



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

NOV 19 1984

) *mapes*  
AB78-1  
PDR

MEMORANDUM FOR: William J. Olmstead  
Director and Chief Counsel  
Regulations Division  
Office of the Executive Legal Director

FROM: *Ben B. Hayes* Ben B. Hayes, Director  
Office of Investigations

SUBJECT: NRC STATEMENT OF POLICY ON INVESTIGATIONS, INSPECTIONS,  
AND ADJUDICATORY PROCEEDINGS--INITIATION OF RULEMAKING  
TO ESTABLISH SPECIAL PROCEDURES FOR RESOLVING CONFLICTS  
CONCERNING THE DISCLOSURE OR NONDISCLOSURE OF  
INFORMATION

We have reviewed your October 22, 1984 draft Federal Register Notice of proposed rulemaking regarding this subject. Based on our review, we offer the following comments:

Our comments fall under two general categories. The first is that the proposed rule contains some imprecise language, and that the ambiguity thus created would lead to interpretations other than intended by the framers of the interim policy. The second is that the rule provides a more cumbersome and time consuming mechanism than that currently in use.

For instance, Section 2.795b refers to the use of the in-camera process for the resolution of potential conflicts between the requirement to disclose and the need to protect information. We believe that the rule should more precisely characterize the presentation as in-camera ex parte, or in some other way make clear that the in-camera presentation would be without other parties present. We note that the rest of the rulemaking similarly neglects to specify that the in-camera proceedings would be conducted without the presence of the other parties. We recommend this notwithstanding the fact that 2.795f appears to clarify the concept of in-camera presentations as there may be some circumstances where less restrictive in-camera presentations may prove satisfactory to OI or the Staff. *accommodated*

We are not in agreement with Section 2.795c as written. It appears to impose a requirement for OI or the Staff to provide the Board the very information which it feels should be withheld from public disclosure. For instance, 2.795c indicates that the "information subject to the request" should be forwarded to the Board. This could be construed as meaning an entire unexpurgated report of investigation, investigators' notes obtained during an ongoing investigation, confidentiality agreements, or other equally sensitive information. We do not believe that *limited to accommodate*

NOV 19 1984

this was the intent of the Commission when it approved the interim policy. Relatedly, we do not understand what the provision, "the confidential nature of the source in which the information was obtained;" (2.795c4). Does it mean that we must document the name of the confidential source in a written document going to the Board, or does it mean merely that we indicate that certain information was *accommodated* provided by a confidential source that we describe no further. At best, this Section is ambiguous. It requires clarification.

We are also concerned that the process as set forth in the rule appears more burdensome than the procedures currently in effect, especially for OI, which is a very small office whose headquarters staff is limited by Congressional mandate. Consequently, we prefer to continue to follow current procedure which is to 1) make use of the existing Board notification system to alert Boards of the existence of relevant and material information and 2) react to requests for followup information from such Boards by the written memorandum/brief proposing that the provisions of this policy be invoked when warranted by the nature of the information. OI, of course, would use less restrictive alternatives whenever possible. This rulemaking on the other hand, appears to require a formal brief, either supplemental to or in lieu of, the Board notification system. We feel that this is neither necessary nor warranted.

*for records*  
In addition to these specific comments which we have provided on the rule itself, we would expect the Statement of Consideration to be modified accordingly. With regard to the latter, we call your attention to the statement at the bottom of page 2 which indicates that, "in most instances these conflicting concerns can be reconciled by placing restrictions which may include suitable protective orders on the disclosure of the information." We do not believe this to be an accurate statement. Our experience to date, at least as it relates to investigative matters, is that these may occasionally prove to be suitable alternatives, but that by and large, OI information is dealt with either by 1) postponing the request for information pending the resolution of the investigative matter, or 2) by the use of ex parte in-camera sessions.

cc:

See Attached Distribution List

Attachment:

As stated

ADDRESSEES TO MEMORANDUM DATED: NOV 19 1984

Harold R. Denton, Dir., NRR  
John G. Davis, Dir., NMSS  
Robert B. Minogue, Dir., RES  
Richard C. DeYoung, Dir., IE  
Kenneth E. Perkins, Jr., IE  
Ben B. Hayes, Dir., OI  
Roger Fortuna, OI  
Sharon Connelly, Dir., OIA  
Patricia G. Norry, Dir., ADM  
Alan S. Rosenthal, Chm., ASLAP  
Gary J. Edles, ASLAP  
B. Paul Cotter, Jr., Chm., ASLBP  
Robert M. Lazo, ASLBP  
David L. Prestemon, ASLBP  
Ivan J. Smith, ASLBP  
Herzel H.E. Plain, GC  
James A. Fitzgerald, GC  
Richard P. Levi, GC  
Edward S. Christenbury, ELD  
Lawrence Chandler, ELD