at the CRGR. We must either quit representing the CRGR this way or reform it to achieve this goal. I suspect that the central problem may be one of composition. Are the members of the CRGR appropriately dispassionate about the staff's backfit analyses or, since the members are, for the most part, Deputy Directors of offices with significant rulemaking activity, is the natural posture more one of "If I let hers go through, she will let mine go through"? We do not know the answer to that question but I do observe that the CRGR has not substantively modified a staff work product presented to them in some years. Based on a quick review, I could not find a single instance of the staff electing to recommend CRGR review of any rulemaking package since the waiver process was approved by the Commission in 2007 – not one, ever. To me, this is telling.

The EDO should task a small group to include representatives from among current CRGR members and also NRC staff from non-program offices, perhaps OCAA or technical staff advisors to the ACRS, to examine this question and propose for the Commission's consideration, changes to the CRGR charter, including, if merited, its purpose and composition.

In its recommendations 4 and 5, the staff elevates form over substance. It is hard to believe that in the Project Aim environment, the staff cries "Uncle" on its own self-imposed administrative burden in processing an Information Paper to the Commission and proposes to demote this work product to a Commissioners' Assistants Note. Rather, the staff should undertake a business process improvement on its processing of Information Papers under Project Aim. This should begin immediately. Rulemaking activities are significant and important. If the staff is in jeopardy of being crushed under the administrative burden of sending an information paper to its own Commission, it should fix that problem systematically rather than providing frivolous recommendations that the Commission vote on demoting this work product to a different one, with a different label on the top of the page. I ponder how former EDO Jim Taylor would have reacted to such a recommendation. I am confident that today's NRC is more than capable of holding to and surpassing the high standards he and other agency leaders historically set and achieved.

I also observe that Commissioners' Assistants Notes are not routinely publicly released. Recategorizing agency work product as the staff proposes has the potential to diminish agency transparency on these topics.

APPENDIX 7

I approve moving the due date for the annual submission of the Common Prioritization of Rulemaking process to the CFO to May or June, along with the Information Paper to the Commission. I approve inclusion of the ACRS and CRGR on the distribution for the Information Paper conveying the Rulemaking Activity Plan to the Commission and moving the date for the annual submission of the plan to May or June.

We now have nearly ten years of operating experience with the changes to the rulemaking process adopted in 2006. Although well intentioned, those changes were predicated on a forecasted deluge of rulemaking activity arising from a nuclear renaissance that did not materialize in the way predicted. Based on the voting record adopting those 2006 changes, the Commission appeared to worry that its review and approval process could become too much of a bottleneck, gumming up the orderly execution of agency work. In retrospect, however, the Commission's review and approval may have been providing a natural and appropriate restraint on the pacing and prioritization of embarking on new rulemakings and the effect of the removal of that wicket may have been the greater worry. Be that as it may, we have the chance to take corrective action now. The staff's proposal is a good start but the additional items I have proposed here are necessary in building confidence that the changes will result in the Commission's re-establishing itself, meaningfully and centrally, in one of the most significant authorities enshrined to us by the law – rulemaking.


Kristine L. Svinicki 16 December 2015

APPENDIX 7

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-15-0129: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING


Approved ☒ Disapproved ☒ Abstain ☐ Not Participating ☐

COMMENTS: Below ☐ Attached ☒ None ☐

Entered in STARS

Yes ☒

No ☐



Signature



Date

APPENDIX 7

Commissioner Ostendorff's Comments on SECY-15-0129, "Commission Involvement in Early Stages of Rulemaking"

I want to thank the staff for its thorough assessment of the rulemaking process in response to the SRM for COMSGB-15-0003, also titled "Commission Involvement in Early Stages of Rulemaking." In my vote on COMSGB-15-0003, I applauded the Chairman for initiating this proposal and I believe the staff has proposed a set of reasonable and pragmatic recommendations that, if implemented properly, will better ensure that we are applying our resources judiciously in the rulemaking arena and are only implementing new requirements when appropriately justified. My specific responses to each of the recommendations are provided below.

