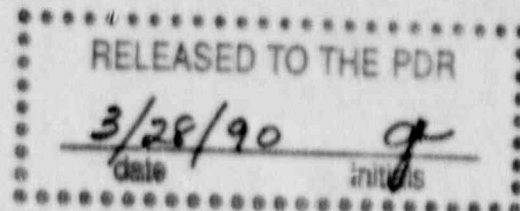




UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

February 21, 1990



MEMORANDUM FOR: William C. Parler, General Counsel  
FROM: *(i) B. J. Chilk* Samuel J. Chilk, Secretary  
SUBJECT: SECY-89-321 - REVISIONS TO PROCEDURES TO  
ISSUE ORDERS - 10 CFR PART 2

This is to advise you that the Commission (with all Commissioners agreeing) has approved the proposed revision to 10 CFR Part 2, subject to the following comments:

1. The Commission agrees with the general approach to separating orders that can affect a licensee from mere demands for information, and agrees that the latter need not provide an opportunity for hearing. However, the rulemaking notice should be clear that this changes current practice under Part 2.202 and effectively overrules two earlier NRC decisions on the scope of hearing on an enforcement order. Recommended text to cover this point is attached. Because orders to show cause under the new Part 2.204 are to be used solely as demands for information and will no longer carry hearing rights, we should not refer to them as "orders" so as to avoid any confusion with prior practice and to dispel any notion that these "orders" trigger adjudicatory procedures under the Atomic Energy Act and the Administrative Procedures Act. The Commission suggests that these "orders" be relabelled "demands to show cause."
2. The draft notice states at page 8 that a finding of immediate effectiveness is "final and not subject to administrative challenge." This sentence should be eliminated because it is seemingly contradicted by the next sentence in the notice which indicates that relief may be sought from the official who issued the order or from the presiding officer in a hearing on the order.

NOTE: THIS SRM AND THE SUBJECT SECY PAPER ARE CONSIDERED TO BE "FINAL COMMISSION DECISIONS" AND AS SUCH WILL BE RELEASED TO THE PUBLIC UPON PUBLICATION OF THE FEDERAL REGISTER NOTICE.

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The discussion also points to the need to determine whether the existing rules of practice are adequate to deal with challenges to the immediate effectiveness of an order, an issue that arose in the Finlay case in 1988. (A response to the March 24, 1988 SRM on SECY-89-78 which deals with the Finlay case is presently due to the Commission on February 28, 1990.)

3. Because this rulemaking attempts a comprehensive revision of our rules of practice for issuing enforcement orders, the General Counsel should advise the Commission as to whether provisions for issuing orders in Subpart G to Part 110 can be eliminated. The purposes of having these separate procedures is not at all clear.

(OGC) (SECY SUSPENSE: 3/9/90)

The Federal Register notice should be revised to accommodate the above comments and the attached revisions; reviewed by the Regulatory Publications Branch, Office of Administration, for conformance to the Federal Register requirements, and returned for signature and publication. Publication of this rule should occur at the same time as publication of the proposed changes to 10 CFR which would hold unlicensed persons accountable for willful misconduct (SECY-90-22).

(OGC) (SECY SUSPENSE: 3/22/90)

cc: Chairman Carr  
Commissioner Roberts  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
EDO  
GPA

Enclosure A

NUCLEAR REGULATORY COMMISSION  
10 C.F.R. Part 2  
Revisions to Procedures to Issue Orders

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to revise the Commission's procedures for issuing orders to include persons not licensed by the Commission but who are otherwise subject to the Commission's jurisdiction. The proposed revisions would more accurately reflect the Commission's existing statutory authority to issue orders than is presently the case. The revisions also ~~identify~~ <sup>identifies</sup> the types of Commission orders to which hearing rights attach.

DATES: The comment period expires on (60 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to the Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. weekdays.

Copies of any comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street, NW, Washington, DC between the hours of 7:45 a.m. and 4:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Mary E. Wagner, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-492-1683.

#### SUPPLEMENTARY INFORMATION:

##### Background

The procedures to be followed by the Commission to initiate formal enforcement action are found in the Commission's Rules of Practice set forth in 10 C.F.R. Part 2, Subpart B. These actions include notices of violation, described in § 2.201, show cause orders, described in § 2.202, orders to modify licenses, described in § 2.204, and civil penalties, described in § 2.205.

