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SUPPLEMENTARY INFORMATION:

Background

On January 25, 2007 (72 FR 3429), the NRC published a notice announcing that the NRC was undertaking a major revision of its Enforcement Policy. On September 15, 2008 (73 FR 53286), the NRC published a notice of availability of draft and request for comments on its proposed revised Policy. A corrected proposed revised Policy was published (73 FR 61442) on October 16, 2008. The public comment period for the revised Policy ended on November 14, 2008. On June 6, 2009 (74 FR 17191), the NRC published a notice of availability and request for comments on additional proposed revisions to Section 6.0, Supplements—Violation Examples, of the proposed revised Policy. The June 8, 2009, Notice of Availability and request for comments applied only to additional proposed revisions to Section 6.0 of the proposed revised Policy. The public comment period for the proposed revised Supplements ended on July 8, 2009.

As discussed in the Supplementary Information of the September 15, 2008 (73 FR 53286) document, the NRC, in developing the revised Policy, in many instances proposed to reward, delete, or move (i.e., move to the NRC Enforcement Manual, an NRC staff guidance document) some of the information in the current Policy. In addition, the NRC had also planned to add detailed violation examples to the Enforcement Manual to serve as further guidance to NRC inspectors. However, based on public comments received in response to the September and October 2008 publications of the proposed revised Enforcement Policy, the NRC reconsidered its original plan to have abbreviated violation examples in the revised Policy and detailed violation examples in the Enforcement Manual. The NRC will continue its past practice of providing violation examples in the Enforcement Policy. These revised violation examples cover a broad range of circumstances in each of the four severity levels in each of 14 activity areas. Also, much of the material that the NRC had originally planned to remove from the revised Policy was subsequently retained based in part on comments received during the 2008 and 2009 public comment periods. A summary of the comment period and the NRC’s responses associated with the 2008 and 2009 Notices are available at the NRC’s Electronic Reading Room at http://www.nrc.gov/reading-rm/adams.html (ADAMS Accession Numbers ML091830260 and ML092650309, respectively).

Summary of Major Revisions to the Enforcement Policy

1. Revisions to Table of Base Civil Penalties

Regulatory requirements have varying degrees of safety, security, or environmental significance. For that reason, the NRC imposes various base civil penalties depending on the specific circumstances. Section 8.0, Tables A and B, of the revised Enforcement Policy set forth the base civil penalties for various reactor, fuel cycle, material, and vendor programs. The NRC uses a graded approach in assessing civil penalties based on the severity level of the violation and on the class of licensee, vendor, or other person. Base civil penalties generally take into account the significance of a violation as the primary consideration, whereas the licensee’s ability to pay is a secondary consideration. The NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties in Table A for Severity Level I, II, and III violations as reflected in Table B of the Enforcement Policy (i.e., 100 percent for Severity Level I violations, 80 percent for Severity Level II violations, and 50 percent for Severity Level III violations). However, in no instance would a civil penalty for any one violation exceed the current statutory limit, which is presently capped at $140,000 per day per violation. In consideration of the above, the following revisions have been made to the Table of Base Civil Penalties:

a. Geologic Repository for Spent Fuel and/or High-Level Waste Repository

The Table of Base Civil Penalties in the current Enforcement Policy has no provisions that address a geologic repository. Therefore, the NRC is revising the civil penalty table in the revised Policy to include geologic repositories to ensure that, if the need arises, the NRC has the appropriate tools to take enforcement actions.

Based on the potential nuclear material inventory involved at a geologic repository and the corresponding safety consequences that could arise at the site (specifically to employees), the NRC determined that the statutorily allowed maximum base civil penalty for a Severity Level I violation is appropriate. In determining the base civil penalty that should be
applied to a geologic repository, the
NRC also considered that the licensing
criteria used in developing 10 CFR Part
60, “Disposal of High-Level Radioactive
Wastes in Geologic Repositories,” and
10 CFR Part 63, “Disposal of High-Level
Radioactive Wastes in a Geologic
Repository at Yucca Mountain, Nevada,”
were comparable to the criteria applied
to reactors and spent fuel facilities. The
NRC has included this information in
Table A of the revised Policy under the
generic heading “High-Level Waste
Repository” to address the possibility of
any future engineered underground
disposal facilities used for the storage of
HLW.

b. Uranium Enrichment Facilities

The current Enforcement Policy only
provides a base civil penalty for gaseous
diffusion plants (GDPs) and does not
address other enrichment facilities such
as gas centrifuge or laser enrichment
facilities. The NRC has issued licenses
for two gas centrifuge uranium
enrichment facilities with enrichment
levels of up to 5 weight percent
uranium-235 (U–235) and 10 weight
percent U–235 and licensed a pilot laser
enrichment facility. Currently, NRC is
performing the licensing review for a
third uranium enrichment facility with an
enrichment level of 5 weight percent
uranium-235. Therefore, the NRC
believes that it is appropriate to provide
a base civil penalty for these types of
facilities at this time.

In developing a base civil penalty for
uranium enrichment facilities, the staff
compared the radiological, chemical
hazards of licensed materials, criticality
and security hazards of these facilities
with both gaseous diffusion plants
(GDPs) and Category III fuel fabricators
and, through an overall comparison,
provided an appropriate base civil
penalty. Both enrichment facilities and
Category III fuel fabricators have
Category III special nuclear material
(i.e., these facilities are limited to
enrichments of less than 20 percent of
U–235 (special nuclear material of low
strategic significance)). In addition, the
radiological and chemical risks of gas
centrifuge uranium enrichment facilities
are considered very similar to Category
III fuel fabricators. Therefore, the
necessary physical protection and
material control and accounting
requirement (based on the category of
facility) for uranium enrichment
facilities are similar to those required
for Category III fuel fabricators. For
these reasons, the staff believes that the
base civil penalty for Severity Level I
violations at uranium enrichment
facilities in Table A should be established at $35,000, the
same as the amount already established for Category
III fuel fabricators. For these reasons, the
staff believes that the base civil penalty for Severity Level I violations at
uranium enrichment facilities in Table A should be established at $35,000, the
same as the amount already established for Category III fuel fabricators.

