

DOCKET NUMBER **PR-1**  
**PROPOSED RULE**  
**(50 FR 20741)**

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

Delegation of Subpoena Authority

DOCKETED  
USNRC

AGENCY: Nuclear Regulatory Commission.

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ACTION: Final rule.

OFFICE OF SECRETARY  
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SUMMARY: The Nuclear Regulatory Commission is amending its regulations to reflect the Commission's decision to delegate authority to the Office of Investigations to issue subpoenas where necessary or appropriate for the conduct of investigations. This amendment will permit the Office of Investigations (OI) to issue independently a subpoena during the course of investigations.

EFFECTIVE DATE:

**JUN 19 1985**

FOR FURTHER INFORMATION CONTACT: Polly Schofield, Office of Investigations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-7246.

SUPPLEMENTARY INFORMATION:

BACKGROUND

By memorandum dated July 20, 1982, the Commission approved SECY 82-239 (June 9, 1982) and delegated the authority to issue subpoenas to the Executive Director for Operations. Under that authority, subpoenas have been issued in

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five matters. In two cases subpoenas have been issued to support staff action. In three cases, including TMI where 47 subpoenas were issued, subpoenas were issued under the EDO's authority to support OI's investigations. The EDO issued subpoenas at the request of OI because OI did not have the independent authority to issue subpoenas.

In those cases where the subpoena is being used to support an OI investigation, the staff function in reviewing a subpoena is essentially (1) assuring an adequate legal basis for issuing the subpoena, (2) questioning whether the agency has exhausted other mechanisms for obtaining the information, and (3) assuring on balance that a subpoena is the appropriate mechanism to obtain the information. This review process is considered to be proper for staff subpoenas. However, this review may not be always appropriate for OI requested subpoenas in view of the separation of functions between the OI and the EDO staff organizations. It may also not be the most efficient way for OI to obtain a subpoena.

The EDO and OI agreed that OI should be delegated authority to issue subpoenas. OI would consult with the staff before issuing a subpoena to determine whether the staff already has the information being sought.

Pursuant to EDO and OI recommendations, the Commission voted on January 11, 1985, to delegate to the Director, Office of Investigations, the authority to issue subpoenas under Section 161c of the Atomic Energy Act of 1954, as amended, where necessary or appropriate for the conduct of investigations.

Since these are minor, procedural amendments relating to agency organization and management, notice and opportunity for comment are not required by the Administrative Procedure Act under 5 U.S.C. 553 or by 10 CFR 2.804(d).

#### Environmental Impact: Categorical Exclusion

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

#### Paperwork Reduction Act Statement

This final 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.).

#### List of Subjects in 10 CFR Part 1

##### Organization and Functions

For 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. 553, the NRC is adopting the following amendment to 10 CFR Part 1.

PART 1 - STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); secs. 201, 203, 204, 205, and 209, Pub. L. 93-438, 88 Stat. 1242, 1244, 1245, 1246, and 1248 (42 U.S.C. 5841, 5843, 5844, 5845, and 5849); Pub. L. 94-79, 89 Stat. 413; and 5 U.S.C. 552 and 553.

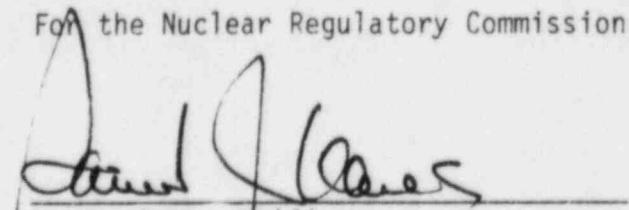
2. Section 1.36 is revised to read as follows:

§1.36 Office of Investigations

The Office of Investigations: (a) develops policy, procedures and quality control standards for the conduct of all NRC investigations of licensees, permittees, applicants, and their contractors and vendors; (b) conducts and supervises investigations within the scope of NRC authority, except those concerning NRC employees and NRC contractors; (c) assures the quality of investigations; (d) maintains current awareness of inquiries and inspections by other NRC offices to identify the need for formal investigations; (e) makes appropriate referrals to the Department of Justice; (f) keeps Commission and involved NRC Offices currently apprised of matters under investigation as they affect public health and safety, the common defense and security, environmental quality, or the antitrust laws; (g) issues subpoenas where necessary or appropriate for the conduct of investigations; (h) maintains liaison with other agencies and organizations to ensure the timely exchange of information of mutual interest.

Dated in Washington, DC, this 14<sup>th</sup> day of May 1985.

For the Nuclear Regulatory Commission.

  
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Samuel J. Chilk  
Secretary of the Commission