Until 1983, with the exception of the civil penalty procedures in § 2.205, the language in these procedures referred solely to licensees. At that time, it was recognized that the Commission's regulations did not provide a procedural mechanism to issue a formal notice of violation to an unlicensed person (corporate or individual) who had violated Commission requirements. For example, by referring only to licensees, the procedures in § 2.201 did not address issuing a notice of violation to a person who possessed radioactive material without a license in violation of Commission requirements or an unlicensed person who violated provisions of 10 C.F.R. Part 21, which



In practice, the Commission has fashioned orders to non-licensees where necessary to ~~halt~~ <sup>compel</sup> a person to cease unauthorized activities that would require a license or to compel actions by a former licensee with respect to its activities previously under license. See, e.g., *Michael E. Duhon*, 54 Fed. Reg. 12704 (March 28, 1989); *Pacific Atomic Electric*, 48 Fed. Reg. 38356 (Aug. 23, 1983).

Consequently, the Commission amended its regulations to permit the issuance of notices of violations to unlicensed persons who violated Commission requirements. Changes were published in the Federal Register on September 28, 1983 (48 FR 44170) to amend § 2.200 (Scope of subpart) and § 2.201 (Notice of violation) to add the phrase "or other person subject to the jurisdiction of the Commission."

As stated above, the provisions for issuing show cause orders only address licensees. ~~However~~ The Commission's statutory authority to issue orders, which is found in Section 161 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2201, is not ~~so~~ limited, <sup>solely to licensees</sup>. In fact, the Commission's Atomic Energy Act authority to issue orders is extremely broad, extending to any person (defined in Section 115 to include, e.g., any individual, corporation, federal, state and local agency) who engages in conduct within the Commission's subject matter jurisdiction. The few court cases which deal with the scope of the general authority Congress has granted the Commission usually do so in a general discussion or in passing and conclude that Section 161 confers uniquely broad and flexible authority on the Commission. See Power Reactor Dev. Co. v. International Union of Elec. Radio and Mach. Workers, AFL-CIO, 367 U.S. 396 (1961); Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n, 673 F.2d 525, 527, n. 3 (D.C. Cir. 1982); New Hampshire v. Atomic Energy Comm'n, 406 F.2d 170, 173-74 (1st Cir. 1969); Siegel v. Atomic Energy Comm'n, 400 F.2d 779, 783 (D.C. Cir. 1968); but cf. Reynolds v. United States, 286 F.2d 433 (9th Cir. 1960) (interpreting Section 161 in detail and holding, in the context of the AEC's bomb testing

activities, that Section 161i(3) authorized the AEC to take action to govern the activities of private licensees and not the activities of the Commission itself; the court's use of the word "licensee" is dictum with regard to the term in the context of this notice).

Cases analyzing the Federal Communications Commission's (FCC) enabling statute, which, in many ways, is analogous to the 1954 Act, also support the principle that the Commission's authority is broad in scope. The Federal Communications Act of 1934 (the 1934 Act) broadly authorizes the FCC to "make such rules and regulations, and issue such orders, not inconsistent with [the 1934 Act], as may be necessary in the execution of its functions", 47 U.S.C. § 154i (1982). This provision is similar to Section 161i(3) of the Atomic Energy Act of 1954, which authorizes the Commission to "prescribe such rules, regulations, and orders as it may deem necessary to govern any activity authorized pursuant to the [Atomic Energy Act of 1954] . . . in order to protect health and to minimize danger to life or property . . . ." 42 U.S.C. § 2201(i) (3) (1982). A number of cases have analyzed Section 154i in detail and determined that the FCC's ordering authority is necessarily broad. See Federal Communications Commission v. National Citizens Committee for Broadcasting, 436 U.S. 775 at 793 (1978); United States v. Storer Broadcasting Co., 351 U.S. 192 at 203 (1955); National Broadcasting Co. v. United States, 319 U.S. 190 at 196 (1943); Lincoln Telephone and Telegraph Co. v. Federal Communications Commission, 659 F.2d 1092 (D.C. Cir. 1981); American Telephone and Telegraph v. Federal Communications Commission, 487 F.2d 865 (2d Cir. 1973); GTE Service Corp. v. Federal Communications Commission, 474 F.2d 724 (2d Cir. 1973); and Western Union Telegraph Co. v. United States, 257 F.2d

715, 722 (2nd Cir. 1959). It has been held that the FCC has authority to issue orders under Section 154i to persons whether licensed or not. United States v. Southwestern Cable, 392 U.S. 157, <sup>at</sup> 180-81 (1968). X

Section 161i provides broad authority to issue orders as the Commission deems necessary to govern any activity authorized pursuant to the Atomic Energy Act in order to protect the public health and safety. Section 161b similarly authorizes the Commission to issue orders to establish standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material. As relevant here, Section 161o authorizes the Commission to order reports as may be necessary to effectuate the purposes of the Act.

