

LRA and the achievement of certain milestones “represent a clear indication that the Pilgrim LRA would be ultimately approved.” Therefore, the Commission should waive the requirement for a preliminary cost estimate, according to Entergy. Entergy further argues that “approximately four years prior to the expiration date of the current operating license \* \* \* is within interpretation of the regulation” requiring a preliminary cost estimate at or about 5 years prior to the projected end of operations.

The NRC does not agree that the review, thus far, of the LRA and milestones achieved constitute “a clear indication” that the LRA will be granted. Moreover, the NRC does not agree that submitting a preliminary cost estimate less than 4 years prior to license expiration is within interpretation of the requirements of 10 CFR 50.75(f)(3).<sup>1</sup> Therefore, based on the arguments presented by Entergy, an exemption is not warranted.

However, the NRC has considered the current funding levels of Pilgrim’s decommissioning trust and the underlying purpose of 10 CFR 50.75(f)(3). Moreover, the NRC staff is not aware of any information indicating that the preliminary decommissioning cost estimate for Pilgrim is likely to be higher than the current minimum formula amount to such a degree that a problematic underfunding situation will exist that would require a full 5-year period to rectify.

#### *Authorized by Law*

This exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. As stated in Section 3.0 above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50. The NRC staff has determined that granting of the licensee’s proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission’s regulations. Therefore, the exemption is authorized by law.

<sup>1</sup> If Entergy believes that submitting a preliminary cost estimate less than 4 years prior to the date of license expiration is “within interpretation of the regulation,” then it is not clear why Entergy has filed this exemption request. The NRC staff notes that Entergy has not claimed that the “projected end of operations” unexpectedly moved to an earlier date as a result in change of circumstance (for example, early permanent shutdown), thus resulting in a period of time spent to submit a preliminary cost estimate well short of the 5 years.

#### *No Undue Risk To Public Health And Safety*

The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. The exemption request applies to the timing of the submission of the preliminary cost estimate and did not request an exemption from any of the information requirements of the regulation.

Based on the above, no new accident precursors are created by allowing Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. Similarly, the probability of postulated accidents is not increased. Therefore, there is no undue risk (since risk is probability multiplied by consequences) to public health and safety.

#### *Consistent With Common Defense And Security*

The proposed exemption would allow Entergy to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008, which is less than 4 years from the date of the expiration of the operating license. This change to the plant requirements for the preliminary decommissioning cost estimate submittal has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

#### *Special Circumstances*

One of the special circumstances, described in 10 CFR 50.12(a)(2)(ii), is that the application of the regulation is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.75(f)(3), is to ensure that all power reactor licensees maintain minimum decommissioning funding assurance that a facility will be able to decontaminate to NRC standards before a license is terminated. The NRC staff finds that the preliminary decommissioning cost estimate for Pilgrim is not likely to be higher than the current minimum formula amount to such a degree that a problematic underfunding situation will exist that would require a full 5-year period to rectify.

Based upon consideration of the information in the licensee’s submittal, the NRC staff concludes that this exemption meets the underlying purpose of the rule.

#### **4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. In addition, a special circumstance is present such that the application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Entergy a schedule exemption from the requirement of 10 CFR 50.75(f)(3) to submit the Pilgrim site-specific preliminary cost estimate by August 1, 2008.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (73 FR32607).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of June 2008.

For the Nuclear Regulatory Commission.

**Timothy McGinty,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

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#### **NUCLEAR REGULATORY COMMISSION**

**[EA-08-033]**

#### **In the Matter of; Certain Panoramic and Underwater Irradiators Authorized To Possess Greater Than 370 Terabecquerels 10,000 Curies Byproduct Material in the Form of Sealed Sources**

#### **Order Imposing Compensatory Measures (Effective Immediately)**

*I*

The Licensees identified in Attachment 1 to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 and 10 CFR Part 36 or comparable Agreement State regulations by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing possession of greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources either in panoramic irradiators that have dry or wet storage of the sealed sources or in underwater irradiators in which both the source and the product being irradiated are under

water. Commission regulations at 10 CFR 20.1801 or equivalent Agreement State regulations, require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR 20.1802 or equivalent Agreement States regulations, require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

## II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain compensatory measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2<sup>1</sup> on all Licensees identified in Attachment 1<sup>2</sup> of this Order who currently possess, or have near term plans to possess, greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and

<sup>1</sup> Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION are being released to the public.

