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## NRC TO BEGIN IMPLEMENTING REVISED SUNSHINE ACT RULES

The Nuclear Regulatory Commission soon will begin holding “non-Sunshine Act discussions,” as outlined in a May Federal Register notice, under regulations it adopted in 1985 but deferred implementing until now.

On May 10, the agency announced in the Federal Register its intention to begin implementing its Government in the Sunshine Act regulations. As it explained in that notice, the 1985 regulations conformed the NRC’s definition of a “meeting” to guidance provided by the Supreme Court in a unanimous 1984 decision. Under that guidance, discussions by three or more Commissioners that are preliminary, informal, or informational do not constitute “meetings,” and the Sunshine Act’s procedural requirements therefore do not apply.

The May 10 notice provided a 30-day comment period, which ended June 9, and stated that in order to give the agency time to consider any comments from the public, no “non-Sunshine Act discussions” would be held before July 1 at the earliest. During the comment period, ten comments were submitted, all but one of which were critical of the NRC’s action. The Commission determined that the comments warranted discussion, and that a further Federal Register notice would therefore be issued.

On July 16, the Commission approved a Federal Register notice that responded to the comments received and announced that the Commissioners would not begin holding “non-Sunshine Act discussions” until August 23, at the earliest.

The Commission emphasized that its intention was to permit the kind of informal, preliminary, and “big picture” discussions that currently do not take place among a quorum of Commissioners. Other examples of “non-Sunshine Act discussions” will include routine status updates from the staff; preliminary, exploratory discussions to generate ideas; discussions of business-related matters not linked to any particular proposal for action; and casual discussions of mutual interest.

The non-Sunshine Act discussions will not include discussions with representatives of NRC licensees, nuclear industry groups, or organizations that could be considered interested parties in NRC adjudications, rulemakings, or development of guidance. The Commission intends to limit participation in non-Sunshine Act discussions to NRC and other federal agency personnel and some others, such as representatives of the regulatory organization of a state or foreign country.

The Commission’s decision does not diminish the NRC’s obligations to follow the requirements of the Sunshine Act. Whenever the Commission holds a discussion that is, in the Supreme Court’s words, “sufficiently focused on particular issues on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters ending or

likely to arise before the agency,” the discussion will constitute a “meeting” under the Sunshine Act, and all the Act’s procedural requirements will apply.

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