Recommendation 1: *Approve the institution of a streamlined rulemaking plan requirement in the form of a SECY paper that would request Commission approval to initiate any nonroutine, nondelegated rulemaking.*

- a. *Approve the template for the streamlined rulemaking plan.*
- b. *Rescind the delegation of authority in the SRM on COMNJD-06-0004/COMEXM-06-0006, "Streamlining the NRR Rulemaking Process," dated May 31, 2006 (ADAMS Accession No. ML061510316), that gave the Director of NRR the discretion to waive (in consultation with the General Counsel) the development and submission of rulemaking plans.*
- c. *Rescind the delegation of authority in the SRM on SECY-07-0134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," dated October 25, 2007 (ADAMS Accession No. ML072980427), that gave the Director of FSME (now merged with NMSS) the discretion to waive (in consultation with the General Counsel) the development and submission of rulemaking plans.*

I approve **Recommendation 1** as it provides a well-understood process to obtain Commission approval for non-routine, non-delegated rulemakings with minimal resource expenditure. However, the staff should revise the template to not only list a preliminary priority, but to also provide a brief discussion regarding the basis for the preliminary priority. Additionally, the "Description and Scope" section of the template should also discuss why rulemaking is preferable to other alternatives such as guidance revisions. I have also proposed additions to the template in my response to Recommendation 7. Additionally, the staff should provide draft and final regulatory bases to the Commission via Commissioners Assistants Notes no less than 10 days before publication to ensure the Commission is provided an opportunity to assess whether additional involvement is warranted.

Recommendation 2: *Approve the requirement that staff submit a SECY paper to request Commission approval to discontinue any rulemaking.*

I approve **Recommendation 2**, however, the staff should explore ways to minimize the resources necessary to discontinue rulemaking, such as not completing a full regulatory analysis once enough information is gained that a cost-benefit test would not be passed.

Recommendation 3: *Approve the requirement that staff submit to the Commission for approval any PRM determination that recommends rulemaking.*

I approve **Recommendation 3**, however, my approval of this recommendation is separate and distinct from the Commission direction needed for low or medium priority proposed rulemakings to be funded. Separately, as the majority of rulemakings proposed as a result of PRMs are low or medium priority, and are thus likely not to be funded, I do not believe the public is served by "granting" these PRMs. The staff should re-evaluate the process for

APPENDIX 7

PRM review to reconcile the granting of a PRM for which the associated rulemaking would likely never come to fruition.

Recommendation 4: *Approve submittal of the updated RAP as an enclosure to a CA note (W201100275) and move the due date for the annual submission of the RAP to November (W199500048).*

Recommendation 5: *Approve the inclusion of ACRS and CRGR on the distribution for the CA note submitting the RAP to the Commission.*

Recommendation 6: *Move the due date for the annual submission of the CPR process to the CFO in May, along with a CA Note to the Commission.*

I approve Recommendations 4, 5 and 6, as they represent simple changes to improve efficiency and effectiveness through better communication.

Recommendation 7: *Reaffirm the Commission's 2006 Direction that CRGR and ACRS not expand their roles to routinely review proposed rules.*

I approve Recommendation 7 relative to ACRS review and note the staff's statement that the Commission can direct the ACRS to review individual proposed rules at their discretion. The staff should include in its RAP template an explicit question to the Commission, and recommendation if desired, whether ACRS review of the proposed rule is warranted.

I approve Recommendation 7 relative to CRGR review subject to Commission review and approval of criteria for CRGR review of proposed rules as discussed in SECY-15-0129. I believe CRGR review of proposed rules would provide additional assurance that proposed rules are adhering to Commission expectations regarding backfitting and the use of qualitative factors, but am receptive to the use of a set of well-defined criteria that would provide this assurance while also minimizing expending resources unnecessarily.

Recommendation 8: *Determine that the CRGR not expand its role to become involved in resource allocation and rule prioritization.*

I neither approve nor disapprove Recommendation 8. In the SRM to SECY-15-0050, Cumulative Effects of Regulation Process Enhancements and Risk Prioritization Initiative," the Commission expressed its support for the consideration of risk-insights in existing agency processes. While SECY-15-0129 mentions the use of risk insights in the rulemaking prioritization process, it does not explicitly discuss how such insights are used. The staff should inform the Commission of how risk insights are explicitly used in the rulemaking prioritization process, and evaluate whether CRGR review of their use would be beneficial.

