

Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATE: Regulation 344, Amendment 1 (§ 908.644) is effective for the period May 17-23, 1985. Regulation 345 (§ 908.645) is effective for the period May 24-30, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5975.

SUPPLEMENTARY INFORMATION:

Findings

These rules have been reviewed under USDA procedures and Executive Order 12291 and have been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulation are consistent with the marketing policy for 1984-85. The marketing policy was recommended by the committee following discussion at a public meeting on March 26, 1985. The committee met again publicly on May 14, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified weeks. The committee reports the demand for Valencia oranges is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendments and the regulation at an

open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendments and the regulation and their effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 908.644 is revised to read as follows:

§ 908.644 Valencia Orange Regulation 344.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 17, 1985, through May 23, 1985, are established as follows:

- (a) District 1: 400,000 cartons;
- (b) District 2: 600,000 cartons;
- (c) District 3: Unlimited cartons.

3. Section 908.645 is added to read as follows:

§ 908.645 Valencia Orange Regulation 345.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period May 24, 1985, through May 30, 1985, are established as follows:

- (a) District 1: 320,000 cartons;
- (b) District 2: 480,000 cartons;
- (c) District 3: Unlimited cartons.

Dated: May 10, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.
[FR Doc. 85-12210 Filed 5-20-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 911

Limes Grown in Florida; Amendment to Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action relieves container marking requirements on Florida seedless limes by expanding the permissible count range of limes in a 10-pound sample for specified size designations and adding a 10 percent tolerance for containers of limes in any lot which may fail to meet these requirements. This rule is necessary to prevent handlers from having to repack

many lots of limes in order to comply with those more restrictive size ranges that would increase handlers' costs. This action was unanimously recommended by the Florida Lime Administrative Committee on April 24, 1985.

EFFECTIVE DATE: May 20, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The final rule is based upon recommendations and information submitted by the Florida Lime Administrative Committee, established under the marketing agreement and order, and upon other information. Shipments of Florida limes are regulated by pack under § 911.311 Lime Pack Regulation 9 (7 CFR Part 911). The pack regulation, which is effective on a continuing basis, establishes pack and container marking requirements for fresh limes. This action was unanimously recommended by the Florida Lime Administrative Committee on April 24, 1985.

This action relieves container marking requirements on Florida seedless limes by expanding the permissible count range of limes in a 10-pound sample for specified size designations and adding a 10 percent tolerance for containers of limes in any lot which may fail to meet these requirements. The committee reports that the original size ranges would require most handlers to repack many lots of limes in order to comply with those more restrictive size ranges and would increase handlers' costs.

A final rule was published in the *Federal Register* (50 FR 15097) on April 17, 1985. This final rule required the marking of containers of seedless limes with one of seven specified sizes. These seven size designations were defined in terms of the number of limes in a ten pound sample in the container with

specific ranges defined. However, it was found that the original size ranges needed to be modified before they could be implemented. At an emergency meeting on April 17, 1985 the FLAC recommended postponement of that final rule until May 20, 1985, so they could study the problem further and recommend an amendment to the final rule. This action is necessary to permit implementation of the container marking requirements.

It is hereby found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the Federal Register (5 U.S.C. 553) in that a final rule with an effective date of May 20, 1985, was published in the Federal Register (50 FR 15097, 50 FR 18849) and this action is a relaxation of restrictions contained in that rule. Shipments of the current crop of limes are in progress and this regulation should be effective May 20, 1985, in order to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

PART 911—[AMENDED]

1. The authority citation for 7 CFR Part 911 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

2. Section 911.311 Lime Pack Regulation 9 is revised by amending paragraph (a)(5) to read as follows:

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(5) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked on two sides with letters at least one inch in height with one of the size designations shown in column 1 of the following table: *Provided*, That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation: *Provided further*, That not more than 10 percent of the containers in any lot may fail to meet these requirements.

TABLE 1

Column 1 size designations	Column 2 size range
72	68 to 76.
63	59 to 67.
54	51 to 58.
45	45 to 51.
36	39 to 44.
	33 to 38.

TABLE 1—Continued

Column 1 size designations	Column 2 size range
28	25 to 32.

Dated: May 16, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-12156 Filed 5-20-85; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Government in the Sunshine Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Interim rule with request for comments.

