



Audit of the Nuclear Regulatory Commission's Drop-In Meeting Policies and Procedures

OIG-22-A-12
August 12, 2022



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MEMORANDUM

DATE: August 12, 2022

TO: Daniel H. Dorman
Executive Director for Operations

FROM: Eric Rivera /**RA**/
Acting Assistant Inspector General for Audits

SUBJECT: AUDIT OF THE NUCLEAR REGULATORY COMMISSION'S DROP-IN MEETING POLICIES AND PROCEDURES (OIG-22-A-12)

Attached is the Office of the Inspector General's (OIG) audit report titled *Audit of the Nuclear Regulatory Commission's Drop-In Meeting Policies and Procedures*.

The report presents the results of the subject audit. Following the July 18, 2022, exit conference, NRC staff indicated that they had no formal comments for inclusion in this report.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at (301) 415-5915 or Paul Rades, Team Leader, at (301) 415-6228.

Attachment: As stated



Results in Brief

Why We Did This Review

A drop-in meeting is a type of non-public meeting that occurs at the U.S. Nuclear Regulatory Commission (NRC). The NRC staff uses both public and non-public meetings to interact with external stakeholders. The agency's policy exempts drop-in meetings from certain requirements governing its public meetings, including the requirements to post a meeting notice and summary.

The audit objective was to determine whether NRC policies and procedures for non-public interactions with industry stakeholders are adequate to prevent compromise of the independence of agency staff or the appearance of conflicts of interest.

Audit of the NRC's Drop-In Meeting Policies and Procedures

OIG-22-A-12

August 12, 2022

What We Found

The OIG found that little guidance exists for drop-in meetings and other informal non-public interactions with external stakeholders. The absence of a structured process reduces transparency and places too much reliance on the ability of individual staff members to conduct such meetings appropriately. The NRC can take measures to clarify, for both the staff and the general public, its expectations regarding drop-in meetings and informal non-public interactions with external stakeholders.

What We Recommend

The report contains recommendations to: (1) develop and publish a public description of the purposes and benefits of, and the controls on, the drop-in meetings process; (2) develop guidance to systematize practices across the agency for consistently informing technical staff about drop-in meetings, both before and after the meetings; (3) develop guidance to systematize practices across the agency for consistently including staff observers as part of staff development and training efforts; and, (4) once the new guidance is developed, train all managers on the new guidance and controls for drop-in meetings and other informal interactions with external stakeholders.

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ABBREVIATIONS AND ACRONYMS

C.F.R.	Code of Federal Regulations
EDO	Executive Director for Operations
GAO	U.S. Government Accountability Office
MD	Management Directive
NRC	U.S. Nuclear Regulatory Commission
OIG	Office of the Inspector General

I. BACKGROUND

A drop-in meeting is a type of non-public meeting that occurs at the U.S. Nuclear Regulatory Commission (NRC). The NRC staff uses both public and non-public meetings to interact with external stakeholders. The agency's policy exempts drop-in meetings from certain requirements governing its public meetings.

Public Meetings

The Commission policy statement on *Enhancing Participation in NRC Public Meetings*.¹ discusses how the agency provides information to the public about its activities, conducts business openly, and balances openness and transparency with the need to exercise regulatory and safety responsibilities without undue administrative burden. The policy states that meetings between the agency staff and one or more outside persons will be open to observation and participation to the extent possible. The policy further describes three types of public meetings with varying opportunities for public participation. The policy also outlines how the NRC staff will notify the public of meetings and provide relevant documents in advance of, and take actions following, a meeting. The implementation of the Commission policy is discussed in detail in Management Directive (MD) 3.5, *Attendance at NRC Staff-Sponsored Meetings*.