Separate from the recommendations provided in SECY-15-0128, I offer for Commission consideration an additional recommendation that the rulemaking process should include explicit guidance for the staff to raise potential policy issues to the Commission as early as practicable in the rulemaking process, especially in those instances where leadership is not able to resolve significant differences of approach. Two recent examples have raised my concern in this area, SECY-15-0065 (Mitigation of Beyond Design Basis Events) and SECY-15-0106 (Incorporation by reference of IEEE-603), both of which were proposed rules for Commission consideration that proposed different requirements for new reactors and operating reactors. In each case, the proposal for different requirements to apply to new and operating reactors should have been provided to the Commission for direction on how to proceed well before the proposed rule stage and perhaps could be raised as a proposed revision to the simplified rulemaking plan.

APPENDIX 7

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Baran
SUBJECT: SECY-15-0129: COMMISSION INVOLVEMENT IN
EARLY STAGES OF RULEMAKING


Approved XX Disapproved _____ Abstain _____ Not Participating _____

COMMENTS: Below _____ Attached XX None _____

Entered in STARS

Yes XX

No _____


Signature

12/2/15
Date

APPENDIX 7

Commissioner Baran's Comments on SECY-15-0129, "Commission Involvement in Early Stages of Rulemaking"

In this paper, the NRC staff provides eight recommendations for enhanced Commission involvement in the early stages of agency rulemaking. I appreciate the staff's thoughtful, thorough, and timely recommendations and approve them all subject to a few clarifications.

Currently, the staff typically submits a brief notation vote paper to the Commission seeking authorization to initiate any non-routine rulemaking. I agree with the staff that standardizing this familiar and effective process makes sense. As the staff emphasizes in the paper, these streamlined rulemaking plans should not become overly time consuming or resource intensive. Lengthy rulemaking plans would delay the rulemaking process and undermine the goal of preventing the significant expenditure of agency resources on rulemakings prior to Commission approval. Therefore, I approve the streamlined rulemaking plan template subject to the following edits: (1) because the Background section will summarize the reason to pursue rulemaking, the Description and Scope section should briefly describe "how the current regulation needs to change" rather than "why", and (2) the template should note that the Costs and Benefits section should not be included if the staff expects that the rule will be necessary for adequate protection.

In addition, the staff paper and draft template do not account for situations in which a notation vote paper presents multiple policy options, including rulemaking and non-rulemaking options. In this common situation, the staff should meet the requirement for a streamlined rulemaking plan by either: (1) including the necessary rulemaking plan information in the body of the options paper or (2) attaching a separate streamlined rulemaking plan to the options paper. Under either approach, the Commission will benefit from the information outlined in the template in its deliberations on the available options without the need for a cumbersome two-step process.

I also agree with the staff that it is unnecessary to expand the role of the Committee to Review Generic Requirements (CRGR) to routinely review proposed rules. As the staff paper explains, CRGR review of draft proposed rules would be duplicative because each of the individual offices represented on the CRGR already concurs on rulemaking packages. Deferring CRGR review until the draft final rule stage also reduces potential delays in the rulemaking process while allowing CRGR to assess any backfit questions with the advantage of public comments received on the proposed rule. I support Chairman Burns' suggestion that the criteria and guidance being developed by the staff for triggering CRGR review of a proposed rule should be provided to the Commission for information.

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PROCEDURES FOR STAFF PRESENTATIONS AT COMMISSION MEETINGS

In the interest of conserving time the following procedures apply to all staff members presenting information at Commission meetings.

1. The presentation should be based on the assumption that Commissioners have read the background paper(s) and are familiar with its content(s).
2. Briefings should cover approximately one-half of the allotted meeting time; the remainder should be reserved for Commission questions and answers.
3. At the outset, briefers should clearly identify the focus of the briefing, should indicate whether there are any safety, security, or emergency preparedness implications, and describe any potential new resource requirements (both personnel and financial).
4. Briefers should summarize background history through emphasis on only the important events.
5. Briefers should not read slides and handouts verbatim and should discuss only the high points on which they wish to focus the Commission's attention.
6. The briefing should be completed within the allotted time.
7. Briefers should follow the Web-based guidance provided by SECY for the preparation of briefing materials; see

http://www.internal.nrc.gov/SECY/pdf/briefing_guidance.pdf or

<http://www.internal.nrc.gov/ADM/branding/presentations.html>

A slide template for incorporating the NRC branding logo is also available on this website.