SUMMARY: The Nuclear Regulatory Commission is making an interim rule change to conform its definition of a "meeting" under the Government in the Sunshine Act (5 U.S.C. 552b) to the statutory intent, as clarified in the unanimous 1984 decision of the United States Supreme Court in *Federal Communications Commission v. ITT World Communications*, — U.S. —, 104 S.Ct. 1936. The Commission believes that this change would serve to effectuate the Congressional intent that background briefings and generalized discussions of agency business not be considered "meetings" for Sunshine Act purposes, and that adherence to statutory standards will help assure both fuller information for the Commissioners and greater collegiality in their performance of their duties. The rule change will be applied on an interim basis, pending submission and evaluation of comments and publication of a final rule.

EFFECTIVE DATE: The rule change will be effective on an interim basis on May 21, 1985. Comments on whether the interim rule change should be made final must be received on or before June 20, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Interested persons are invited to send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street, NW., Washington, D.C. between 8:15 a.m. and 5:00 p.m. Copies of any documents received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT:

Peter Crane, Office of General Counsel, United States Nuclear Regulatory Commission, Washington, DC 20555, telephone: 202-634-1465.

SUPPLEMENTARY INFORMATION: The NRC's current Sunshine Act regulations (10 CFR § 9.100-109), define a "meeting" as follows, at 10 CFR § 9.101(c):

"Meeting" means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official business, but does not include deliberations required or permitted by §§ 9.105, 9.106, or 9.108(c),¹ gatherings of a social or ceremonial nature, or briefings of the Commission by representatives of other agencies or departments of the United States government, or representatives of foreign governments or international bodies where such briefings or discussions are informational in nature and are not conducted with specific reference to any particular matter then pending before the Commission.

It will at once be noticed that the only type of briefing which is explicitly exempted from the definition of "meeting" is a briefing by a representative of another agency or department or a foreign or international body. Likewise, the only type of "gathering" of Commissioners which is expressly exempted from the definition is one of a "social or ceremonial nature." Thus under the NRC's regulations, the following types of meetings would all be subject to the Sunshine Act's meeting requirements: a general background briefing by the NRC staff on a technical issue common to a number of plants; informal discussion of problems likely to face the agency in the coming year; a discussion of the effectiveness of a particular office in meeting the Commission's needs; and a discussion of the state of relations between the Commission and its oversight committees, or with other government agencies. It is the Commission's view that the Supreme Court's 1984 decision in *FCC v. ITT World Communications*, — U.S. —,

¹ These three sections definition refer to procedures for implementing the Sunshine Act itself, and have no bearing on the Commission's conduct of its everyday duties under the Atomic Energy Act, Energy Reorganization Act, and other statutes.

104 S.Ct. 1936, strongly suggests that none of these topics necessarily falls within the class of discussions that triggers the "meeting" requirement of the Sunshine Act.

In 1984, the Supreme Court provided its first guidance on the Sunshine Act. *FCC v. ITT World Communications*, — U.S. —, 104 S.Ct. 1936, was decided by a unanimous Court on April 30, 1984. The case arose when three members of the FCC, constituting a quorum of the agency's Telecommunications Committee (a subdivision to which decisionmaking power had been delegated) traveled to Europe to take part in an international conference of telecommunications regulators. An American company, aware that the FCC Commissioners planned to use the conference to argue for increased competition in the provision of telecommunications services, filed suit in District Court, charging among other things that the presence of a sufficient number of Commissioners to decide agency business rendered the international conference a Commission "meeting" under the Sunshine Act, and that the meeting was required to be held in the open. The District Court ruled for the company, as did the D.C. Circuit Court of Appeals, in a decision written by Judge Bazelon.

The Supreme Court, in a 9-0 decision written by Justice Powell, reversed the D.C. Circuit's holding. Its discussion of the meaning of "meeting" under the Sunshine Act is worth quoting at some length.

Congress in drafting the Act's definition of "meeting" recognized that the administrative process cannot be conducted entirely in the public eye. "[I]nformal background discussions [that] clarify issues and expose varying views" are a necessary part of an agency's work. See S. Rep. No. 94-354, at 19 (1975). The Act's procedural requirements effectively would prevent such discussions and thereby impair normal agency operations without achieving significant public benefit. Section 552b(a)(2) therefore limits the Act's application to meetings "where at least a quorum of the agency's members . . . conduct or dispose of official agency business." S. Rep. No. 94-354, at 2.

