

## CHAPTER II

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# DECISION DOCUMENTS

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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, 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 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.

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## SECY PAPERS

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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-11-0089) 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

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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 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 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 color-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

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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:

- 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.). 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:

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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

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 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, Report to Congress, etc. In these cases the paper will be released 5 days after the letter/report is issued, and the Staff Requirements Memorandum (SRM)<sup>11</sup> will be issued with a statement which 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

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<sup>11</sup> SRM is the acronym 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.

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considered sensitive. In the event of a split Commission with no majority view, the document 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.

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### FORMAT FOR STAFF PAPERS AND ACTION MEMORANDA TO THE COMMISSION

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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.

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

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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" section.
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 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, II-3, or II-4.
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, and adjudication. Draft Congressional letters and Press 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.

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### **ACTION MEMORANDA (COMS AND COMSECYS)**

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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

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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", and processed with a distinctive control and identification number, similar to the SECY paper numbering system, and is 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., COMGBJ-11-XXXX, COMKLS-11-XXXX). Staff action memoranda are identified with a "COMSECY" identification number, year of issuance, and a consecutive number (COMSECY-11-XXXX). 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:

- 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

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justification will be issued with the following statement which restricts any future release determination to the Commission.

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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.). 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**

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



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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.

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### STAFF REQUIREMENTS MEMORANDA

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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 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 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."

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### RELEASE OF DOCUMENTS UNDER FOIA

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The Commission's decision-making documents, including the private intra-office exchanges

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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 also 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. 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.