2. Other Major Revisions to the
Enforcement Policy

a. Interim Enforcement Policy Regarding
the Use of Alternative Dispute
Resolution

The Interim Enforcement Policy on
the Use of Alternative Dispute
Resolution (ADR) was established to set
forth an interim Policy that the NRC
would follow while undertaking a pilot
program to test the use of ADR. Because
the ADR pilot program has been
successfully completed and the ADR
program has since been fully
implemented, the staff has revised the
Policy statement on ADR to reflect this
change.

b. Violation Examples

The violation examples have been
reorganized and expanded from the 8
activity areas contained in the current
Enforcement Policy to 14 activity areas
in the revised Policy. These changes
were made for clarification and ease of
use; in other cases, the activity areas
reflect changes made to NRC
regulations. For example, the NRC
rewrote the facility construction
violation examples to include licensees
under 10 CFR Part 52, “Licenses,
Certifications, and Approvals for
Nuclear Power Plants,” and fuel cycle
facilities. Fuel cycle and materials
operations were reorganized into
separate activity areas. New activity
areas were added for reactor and fuel
facility security, materials security,
information security, and fitness for
duty.

c. Addition of a Glossary

A Glossary, containing many of the
terms commonly used throughout the
NRC enforcement process, has been
added to the revised Policy.

d. Terminology Change

The revised Enforcement Policy
includes a change to previous Policy
Statement terminology that was
published in the Federal Register on
December 18, 2000 (65 FR 79139).
Specifically, the NRC has replaced
the term “sealed source or device” with the
term “regulated material” both in the
body of the revised Policy, Section
2.3.4, and in the Table of Base Civil
Penalties, Table A, category f. The term
“sealed” was deleted from this section
since the same enforcement approach is
used for both sealed and unsealed
sources. The term “regulated material”
captures all present and future NRC
regulated material.
SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Fees Schedule for the CBOE Stock Exchange

September 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) 1 and Rule 19b–4 thereunder,2 notice is hereby given that on September 14, 2010, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the Fees Schedule for its CBOE Stock Exchange (“CBSX”). The text of the proposed rule change is available on the Exchange’s Web site (http://www.cboe.org/legal), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to adopt the Trading Permit Holder Application Fees that apply to CBOE. The purpose of the proposed rule change is to offset some of the expenses incurred by the Exchange in connection with CBSX Trading Permit Holder applicants and existing CBSX Trading Permit Holders. A description of the application fees is provided below.

The Individual Applicant Fee (Trading Permit Holder) is payable by a new individual applicant for Trading Permit Holder status on the Exchange. The applicant’s Fingerprint Processing Fee is included as part of this fee. The New Trading Permit Holder Orientation & Exam Fee is payable by each applicant seeking Trading Permit Holder status, which requires a trading function.

The TPH Organization Application Fee (Corporation/Partnership/LLC) is payable by an applicant that desires to be a TPH organization on the Exchange. This fee encompasses the TPH Organization Application and related documentation, one Responsible Person’s Orientation & Exam Fee and Fingerprint Fee associated with the TPH Organization Application, and Associated Person(s) Fees that are part of this TPH Organization Application.

The TPH Organization Renewal Fee (Corporation/Partnership/LLC) is payable by a former trading firm member or TPH organization that reapplies for Trading Permit Holder status within nine months of its Trading Permit Status termination date and becomes an effective TPH organization within one year of its Trading Permit Status termination date. This fee encompasses the TPH Organization Application and related documentation and one Responsible Person who is a former Responsible Person who reapplies within nine months of his termination date and becomes an effective Responsible Person within one year of his termination date.

The Associated Person Fee is payable for the addition of certain individuals on a TPH organization’s Form BD. This fee includes the related Fingerprint Processing Fee. This fee is payable by each executive officer, general partner, or LLC Manager. Additionally, this fee is payable by each principal shareholder that has 5% or more direct ownership of a class of a voting security of a TPH organization corporation, limited partner who has the right to receive upon dissolution, or has contributed, 5% or more of the partnership’s capital, and LLC member who has the right to receive upon dissolution, or has contributed, 5% or more of the LLC’s capital. This fee is also payable by any person classified as a “Control Person” of the TPH organization.

The Fingerprint Processing Fee will be assessed for employees of Trading Permit Holders and any other individual requesting the Exchange to process a fingerprint, electronically or otherwise, excluding fingerprint requirements for Individual Applicants, individuals applying for Renewal/Change of Status, and Associated Persons.

The Renewal/Change of Status Fee is payable by a former individual Trading Permit Holder who reapplies for Trading Permit Holder status within nine months of his Trading Permit Holder status termination date and becomes an effective Trading Permit Holder within one year of his Trading Permit Holder status termination date. A former individual Trading Permit Holder or former individual member who reapplies for Trading Permit Holder status within nine months of termination from Trading Permit Holder status will be assessed the Renewal/Change of Status fee at the time of submission of the application. If that person becomes an effective Trading Permit Holder more than one year after his Trading Permit Holder status termination date, the person will then be charged an additional fee equal to the