In a footnote, the Court reviewed the pertinent legislative history:

The evolution of the statutory language reflects the congressional intent precisely to define the limited scope of the statute's requirements. See generally, H.R. Rep. No. 94-880, Part 2, at 14 (1976). For example, the Senate substituted the term "deliberations" for the previously proposed terms—"assembly or simultaneous communication," H.R. 11656, 94th Cong., 2d Sess. § 552b(a)(2) or "gathering," S. 5, 94th Cong., 1st Sess. § 201(a) (1976)—in order to "exclude many

discussions which are informal in nature." S. Rep. 94-354, at 10; see *id.*, at 18. Similarly, earlier versions of the Act had applied to any agency discussions that "concern[] the joint conduct or disposition of agency business," H.R. 11656, *supra*, § 552b(a)(2). The Act now applies only to deliberations that "determine or result in" the conduct of "official agency business." The intent of the revision clearly was to permit preliminary discussion among agency members. See 122 Cong. Rec. 28474 (1976) (remarks of Rep. Fawell).

The Court then explained that though the FCC's Telecommunications Committee was subject to the Sunshine Act (since it could act on behalf of the agency, under a delegation of authority from the Commission as a whole), it did not appear that the Committee had, by participating in the international conference, engaged in "deliberations [that] determine or result in the joint conduct or disposition of official agency business." The Court offered a definition of this by no means self-explanatory language:

This statutory language contemplates discussions that "effectively predetermine official actions." See S. Rep. No. 94-354, at 19; accord *id.*, at 18. Such discussions must be "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating member to form reasonably firm positions regarding matters pending or likely to arise before the agency." R. Berg and S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act 9 (1976) (hereinafter Interpretive Guide).

The Court noted that ITT had not alleged that the Conference sessions included formal action on applications before the FCC, nor that the sessions "resulted in firm positions on particular matters pending or likely to arise before the Committee." Rather, the conference sessions "provided general background information to the Commissioners and permitted them to engage with their foreign counterparts in an exchange of views by which decisions already reached by the Commission could be implemented." The Court added: "As we have noted, Congress did not intend the Sunshine Act to encompass such discussions."

The Court observed that the D.C. Circuit had not found that the FCC Commissioners at the conference were actually deliberating on matters within their formally delegated authority; rather, the lower court had inferred an authority, not formally delegated, to engage in discussions on behalf of the Commission. The lower court "then concluded that these discussions were deliberations that resulted in the conduct of official agency business, as the discussions 'play[ed] an integral role in the Commission's policy-making processes.' [citation omitted]"

The Court categorically rejected the Court of Appeals' reasoning:

We view the act differently. . . . Under the reasoning of the Court of Appeals, any group of members who exchange views or gathered information on agency business apparently could be viewed as a "subdivision . . . authorized to act on behalf of the agency." . . . Moreover, the more expansive view of the term "subdivision" adopted by the Court of Appeals would require public attendance at a host of informal conversations of the type Congress understood to be necessary for the effective conduct of agency business.

The interim rule incorporates verbatim the Supreme Court's language in the *ITT* decision. The exceptions for "social and ceremonial" gatherings and for informational briefings by other agencies or international organizations are dropped, since under the proposed rule they would be redundant. The Commission believes, based on almost eight years of operation under the current rules, that a decision to conform its regulations to the literal requirements of the statute as interpreted by the Supreme Court will improve its ability to do the public's business. The ability to hold informal preliminary briefings can help assure that Commissioners are well informed about subject areas well before any particularized proposal reaches them for consideration. The ability to hold free-flowing discussions of a variety of problems likely to face the agency, or to get together for "brainstorming sessions," can foster both collegiality and sound management. It is through such generalized background discussions that Commissioners can decide what topics should become the subject of more particularized proposals, discussions of which would fall within the Act's definition of "meeting."

In so changing its rules, the Commission would in no sense be seeking to evade the Sunshine Act's requirements. Rather, it would be giving belated recognition to the fact—understood by the Congress and reaffirmed by the Supreme Court—that some types of informal discussions, necessary for sound agency functioning, do not belong within the purview of the Sunshine Act.

II

In one other respect, the Commission placed on itself a restriction that other agencies did not see fit to adopt. The NRC's rules provide that when a meeting is closed, one of the following two alternatives must be adopted: either, (1) The Commission itself, as the last item if business in the meeting.

reviews the course of the meeting and decides which portions of the transcript or recording can be withheld, or (2) the Secretary, "upon the advice of the Office of General Counsel and after consulting with the Commission, shall make such determinations." These rules apply whether or not anyone has evinced any interest in learning the nature of the Commission's discussions.

