

procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security, shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular persons described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 20, 2007.

**Michael Chertoff,**

*Secretary of Homeland Security.*

[FR Doc. E7-3913 Filed 3-5-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### Exercise of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice of determination.

**DATES:** This determination is effective February 26, 2007.

**Authority:** 8 U.S.C. 1182(d)(3)(B)(i).

Following consultations with the Secretary of State and the Attorney General, I hereby conclude, as a matter of discretion in accordance with the authority granted to me by Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act ("the Act"), considering the national security and foreign policy interests deemed relevant in these consultations, that subsection 212(a)(3)(B)(iv)(VI) of the Act shall not apply with respect to material support provided under duress to a terrorist organization as described in subsection 212(a)(3)(B)(vi)(III) if warranted by the totality of the circumstances.

This exercise of authority as a matter of discretion shall apply to an alien who satisfies the agency that he:

(a) Is seeking a benefit or protection under the Act and has been determined to be otherwise eligible for the benefit or protection;

(b) Has undergone and passed relevant background and security checks;

(c) Has fully disclosed, in all relevant applications and interviews with U.S. Government representatives and agents, the nature and circumstances of each provision of such material support; and

(d) Poses no danger to the safety and security of the United States.

Implementation of this determination will be made by U.S. Citizenship and Immigration Services (USCIS), in consultation with U.S. Immigration and Customs Enforcement (ICE). USCIS has discretion to determine whether the criteria are met.

When determining whether the material support was provided under duress, the following factors, among others, may be considered: whether the applicant reasonably could have avoided, or took steps to avoid, providing material support, the severity and type of harm inflicted or threatened, to whom the harm was directed, and, in cases of threats alone, the perceived imminence of the harm threatened and the perceived likelihood that the harm would be inflicted.

When considering the totality of the circumstances, factors to be considered, in addition to the duress-related factors stated above, may include, among others: the amount, type and frequency of material support provided, the nature of the activities committed by the terrorist organization, the alien's awareness of those activities, the length of time since material support was provided, the alien's conduct since that time, and any other relevant factor.

I may revoke this exercise of authority as a matter of discretion and without notice at any time with respect to any and all persons subject to it. Any determination made under this exercise of authority as set out above shall apply to any subsequent benefit or protection application, unless it has been revoked.

This exercise of authority shall not be construed to prejudice, in any way, the ability of the U.S. Government to commence subsequent criminal or civil proceedings in accordance with U.S. law involving any beneficiary of this exercise of authority (or any other person). This exercise of authority is not intended to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person. This exercise of authority does not affect the continued applicability of any other security-related ground of inadmissibility in section 212 of the Act, including subsections 212(a)(3)(B)(iv)(I) through (V), which continue to render

inadmissible those who have engaged in terrorist activity as enumerated by those subsections.

In accordance with Sec. 212(d)(3)(B)(ii) of the Act, a report on the aliens to whom this exercise of authority is applied, on the basis of case-by-case decisions by the U.S. Department of Homeland Security shall be provided to the specified congressional committees not later than 90 days after the end of the fiscal year.

This determination is based on an assessment related to the national security and foreign policy interests of the United States as they apply to the particular aliens described herein and shall not have any application with respect to other persons or to other provisions of U.S. law.

Dated: February 26, 2007.

**Michael Chertoff,**

*Secretary of Homeland Security.*

[FR Doc. E7-3914 Filed 3-5-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

[DHS-2007-0008]

#### Data Privacy and Integrity Advisory Committee

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Data Privacy and Integrity Advisory Committee will meet on March 21, 2007 in Washington, DC. This meeting will be open to the public.

**DATES:** The Data Privacy and Integrity Advisory Committee will meet on Wednesday, March 21, 2007 from 9 a.m. to 12:30 p.m. and 2:15 p.m. to 3:30 p.m. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, Virginia. Send written material, comments, and requests to make oral presentations to Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528. Written materials, comments, and requests to make oral presentations at the meeting should reach the contact person listed by March 16, 2007. Requests to have a copy of your material distributed to each member of the committee prior to

the meeting should reach the persons listed under **FOR FURTHER INFORMATION CONTACT**, below, by March 16, 2007. Persons wishing to make comments or who are unable to attend or speak at the meeting may submit comments at any time. All submissions received must include the docket number: DHS-2007-0008 and may be submitted by any one of the following methods:

- *Federal Rulemaking Portal*: <http://www.regulations.gov>. Follow instructions for submitting comments on the Web site.

- *E-mail*: [PrivacyCommittee@dhs.gov](mailto:PrivacyCommittee@dhs.gov). Include docket number in the subject line of the message.