The Commission policy applies to planned, formal encounters between NRC staff members and outside individuals or entities, with an expressed intent of discussing substantive issues directly associated with the NRC's regulatory responsibilities. Although regulatory decisions are not made at public meetings, regulatory issues may be discussed, and information exchanged becomes part of the decision-making record. The policy does not apply to meetings of the Commission, but the public can observe many meetings when the Commission meets as a collegial body.²

Non-Public Meetings

The Commission policy statement also discusses when typically open, formal meetings of NRC staff can be closed to the public. The deciding factor in designating a meeting, or a

¹ Nuclear Regulatory Commission, [Enhancing Participation in NRC Public Meetings](#), 86 Fed. Reg. 14,964 (March 19, 2021).

² The practices of the Commission meeting as a collegial body, including voting and hearings, are governed by statute, as described in the *Internal Commission Procedures*, and by the *Agency Rules of Practice and Procedure* in 10 C.F.R. Part 2.

portion of a meeting, as closed is normally the type of information that will be discussed. For example, meetings between the agency staff and outside individuals or entities may be closed when the subject matter or information to be discussed in the meeting is safeguards, proprietary, privacy, or other sensitive information exempted from disclosure by statute or executive order.³

MD 3.5 explains how staff will document the formal, closed meeting. For example, staff will prepare a meeting notice using plain language for every appropriate closed meeting. The meeting notice will state the reason that the meeting, or portion of the meeting, will be closed. Notices of closed meetings will be placed in the Agencywide Documents Access and Management System (ADAMS) for the record but not in the Public Meeting Notice System.

The Commission policy statement provides for several additional information category exceptions allowing meetings to be closed, such as information that is preliminary, predecisional, or unverified, or related to an open allegation.⁴ Two additional exceptions in the policy statement allowing for non-public meetings are:

- A meeting for general information exchange having no direct, substantive connection to a specific NRC regulatory decision or action; and,
- A meeting at which the administrative burden associated with public attendance could interfere with the NRC staff's execution of its safety and regulatory responsibilities.

Management Meeting Exceptions

MD 3.5 provides guidance for staff in implementing the Commission policy, noting that NRC staff and management hold various planned and unplanned, formal and informal, meetings with stakeholders, as part of the NRC's routine regulatory, safety, and oversight responsibilities. As guidance for staff in determining what should be public or can be non-public, MD 3.5 provides examples of typical NRC meetings with outside individuals or entities that may be closed to public observation and participation because they fall into excepted categories.

³ When a Commission meeting is closed to the public under one or more of these exemptions, the agency provides notice of the meeting through the *Federal Register*.

⁴ The policy statement does not apply to the settlement of enforcement actions, which is discussed in the [NRC Enforcement Policy](#), January 14, 2022.

In particular, the examples in MD 3.5 describe the following two types of meetings engaged in by NRC senior managers, restated here with emphasis added to highlight the connection to the language of the Commission policy statement:⁵

- Drop-in meetings or similar management meetings: “Senior executives of a licensee, applicant, or a potential applicant request the opportunity to conduct a ‘drop-in’ visit or similar management meeting with the Executive Director for Operations (EDO), with other senior managers at agency headquarters, or with senior managers of the region in which their facility is located. Because this type of visit or meeting is usually limited to **a general exchange of information not directly related to any regulatory action or decision**, it would not typically be a public meeting.”
- NRC management visits to licensee facilities: “NRC staff and management from regional and headquarters offices visit a facility for various purposes, including but not limited to tours to enhance familiarity with the facility or operational events, discussion of plant issues and informal assessments of licensee performance, and monitoring or assessing the performance of NRC subordinates. This meeting would not be public because doing so would create **an unnecessary administrative burden and impede the efficient execution of the NRC’s safety and regulatory responsibilities.**”

The description of a drop-in meeting in MD 3.5 emphasizes that it is requested by the management of the external entity. This description refers only to meetings requested by “a licensee, applicant, or a potential applicant.”⁶ Management visits to licensee facilities typically include meetings with site management as well as with NRC inspectors onsite. Both meeting types are typically closed to the public and exempt from any requirement to post a meeting notice and summary.

⁵ Members of the Commission also conduct drop-in meetings and meetings with site management during site visits. However, neither the Commission policy statement nor MD 3.5 is applicable to individual members of the Commission, who determine the policies for their own offices.

