

February 9, 1981



SECY-81-100

RULEMAKING ISSUE
(Affirmation)



For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: WITHDRAWAL OF PROPOSED RULEMAKING ON THE BURDEN OF PROOF
IN ENFORCEMENT PROCEEDINGS

Purpose: To obtain Commission approval of a Federal Register notice announcing the withdrawal of a proposed rule-making on the burden of proof in enforcement proceedings.

Category: This paper covers a routine matter.


Discussion: The Commission published in the Federal Register on July 21, 1977 a proposed rule change to 10 CFR § 2.732 that would generally provide that the proponent of an order in an enforcement proceeding would have the burden of proof. In SECY-80-212, dated April 25, 1980, the Staff discussed the public comments received on the proposed rule and recommended that the Commission approve publication of the final rule. (Enclosure A). The Commission disapproved the Staff's recommendation. (Enclosure B)

The attached Federal Register notice formally withdraws the notice of proposed rulemaking.

Contact:
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Recommendation: That the Commission approve the withdrawal of proposed rulemaking.



William J. Dircks
Executive Director for Operations

Enclosures:

- A. SECY-80-212, April 25, 1980
- B. Memorandum, S. Chilk to
W. J. Dircks, June 20, 1980
- C. Proposed Federal Register notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, February 25, 1981.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT February 18, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of March 9, 1981. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION

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April 25, 1980

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SECY-80-212

SENT

CONSENT CALENDAR ITEM

For: The Commissioners
From: Howard K. Shapar
Executive Legal Director *W. Dircks*
Thru: William J. Dircks
Acting Executive Director for Operations

OLD FILE COPY

Subject: PUBLICATION OF FINAL RULE, AMENDMENT TO 10 CFR 2.732 ON BURDEN OF PROOF

Purpose: To obtain Commission consent to publish an amended 10 CFR 2.732 as a final rule.

Category: This paper covers a routine matter.

Discussion: On July 21, 1977 the Commission published in the Federal Register a proposed rule change to 10 CFR 2.732 that would generally provide that the proponent of an order in an enforcement proceeding would have the burden of proof (Enclosure B). The burden of proof was defined as including both the initial burden of going forward with evidence (producing enough evidence to make a case) and the ultimate burden of persuasion (the need to establish the validity of a contention, or overcome opposing evidence). The presiding officer in a proceeding would be authorized to assign the burden of proof to a party other than the proponent.

A primary purpose of the proposed rule change, as explained in the Statement of Considerations accompanying the proposal (Enclosure B), was to give expression to a basic concept of fairness that after a licensing and review process had been completed and a construction permit issued, it was generally unnecessary for effective enforcement and unreasonable to require the permittee continually to prove the absence of permit violations.

Contact:

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ENCLOSURE A