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POLICY ISSUE
(Notation Vote)

March 17, 1994

SECY-94-070

FOR: The Commissioners
FROM: James M. Taylor
Executive Director for Operations
SUBJECT: STREAMLINING OFFICE OF INVESTIGATIONS (OI)
ACTIVITIES IN SUPPORT OF THE NATIONAL PERFORMANCE
REVIEW

PURPOSE:

To obtain Commission approval to:

1. Delegate authority to issue subpoenas necessary to the conduct of OI investigations from the Director of OI, to the OI regional Field Office Directors.
2. Eliminate the requirement to notify the Commission immediately of each case opened by OI.

BACKGROUND:

Delegation of Subpoena Authority. In 1982, the Acting Director, OI, was authorized to *recommend* issuance of subpoenas (ad testificandum and duces tecum) in the furtherance of OI investigations under Section 161(c) of the Atomic Energy Act of 1954, as amended. On January 11, 1985, pursuant to a

Contact:
William D. Hutchison, OI
504-3484

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

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Commission vote on a recommendation contained in SECY-84-417, the Director, OI, was delegated authority to *issue* such subpoenas where necessary or appropriate for the conduct of investigations. This delegation stipulated a prior review of such subpoenas by the Office of the General Counsel and suitable advance notice of issuances to the Commission.

Later in 1985 a rule was placed in the Federal Register amending 10 CFR Part 1 to reflect the Commission's decision to delegate subpoena authority to OI. This rule was issued without prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(B)(a) because it was considered a minor procedural amendment relating to agency organization and management.

On June 17, 1986, OI was informed that the Commission did not object if *final approval* of subpoena issuance was granted by the Director, OI, without prior consultation with the Commission.

Commission Notification of Cases Opened. Since 1983, OI has been providing an Investigations Status Report to the Commission each month regarding ongoing and closed cases. In March 1983, a policy was adopted that required the Director, OI, to *promptly inform* the Chairman of all investigations commenced by OI. This policy was implemented by instituting a paper describing the circumstances surrounding the opening of each OI investigation to the Commission within 24 hours. At the time this policy was adopted, OI was reporting directly to the Commission. The Commission desired to monitor the justification for opening all OI investigations, as the cases were commenced.

DISCUSSION:

Delegation of Subpoena Authority. Currently the procedure to obtain authorization for a subpoena is complicated and time consuming. An investigator desiring to use a subpoena in the conduct of an investigation must provide a draft of the subpoena and a draft memorandum indicating justification for use of the subpoena to his or her Field Office Director. The Field Office Director then submits the finalized justification memorandum formally requesting the subpoena, along with the draft subpoena itself, to OI Headquarters where it is reviewed, coordinated with OGC, and ultimately approved by the Director, OI. The subpoena is signed, sent back to the field office, and normally served by mail or in person by the case investigator.

The case investigator requesting it, the need for the subpoena, the supervising Field Office Director who is in a position to best analyze whether the subpoena is necessary, and the method by which the subpoena would be served are all concentrated at the field office level. OI Field Office Directors have an average of approximately 20 years investigative and management experience,

with an average of approximately 11 of those years with the NRC. To complement their expertise, OI investigators have an average of approximately 15 years of experience, normally in Federal criminal law enforcement. By empowering OI Field Office Directors with the authority to issue subpoenas recommended by their investigators, the responsibility and accountability for such actions will be placed at the most efficient and effective level. In addition, it would eliminate the cumbersome and time-consuming process of Headquarters review and approval in each instance where a subpoena is warranted. Both of these goals are clearly in keeping with the recommendations of the National Performance Review.

If this delegation of subpoena authority is approved by the Commission, the Field Office Directors would continue to coordinate each subpoena through the Office of General Counsel, and OI Headquarters would receive prior notification that a subpoena is being issued and served. This action involves no resource adjustments to the NRC Five Year Plan.

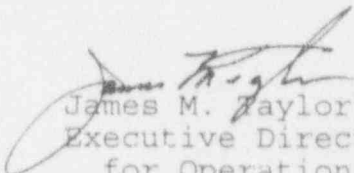
Commission Notification of Cases Opened. OI no longer reports directly to the Commission, as was the case when the 24-hour notification was initiated. OI now reports to the Executive Director for Operations through the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support. In addition, significant cases (which include, but are not limited to, cases where wrongdoing allegations are made against a corporate officer in the power industry or other cases where significant health and safety matters are concerned) are currently being briefed to the Commission by the Director, OI, as soon as they are surfaced.

