



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

AD53-1 03  
PDR

3-7-90

Mary Wogner, OGC

I have indicated the changes to the proposed rule "Revisions To Procedures To Issue Orders" that I believe are necessary to meet IRM's requests of the March 5 memorandum to D. Meyer and R. Smith. I have included the text of the revised statement and the new section as well as any other pages where conforming amendments would be needed. If you have any questions, please give me a call.

Michael Lesar  
X27758

Regulatory Publications Branch

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~~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 <sup>Section</sup> 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.

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#### Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150-0136.

Subpart L also issued under sec. 189,  
68 Stat. 955 (42 U.S.C. 2239)①

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Note: Added  
2-28-83: 54  
FR 8276

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.).

Section  
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 demands 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.

Section  
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 to take such other action as may be proper by serving on

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3. Section 2.8 is added to read as follows:

§ 2.8 Information collection requirements: OMB approval.

(a) The NRC has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150-0136.

(b) The approved information collection requirements contained in this part appear in Appendix B.

(d) An answer 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.

5 ) Section

2.204 is revised to read as follows:

§ 2.204 Demand to show cause.

(a) The Commission may issue to a licensee or other person subject to the jurisdiction of the Commission a demand 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 demand to show cause under oath or affirmation within twenty (20) days of its date, or such other time as may be specified in the demand to show cause.

(b) A licensee or other person to whom the Commission has issued a demand to show cause under this section must respond to the demand by filing a written answer under oath or affirmation. The answer shall specifically admit or deny each allegation or charge made in the demand to show cause, and shall set forth the matters of fact and law on which the licensee or other person relies.

(c) An answer may consent to the entry of an order in substantially the form proposed in the demand 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 demand to show cause or to take such other action as may be proper.

6 ) Section  
§ 2.700 is revised to read as follows:

§ 2.700 Scope of subpart.

9/ ← The general rules in this subpart govern procedure in

// ← all adjudications initiated by the issuance of an order