



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

October 1, 1982

MEMORANDUM FOR: All NRR Employees

FROM: Harold R. Denton, Director
Office of Nuclear Reactor Regulation

SUBJECT: NRR OFFICE LETTER NO. 19, REVISION 2 - PROCEDURES FOR
NOTIFICATION TO LICENSING BOARDS OF RELEVANT AND MATERIAL
NEW INFORMATION

This Revision supersedes and replaces NRR Office Letter No. 19, Revision 1, dated December 9, 1980.

Effective immediately, all NRR personnel will use the following revised procedures for assuring prompt and appropriate action on notifying Licensing Boards, Appeal Panel and the Commission of new information which is considered by the staff to be relevant and material to one or more licensing proceedings. These revised procedures reflect the experience we have gained since issuing Revision 1 on December 9, 1980.

The major changes in this procedure from Revision 1, which were specified in SECY 82-122 dated March 18, 1982, reflect the following:

1. The increased role of the Regions in the Board Notification process.
2. More emphasis on meeting the Guidelines for Board Notification set forth in ALAB-551 regarding an explanation of the information to be submitted.
3. More emphasis on the need to account for new material in the SER or by providing a summary list of the items not in the SER to the Board 30 days prior to the hearing.

BOARD NOTIFICATION PROCEDURE

A. BACKGROUND

Following Commission approval of its Board Notification policy on May 4, 1978, the Office of Nuclear Reactor Regulation issued NRR Office Letter No. 19 dated July 6, 1978, which contained Board Notification procedures to be implemented by NRR. The term "Board Notification" refers to new information which is considered to be relevant and material to one or more licensing proceedings, i.e., material relating to an issue before a Licensing Board, Appeal Panel, or the Commission which can reasonably be regarded as putting a new or different light on that issue, or raising a new issue. (Note that the term "Board" will be used in this procedure to refer to Licensing Boards, Appeal Panel and Commission.)

In a memorandum dated May 10, 1978, the Commission requested that an evaluation of the Board Notification policy be prepared when approximately one year of experience was available. SECY-80-129, dated March 10, 1980, provided an assessment of then current procedures and proposed changes to those procedures to correct problems encountered in carrying out the Board Notification policy. In its approval of SECY-80-129 policy changes, the Commission requested another review of the new policy after one year of experience was gained. The review was completed and forwarded to the Commission as SECY-82-122 dated March 18, 1982.

There were three significant changes to the Board Notification policy recommended in SECY-80-129 and approved by the Commission.

1. Change the time threshold for initiating the formal Board Notification procedures from the issuance of the ACRS Supplement and FES to 30 days before the start of the evidentiary hearing.
2. Eliminate the routine transmittal to the Boards of staff correspondence and notices to applicants and licensees. Staff correspondence and notices to applicants and licensees would be sent to the Board only if it is determined to meet the guidelines for Board Notification, i.e., new information considered material and relevant.

Information received from outside sources and considered to be suitable for Board Notification must be handled in an expeditious manner. Some examples of information from outside sources are: (1) the reporting of errors discovered in a vendor's Emergency Core Cooling System (ECCS) models or codes which could result in changes to analyses previously evaluated and discussed in the SER, (2) the reporting of geological features which could result in significant changes to those previously reported by the applicant and evaluated by the staff as discussed in the SER, and (3) those reports identified by the Research and Standards Coordination Branch as being appropriate for consideration for Board Notification. All such information should be transmitted to the Director, Division of Licensing, according to the procedures of Section B.1, below within 2 working days of its receipt by the staff.

Internally generated information that could reasonably be regarded as putting a new or different light upon an issue before Boards should also be reported as expeditiously as practicable. However, the Commission's policy recognizes the difficulty of determining the point when an individual staff member's perceived concern has developed into a staff issue of sufficient importance that Boards are to be notified. In accordance with the Commission's policy, internally generated information should be provided to Boards at the point when the staff determines that it is necessary to get more information about a problem from a source external to the staff. That is, if such new information is determined to be of sufficient importance to seek further information, analyses, tests, etc., from licensees or vendors, NRC contractors, or others outside the NRC staff, then the issue has developed to the point where concerned Boards should be informed.