The elimination of the requirement to inform the Commission of all OI full-scale case openings within 24 hours of receipt would accomplish two purposes, both of which are in keeping with the recommendations of the National Performance Review. It would reduce the administrative requirement by eliminating the need to prepare and distribute the paper, and it would streamline the basic case opening procedure for the OI field offices and headquarters by eliminating one entire step in the process. In order to continue to provide the Commission with details regarding the cases opened in a given month in a timely manner, the OI Monthly Investigations Status Report would be expanded to include details of those cases opened during that period. This action involves no resource adjustments to the NRC Five Year Plan.

This paper has been coordinated with the Office of General Counsel.

RECOMMENDATIONS:

1. It is recommended that the Commission authorize the Director, OI, to re-delegate authority to issue subpoenas in OI investigations to the Field Office Directors, with a requirement of prior coordination with the Office of the General Counsel and notification to OI Headquarters for oversight purposes.
2. It is recommended that the immediate Commission notification be discontinued in favor of Commission briefings on significant cases as they are developed, and a more detailed OI Monthly Investigations Status Report to the Commission by highlighting cases opened during the month.


 James M. Taylor
 Executive Director
 for Operations

Enclosure(s):

1. Memo/Fitzgerald fm Palladino-07/16/82
2. SECY-84-417, 10/26/84
3. Memo/Dircks, Hayes fm Chilk-11/09/84
4. Memo/Hayes fm Palladino-01/11/85
5. 10 CFR Part 1
6. Memo/Stello fm Chilk-06/17/86

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Friday, April 1, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, March 25, 1994, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

July 16, 1982

MEMORANDUM FOR: James A. Fitzgerald, Acting Director
Office of Investigations

FROM: Nunzio J. Palladino *NJP*

SUBJECT: DELEGATION OF AUTHORITY

As Acting Director, Office of Investigations, you are hereby delegated authority to:

1. Develop, administer, maintain, and monitor a program to perform thorough, timely and objective investigations.
2. Conduct and supervise investigations within the scope of NRC authority, except those concerning NRC employees and NRC contractors, at the request of the Commission, the Chairman, the Executive Director for Operations, Regional Administrators, or on your own initiative.
3. Develop, administer, and maintain a quality control system and standards over the initiation, conduct and supervision of all investigations undertaken by the Office.
4. Develop, administer, and maintain a program to ensure the proper level of training for the investigative staff of the Office.
5. Keep abreast of the NRC inspection program for licensees, permittees, and applicants, and their contractors or vendors, in order to advise the Commission, the Executive Director for Operations, and Regional Administrators of the need for formal investigations.
6. Establish and maintain systems and procedures to ensure that appropriate organizational components of NRC are promptly notified and fully informed of those matters under investigation which may affect public health and safety, the common defense and security, environmental quality, or the antitrust laws.

NJP

7. Advise and assist the Office of Inspector and Auditor in referrals to the Department of Justice stemming from investigations by OI.
8. Administer oaths and affirmations where needed. This authority may be redelegated to other members of OI. Any redelegation must be made in writing and filed with the Secretary of the Commission.
9. Recommend issuance of subpoenas (ad testificandum and duces tecum).
10. Develop policy options for Commission consideration on matters within the above authority.

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
SECY
OGC
OPE
OIA
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OPA

File



U.S. NRC

1984 OCT 30 PM 3:46

OFFICE OF INVESTIGATIONS
HEADQUARTERS

POLICY ISSUE
(Notation Vote)

October 26, 1984

SECY-84-417

For: The Commission
From: William J. Dircks
Executive Director for Operations

Ben Hayes, Director
Office of Investigations

Subject: DELEGATION OF SUBPOENA AUTHORITY

Purpose: To delegate to the Director of the Office of Investigations the authority to issue subpoenas during the course of investigations.

Discussion: By memorandum dated July 20, 1982 the Commission approved SECY 82-239 (June 9, 1982) and delegated the authority to issue subpoenas to the Executive Director for Operations. Under that authority subpoenas have been issued in five matters. In two cases subpoenas have been issued to support staff action. In three cases, including TMI where 47 subpoenas were issued, subpoenas were issued under the EDO's authority to support OI's investigations. The staff issued subpoenas at the request of OI because OI does not have the independent authority to issue subpoenas.