Given this broad statutory authority, it is appropriate to amend 10 C.F.R. § 2.202 to have the procedural mechanism in place to issue orders, as necessary, to unlicensed persons when such persons have demonstrated that future control over their activities subject to the NRC's jurisdiction is deemed to be necessary or desirable to protect public health and safety or to minimize danger to life or property or to protect the common defense and security. This amendment would revise § 2.202 to establish that mechanism both as to a licensee, as the current § 2.202 provides, and to any person subject to the jurisdiction of the Commission. Such a person includes, but is not limited to, a person who held a license or who was otherwise engaged in licensed activities at the time of the conduct in question, but who no longer holds a license or is so engaged.

In addition, the procedural mechanism for issuing orders to show cause to licensees and other persons would be set forth in a separate section in order

*, renamed demands to show cause  
by this rulemaking,*

*mere demand for information; i.e., a demand that a person or licensee 'show cause' why it should not be compelled to take certain action.*

to make it clear that the right to a hearing does not attach at the time of issuance of a ~~show cause order~~. Orders, including orders to show cause, currently are issued under § 161 of the Atomic Energy Act of 1954, as amended, which are implemented by §§ 2.202 (order to show cause), and 2.204 (order for modification of license). In addition, civil penalty orders are issued under Section 234, implemented by § 2.205 (civil penalties). NRC practice commonly has been to issue a single order, an order to show cause, which requires that certain information be provided to demonstrate why either a proposed or immediately effective action modifying, suspending, or revoking a license should not be taken. The order affords a hearing with regard to these actions. While § 189 of the Atomic Energy Act provides for the granting of a hearing in connection with proceedings to modify, suspend, or revoke a license, neither the Act nor the Administrative Procedure Act would require a hearing in connection with an order to show cause which requires only the submission of information, but does not by its terms modify, suspend or revoke a license.

The Act does not explicitly set out the form or requirements for an order to show cause. The Act does, however, authorize the Commission to collect information pursuant to §§ 161c and d and the Commission may issue show cause orders to implement this authority. Section 182 of the Act authorizes the Commission to request information from licensees and the Commission has implemented this authority by promulgating regulations such as 10 C.F.R. § 50.54(f). Licensees subject to Commission requests under 10 C.F.R. § 50.54(f) or its equivalent in other parts of the NRC's regulations have no hearing rights under the Act regarding these information requests.



Need to indicate that this changes  
the rule in Dairyland Power Corp.  
- 7 - see suggested insert.

Accordingly, to clarify that hearing rights do not attach to "show cause"  
<sup>more</sup>  
~~orders~~ <sup>current provisions on</sup> demands for information <sup>on</sup> orders to show cause ~~orders~~

from the Commission's general ordering authority contained in § 2.202. ~~To avoid~~  
any confusion with orders under ~~§~~ revised § 2.202, such actions will be called "de-  
to show provisions concerning ~~orders~~ demands to show cause are set forth in a new § 2.204.  
cause and

Under the proposed rule changes, a ~~demand~~ <sup>demand</sup> to show cause will be issued only to  
require the submission of information. If a ~~demand~~ <sup>demand</sup> to show cause is issued as  
part of an order requiring action, <sup>pursuant to § 2.202</sup> hearing rights will be offered but only  
with respect to the provisions of the order requiring action. ~~this~~ <INSERT>

In order to avoid unnecessary duplication in the regulations, it is  
proposed that the current § 2.204, "Order for modification of license," be  
deleted from Part 2, since procedures for modification of a license are  
included in proposed § 2.202. Proposed § 2.202(f) provides that if the action  
ordered by the Commission constitutes a backfit of a Part 50 licensee, the  
procedures described in 10 C.F.R. § 50.109 must be followed. This provision  
currently appears in the last sentence of § 2.204.