Other agencies have taken the common-sense view that they will review the transcripts if and when someone asks for them. The Federal Communications Commission, in promulgating its Sunshine Act regulations in 1977, dismissed the suggestion that every transcript of every closed meeting should be reviewed as a matter of course (and later re-reviewed if any portions continued to be withheld). The FCC said:

We reject the proposition that the transcript of each closed meeting should be reviewed regularly to determine whether it can be made available to the public. The proposition is impracticable. * * * Many of the matters acted on by the Commission in closed meetings should be of little or no interest to the general public and should rarely be made the subject of requests for transcripts. A periodic review of such transcripts would be a waste of time and public funds. Transcripts may be placed in the public file just after the meeting is held, but otherwise will be reviewed only when requests for copies are received. 42 Fed. Reg. 12867 (March 7, 1977).

In addition, in the interest of the efficient use of resources, the Commission is amending its rules to clarify that Sunshine Act recordings, transcripts, and minutes of closed Commission meetings will be reviewed for "closability" only when a request is received. The Commission agrees with the position taken in this regard by the Federal Communications Commission, which likewise found that it would be a waste of public funds to review transcripts in which no one has evinced any interest. Moreover, since the Commission's present rules require the Commissioners themselves to be consulted on these reviews, the present rule is an unnecessary burden on the time of the Commissioners. As revised, the relevant subsection provides that the review will take place if requested within the period during which the recording, transcript, or minutes must be retained. The provision for review by the Commissioners at the end of the meeting itself is dropped from the rule, as this provision is impracticable and is not currently used.

While the Commission is seeking public comment on the rule change, it has decided to make the rule effective

on publication on an interim basis pending submission and evaluation of comments, and publication of a final rule. It is authorized to do so because the change to 10 CFR § 9.101(c) is both an interpretative rule and a rule of agency procedure, and the changes to 10 CFR § 9.108(c) is a rule of agency procedure. Such rule changes are exempt from proposed rulemaking and deferred effectiveness under 5 U.S.C. § 553 of the Administrative Procedure Act. The change to 10 CFR § 9.101(c) is interpretative because it merely specifies the Commission's interpretation of the term "meeting" in the Sunshine Act, *Batterton v. Marshall*, 648 F.2d 694, 705 (D.C. Cir. 1980). The changes to 10 CFR 9.101(c) and 10 CFR 9.108(c) are rules of agency procedure because they govern how the Commission conducts its business and do not in any way alter the substantive rights or interests of persons affected by Commission action, *Batterton v. Marshall*, *supra* at 707.

Making the rule change effective on an interim basis will not only improve the conduct of Commission business in the interim by facilitating the flow of information to the Commission and fostering collegiality, but will also enable the Commission to gain some limited experience with the rule change before making any decision on the final rule. However, in this interim period the Commission will not be using the new definition of meeting to permit private Commission discussions in any briefings or other Commission sessions devoted to specific initial licensing cases or the TMI-1 restart case. In this interim period initial licensing and TMI-1 restart will, as matter of policy, be governed by the "old" expansive definition of "meeting".

Environmental Impact—Categorical Exclusion

The amendments amend the Commission's rules relating to the Sunshine Act codified in 10 CFR Part 9 and therefore meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(1). Accordingly, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

Paperwork Reduction Act Statement

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

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9 on an interim basis. As noted, public comment is solicited as to whether they should be made final.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under 5 U.S.C. 552 and 31 U.S.C. 9701. Subpart B also issued under 5 U.S.C. 552a. Subpart C also issued under 5 U.S.C. 552b.

2. In Subpart C, § 9.101, paragraph (c) is revised to read as follows:

§ 9.101 Definitions.

(c) "Meeting" means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by § 9.105, 9.106, or 9.108(c) do not constitute "meetings" within this definition.

3. In Subpart C, § 9.108, paragraph (c) is revised to read as follows:

§ 9.108 Certification, transcripts, recordings, and minutes.

(c) In the case of any meeting closed pursuant to § 9.104, the Secretary of the Commission, upon the advice of the General Counsel and after consultation with the Commission, shall determine which, if any, portions of the electronic recording, transcript or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which should be withheld pursuant to § 9.104, in the event that a request for the recording, transcript, or minutes is received within the period during which the recording, transcript,

or minutes must be retained, under subsection (b) of this section.

Dated at Washington, D.C., this 16th day of May, 1985.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Separate Statement of Chairman Palladino—Sunshine Act Rulemaking

I fully support the proposal set forth in this notice of rulemaking to change the Commission's Sunshine Act rules. However, I disagree with the policy decision to use the revised definition of a "meeting" during the interim period during which public comments are received and a final rule is published.