⁶ The definition of the drop-in meeting in MD 3.5 speaks only to visits requested by a “licensee, applicant, or potential applicant.” MD 3.5 is the only publicly available description of, or guidance related to, drop-in meetings and it does not enumerate any other types of drop-in visitors. However, senior NRC managers do conduct drop-in meetings with visitors who are not licensees, applicants, or potential applicants. In addition to the frequent visits by industry trade organizations, occasionally drop-in visits may include representatives of non-governmental organizations with an interest in nuclear safety, environmental protection, or local concerns about operations of NRC licensees.

Drop-in Meetings and a Controversial 2016 Decision

External stakeholders and NRC staff have raised concerns to the OIG regarding drop-in meetings. For example, a September 2016 decision by the EDO drew attention to drop-in meetings. A nuclear power licensee appealed the 2015 staff determination that a backfit was necessary at two of its plants. The Office of Nuclear Reactor Regulation director upheld the backfit determination. However, following the recommendation of a second, *ad hoc* review panel, the EDO overturned the staff determination in 2016. The reversal of the staff determination concerned both internal and external stakeholders. Freedom of Information Act requests about the backfit appeal revealed that licensee executives had made numerous visits to NRC headquarters during the appeals process. Because some of those visits were drop-in meetings rather than public meetings, stakeholders expressed concern that the backfit matter was discussed during the management meetings, contrary to the NRC meeting policy.

II. OBJECTIVE

The audit objective was to determine whether NRC policies and procedures for non-public interactions with industry stakeholders are adequate to prevent compromise of the independence of agency staff or the appearance of conflicts of interest.

III. FINDING

The OIG found that little guidance exists for drop-in meetings and other informal non-public interactions with external stakeholders. The absence of a structured process reduces transparency and places too much reliance on the ability of individual staff members to conduct such meetings appropriately. The NRC can take measures to clarify, for both the staff and the general public, its expectations regarding drop-in meetings and non-public informal interactions with external stakeholders.

NRC Policies and Procedures Do Not Fully Address Potential Risks Inherent in Drop-In Meetings and Informal Interactions

Gaps exist in NRC policies and procedures for drop-in meetings and informal non-public interactions. Management should develop policies and procedures as a form of internal control to address potential risks to agency transparency objectives. NRC management

has not systematically addressed the potential risks of drop-in meetings. As a result, there is a perceived asymmetry of access to NRC management and risk of regulatory capture that undermine the NRC’s goal to be seen as a trusted regulator by staff and external stakeholders.

What Is Required

Internal Controls Should Address Potential Risks to the NRC’s Transparency Objectives

Agency Transparency Objectives

The NRC values emphasize independence, openness, and transparency, for example in the Principles of Good Regulation. The NRC’s Principles of Good Regulation, originally issued by the Commission in 1991, include independence and openness.⁷ Independence features objective, unbiased, and documented decision-making, but does not require isolation. Openness comprises the means through which the public will be informed about and have the opportunity to participate in the agency’s regulatory work.

Table 1: Excerpt from the NRC’s Principles of Good Regulation

Independence	Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.
Openness	Nuclear regulation is the public’s business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

Source: The NRC public website

⁷ The five Principles of Good Regulation are Independence, Openness, Efficiency, Clarity, and Reliability. The definitions of all the principles are available at [NRC Values](#) on the NRC public website. The Commission revised the “Mission and Regulatory Philosophy” section of the NRC’s Five Year Plan for fiscal years 1991 through 1995 to promulgate the five Principles of Good Regulation. The principles were then published separately as guidance for the NRC staff from the Chairman. They have since been used by the NRC to drive improvement and by stakeholders to hold the agency accountable.

The NRC Strategic Plan for fiscal years 2022 to 2026 reemphasizes these principles in its goal of inspiring stakeholder confidence in the NRC. The plan echoes the Principles of Good Regulation as it states that to achieve this strategic goal, the NRC must be viewed as an independent, open, and reliable regulator. In particular, the NRC needs to engage meaningfully with diverse stakeholders to obtain a range of views and expertise, and to thereby build public confidence.