Section 2.202 is also revised to provide that if the licensee or other  
person to whom an order is issued consents to its issuance, or the order  
confirms actions agreed to by the licensee or such other person, such consent  
or agreement constitutes a waiver by the licensee or such other person of a  
right to a hearing and any associated rights. Such orders will be immediately  
effective. This is not a departure from current Commission practice, but  
merely conforms the Commission's regulations to such practice. Section  
2.202(d) also provides that the licensee's or other person's agreement to an  
order must be in writing. The addition of this provision is intended to  
minimize the possibility of issuance of a confirmatory order which does not

*Replaces the term*

(i.e., an order intended to confirm and  
bind a licensee to its commitments to certain actions)

Insert - page 7

This revision to the regulations governing orders changes the rule in Dairyland Power Cooperative, LBP-80-26, 12 NRC 367, 370-72 (1980) and Consumers Power Company, CL1-73-38, 6 AEC 1082 (1973), by setting the point at which a "proceeding" begins for purposes of triggering the adjudicatory rights under §169 of the Atomic Energy Act to the point of issuance of an order compelling a licensee or other person to take or refrain from certain actions rather than the point where the agency merely demands information to show why no action should be taken. The change in practice is consistent with the Commission's power to define the scope of its proceedings, see Bellotti v. NRC, 725 F.2d 1380 (D.C. Cir. 1983).

accurately reflect the agreement reached by the parties. Whether or not the licensee or other person consents to any order, a person adversely affected by an order issued under § 2.202 to modify, suspend or revoke a license will be offered an opportunity for a hearing pursuant to § 189 of the Atomic Energy Act, consistent with current practice and the authority of the Commission to define the scope of the proceeding <sup>on an enforcement order.</sup> See Bellotti v. NRC, 725 F.2d 1380 (D.C.

Cir. 1983). *The Commission will continue to publish orders in the Federal Register in accordance with current practice.*

The existing § 2.202 vests authority to issue orders in the Executive Director for Operations (EDO), and various staff office directors. Currently, the rule limits the EDO's authority to issue orders to emergency situations. Existing § 2.204 vests authority to issue orders in the Commission. The revised rules consistently vest such authority in the Commission, leaving it to the Commission's internal delegation authority to delegate such authority to others. This change will avoid the need to amend the regulations each time the title of one of the currently enumerated officials is changed, and it will also remove the unnecessary limitation on the EDO's authority.

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The Commission is retaining, in new § 2.202(e), a provision that, upon a finding that the public health, safety or interest so requires or that the violation is willful, the proposed action may be <sup>made</sup> immediately effective. A similar provision appears in current §§ 2.202(f) and § 2.204. ~~A finding, in an~~

~~order, if the need for immediate effectiveness is found, and is subject to~~

*pending further  
proceedings on the order.*

{This sentence can be read to contradict the previous one}

~~Administrative challenge.~~ Relief from the requirements of an immediately effective order, on the other hand, may be sought under the relaxation provisions contained in that order, or by motion for a stay to the presiding officer if a hearing has been requested.

The proposed rule also continues, in § 2.202(f), the backfitting requirements of § 50.109, including the provision therein that when immediately effective action is required, the documented evaluation may follow, rather than precede, the regulatory action.

Finally, consistent with the changes to §§ 2.202 and 2.204, § 2.1 is amended to specify that the scope of Part 2 includes the issuance of orders and ~~orders~~ <sup>demands</sup> to show cause to unlicensed persons, and § 2.700 is amended to specify that Subpart G (Rules of General Applicability) applies to all adjudications initiated by an order. ~~Order is not an order to show cause~~

[If show cause order does not invite hearing why review it? §2.7]

The proposed amendments are procedural in nature. They do not establish the substantive standards or conditions under which the NRC would issue an order to a licensed or an unlicensed person. The Commission intends to propose, in a separate rulemaking, a substantive addition to its regulations in order to put unlicensed persons on notice that they may be held accountable for willful misconduct which undermines, or calls into question, adequate protection of the public health and safety. Once the proposed rules are in effect, consistent with the Commission's statutory authority, there will be

~~Of course, the Commission has the inherent power to review, sua sponte, orders issued by those to whom it has delegated authority.~~

[What is the import of the sentence and this FN? It suggests that objections to immediate effectiveness should go to fed. court, presumably U.S.C.A. Why not build in a review mechanism, as Commission directed be studied after the Finkley case?]



procedural rules governing the issuance of an order or show cause order not only to a licensee, as currently provided, but also to an unlicensed person who willfully causes a licensee to be in violation of Commission requirements or whose willful misconduct undermines, or calls into question, the adequate protection of the public health and safety in connection with activities regulated by the NRC under the Atomic Energy Act of 1954, as amended.

