

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

In the Matter of )  
 )  
Innovative Weaponry, Inc. )  
Albuquerque, New Mexico )

'96 JUN 17 P1:36  
Docket No. 030-30266 - HP  
License No. 30-23697-01E  
EA 96-170  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

REQUEST FOR HEARING

I.

This is a request for hearing pursuant to 10 C.F.R. Part 2, Subpart G, on behalf of Innovative Weaponry Incorporated (IWI), 337 Eubank NE, Albuquerque, New Mexico 87123, (505) 296-4645 (Licensee). The subject of the hearing request is a Confirmatory Order Modifying License (Effective Immediately) issued on May 15, 1996 by the NRC Director, Office of Enforcement.

II.

The contentions serving as the basis for the IWI action are:

- (1) The pattern of the NRC actions underlying this Order and the Order itself are beyond the agency's jurisdiction;
- (2) The investigation reports upon which decision makers relied in this case are biased, willfully disregard a full and candid exposition of material facts, and amount to a material false statement as that term is defined by the NRC.
- (3) The exercise of power by the NRC in the Order is arbitrary and capricious;
- (4) The exercise of power by the NRC prior to the issuance of the Order amounts to unjustifiable regulatory duress;
- (5) The actions underlying the Order are anti-competitive;

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- (6) The actions underlying the Order are unduly discriminatory; and
- (7) The actions underlying the Order are otherwise contrary to the public interest.

III.

Licensee seeks the following remedies:

1. An order declaring the enforcement action taken in this case as null and void for want of jurisdiction and for such other reasons as may appear during the course of the hearing.
2. An order requiring the NRC staff to cease and desist from exceeding NRC jurisdictional authority and defining the nature of that authority more precisely.
3. An order prohibiting the NRC staff from engaging in certain unethical practices.
4. Such other remedies as may be appropriate in light of evidence produced during the course of the hearing.

On oath, the above facts and allegations are true to the best of my knowledge.



James R. Tourtellotte  
Attorney-at-Law  
IWI Counsel

Proof of Service

Service is made in accordance with 10 C.F.R. § 2.701 by delivery to the NRC Public Document Room on June 14, 1996.

A handwritten signature in black ink, reading "James R. Tourtellotte". The signature is written in a cursive style with a long horizontal flourish extending to the left.

James R. Tourtellotte  
Attorney-at-Law

information necessary to determine entitlement to benefits under FECA.

**II. Current Actions**

The Department of Labor seeks the revision approval to collect this information in order to carry out its responsibility to determine eligibility for and the compensation of benefits. The OWCP-5a, OWCP-5b and OWCP-

5c are being revised. The CA-1302, formerly included in 1215-0103, is being eliminated.

*Type of Review:* Revision.  
*Agency:* Employment Standards Administration.  
*Title:* FECA Medical Report Forms.  
*OMB Number:* 1215-0103.  
*Agency Numbers:* CA-7, CA-8, CA-16b, CA-20, CA-20a, CA-1090, CA-1303, CA-1305, CA-1306, CA-1314,

CA-1316, CA-1331, CA-1332, A-1336, OWCP-5a, OWCP-5b, and OWCP-5c.

*Affected Public:* Individuals or households; Businesses or other for-profit; Federal Government.

*Total Respondents:* 441,855.

*Frequency:* As needed.

*Total Responses:* 441,855.

*Estimated Total Burden Hours:* 43,412.

Total	Form respondents	Responses	Total response time	Burden hours
CA-7	200	200	20 min	67
CA-8	200	200	5 min	17
CA-16B	157,000	157,000	5 min	13,083
CA-17B	134,000	134,000	5 min	11,167
CA-20	92,000	92,000	5 min	7,667
CA-20a	20,000	20,000	5 min	1,667
CA-1090	800	800	5 min	67
CA-1303	4,000	4,000	20 min	1,333
CA-1305	80	80	20 min	27
CA-1306	25	25	10 min	4
CA-1314	1,200	1,200	20 min	400
CA-1316	1,100	1,100	10 min	183
CA-1331	750	750	5 min	63
CA-1332	1,500	1,500	30 min	750
CA-1336	2,000	2,000	5 min	167
OWCP-5a	7,000	7,000	15 min	1,750
OWCP-5b	5,000	5,000	15 min	1,250
OWCP-5c	15,000	15,000	15 min	3,750
<b>Totals</b>	<b>441,855</b>	<b>441,855</b>		<b>43,412</b>

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintenance):* \$141,394.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 17, 1996.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 96-12846 Filed 5-21-96; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

[Docket No. 030-30266, License No. 30-23697-01E, EA 96-170]

**Innovative Weaponry, Inc., Albuquerque, New Mexico; Confirmatory Order Modifying License. Effective Immediately)**

Innovative Weaponry, Inc. of Nevada, (IWI or Licensee) is the holder of NRC

License No. 30-23697-01E issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The license authorizes the Licensee to distribute byproduct material (i.e., tritium) in gunsights as specified in the license. The license was transferred from IWI of New Mexico to IWI of Nevada on April 3, 1995. Although due to expire on June 30, 1993, the license has remained active based on a timely renewal application.

