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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20585-0001

March 31, 1993

MEMORANDUM FOR: Commissioner Curtiss

FROM: James M. Taylor  
Executive Director for Operations

SUBJECT: SECY-93-034, AGENCY POLICY CONCERNING  
PUBLIC MEETINGS HELD BY THE STAFF -  
RESPONSE TO REQUEST FOR INFORMATION

This responds to your request for additional information dated March 9, 1993 on the subject of the proposed policy on open meetings. The decision to promulgate the policy was based on continuing evidence of confusion among the staff as to what was proper in terms of opening or closing meetings. I would like to emphasize that the policy is intended to apply to all offices reporting to the EDO across the agency as a whole and that its purpose is to clearly set out present general agency practices. Additionally, the examples provided were not intended to be all inclusive but to establish a thought process that would lead to the proper choice when determining whether to open or close a meeting.

Question 1: The proposed policy is an amplification upon, and expansion of, earlier policy pronouncements that directly addressed rights of parties and petitioners to licensing-related actions, and would now, by its terms, apply to "all members of the general public" and "all meetings" conducted by the NRC staff. The guidance appears to apply to materials-related matters as well as power reactor licensing, but there is no specific consideration of materials-related actions in the meeting examples or discussions in the proposed guidance. It also appears to apply to interactions with States and Agreement State matters. Is this expanded coverage intentional, and if so, are there any specific considerations applicable to materials-related actions or to state interactions.

Response:

The purpose of the proposed policy is as stated on Page 2 Part I of Handbook 3.5. It was promulgated to codify existing staff practices which, as you stated in your request for additional information, applies to situations beyond those described in the 1978 policy.

The text of the proposed management directive contains an abundance of examples that refer to power reactors since that is where the majority of policy questions concerning open meetings have arisen. A few examples that are either generic in the sense they apply to both the power reactor and materials program or apply specifically to materials licensees can be found on pages 4, 8, and 9 of Handbook 3.5. In addition most of the examples that apply specifically to power reactors could also apply to the materials area. The examples were provided to aid the staff in its thought process when deciding to open or close a meeting. They were not intended to limit the applicability of the policy.

~~The policy is not intended to address the NRC's interface with States and Agreement States other than as specifically stated therein.~~ We thought that this would be sufficiently covered by the exclusion of meetings having "no direct, substantive connection to a specific NRC regulatory decision or action," Item (B)(2)(a)(vii), p.3. However, in light of the comment, we will add an explicit statement to (B)(1) to exclude meeting with state and Agreement states other than those relating to NRC licensing or regulatory actions involving specific licensees.

Question 2: The American Mining Congress raised a number of concerns about the proposed policy in a letter to the Chairman dated February 4, 1993. The concerns raised should be addressed and the staff should indicate how the difficulties alluded to in that letter would be resolved under the proposed policy.

Response:

The letter from the American Mining Congress expressed a concern that the interim guidance was issued in response to a request by the Chairman to allow more public participation in meetings. The theme of the letter was that the interim guidance opened up to the public, meetings between the NRC and those it regulates, thereby, making it difficult for the regulator and licensee to deal frankly on certain issues. Enclosure 1 is a draft response to their letter explaining that the interim guidance was not issued in response to a request by the Chairman but was self-initiated by the staff to ensure uniformity in application of the agency's open meeting policy. It also explains that existing NRC policy requires openness in its dealings with those it regulates. The guidance set forth in Management Directive 3.5 was predicated on interim guidance issued by the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research to the staff on August 21, 1992 in response to queries over an

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extended period of time as to whether various meetings should be opened or closed. Enclosure 2 is a copy of the interim guidance. It should be noted that both the August 21, 1992 interim guidance and Management Directive 3.5 still allow some judgement by senior agency managers in determining whether or not a particular meeting falls within the definition of meeting, i.e., "a planned, formal encounter between one or more NRC staff and one or more outside persons with the expressed intent of discussing substantive issues that are directly associated with NRC's regulatory and safety responsibilities." The word "substantive" is well defined in the dictionary and is further amplified by the examples in the guidance.

Question 3: In view of the pending budget constraints, I would like an estimate of the budgetary impacts (dollars and FTE) that implementation of this public meeting and notice guidance will entail.

Response:

No budget impact is expected since the policy merely codifies current agency practices.

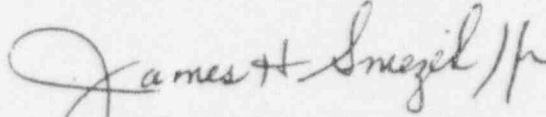
Question 4: In order to preserve some flexibility for unanticipated events, I believe that the notice provisions should make it clear that the minimum 10-day notice can be waived (e.g., less than 10 days notice can be provided) when the circumstances or the needs of agency business so require. Would the staff object to modifications to the guidance that would provide such flexibility? Would the staff recommend some language in the proposed guidance that would provide such flexibility?

Response:

Generally, a reasonable amount of time should be provided for the public to react to notice of a public meeting. The 10 days specified provides that reasonable amount of time. The narrative will be modified to consistently state the time as 10 calendar days. Regarding the flexibility concern, it is addressed in Handbook 3.5 on page 13 where it is stated that, "Meetings

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scheduled with less than a 10-day public notice must be approved in writing by the appropriate branch chief before the notice is submitted to the meeting announcement coordinator."

  
James M. Taylor  
Executive Director  
for Operations

Enclosures:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Remick  
Commissioner de Planque  
SECY  
OGC  
OCA  
OPA