The NRC statements regarding independence and openness suggest that the agency's adherence to these principles could face risks from different sources.⁸ For example, an activity or information source that may introduce bias into an assessment, that is not well documented, or that appears to be unfair or inappropriate, could be a source of risk. The principal risks from drop-in meetings, if not properly conducted, include:

- Improperly limiting public access to information or public participation in NRC regulatory processes;
- Overstepping limits on permissible meeting topics; and,
- Undermining the perception of the NRC as independent, open, and transparent.

Responding to Potential Risks through Internal Control

The Government Accountability Office (GAO) Standards for Internal Control in the Federal Government⁹ states that management should identify, analyze, and respond to risks related to organizational objectives. Two important aspects of this process are:

- Establishing an organizational structure, assigning responsibility, and delegating authority to achieve the agency's objectives; and,
- Designing control activities, including policies and procedures, to respond to risks.

⁸ The OIG focused on whether NRC policies and procedures are adequate to prevent the appearance that staff conduct drop-in meetings in a manner that conflicts with the agency's role as an independent regulator. The OIG did not focus on whether these policies and procedures are adequate to prevent the appearance of conflicts involving staff members' personal or business relationships, as these concerns are already addressed in federal ethics rules and the NRC's supplemental ethics regulations. Additionally, government-wide ethics regulations at 5 C.F.R. 2635.101(b)(8) and (14) include the standard that employees shall avoid any actions creating the appearance that they are violating the law or the ethical standards for impartiality. Reputational risk can, however, remain a challenge even in the absence of financial ethical violations or regulatory transgressions.

⁹ Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.

NRC management must consider the potential risks that may prevent the NRC from adhering to the principles to which it has committed. NRC management must also establish responsibility for mitigating those risks through appropriate control activities.

What We Found

Gaps Exist in NRC Policies and Procedures for Drop-In Meetings and Non-Public Informal Interactions with External Stakeholders

Although the NRC has specific guidance to address the ways its staff engage with licensees and applicants in formal public meetings, and although the *Internal Commission Procedures* describe how the Commission, as a collegial body, will carry out its decision- and policymaking responsibilities in the public view, there is little guidance governing drop-in meetings and informal interactions at the staff senior management level.

Drop-in Meeting and Site Visit Policy

NRC policy documents do not formally define the term “drop-in meeting.” Moreover, although these documents describe drop-in meetings, they do so primarily by stating what a drop-in meeting is *not*, rather than by positively defining the attributes of a drop-in meeting.

The descriptions of drop-in meetings and management site visits in MD 3.5 are based on exceptions in the Commission policy statement on *Enhancing Public Participation in NRC Meetings*. Drop-in meetings and similar management meetings fall under the policy exception for meetings with outside individuals or entities that include “general information exchange having no direct, substantive connection to a specific NRC regulatory decision or action.” Management site visits fall under the policy exception for meetings where staff determine that the administrative burden of public attendance could interfere with execution of safety and regulatory responsibilities. These descriptions in MD 3.5 do not illuminate the purposes, roles and responsibilities, or processes for communicating information shared during drop-in meetings. Expectations for the conduct of staff during such meetings are unwritten.¹⁰

¹⁰ The MD 3.5 description of drop-in meetings focuses on scheduled NRC management interactions with, and at the request of, licensees or applicants. It is not clear that it includes other forms of contact between managers and licensees or applicants. MD 3.5 notes that NRC staff may come into contact with licensees, vendors, or applicants in informal settings, and states that conversations in informal settings should be limited to generic issues and publicly available information about NRC policies and decisions. However, similar impromptu, informal contacts with NRC managers, such as telephone calls, emails, or chance meetings, are not explicitly addressed in MD 3.5.