8. A sufficient number of copies of the slides or other relevant written information should be placed in the Commission briefing room 30 minutes before the start of the briefing for the public. See above guidance document for details.
9. The amount of material permitted on a slide is limited due to media streaming and live captioning but the material provided should have substantial content related to the topic. The Commission encourages the use of pictures, video, figures and charts, where relevant, but they should be explained by the presenter.

APPENDIX 8

10. As a recommended best practice, presenters should minimize the overuse of acronyms. If acronyms are used, they should be included in a list of acronyms in the presenter's slides and explained when first used.

APPENDIX 9

NUCLEAR REGULATORY COMMISSION ISSUANCES

The following types of significant Commission adjudicatory decisions are published in NUREG-750, "Nuclear Regulatory Commission Issuances" (NRCI).

1. Orders addressing a significant issue of law or policy, including but not limited to:
 - a. those which apply established rule of law to factual situations significantly different from those in earlier published orders;
 - b. those useful for the historical record;
 - c. those where the Licensing Board decision is modified or reversed by the Commission;
 - d. those not accepting the rationale of previously published decisions.
2. Licensing and enforcement orders issued by the Boards and the Commission that may not address significant legal or policy questions, but are nonetheless significant because of their content (e.g., suspension of licenses, imposition of civil penalties, results of immediate effectiveness reviews, action in cases likely to result in judicial review).
3. Orders applying legal theories or administrative policies in cases not significant by themselves but that contain issues capable of arising again where precedent would be useful (e.g., Seabrook low power operation order addressing financial qualification of applicants for low power operation license CLI-88-10, 28 NRC 573 (1988)).
4. Grants or denials of significant stay motions.

Ordinarily, less significant orders (e.g., orders under 10 CFR 2.346) and minor procedural orders (e.g., extensions of time and scheduling matters) are not published in NRCI.

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SECURITY PROCEDURES FOR CONDUCTING CLASSIFIED MEETINGS/HEARINGS

General --The following guidance is applicable to classified meetings held within NRC space where information up Secret Restricted Data (S-RD) is discussed. Except as noted, all actions are the responsibility of the organization hosting the meeting.

Meetings where Sensitive Compartmented Information (SCI) or Top Secret (TS) Information will be discussed are restricted to a Sensitive Compartmented Information Facility (SCIF) and other special conditions may apply. Please coordinate with Special Security Officer (SSO), Information Security Branch, Office of Nuclear Security and Incident Response (NSIR).

1. Complete Form 876A and indicate that a classified meeting will be held. The Division of Facilities and Security (DFS) in the Office of Administration will provide guidance on locations that meet the classification and size requirements.
2. Obtain an advance list of attendees. Verify NRC staff attendees and non-NRC personnel have appropriate security clearances through the Personnel Security Branch (PSB)/DFS and/or the SSO, as appropriate. Security clearances for non-NRC personnel must be certified (i.e., faxed) to the PSB, at least 5 business days (if possible) before the meeting. The sponsoring office shall verify that all attendees have a need to know for meeting attendance.
3. The level of classified information discussed in any meeting shall not exceed S-RD except when conducted in the SCIFs.
4. DFS will determine whether a survey is required.
5. Cell phones, two-way pagers, and other portable electronic devices shall not be permitted into the meeting room. An office representative should be available prior to the start of the meeting to collect these items.
6. The person conducting the meeting shall advise all attendees of the classification level of the meeting at the beginning of the meeting and each time the meeting reconvenes. Explain to the meeting participants that they should not take notes because of the possibility that these notes might be classified. If notes are necessary, they must be handled as classified until they can be reviewed by an authorized NRC classifier. If someone from outside the NRC has classified notes, they can carry them back to their organization only if they have a courier card, otherwise the NRC will mail or secure-fax the notes to their classified address.
7. The person conducting the meeting must announce, prior to starting, that the following items/articles are prohibited in the room during the meeting/hearing: any electronic equipment that transmits or records such as cell phones, smart phones,

APPENDIX 10

tablets, personal computers not accredited by the NRC to process either classified or safeguards information, unclassified agency computers, cameras, personal fitness tracking devices, and items that send or receive a Bluetooth signal. Only a transcription service authorized by DFS may record the meeting.