An example of a situation in which it might be appropriate to issue an order to an unlicensed person is where an employee of a corporate licensee might willfully cause that licensee to be in violation of Commission requirements such that the Commission does not have reasonable assurance that requirements to protect the public health and safety will be followed if that person continues to engage in activities licensed by the Commission. ~~Another example would be an unlicensed person who willfully provides the Commission with materially false information; this would not, of course, include such persons who, in good faith, bring information or make allegations to the NRC concerning safety matters which, after review, are found to be unsubstantiated.~~ Depending on the circumstances in ~~these~~ <sup>such</sup> cases, it might be appropriate to issue an order to such a person to either prohibit the person from being involved in activities licensed by the Commission or require the person to provide prior notice to the Commission before engaging in licensed activities. These types of conditions have been used by the Commission in settlement of litigation in accordance with 10 C.F.R. 2.203. See Edward Hines, Jr. Medical Center, 27 NRC 477, ALJ-88-2 (October 7, 1988), and Finlay Testing Laboratories, Inc., LBP-88-17, 27 NRC 586 (1988).

[Since this example requires a caveat, it may not be held]

This rulemaking establishes the procedures to be used in issuing orders to licensed and unlicensed persons. The procedures establish the mechanism to provide notice of the issuance of an order and to resolve, through adjudication, whether a particular order is appropriate under the circumstances.

#### Environmental Impact: Categorical Exclusion

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

#### Paperwork Reduction Act Statement

This proposed 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.).

#### Regulatory Analysis

The existing regulations in 10 C.F.R. 2.202 authorize the NRC, through its designated officials, to institute a proceeding to modify, suspend, or revoke a license by service of an order to show cause on a licensee. The regulations, as currently written, do not provide procedures for the NRC to take direct action against unlicensed persons whose willful misconduct causes a licensee to violate Commission requirements or places in question reasonable assurance of adequate protection of the public health and safety, although such action is authorized by the Atomic Energy Act of 1954, as amended. The

amendments will make the Commission's Rules of Practice more consistent with the Commission's existing statutory authority and provide the appropriate procedural framework to take action, in appropriate cases, in order to protect the public health and safety. The amendments also will make clear that hearing rights do not attach to orders to show cause, consistent with § 189 of the Atomic Energy Act of 1954, as amended, and the Administrative Procedure Act.

The proposed rule constitutes the preferred course of action and the cost involved in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the procedural mechanism to issue orders to show cause to unlicensed persons in addition to licensed persons, who were previously covered. The proposed rule, by itself, does not impose any obligations on entities including any regulated entities that may fall within the definition of "small entities" as set forth in § 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in § 3 of the Small Business Act, 15 U.S.C. § 632, or within the Small Business Size Standards found in 13 C.F.R. Part 121. Such obligations would not be created until an

order is issued, at which time the person subject to the order would have a right to a hearing in accordance with the regulations.

#### Backfit Analysis

This proposed rule does not involve any new provisions which would impose backfits as defined in 10 C.F.R. 50.109(a)(1). Accordingly no backfit analysis pursuant to 10 C.F.R. 50.109(c) is required for this proposed rule.

#### List of Subjects in 10 C.F.R. Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the 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. 552 and 553, the NRC is proposing to adopt the following amendments to 10 C.F.R. Part 2.

#### Part 2 -- Rules of Practice for Domestic Licensing Proceedings

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 86 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092,



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2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5371). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 161b, 1, 2, 186, 234, 68 Stat. 948-951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (1), (c), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.710 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C are also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. § 2.1 is revised to read as follows:

§ 2.1 Scope.