Guidance Does Not Address Purposes and Benefits

The NRC Principles of Good Regulation note that independence does not equate to isolation. Regulators such as the NRC must communicate with the industries they regulate. There is a need for exchange of expertise in complicated areas of regulation, which depends on constant interaction between the industry and regulators. Some degree of coordination between government and industry is also needed for the implementation of policy. At the NRC, these interactions occur in many areas, including research, rulemaking, guidance development, licensing processes, resolution of inspection results, incident follow-up, generic issues, and operations assessment. These regulatory interactions take place largely publicly, through formal, open public meetings and public comment processes, with certain exceptions for security-related or otherwise sensitive information.

As exceptions to the policy for public-facing regulatory activity, drop-in meetings and management site visits allow for more informal interactions with external stakeholders. Senior NRC managers described to the OIG several purposes and benefits of general, informal information exchanges with external stakeholders, like those that occur during drop-in meetings. These benefits include:

- NRC managers learn about the industry's business environment and expectations for growth or challenges, such as the impact of natural gas plants as competitors. Such larger forces beyond the control of the industry, licensees, or applicants affect their longer-term plans. Understanding longer-term trends can thus improve the accuracy of NRC budget and staffing projections.
- NRC managers learn about near-term plans of licensees and applicants that will impact NRC resource allocation, such as significant outage activities requiring inspection teams, or the timing of an application for a new design that will initiate licensing milestone schedules. Such plans are proprietary information until they are publicly announced, but advance notice provides the NRC more time to prepare.
- NRC managers obtain feedback on NRC processes, such as the pace of rulemaking or whether programmatic changes are achieving desired results.
- NRC managers become familiar with the licensee's or applicant's organization and representatives outside of the need to deliver a regulatory decision or respond to an incident. Regional managers, in particular, emphasized the value of

knowing the licensee before having to ask blunt questions on a phone call about plant status and licensee response following an unplanned shutdown.

NRC senior managers described drop-in meetings as an opportunity to be in a listening mode, attuned to insights about anything that could adversely impact operations or a given site's safety culture. Regional managers also mentioned that this information can complement what resident inspectors hear and observe to provide a multi-level, complex view of a licensee's activities, performance, and status. However, the purposes and benefits articulated by managers are not described in any guidance.

Guidance Lacking on Roles and Responsibilities

The OIG found a paucity of guidance related to drop-in meetings, including very limited or nonexistent guidance on conducting such meetings, the roles and responsibilities for training staff in this area, and meeting follow-up activities.

Variable Experience Replaces Training Guidance

Senior managers told the OIG that staff generally learn to conduct drop-in meetings through experience. Most NRC senior managers come up through the ranks in different NRC oversight roles. Qualification for these roles includes understanding the NRC public meeting policy and procedures, but there is less specific direction on maintaining regulatory boundaries in non-public meetings. Qualification programs for NRC technical positions emphasize the importance of an individual's conduct in interactions with licensees, applicants, and the public. However, specific criteria do not exist in qualification programs for demonstrating understanding and assertiveness to preserve regulatory boundaries in non-public, informal interactions with licensees and applicants. The types of informal interactions can be broader than the narrow category of scheduled drop-in meetings.¹¹

NRC senior managers told the OIG that observing drop-in meetings and participating in them at different management levels helped them develop awareness of what is and is not appropriate for a non-public forum. One senior manager described it as "muscle memory" developed over years in different roles. However, individual career paths, mentors, and experience vary throughout the agency. Consequently, not all managers

¹¹ MD 3.5 notes that NRC staff and management hold various meetings with stakeholders – planned and unplanned, formal and informal – as part of their routine regulatory, safety, and oversight responsibilities. A drop-in meeting or a management site visit is a planned, informal interaction, whether in person or virtual. A call about plant status can be unplanned and informal. Additional informal interactions can include phone calls or conferences attended by licensees.

may have equal opportunities to develop practical understanding of regulatory boundaries in the context of drop-in meetings.

No Guidance for Drop-in Meeting Information Sharing

NRC technical staff may not become aware of a scheduled drop-in meeting. A senior manager may request background information from staff prior to a scheduled drop-in meeting, but it can depend on the manager's preferences or degree of familiarity with the proposed meeting subject. By providing management with background information in writing or orally, staff become aware of drop-in meetings. In some cases, technical staff may facilitate scheduling a drop-in meeting. However, if background information is not requested or if scheduling occurs through a different means, staff may not become aware of a drop-in meeting. There is no public notice or record, and meetings may occur without internal documentation outside of email or electronic calendar applications.