8. Monitor entrances and exits to the meeting room and note individuals arriving and leaving, making additions or deletions to the attendance list as required. (In the case of additions, verify that the individual is appropriately cleared with the assistance of the PSB, DFS, or NRC SSO, as applicable.)
9. Ensure that no unauthorized personnel enter the meeting room. If urgent messages must be passed to anyone in the meeting, ensure that only an individual with an appropriate level of clearance, and need to know, delivers the message.
10. At the conclusion of the meeting, the person conducting the meeting should:
 - a. Remind attendees of their responsibility to protect the classified information that was discussed during the meeting.
 - b. Be prepared to receive any classified notes taken that may require review for classification, storage, or destruction. Assume control and secure any classified material that will be sent to meeting attendees and ensure that any classified material sent to meeting attendees is sent by secure means.
 - c. Recover all extra copies of classified or sensitive unclassified information handed out during the meeting, as well as all copies not intended for retention by the attendees.
 - d. Ensure that no classified information has been left behind prior to leaving the room. (Check tables, chairs, chalk boards, floors, etc.)
11. If a cleared court reporter has recorded the meeting, ensure that all materials used by the reporter are properly secured in approved NRC space and that subsequent transcription is performed under NRC control.
12. Ensure that all transcription and/or audio tapes are properly classified, marked, protected, and stored. Audio tapes and transcripts being removed from NRC property must be transported by an individual with a courier card and the proper clearance in a locked courier bag.

CLASSIFIED MEETINGS THAT IMMEDIATELY FOLLOW UNCLASSIFIED MEETING

In the event that a classified meeting immediately follows an unclassified meeting in the same room, all in attendance who are not authorized to attend the classified meeting must vacate the room. A list of the attendees authorized to remain for the classified meeting

APPENDIX 10

must be verified. It is the responsibility of the organization sponsoring the meeting to ensure that only authorized and appropriately cleared persons are in attendance before starting the classified meeting.

APPENDIX 10

STATEMENT FOR USE AT ALL COMMISSION MEETINGS IN WHICH CLASSIFIED INFORMATION IS TO BE DISCUSSED (E.G. TOP SECRET, SECRET, OR CONFIDENTIAL)

STATEMENT TO BE READ PRIOR TO THE START OF THE MEETING:

Today's meeting may include the discussion of (select one) TOP SECRET, SECRET-RD, SECRET, OR CONFIDENTIAL material.

This is a closed meeting under the provisions of the Sunshine Act. Please be advised of the following security considerations in effect for this briefing:

- Classified information may not be shared with others for whom access has not been authorized.
- It is recommended that notes not be taken during the meeting. However, if notes must be taken on information discussed at the meeting, they should be considered as classified and must be appropriately marked and protected.
- Any questions regarding classification of notes taken at this meeting should be referred to the office sponsoring the meeting. The notes will then be returned to the note taker.
- The following items are prohibited in the room during the meeting: any electronic equipment that transmits or records such as cell phones, smart phones, tablets, personal computers not accredited by the NRC to process either classified or safeguards information, unclassified agency computers, cameras, personal fitness tracking devices, and items that send or receive a Bluetooth signal.

STATEMENT TO BE READ AT THE CONCLUSION OF THE MEETING:

You are reminded that the information discussed at this meeting was (select one) TOP SECRET, SECRET-RD, SECRET, OR CONFIDENTIAL information and of the special handling requirements associated with that information.

APPENDIX 10

STATEMENT FOR USE AT ALL COMMISSION MEETINGS IN WHICH SAFEGUARDS INFORMATION (SGI) IS TO BE DISCUSSED

STATEMENT TO BE READ PRIOR TO THE START OF THE MEETING:

This is a meeting in which Safeguards Information will be discussed. Safeguards Information is established under Section 147 of the AEA, and is subject to special protection requirements.

Please be advised of the following security considerations that are in effect for this meeting.