**II**

Based on its review of the results of an NRC investigation conducted from May 9, 1995, through March 22, 1996, the NRC identified the following apparent violations of IWI's license conditions: (1) IWI distributed tritium in gunsights not approved by the NRC and not specifically authorized on the license; and (2) IWI distributed tritium sources obtained from a manufacturer not authorized on the license. In addition, as indicated in a letter issued to IWI on April 17, 1996, it appeared that the violations were committed by the President and Executive Vice President of the company.

These apparent violations and the concern that they were committed by the President and Executive Vice President were discussed with IWI

representatives at a predecisional enforcement conference in Rockville, Maryland on April 23, 1996. The Licensee admitted that violations had occurred but denied that there was any intent to commit the violations. Notwithstanding the Licensee's position on intent, the NRC is concerned that the violations resulted from a lack of effective action to assure compliance with license requirements, despite IWI officials being aware that the NRC license contained limitations on what could and could not be distributed.

**III**

As a result of the NRC investigation, the NRC staff questioned whether it should have the requisite reasonable assurance that IWI will comply with agency requirements. At the predecisional enforcement conference and a meeting on the same date to discuss license amendment issues, the Licensee voluntarily committed to actions to address the NRC's concerns about its ability to conduct its activities in compliance with the license and applicable NRC requirements. The Licensee offered to develop the following plans and to submit them to the NRC for approval: (1) a training plan to assure that all IWI employees, including management, understand the

NRC license and applicable NRC requirements; (2) an audit plan to assure compliance with requirements to be implemented by a third-party, independent auditor; and (3) development of written procedures to maintain accountability, control, and security of materials authorized by the NRC for distribution. The NRC has concluded that implementation of these commitments, which are described in more detail below, would provide the necessary assurance that licensed activities will be in compliance with NRC requirements in the future.

I find that the Licensee's commitments set forth at the predecisional enforcement conference and licensing meetings conducted on April 23, 1996, are acceptable and necessary and conclude that with these commitments the public health, safety, and interest are reasonably assured. In a telephone call on May 8, 1996, with Mr. James Tourtellotte, the Licensee's attorney, the Licensee agreed to this action. I have also determined, based on the Licensee's consent and on the significance of the conduct described above, that the public health and safety require that this Order be immediately effective.

#### IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, IT IS **HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT LICENSE NO. 30-23697-01E IS MODIFIED AS FOLLOWS:**

1. The Licensee shall submit for NRC approval, within 30 days of the issuance of this Order, a training plan designed to assure that all IWI employees, including management, who are involved in activities that may affect compliance with the NRC license are familiar with the conditions and restrictions contained in the license, as well as with all other applicable NRC requirements. The training plan also shall provide for training in accountability, control, and security of licensed material in gunsights authorized by the NRC for distribution to persons exempt from licensing. The training plan shall provide for initial training of all existing employees, including management, within 30 days of the issuance of this Order, training for new employees, including management, prior to their working with licensed materials, and annual refresher training thereafter.

2.a. The Licensee shall submit for NRC approval, within 30 days of the

date of this Order, the name and qualifications of an independent auditor, or auditors whom the Licensee proposes to conduct the audits described below and who are capable of conducting such audits to assure compliance with all NRC license conditions and requirements.

b. The Licensee shall submit for NRC approval, within 30 days of the NRC's approval of the above auditor, an audit plan which shall provide for periodic audits to assure compliance with all NRC license conditions and requirements. The audit plan shall provide for an initial audit, followed by quarterly audits for a 1-year period, and semi-annual audits thereafter. The audit plan shall provide for audit reports to be issued to the Licensee and the NRC at the same time within 30 days of the completion of each audit. The audit report shall contain findings on the Licensee's state of compliance with NRC requirements and recommendations to achieve compliance if deficiencies are noted. The plan shall provide for the Licensee to respond in writing to all audit findings within 30 days of each audit report, with a copy to the NRC. The response shall state the actions taken by the licensee to address audit recommendations with which the Licensee agrees. For those recommendations that the Licensee disputes, the Licensee shall provide the basis for dispute and any other action taken.

3. The Licensee shall develop and implement, within 30 days of the issuance of this Order, written procedures designed to maintain inventory and accountability of gunsights with sources authorized by the NRC for distribution to persons exempt from licensing.

4. Upon approval of the actions required under items 1 and 2.a above, items 1 and 2.b shall be implemented until relaxed by the Regional Administrator, Region IV.

5. Requests for approval of the auditor, audit plan, training plan, and for changes of the approved auditor, changes to the audit plan, and to reports required to be submitted, shall be submitted to the Regional Administrator, Region IV, with a copy to the Director, Office of Nuclear Materials Safety and Safeguards.

The Regional Administrator, Region IV, may relax or rescind, in writing, any of the above conditions upon a showing by the Licensee of good cause.

#### V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within

20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee, adversely affected by the Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. **AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.**

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 15th day of May 1996.

**James Lieberman,**

*Director, Office of Enforcement.*

[FR Doc. 96-12810 Filed 5-21-96; 8:45 am]

BILLING CODE 7590-01-P

## UNITED STATES NUCLEAR REGULATORY COMMISSION

### Biweekly Notice

#### Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

##### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 27, 1996, through May 10, 1996. The last biweekly notice was published on May 8, 1996 (61 FR 20842).

#### Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 21, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with