Although senior managers cited the value they had derived from observing drop-in meetings, staff may not have a comparable opportunity to observe meetings themselves. Managers may invite staff familiar with the visiting licensee or applicant to observe drop-in meetings, but this practice is used differently across NRC offices and regions. Some senior managers may invite a branch chief to attend a drop-in meeting. Some staff who provide background information for drop-in meetings, such as technical assistants, senior project engineers, and project managers, describe having opportunities to observe a drop-in meeting, while others have not had the same opportunity. Reasons given by senior managers for not including technical staff include keeping a meeting from becoming too large or making sure no one present would become defensive about a visitor's comment.

In addition, staff whose work relates directly to a visitor's facility, or to relevant regulatory issues, may not receive any follow-up information after the drop-in meeting. Some senior managers update their technical staff, but others leave it up to division directors to communicate about drop-in meetings. Managers who provided follow-up information to staff noted that it, like direct observation of a meeting, helps demystify the drop-in meeting process and demonstrate to staff that nothing of regulatory significance was discussed during the meeting.

Absence of Guidance Regarding Expectations for Meeting Conduct

The OIG spoke with approximately fifteen NRC staff about how they prepare for drop-in meetings. In particular, those staff who prepare background materials for management drop-in meetings described their concerns about the absence of guidance for drop-in meeting conduct. They stated that the absence of guidance focuses reliance on individual

judgment to maintain regulatory boundaries in drop-in meetings and similar non-public informal interactions.

- Some observed that their comfort with drop-in meetings depends on how they view a manager's dedication to agency values. Those who had observed a drop-in meeting or whose managers frequently provided follow-up information expressed greater confidence in management.
- Some staff stated that they seek to use requests for background information to align a manager's perspectives with those of staff but may not know with certainty whether they were successful if there is no follow-up.
- Some emphasized they saw a need to educate managers about the boundaries for discussions. One staff member noted a potential problem in the ease with which licensees or applicants can reach middle managers, who may not have as much experience to prepare for non-public informal interactions.¹²

Overall, staff interviewed for the audit expressed confidence in their current senior managers' engagement in drop-in meetings, but some specifically noted they would not have the same level of confidence with different individuals in the absence of more or better guidance. Although they recognized that some information advantages for management could be lost, these staff members suggested the NRC could regulate well without drop-in meetings and avoid risks of crossing regulatory boundaries.

As part of the audit, the OIG performed an analysis to explore concerns regarding drop-in meetings. Specifically, the OIG analyzed drop-in meeting and site visit briefing packages for Commission members and headquarters senior leaders from calendar years 2018 through 2021.¹³ The review analyzed the following: (1) the frequency of drop-in meetings and senior management site visits; (2) the number of distinct entities engaging with the NRC through executive level drop-in meetings and site visits; (3) the most frequent visitors or sites visited; and, (4) the range of topics proposed by licensees or included by staff in the briefing materials. Based on this analysis, the OIG did not find patterns suggesting that favorable regulatory outcomes routinely followed frequent drop-in meetings or site visits at the highest levels of NRC leadership. However, because the NRC does not maintain thorough documentation of drop-in meetings and other informal

¹² Some staff interpret licensee and applicant direct phone calls to middle managers as equivalent to drop-in meetings. Staff who hold this view believe the same principles of conduct should apply to ensure regulatory boundaries are maintained.

¹³ The methodology for the briefing package review is discussed in the appendix to this report.

interactions between external stakeholders and NRC officials at lower management levels, the OIG could not conduct the same systematic verification for these interactions.

Why This Occurred

NRC Management Has Not Systematically Addressed the Potential Risks of Drop-in Meetings

Drop-in meetings and other non-public informal interactions are a long-standing NRC management practice without concrete structure or explicit rules. Management has not systematically addressed the potential risks of these non-public informal interactions, in particular, by developing control activities to mitigate them.