- Safeguards Information may not be shared with others for whom the “need-to-know” has not been established.
- It is recommended that notes not be taken during the meeting. However, if notes must be taken on information discussed at the meeting, they should be considered as SGI and must be appropriately marked and protected.
- Any questions regarding SGI designation of notes taken at the meeting may be referred to the office sponsoring the meeting. The notes will then be returned to the note taker.
- The following items are prohibited in the room during the meeting: any electronic equipment that transmits or records such as cell phones, smart phones, tablets, personal computers not accredited by the NRC to process either classified or safeguards information, unclassified agency computers, cameras, personal fitness tracking devices, and items that send or receive a Bluetooth signal.

STATEMENT TO BE READ AT THE CONCLUSION OF THE MEETING:

You are reminded that the information discussed at this meeting contained Safeguards Information and of the special handling requirements associated with that information.

APPENDIX 10

STATEMENT FOR USE AT ALL COMMISSION INTERNATIONAL VISITOR MEETINGS IN WHICH SAFEGUARDS INFORMATION (SGI) IS TO BE DISCUSSED

STATEMENT TO BE READ PRIOR TO THE START OF THE MEETING:

This is a meeting in which Safeguards Information will be discussed. Safeguards Information is established under Section 147 of the AEA, and is subject to special protection requirements.

Please be advised of the following security considerations that are in effect for this meeting.

- Safeguards Information may not be shared with other foreign nationals for whom the need to know has not been established.
- It is recommended that notes not be taken during the meeting. However, if notes must be taken on information discussed at the meeting, they should be considered as SGI and must be appropriately marked and protected.

Any questions regarding SGI designation of notes taken at the meeting may be referred to the office sponsoring the meeting. The notes will then be returned to the note taker.

- The following items are prohibited in the room during the meeting: any electronic equipment that transmits or records such as cell phones, smart phones, tablets, personal computers not accredited by the NRC to process either classified or safeguards information, unclassified agency computers, cameras, personal fitness tracking devices, and items that send or receive a Bluetooth signal.

STATEMENT TO BE READ AT THE CONCLUSION OF THE MEETING:

You are reminded that the information discussed at this meeting contained Safeguards Information and of the special handling requirements associated with that information.

APPENDIX 10

STATEMENT FOR USE AT ALL COMMISSION AND INTERNATIONAL VISITOR MEETINGS IN WHICH CLASSIFIED NATIONAL SECURITY INFORMATION IS TO BE DISCUSSED

STATEMENT TO BE READ PRIOR TO THE START OF THE MEETING:

This meeting may include a discussion of [select one] SECRET or CONFIDENTIAL National Security Information.

Please be advised of the following security considerations that are in effect for this meeting.

- Restricted Data will not be discussed in this meeting
- Classified National Security Information may not be shared with other foreign nationals for whom access has not been authorized.
- It is recommended that notes not be taken during the meeting. However, if notes must be taken on information discussed at this meeting, they should be considered as classified and must be appropriately marked and protected.
- Any questions regarding classification of notes taken at the meeting may be referred to the office sponsoring the meeting. The notes will then be returned to the note taker.
- The following items are prohibited in the room during the meeting: any electronic equipment that transmits or records such as cell phones, smart phones, tablets, personal computers not accredited by the NRC to process either classified or safeguards information, unclassified agency computers, cameras, personal fitness tracking devices, and items that send or receive a Bluetooth signal.

STATEMENT TO BE READ AT THE CONCLUSION OF THE MEETING:

You are reminded that the information discussed at this meeting contained [select one] SECRET or CONFIDENTIAL National Security Information and of the special handling requirements associated with that information.

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APPENDIX 11

RECORD OF NON-SUNSHINE ACT DISCUSSIONS

Caution to Participants: As the Commission explained in its Federal Register notices announcing its intention to implement its 1985 rule change regarding the Sunshine Act, non-Sunshine Act discussions among three or more Commissioners are appropriate and legally permissible only when discussions are preliminary, informal, informational, or "big picture." If such a discussion begins to focus on discrete proposals or issues, such as to cause or be likely to cause individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency, the discussion should be halted, and continued only in the context of a Sunshine Act meeting, scheduled in accordance with the requirements of that statute.