- *Fax*: (866) 466-5370.

- *Mail*: Ms. Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

*Instructions*: All submissions received must include the words "Department of Homeland Security Data Privacy and Integrity Advisory Committee" and the docket number: DHS-2007-0008. Comments received will also be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Docket*: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Committee, go to [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Hugo Teufel III, Chief Privacy Officer, or Rebecca J. Richards, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (571) 227-3813, by fax (571) 227-4171, or by e-mail [PrivacyCommittee@dhs.gov](mailto:PrivacyCommittee@dhs.gov).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463).

During the meeting, the DHS Chief Privacy Officer will provide an update on the activities of the DHS Privacy Office. In the morning and afternoon sessions, invited speakers will discuss policy development, data integrity, and IT transformation at DHS, as well as DHS' plans to implement the REAL ID Act. The Subcommittees will update the Committee on the work currently being conducted. A tentative agenda has been posted on the Privacy Advisory Committee Web site at [www.dhs.gov/privacy](http://www.dhs.gov/privacy).

At the discretion of the Chair, members of the public may make brief (i.e., no more than three minutes) oral presentations from 4 p.m.-4:30 p.m. If

you would like to make an oral presentation at the meeting, please register in advance or sign up on the day of the meeting. If you would like a copy of your material(s) distributed to each member of the committee in advance, please submit 22 copies to Rebecca J. Richards by March 16, 2007.

#### **Information on Services for Individuals With Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Rebecca J. Richards as soon as possible.

Dated: February 28, 2007.

**Kenneth Mortensen,**

*Acting Chief Privacy Officer.*

[FR Doc. 07-1008 Filed 3-5-07; 8:45 am]

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## **NUCLEAR REGULATORY COMMISSION**

### **DEPARTMENT OF HOMELAND SECURITY**

#### **Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Homeland Security Regarding Consultation Concerning Potential Vulnerabilities of the Location of Proposed New Utilization Facilities**

##### **I. Purpose**

This Memorandum of Understanding (MOU) establishes a process to implement the provisions of Section 657 of the Energy Policy Act of 2005 (EPA), Public Law 109-58, 119 Stat. 594, 814 (2005). Section 657 states:

Sec. 657. Department of Homeland Security Consultation

Before issuing a license for a utilization facility, the Nuclear Regulatory Commission shall consult with the Department of Homeland Security concerning the potential vulnerabilities of the location of the proposed facility to terrorist attack.

##### **II. Background**

###### *Nuclear Regulatory Commission*

Pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2133, the NRC is responsible for licensing and regulating the construction and operation of commercial nuclear power plants (known as "utilization facilities") in the United States to protect the health and safety of the public and to promote the common defense and security. In conducting its review of applications for such facilities pursuant to the Commission's implementing regulations

in 10 CFR Parts 50 and 52, the NRC must, among other matters, determine the suitability of the site for the proposed facility.

Among the provisions pertaining to the determination of site suitability, issues associated with the common defense and security are, as a general matter, addressed through the requirements of 10 CFR 100.21(f). This provision requires applicants to demonstrate that the site characteristics of the proposed location are such "that adequate security plans and measures can be developed." In conducting its technical review of this portion of the application, the NRC addresses potential vulnerabilities of the location of the proposed facility to terrorist attack; this evaluation focuses on assessing the impact of the following factors:

(1) Pedestrian and vehicular land approaches, (2) railroad approaches, (3) waterborne approaches, (4) potential "high-ground" adversary advantage areas, (5) nearby road and/or transportation routes, and (6) nearby hazardous materials facilities, airports, dams, military and chemical facilities, and pipelines.

Commencing in FY07, a substantial number of applications for new nuclear power plants is expected.

###### *Department of Homeland Security*

The Department of Homeland Security (DHS), pursuant to the Homeland Security Act (HSA) of 2002, Public Law 107-296, 116 Stat. 2135; Homeland Security Presidential Directive 7 (HSPD-7); and the National Infrastructure Protection Plan (NIPP) of 2006, has the authority and responsibility to lead the unified national effort to secure America by preventing, deterring, and responding to terrorist attacks and other threats and hazards to the Nation, including protecting the Nation's critical infrastructure (CI) and key resources (KR), such as the subject "utilization facilities."

##### **III. Consultation Roles and Responsibilities**

The NRC will "consult" with the DHS under Section 657 of the EPA as follows:

Before issuing a license for a utilization facility, the NRC will request, and the DHS will review and provide to the NRC comment on the potential vulnerabilities of the location of the proposed facility to terrorist attack. This review and comment will be based on information, including the application, provided by the NRC, and any other factors, consistent with DHS authorities, the DHS considers vital to