This part governs the conduct of all proceedings, other than export and import licensing proceedings described in Part 110 under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, for: (a) granting, suspending, revoking, amending, or taking other action with respect to any license, construction permit, or application to transfer a license; (b) issuing orders and ~~orders~~ <sup>demands</sup> to show cause to persons subject to the Commission's jurisdiction, including licensees and persons not licensed by the Commission; (c) imposing civil penalties under section 234 of the Act; and (d) public rulemaking.

Do order regs in Pt 110 remain in effect? Do we still use them?

3. § 2.202 is revised to read as follows:

§ 2.202 Orders.

(a) The Commission may institute a proceeding to modify, suspend, or revoke a license or ~~for~~ <sup>to take</sup> such other action as may be proper by serving on the licensee or other person subject to the jurisdiction of the Commission an order that will:

(1) Allege the violations with which the licensee or other person subject to the Commission's jurisdiction is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed;

(2) Provide that the licensee or other person must file a written answer to the order under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the order;

(3) Inform the licensee or <sup>any</sup> other person <sup>adversely affected by the order</sup> of his right, within twenty (20) days of the date of the order, or such other time as may be specified in the

order, to demand a hearing on all or part of the order, except in a case where the licensee or other person has consented <sup>in writing</sup> to the order;

(4) Specify the issues; <sup>for hearing</sup> and

(5) State the effective date of the order.

(b) A licensee or other person to whom the Commission has issued an order under this section must respond to the order by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order, and shall set forth the matters of fact and law on which the licensee or other person relies, and, if the order is not consented to, the reasons as to why the order should not have been issued. Except as provided in (d) below, the answer may demand a hearing.

(c) If the answer demands a hearing, the Commission will issue an order designating the time and place of hearing.

(d) An answer ~~for signature~~ may consent to the entry of an order in substantially the form proposed in the order with respect to all or some of the actions proposed in the order. The consent of the licensee or other person to whom the order has been issued to the entry of an order shall constitute a waiver by the licensee or other person of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum as to those matters which have been consented to or agreed to or on which a hearing has not been requested. The order shall have the same force and effect as an order made after hearing by a presiding officer or the Commission, and shall be effective as provided in the order.

(e) When the Commission finds that the public health, safety, or interest so requires or that the violation or conduct causing the violation is willful, the order may provide, for stated reasons, that the proposed action be immediately effective *pending further order.*

(f) If the order involves the modification of a Part 50 license and is a backfit, the requirements of § 50.109 of this chapter shall be followed, unless the licensee has consented to the action required.

4. § 2.204 is revised to read as follows:

§ 2.204 <sup>*Demand to*</sup> ~~order to~~ *Show Cause* ~~licensee~~

(a) The Commission may issue to a licensee or other person subject to the jurisdiction of the Commission <sup>*demand*</sup> ~~an order~~ to show cause why such actions as may be proper should not be taken, which will:

(1) Allege the violations with which the licensee or other person is charged, or the potentially hazardous conditions or other facts deemed to be sufficient ground for the proposed action, and specify the action proposed; and

(2) Provide that the licensee or other person must file a written answer to the <sup>*demand to*</sup> ~~order~~ <sup>*demand*</sup> show cause <sup>*demand*</sup> under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the ~~order~~ <sup>*demand*</sup> to show cause.

(b) A licensee or other person to whom the Commission has issued an <sup>*demand*</sup> ~~order~~ to show cause under this section must respond to the <sup>*demand*</sup> ~~order~~ by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the order to show cause, and shall



set forth the matters of fact and law on which the licensee or other person relies.

(c) An answer ~~[or stipulation]~~ may consent to the entry of an order in substantially the form proposed in the order to show cause.

(d) Upon review of the answer filed pursuant to paragraph (a)(2) of this section, or if no answer is filed, the Commission may institute a proceeding pursuant to 10 C.F.R. 2.202 to take the action proposed in the ~~order~~ <sup>demand to</sup> show cause ~~or~~ <sup>to take</sup> such other action as may be proper.

5. § 2.700 is revised to read as follows:

§ 2.700 Scope of subpart.

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of an order pursuant to § 2.202, an order pursuant to § 2.205(e), a notice of hearing, a notice of proposed action issued pursuant to § 2.105, or a notice issued pursuant to § 2.102(d)(3).

Dated at Rockville, Maryland,  
this      day of      1989.

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out

FOR THE NUCLEAR REGULATORY COMMISSION

\_\_\_\_\_  
Samuel J. Chilk  
Secretary of the Commission