In practice, the regional OI investigator has worked with the Regional Counsel and the Office of the Executive Legal Director in preparing a memorandum to the Executive Director for Operations, a draft Commission memorandum, and a draft subpoena. Following discussions at the EDO level with appropriate staff officials and the Office of Investigations, a memorandum is sent to the Commission informing the Commissioners of the proposed issuance of a subpoena, as is currently required under

Contact: James Lieberman, OELD
492-7496

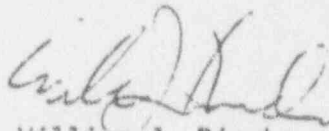
the Commission's delegation of subpoena authority to the staffs for the first ten cases. Frequently discussions are also held with the Office of General Counsel.

In those cases where the subpoena is being used to support an OI investigation the staff function in reviewing a subpoena is essentially (1) assuring an adequate legal basis for issuing the subpoena, (2) questioning whether the agency has exhausted other mechanisms for obtaining the information and (3) assuring on balance that the subpoena is the appropriate mechanism to obtain the information. We consider this review process to be proper for staff subpoenas. However, this review may not be always appropriate for OI requested subpoenas in view of the separation between the OI and staff organizations. It may also not be the most efficient way for OI to obtain a subpoena.

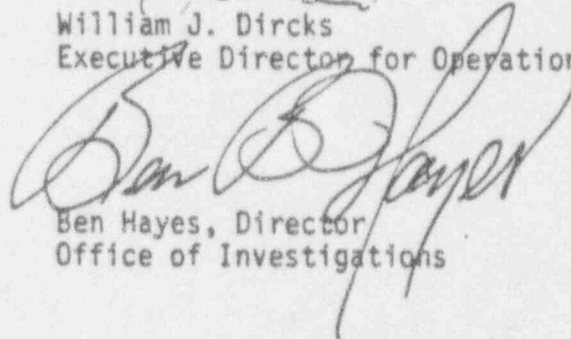
The staff and OI agree that OI should be delegated authority to issue subpoenas. OI would consult with the staff before issuing a subpoena to determine whether the staff already has the information being sought.

Recommendation:

That the Commission delegate to the Director, Office of Investigations, the authority to issue subpoenas when necessary or appropriate for the conduct of investigations.



William J. Dircks
Executive Director for Operations



Ben Hayes, Director
Office of Investigations



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

November 9, 1984

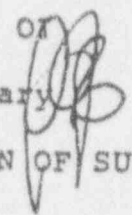
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OFFICE OF INVESTIGATIONS
HEADQUARTERS

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: William J. Dircks, Executive Director
for Operations
Ben B. Hayes, Director, OI

FROM: Samuel J. Chilk, Secretary 

SUBJECT: SECY-84-417 - DELEGATION OF SUBPOENA
AUTHORITY

This is to advise you that the Commission (with all Commissioners agreeing) has approved your recommendation to delegate to the Director, Office of Investigations, the authority to issue subpoenas when necessary or appropriate for the conduct of investigations.

By copy of this memorandum, OGC in consultation with OI, should prepare the delegation. The delegation should include the provisions included in prior delegations including the need for prior review by OGC, the need for OI to consult with staff to assure that the information being subpoenaed is not otherwise available, and providing suitable advance notice to the Commission. The appropriate Manual Chapter and 10 CFR Part I changes should also be drafted.

(OGC/OI) (SECY SUSPENSE: 11/26/84)

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OGC
OPE



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

January 11, 1985

MEMORANDUM FOR: Ben B. Hayes, Director
Office of Investigations

FROM: Nunzio J. Palladino *NJP*

SUBJECT: DELEGATION OF AUTHORITY

Pursuant to Commission vote on the recommendation contained in SECY-84-417, the Director, Office of Investigations, is hereby delegated authority to issue subpoenas under Section 161c of the Atomic Energy Act of 1954, as amended, where necessary or appropriate for the conduct of investigations.

Prior to issuance of a subpoena, OI is to:

- (1) determine whether the staff already has the information being sought;
- (2) obtain review by the Office of the General Counsel; and
- (3) provide suitable advance notice to the Commission.

The above authority may not be redelegated.

cc: Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OPE
OGC
EDO
SECY

NUCLEAR REGULATORY COMMISSION
10 CFR Part 1
Delegation of Subpoena Authority

U.S. NRC

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OFFICE OF INVESTIGATIONS
HEADQUARTERS

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AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the Commission's decision to delegate authority to the Office of Investigations to issue subpoenas where necessary or appropriate for the conduct of investigations. This amendment will permit the Office of Investigations (OI) to issue independently a subpoena during the course of investigations.