<sup>2</sup> Attachment 1 contains sensitive information and will not be released to the public.

common defense and security continue to be adequately protected in the current threat environment. Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for individuals when the licensee's reviewing official is determining access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources. These requirements will remain in effect until the Commission determines otherwise.

The Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public. The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to "issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information.\* \* \*" This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-07-050). The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-07-050), applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and security of the United States. Access to Safeguards Information is limited to those persons who have established a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-

07-051). A need-to-know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-07-051) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigation's criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-07-051) dated March 8, 2007. Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA-07-051. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing possession greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources in a panoramic or underwater irradiator shall implement the requirements identified in Attachments 2 and 3 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

## III

Accordingly, pursuant to Sections 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, Part 36, and Part 73, it is hereby

ordered, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements of this order as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. The licensee shall immediately start implementation of the requirements in Attachments 2 and 3 to the Order and shall complete implementation by December 3, 2008, or the first day that greater than 370 terabecquerels (10,000 curies) of byproduct material in the form of sealed sources is possessed, whichever is later.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

C. 1. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-07-051) issued on March 8, 2007, only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the

licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA-07-051. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to the panoramic or underwater irradiator sealed sources that equal or exceed 370 Terabecquerels (10,000 curies). Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Energy Policy of 2005 fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to the panoramic or underwater irradiator sealed sources if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material subject to regulation by the NRC.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Order EA-07-051 do not need to be fingerprinted again for purposes of being considered for unescorted access.

E. The Licensee may allow any individual who currently has unescorted access to the panoramic or underwater irradiator sealed sources, in accordance with this Order, to continue to have unescorted access during the pendency of a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may

continue to have unescorted access to the panoramic or underwater irradiator sealed sources. The licensee shall complete implementation of the requirements of Attachments 2 and 3 to this Order by December 3, 2008.

F. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments 2 and 3.

G. Notwithstanding any provisions of the Commission's or Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee response to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as "SAFEGUARDS INFORMATION—MODIFIED HANDLING" and mailed (no electronic transmittals i.e., no e-mail or FAX) to the NRC in accordance with Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-07-050).

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

#### IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty (20) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty (20) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a

statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV), or by calling (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate also is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in

the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 5th day of June 2008.

For The Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Office of Federal and State Materials and Environmental Management Programs.*

**Attachment 1: List of Licensees—Redacted**

**Attachment 2: Compensatory Measures for Panoramic and Underwater Irradiator Licensees Revision 2**

These compensatory measures (CMs) are established to delineate licensee responsibility in response to the current threat environment in the aftermath of the terrorist attacks of September 11, 2001. The following security measures apply to Licensees who, now and in the future, possess greater than 370 TeraBecquerels (TBq) [10,000 Ci] of byproduct material in the form of sealed sources in panoramic irradiators that have dry or wet storage of the sealed sources, or in underwater irradiators in which both the source and the product being irradiated are underwater.

1. Use and store the radioactive material only within a security zone that isolates the material from unauthorized access and facilitates detection if such access occurs.

The security zone is an area, defined by the licensee, that provides for both isolation of radioactive material and access control. The licensee must demonstrate for this area a means to detect any attempt of unauthorized access to licensed material. "Isolation" means to deter persons, materials, or vehicles from entering or leaving through other than established access control points. "Access control" means to allow only approved individuals into the security zone. Thus, isolation and access control aid in the detection of unauthorized access or activities deemed by the licensee to be indicative of, or contributory to, the loss, theft, or release of material. The security zone does not have to be the same as the restricted area or controlled area, as defined in 10 CFR Part 20.

Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery and source replacement). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Continuously control access to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

A. For individuals granted access to safeguards information or unescorted access to the security zone, Licensees must provide reasonable assurance that

individuals are trustworthy and reliable, and do not constitute an unreasonable risk to the common defense and security. "Access" means that an individual could exercise some physical control over the material or device containing radioactive material.

i. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of eligibility for employment in the United States.

ii. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

iii. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," may continue to make trustworthiness and reliability determinations. The licensee may also nominate another individual specifically for making unescorted access determinations using the process identified in the NRC "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information."

B. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

3. Implement a system (i.e., devices and/or trained individuals) to monitor, detect, assess and respond to unauthorized entries into or activities in the security zone.

A. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

B. Provide enhanced security measures when temporary security zones are established, during periods of maintenance, source delivery and shipment, and source replacement, that will provide additional assurance for enhanced detection and assessment of and response to unauthorized individuals or activities involving the radioactive material. Such security measures shall include, but not be limited to:

i. Advanced notification to the local law enforcement agency (LLEA) for radioactive source exchanges, deliveries, and shipments.

ii. For shipments of sources, establish a positive means of transferring the

security responsibility, between the shipper/carrier and the consignee (receiver), for communicating with the LLEA.

C. Provide a positive measure to validate that there has been no unauthorized removal of the radioactive material from the security zone.

D. Maintain continuous communications capability among the various components for intrusion detection and assessment to bring about a timely response.

E. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed.]

**Attachment 3: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information or Unescorted Access to the Panoramic or Underwater Irradiator Sealed Sources**

*General Requirements*

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to the panoramic or underwater irradiator sealed sources. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check (e.g. National Agency Check), Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and

clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 27 CFR Part 555, Hazardous Material security threat assessments for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trace Program<sup>1</sup> within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow, access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources.

#### *Prohibitions*

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the

case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

#### *Procedures for Processing Fingerprint Checks*

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-7232, or by e-mail to [forms@nrc.gov](mailto:forms@nrc.gov). Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application (Note: other fees may apply to obtain fingerprints from your local law enforcement agency). Licensees should submit payments electronically via <http://www.pay.gov>. Payments through *Pay.gov* can be made directly from the

Licensee's credit/debit card. Licensees will need to establish a password and user ID before they can access *Pay.gov*. To establish an account, Licensee requests must be sent to [paygo@nrc.gov](mailto:paygo@nrc.gov). The request must include the Licensee's name, address, point of contact, e-mail address, and phone number. The NRC will forward each request to *Pay.gov* and someone from *Pay.gov* will contact the Licensee with all of the necessary account information.

Licensees shall make payments for processing before submitting applications to the NRC. Combined payment for multiple applications is acceptable. Licensees shall include the *Pay.gov* payment receipt(s) along with the application(s). For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404. The application fee (currently \$36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

#### *Right to Correct and Complete Information*

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of

<sup>1</sup> The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources shall not be granted to an individual during the review process.

#### *Protection of Information*

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to the panoramic or underwater irradiator sealed sources. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social

security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to the panoramic or underwater irradiator sealed sources. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8-13326 Filed 6-12-08; 8:45 am]

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## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### Senior Executive Service Performance Review Board Membership

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is given under 5 U.S.C. 4314(c)(4) of the appointment of members to the Performance Review Board (PRB) of the Occupational Safety and Health Review Commission.

**DATE:** Membership is effective on June 13, 2008.

**SUPPLEMENTARY INFORMATION:** The Review Commission, as required by 5 U.S.C. 4314(c)(1) through (5), has established a Senior Executive Service PRB. The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations to the Chairman of the Review Commission regarding performance ratings, performance awards, and pay-for-performance adjustments. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The names and titles of the PRB members are as follows:

- Terry T. Shelton, Associate Administrator, U.S. Department of Transportation, Federal Motor Carrier Safety Administration;
- Fran L. Leonard, Chief Financial Officer, Federal Mediation and Conciliation Service, Office of the Director;

- Cynthia G. Pierre, PhD, Enforcement Director, U.S. Department of Education, Office for Civil Rights; and
- Janice H. Brambilla, Director of Management Planning, Broadcasting Board of Governors.

**FOR FURTHER INFORMATION CONTACT:**

Debra A. Hall, Deputy Director of Administration, U.S. Occupational Safety and Health Review Commission, 1120-20th Street, NW., Washington, DC 20036, (202) 606-5397.

Dated: June 9, 2008.

**Horace A. Thompson, III,**

*Chairman.*

[FR Doc. E8-13331 Filed 6-12-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57937; File No. SR-CBOE-2008-58]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow the Exchange To Determine To Permit Electronic Exposure of SAL, HAL, and/or COA Orders to All CBOE Market-Makers

June 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 3, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Rules 6.13A, *Simple Auction Liaison* ("SAL"), 6.14, *Hybrid Agency Liaison* ("HAL"), and 6.53C(d), *Process for Complex Order RFR Auction* ("COA"),

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).