As for internally generated information, technical papers and journal articles should be provided to Boards at a point when the staff determines that (1) such information is of sufficient importance to call into question staff positions and criteria, or (2) the staff has determined to seek further information, analyses, tests, etc., from licensees, vendors, NRC contractors or others outside the staff.

The following guidelines apply to recommendations for Board Notification:

1. Staff members should provide promptly (i.e., within 2 days) the following minimum information, through their management, to the Director, Division of Licensing. Memorandum transmitting recommended items should be hand-carried through concurrence to destination.

The above information represents the minimum content of a proposed notification as submitted to the Director, Division of Licensing. The safety or environmental significance/assessment of the matter and the basis for any conclusions must be presented to the Board either in the initial notification or in a followup notification.

2. NRR also has a responsibility for identifying information potentially relevant and material to Boards considering facilities licensed under Part 70 and under the cognizance of the Office of Nuclear Material Safety and Safeguards (NMSS). Staff members should make any such recommendations through their management to the Director, Division of Licensing. The information provided should, to the extent possible, conform to that listed in Item 1. above. The Director, Division of Licensing, will forward the Board Notification material to the Director, Office of Nuclear Material Safety and Safeguards.
3. Recommendations may be judged by the Director, Division of Licensing, not to be material and relevant and a memorandum to that effect will be provided to the originator. If the originator still feels that the information should be provided to Boards, he or she should so state in a followup recommendation. Such a followup recommendation will be processed through the normal Board Notification channels. Although comments may be added indicating disagreement by those who judged the information not to be relevant and material, it will be forwarded to the Board.
4. Board Notifications on differing professional opinions will follow the procedures of NRC Manual Chapter 4125, "Differing Professional Opinions."
5. Due to the increased scope of the Region's responsibilities under Regionalization the Regional Administrators will transmit potential Board Notification information directly to the Director, Division of Licensing. The procedures of this Section B apply for these notifications. The OIE Board Notification Procedures are contained in IE MC 1530.
6. The Office of Investigations will transmit information recommended for Board Notification to the Director, DL. The Director, DL should obtain OI comments on Board Notifications involving allegations (SECY 82-340 dated August 17, 1982.)

5. If the recommendation involves an allegation, and is determined by the Director, DL, to be appropriate for Board Notification, the Director, DL, will transmit the draft notification to the Director, Office of Investigations (OI) for prompt assessment/concurrence. The OI prompt assessment will (1) assure that the Board Notification is written in a manner which would not compromise an investigation, and (2) make a preliminary determination of the authenticity of the allegation. The level of detail in the BN document will meet the minimum level of detail described by the BN criteria (SECY 82-122, 3/18/82) even though the actual allegations (original copy) may not be transmitted to the Board. The safety or environmental concerns of the notification must be preserved in this process. The OI should transmit their comments to the Director, DL, within 5 working days of receipt of the draft Board Notification.
6. The Director, Division of Licensing, will make a written determination and forward the Board Notification to the cognizant DL Assistant Director for action.
 - a. For instances prior to 30 days of the evidentiary hearing, the item will be brought to the attention of the Board through incorporation in the SER or as supplemental staff testimony. A copy of the memorandum will be sent to the originator. The project manager is responsible for seeing that the item is covered in evidentiary documents unless it has been determined that the item has been resolved and that Board Notification is not required. Final disposition shall be reported to the Office of the Director, DL (Board Notification Coordinator).
 - b. For instances within 30 days of (or during) the evidentiary hearing, the item must be brought promptly to the attention of the Boards (issue within 2 working days from receipt of the Director's memorandum). Copies of the Board Notification shall be sent to the originator, technical review group, Office of the Director, DL (Board Notification Coordinator) and OELD (Hearing Division Director and Chief Counsel).
 - c. A finding by the Director, Division of Licensing, with regard to Board recommendations should be reviewed by the DL Assistant Directors for applicability to proceedings related to applications for construction permits, post-CP proceedings, applications for operating licenses, as well as proceedings relating to issuance of license amendments. Proceedings related to research and test facilities licensed under Part 50 are to be taken into consideration also.