In discussions with the OIG during the audit, NRC managers largely focused on the benefits of drop-in meetings. Senior managers acknowledged the potential for reputational risk, however, often noting that internal distrust is as important as external doubts. Nevertheless, senior managers also defended their own ability to observe appropriate limits in drop-in meetings, highlighting how the lack of guidance necessitates reliance on individual judgment.

Some managers have employed methods to mitigate the potential reputational risks associated with public or staff perception that drop-in meetings are being used inappropriately, but these methods have not been institutionalized by the agency. As a result:

- Preparation for managers to conduct drop-in meetings is not prioritized;
- There is little or no documentation that most drop-in meetings have occurred;
- Observation by branch chiefs or senior technical staff is not consistently practiced; and,
- Management does not have a consistent, routine process for feedback to staff about meeting topics.

In addition, NRC policies and procedures do not clearly state that the same principles used for drop-in meetings apply to other forms of non-public informal management interactions with external stakeholders, such as unplanned meetings, phone calls, and teleconferences.

Why This Is Important

Perceived Asymmetry of Access to NRC Management and Risk of Regulatory Capture Undermine NRC Transparency Goals

During our audit, the OIG identified chronic concerns, expressed by NRC staff and external stakeholders alike, about drop-in meetings and similar non-public informal interactions. One of these concerns was regulatory capture, which in relation to drop-in meetings is the concern that the NRC is serving to advance the interests of the very industry it regulates. Regulatory capture is often intangible and not measurable.

Established NRC modes of interaction can foster a shared view between regulator and industry about which technical issues and information are significant, even where there is disagreement about solutions. These shared views do not necessarily reflect regulatory capture. However, disproportionate nuclear industry access to NRC officials may appear to be improper influence to interested stakeholders who are outside of the ongoing conversation, or who have less technical expertise.

There is no metric for the agency's stated goal to be seen as a trustworthy regulator. There are, however, factors the NRC should consider as potentially weakening the agency's perceived trustworthiness:

- If interactions with regulated entities are not conducted in a manner that is transparent to lower-level staff, there is a potential loss of trust within the organization. Further, staff may feel their technical work is undermined, thereby damaging morale.
- If interactions with regulated entities are not transparent to the public, there is a potential loss of confidence in NRC decision-making. The technical complexity of many NRC matters already makes it difficult for non-expert members of the public to participate meaningfully in regulatory processes. NRC exchanges with regulated entities in non-public meetings can contribute to public perceptions of NRC partiality towards industry.

Without taking actions commensurate with the reputational risks inherent in drop-in meetings and similar non-public informal interactions, the NRC will face continual challenges in meeting its independence, openness, and transparency goals.

Recommendations

The OIG recommends that the Executive Director for Operations:

1. Develop and publish a public description of the purposes and benefits of, and the controls on, the drop-in meeting process;
2. Develop guidance to systematize practices across the agency for consistently informing technical staff about drop-in meetings, both before and after the meetings;
3. Develop guidance to systematize practices across the agency for consistently including staff observers as part of staff development and training efforts; and,
4. Once the new guidance is developed, train all managers on the new guidance and controls for drop-in meetings and related interactions with external stakeholders.

IV. NRC COMMENTS

The OIG held an exit briefing with the agency on July 18, 2022. Prior to this meeting, NRC management reviewed a discussion draft and later provided comments that have been incorporated into this report, as appropriate. As a result, NRC management stated their general agreement with the finding and recommendations of this report and chose not to provide formal comments for inclusion in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit objective was to determine whether NRC policies and procedures for non-public interactions with industry stakeholders are adequate to prevent compromise of the independence of agency staff or the appearance of conflicts of interest.

Scope

This performance audit focused on the NRC's policies and procedures governing non-public interactions with industry stakeholders for the period between January 2018 and December 2021. The OIG conducted this audit from September 28, 2021 to May 31, 2022 at the NRC headquarters in Rockville, Maryland.