EFFECTIVE DATE:

JUN 19 1985

FOR FURTHER INFORMATION CONTACT: Polly Schofield, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-7246.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By memorandum dated July 20, 1982, the Commission approved SECY 82-239 (June 9, 1982) and delegated the authority to issue subpoenas to the Executive Director for Operations. Under that authority, subpoenas have been issued in

five matters in two cases subpoenas have been issued to support staff action. In three cases, including TMI where 47 subpoenas were issued, subpoenas were issued under the EDO's authority to support OI's investigations. The EDO issued subpoenas at the request of OI because OI did not have the independent authority to issue subpoenas.

In those cases where the subpoena is being used to support an OI investigation, the staff function in reviewing a subpoena is essentially (1) assuring an adequate legal basis for issuing the subpoena, (2) questioning whether the agency has exhausted other mechanisms for obtaining the information, and (3) assuring on balance that a subpoena is the appropriate mechanism to obtain the information. This review process is considered to be proper for staff subpoenas. However, this review may not be always appropriate for OI requested subpoenas in view of the separation of functions between the OI and the EDO staff organizations. It may also not be the most efficient way for OI to obtain a subpoena.

The EDO and OI agreed that OI should be delegated authority to issue subpoenas. OI would consult with the staff before issuing a subpoena to determine whether the staff already has the information being sought.

Pursuant to EDO and OI recommendations, the Commission voted on January 11, 1985, to delegate to the Director, Office of Investigations, the authority to issue subpoenas under Section 161c of the Atomic Energy Act of 1954, as amended, where necessary or appropriate for the conduct of investigations.

Since these are minor, procedural amendments relating to agency organization and management, notice and opportunity for comment are not required by the Administrative Procedure Act under 5 U.S.C. 553 or by 10 CFR 2.804(d).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final 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 1

Organization and Functions

For 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 amendment to 10 CFR Part 1.

PART 1 - STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

AUTHORITY: Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); secs. 201, 203, 204, 205, and 209, Pub. L. 93-438, 88 Stat. 1242, 1244, 1245, 1246, and 1248 (42 U.S.C. 5841, 5843, 5844, 5845, and 5849); Pub. L. 94-79, 89 Stat. 413; and 5 U.S.C. 552 and 553.

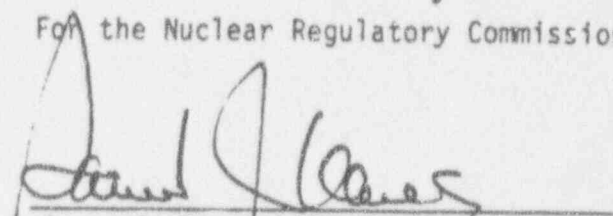
2. Section 1.36 is revised to read as follows:

§1.36 Office of Investigations

The Office of Investigations: (a) develops policy, procedures and quality control standards for the conduct of all NRC investigations of licensees, permittees, applicants, and their contractors and vendors; (b) conducts and supervises investigations within the scope of NRC authority, except those concerning NRC employees and NRC contractors; (c) assures the quality of investigations; (d) maintains current awareness of inquiries and inspections by other NRC offices to identify the need for formal investigations; (e) makes appropriate referrals to the Department of Justice; (f) keeps Commission and involved NRC Offices currently apprised of matters under investigation as they affect public health and safety, the common defense and security, environmental quality, or the antitrust laws; (g) issues subpoenas where necessary or appropriate for the conduct of investigations; (h) maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest.

Dated in Washington, DC, this 14th day of May 1985.

For the Nuclear Regulatory Commission.



Samuel J. Chilk
Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
U.S. NRC WASHINGTON, D.C. 20555

Cys:Stello
Roe
Rehm
Sniezek
GCunningham
Lieberman
Denton
Taylor
Davis
Regions I-V
CI

Boyd
Ray ✓

1986 JUN 15 PM 12:53 June 17, 1986

OFFICE OF INVESTIGATIONS
HEADQUARTERS

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for Operations
FROM: *Th. Cole* Samuel J. Chilk, Secretary
SUBJECT: ISSUANCE OF SUBPOENAS WITHOUT PRIOR
CONSULTATION WITH THE COMMISSION

This is to inform you that the Commission does not object to your exercising final approval over issuance of subpoenas by the staff without prior consultation with the Commission as outlined in your June 4, 1986 memorandum.

cc: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech
OGC
OPE