I doubt the usefulness of such interim application. If, on the one hand, the Commission applies the new definition narrowly—that is, if it exempts from the definition of "meeting" only the clearest of cases—then it will not gain much of value from interim application. If, on the other hand, the Commission applies the new definition broadly, then it risks potentially counter-productive consequences for its overall objective to conform its rules to the Sunshine Act.

Separate Views of Commissioner Assestine

I approved publication of the proposed changes to our rule implementing the Sunshine Act only in order to obtain comment on those changes. However, I have significant concerns about the difficulty of administering the proposed standard which make it impossible for me to endorse the proposed rule. I particularly invite comment on the concerns expressed below.

The Sunshine Act is not an easy act to interpret or to apply. This is the primary reason the Commission's present regulation was written as it was. The Commission's regulation sets up a bright line for determining what constitutes a meeting and what does not. While the Commission may have given up some flexibility when it set up that bright line standard, it did so with a reason. A standard which provided more flexibility would, of necessity, have been less certain and would have created problems of interpretation. Adopting a more flexible standard would have made it easier for the Commission to misapply the Act inadvertently in a particular case.

The standard in the proposed rule suffers from just these problems. Because the standard is vague and subjective, it will be much more difficult to administer than the present standard.

Predicting whether a particular meeting will consist of discussions "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency" will require nothing short of divination. And, if the Commission guesses wrong, there is no remedy because if there is no "meeting" there will be no notice, no transcript, and no minutes.

If the Commission insists on going forward with the proposed rule, it should at least have made clear in the statement of considerations what change to present practice the rule is intended to effect. The Commission should have explained, with concrete examples, exactly what kind of meetings now held by the Commission will be treated as "gatherings" under the proposed rule. Or, if the intent is to create a new type of meeting not now held by the Commission, that should have been made clear.

I also cannot support the Commission's decision to make this rule immediately effective by applying it while the comment period runs. A rule changing the manner in which the Commission implements the Government in the Sunshine Act, an act the purpose of which was to provide the public with "the fullest practicable information regarding the decisionmaking processes of the Federal Government" (P.L. No. 94-409 § 2), is clearly a rule in which the public has an interest. The Commission should await public comment before putting the rule into effect. The Commission has operated under its present rule for eight years without catastrophe. Waiting thirty more days for public comment hardly seems to be an onerous burden.

[FR Doc. 85-12217 Filed 5-20-85; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 50

Emergency Planning; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12).

SUMMARY: The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit" or "Court") has vacated and remanded to the Nuclear Regulatory Commission ("NRC" or "Commission") that part of its interpretation of 10 CFR 50.47(b)(12)

("planning standard (b)(12)") which stated that a list of treatment facilities constituted adequate arrangements for medical services for individuals who might be exposed to dangerous levels of radiation at locations offsite from nuclear power plants. *GUARD v. NRC*, 753 F.2d 1144 (D.C. Cir. 1985). The Court also vacated certain Commission decisions which applied this interpretation in the Commission proceeding on operating licenses for the San Onofre Nuclear Generating Station, Units 2 and 3 ("SONGS"). However, the Court did not vacate or in any other way disturb the operating licenses for SONGS. Moreover, the Court's remand left to the Commission's sound discretion a wide range of alternatives from which to select an appropriate response to the Court's decision. This Statement of Policy provides guidance to the NRC's Atomic Safety and Licensing Boards ("Licensing Boards") and Atomic Safety and Licensing Appeal Boards ("Appeal Boards") pending completion of the Commission's response to the D.C. Circuit's remand.

EFFECTIVE DATE: May 21, 1985.

FOR FURTHER INFORMATION CONTACT: Sheldon Trubatch, Office of the General Counsel, (202) 634-3224.

SUPPLEMENTARY INFORMATION:

I. Background

Emergency planning standard (b)(12) provides:

(b) The onsite and offsite emergency response plans for nuclear power reactors must meet the following standards:

(12) Arrangements are made for medical services for contaminated injured individuals.
10 CFR 50.47(b)(12).

The scope of this requirement was an issue of controversy in the adjudicatory proceeding on the adequacy of the emergency plans for SONGS. See generally, LBP-82-39, 15 NRC 1163, 1186, 1200, 1244-1257, 1290 (1982). The Licensing Board concluded that planning standard (b)(12) required, among other things, the development of arrangements for medical services for members of offsite public who might be exposed to excessive amounts of radiation as a result of a serious accident. 15 NRC at 1199. The Licensing Board did not specify what would constitute adequate medical service arrangements for such overexposure. However, it found that there was no need to direct the construction of hospitals, the purchase of expensive equipment, the stockpiling of medicine or any other large expenditure, the sole purpose of which