Internal controls related to the audit objective were reviewed and analyzed. Specifically, the OIG reviewed the components of control environment, risk assessments, control activities, information and communication, and monitoring. Within those components, the OIG reviewed the principles of establishing structure, responsibility, and authority organizational structure; assigning responsibility and delegating authority to achieve the entity's objectives; and, designing control activities, including policies for achieving management objectives and responding to risks.

Methodology

The OIG reviewed relevant criteria and program documents for this audit, including, but not limited to:

- Commission Policy Statement, *Enhancing Participation in NRC Public Meetings*, March 19, 2021.
- Government Accountability Office, *Bank Supervision: FDIC Could Better Address Regulatory Capture Risks*, GAO-20-519, September 4, 2020.
- Government Accountability Office, *Standards for Internal Control in the Federal Government*, GAO-14-704G, September 2014.
- Inspection Manual Chapter 1201, *Conduct of Employees*, July 29, 2016.
- Management Directive 3.5, *Attendance at NRC Staff-Sponsored Meetings*, July 26, 2021.

- *Administrative Procedures Act, 5 United States Code (U.S.C.) 551-559*, NUREG-0980, Volume 2, No. 11, December 2015.
- NUREG-1614, Volume 8, *Strategic Plan for Fiscal Years 2022- 2026*, April 2022.
- The NRC's *Principles of Good Regulation*, as of September 25, 2017.
- Title 10, C.F.R., Part 2, *Agency Rules of Practice and Procedure, Subpart C Section 2.347, Ex Parte Communications*.
- Title 10, C.F.R., Part 9, *Subpart C, Government in the Sunshine Act Regulations*.

The OIG analyzed more than 300 briefing packages from calendar years 2018 through 2021 to understand the frequency of drop-in meetings and site visits, the number of distinct entities engaging with the NRC through drop-in meetings and visits, the most frequent visitors or sites visited, and the range of topics suggested by licensees or raised by staff in the briefing materials. The briefing packages reviewed by the OIG represent a specific subset of all the drop-in meetings and management site visits, but as a source they provide a partial picture of the visitors and matters of interest at the highest NRC leadership levels.

The OIG also analyzed the data to assess whether any patterns existed between the frequency of drop-in meetings or site visits and favorable regulatory outcomes. As part of this analysis, the OIG identified the most frequent visitors that also had NRC dockets or announced planned applications. Next, the OIG systematically catalogued topics proposed by licensees or applicants and the times of drop-in meetings and performed a month-by-month cross walk of this information with the public record on NRC regulatory actions and activities. Actions and activities reviewed include: public meetings, licensing activity, Atomic Safety Licensing Board hearings, Commission orders, inspection findings, enforcement actions, and construction inspection findings. Where the public record did not answer a question raised in the review, auditors searched NRC internal records for information.

The OIG sought to benchmark NRC policies and procedures in this area with the activities of comparable U.S. regulatory agencies to identify possible best practices. The NRC OIG reached out to the OIGs of the following eight agencies: (1) the Securities and Exchange Commission; (2) the Federal Communications Commission; (3) the Federal Maritime Commission; (4) the Postal Regulatory Commission; (5) the Federal Election Commission; (6) the Commodity Futures Trading Commission; (7) the Federal Deposit Insurance Corporation; and, (8) the U.S. International Trade Commission.

Additionally, the OIG interviewed 29 NRC managers and staff to understand the processes for conducting drop-in meetings and implementing the agency's existing policies and procedures.

For the purposes of this audit, the OIG did not use computer-generated data.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Throughout the audit, auditors considered the possibility of fraud, waste, and abuse in the program.

The audit was conducted by Paul Rades, Team Leader; Amy Hardin, Audit Manager; Jennifer Cheung, Senior Management Analyst; Chanel Stridiron, Senior Auditor; and Melissa Chui, Auditor.

TO REPORT FRAUD, WASTE, OR ABUSE

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COMMENTS AND SUGGESTIONS

If you wish to provide **comments** on this report, please email the OIG using this [link](#).

In addition, if you have **suggestions** for future OIG audits, please provide them using this [link](#).