Date: _____ Time begun: _____ Time ended: _____

Topic(s) discussed: _____

Commissioners present:

Chairman XXXX	<input type="checkbox"/>
Commissioner AAAA	<input type="checkbox"/>
Commissioner BBBB	<input type="checkbox"/>
Commissioner CCCC	<input type="checkbox"/>
Commissioner DDDD	<input type="checkbox"/>

Other Attendees: _____

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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CORRESPONDENCE RESPONSE SHEETS

CORR: 15-0074

CORR: 15-0074

COMMISSION CORRESPONDENCE

Correspondence Response Sheet

Date: September 25, 2015

To: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran

From: Annette Vietti-Cook, Secretary

Subject: Letter to Marvin S. Fertel, President and Chief Executive Officer, Nuclear Energy Institute, responds to his letter regarding the Nuclear Regulatory Commission's contingency plan in the event of a lapse of appropriations

ACTION: Please comment/concur and respond to the Office of the Secretary by:

Time: 5:00 P.M.

Day: Friday,

Date: October 2, 2015

Comment:

Contact: Michael Norris, OGC
(301) 415-5441

Entered in STARS Tracking System ☐Yes ☐No

APPENDIX 12

CORR: 16-0009

CORR: 16-0009

COMMISSION CORRESPONDENCE

Correspondence Response Sheet

Date: February 5, 2016

To: Chairman Burns
Commissioner Svinicki
Commissioner Ostendorff
Commissioner Baran

From: Annette Vietti-Cook, Secretary

Subject: Letter to the Honorable Thad Cochran and Harold Rogers
submits the NRC's print strategy in response to a request in
the Senate Appropriations Committee's Report

ACTION: Please comment/concur and respond to the Office of the
Secretary by:

Time: 5:00 P.M.

Day: Friday,

Date: February 12, 2016

Comment: SRM-PL114-113-7
Response is due to Congress by 02/16/16.

Contact: Darren Ash, OCIO
(301) 415-7443

Entered in STARS Tracking System ☐Yes ☐No

APPENDIX 13

COMMISSION OFFICE AND STAFF INSTRUCTIONS FOR PROCESSING CONGRESSIONAL REQUESTS FOR DOCUMENTS

COMMISSION OFFICE AND STAFF INSTRUCTIONS FOR PROCESSING CONGRESSIONAL REQUESTS FOR DOCUMENTS

Congressional Association

- ☐ Chairman, Oversight Committee
- ☐ Member, Oversight Committee
- ☐ Individual Member of Congress
- ☐ Committee Staff

Documents to be released:

- ☐ Un-redacted Release
- ☐ Redacted Release (based on FOIA/Privacy Act procedures)
- ☐ Only publicly available documents

Provide documents with the following listing:

- ☐
 - Classified National Security Information
 - Safeguards Information
 - Proprietary Information
 - Privacy Information
 - Sensitive Investigatory Information
 - Sensitive Adjudicatory Information or Attorney-Client Information
 - Sensitive Pre-decisional Information
 - Not Publicly Available, but not of concern if publicly released
 - Publicly Available

Cover Letter

- ☐ If documents are to be provided and are not to be made public by the requester, please include a statement in the cover letter that documents are sensitive and not to be publicly released. Mark each page of sensitive documents to be provided with "Not for Public Disclosure".

Due Date for Completion of Staff Review: _____

OCA Contact: _____

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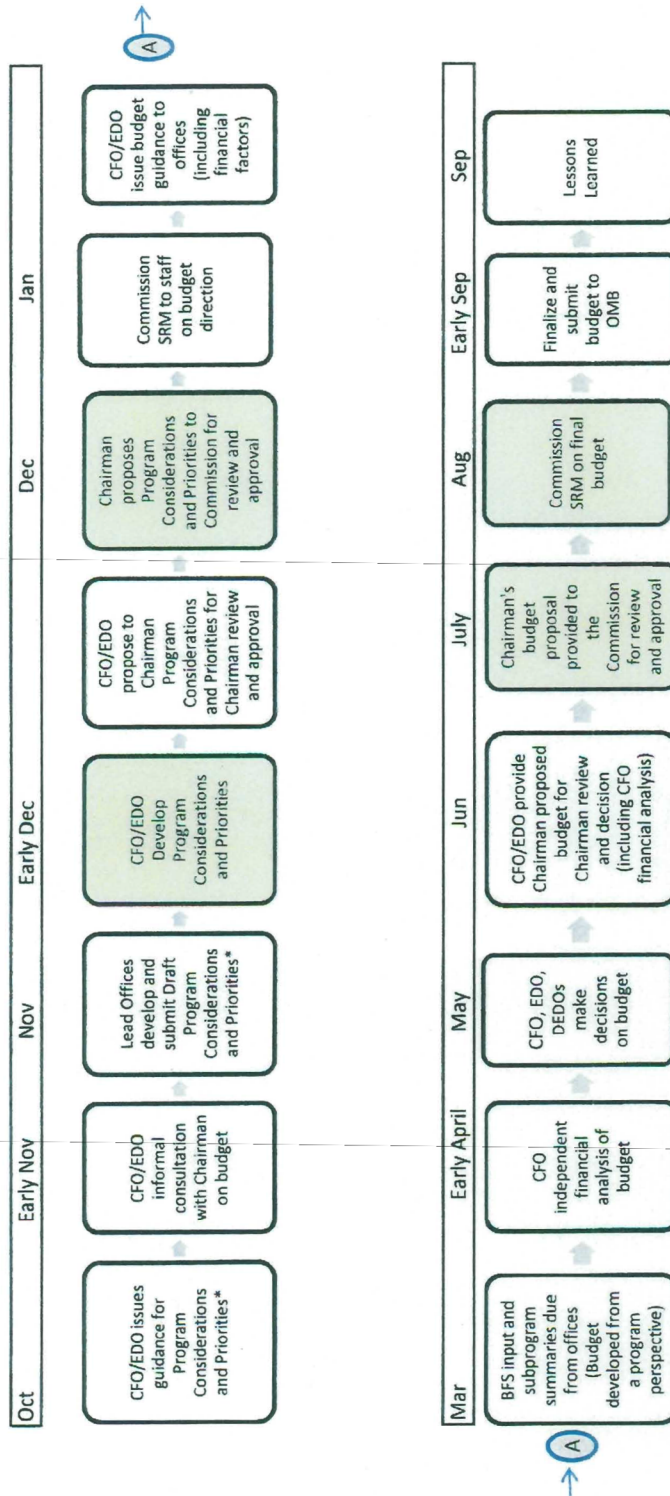
THE BUDGET PROCESS

As part of the collegial functions, the Commission revises budget estimates and determines the distribution of appropriated funds according to major programs and purposes. As a best practice, the initial step in this process at the Commission level is for the Chairman to provide high-level planning objectives for budget development and prioritization of planned activities to the Commission for review and approval and to provide any other documents used to inform the high-level planning objectives to the Commission for review. This is done prior to the start of the annual budget formulation process. The Chairman is also responsible for initiating the update of the agency Strategic Plan and the Commission's annual review of the Performance Budget; presenting the Strategic Plan, Performance Budget, and Congressional Budget Justification to the Commission for its review and approval; and proposing to the Commission the distribution of appropriated funds according to the agency's major programs and purposes. Upon request of a Commissioner after submission of the Chairman's budget proposal, the Commission shall be provided all budgetary input provided to the Chairman or otherwise used for the purpose of formulating the Chairman's budget proposal.

The following flow chart depicts a budget formulation process that the Commission has found very useful and recommends as a best practice

APPENDIX 14

Recommended Budget Formulation Process



LIST OF POSITIONS FOR WHICH THE COMMISSION IS THE AWARDING AUTHORITY FOR PERFORMANCE AWARDS

Specific positions for which the Commission is the awarding authority for performance awards are listed below:

Executive Director for Operations

General Counsel

Secretary of the Commission

Director, Office of International Programs

Director, Office of Commission Appellate Adjudication

Chief Financial Officer

Deputy Chief Financial Officer

Director, Office of Nuclear Reactor Regulation

Director, Office of Nuclear Material Safety and Safeguard

Director, Office of Nuclear Regulatory Research

Director, Office of New Reactor Programs

Director, Office of Nuclear Security and Incident Response