

**RULEMAKING ISSUE**  
(Affirmation)

November 27, 2006

SECY-06-0234

FOR: The Commissioners

FROM: Luis A. Reyes  
Executive Director for Operations /RA/

SUBJECT: FINAL RULE: SECURE TRANSFER OF NUCLEAR MATERIAL  
(RIN 3150-AH90)

PURPOSE:

To request Commission approval for publication of the final rule.

SUMMARY:

Section 656 of the Energy Policy Act (EPAAct) mandates that the U.S. Nuclear Regulatory Commission (NRC) establish a system of manifests and security background checks related to transfer of nuclear materials, pursuant to an NRC import or export license; and to issue final regulations within one year after passage of the EPAAct regarding exceptions to the provisions of Section 1701 of the Atomic Energy Act (AEA), as amended. After considering the status and extent of NRC's regulatory program, NRC published a proposed rule, codifying a set of exceptions, based on the system of Orders it had already issued. As a result of our consideration of public comments received, the final rule text continues to read the same as the proposed rule text. This paper does not address any new commitments.

BACKGROUND:

On August 8, 2005, the President signed the EPAAct into law. Section 656 of the EPAAct added Section 1701 to the AEA, which placed three broad requirements on the NRC: 1) establish a

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system for manifests of import/export shipments of radioactive materials; 2) require security background checks of persons receiving or accompanying import/export shipments of certain radioactive materials, to become effective on a date established by the Commission; and 3) issue a regulation, within one year after enactment of the EPAct, excepting shipments of certain types of radioactive materials or classes of individuals from the requirements of Section 170I of the AEA. \_\_\_\_\_

## DISCUSSION:

### Rulemaking Considerations Related to Proposed Rule to Implement Section 656 of the EPAct

In preparing the proposed rule to implement Section 656, the staff determined that, based on existing requirements for shipping papers for radioactive materials already in place in Department of Transportation regulations, and incorporated by reference in NRC regulations in 10 CFR Part 71, an appropriate system is already established to ensure that shipments of radioactive materials, that would be affected by Section 656, are accompanied by shipping papers (i.e., a manifest) appropriately describing the materials being transported. Thus, NRC did not include any additional requirements for manifesting of radioactive material shipments in the proposed rule. In addition, the staff determined that the most appropriate and comprehensive approach for establishing requirements for security background checks is as part of the broader considerations of NRC's rulemaking to implement Section 652 of the EPAct. Section 652 mandates that the Commission require fingerprinting and criminal history record checks for any individual permitted unescorted access to risk-significant radioactive material. The Section 652 proposed rule is currently in preparation; its schedule calls for issuance of a proposed rule, in Fall 2007, and a final rule, in Fall 2008. While the Section 652 rulemaking is being conducted, NRC has a regulatory framework for security background checks through a system of Orders regarding unescorted access to risk-significant sources of radioactive material.

### Issuance of Proposed Rule

Consistent with Section 656(b), the Commission proposed to amend NRC's regulations to except from the security background check requirements of Section 170I those licensees that have not received NRC Orders containing requirements for background checks for trustworthiness and reliability, that include fingerprinting and criminal history record checks, as a prerequisite for unescorted access to risk-significant radioactive materials. Orders restricting access, based on fingerprinting and criminal history record checks, have been issued for pool-type irradiator licensees, manufacturing and distribution (M&D) licensees, and licensees that make shipments of radioactive materials in quantities of concern (RAMQC). Thus, these licensees satisfy the requirements of Section 170I through compliance with the requirements contained in their existing Orders (or new or amended Orders). Also, if additional Orders for fingerprinting and criminal history checks for unescorted access to radioactive material were to be issued to licensees other than those noted here, licensees who receive any such new Orders would no longer be excepted from the security background check requirements of Section 170I.

The rationale for the exceptions is that they are consistent with the system of Orders, issued to certain licensees, that NRC has instituted for protection of the common defense and security. The materials possessed and transferred by licensees that have received Orders have been deemed, during the process of issuance of the Orders, to be appropriate for immediately requiring certain security measures for unescorted access based on potential higher risk resulting from malevolent use of those materials.

The proposed rule was published in the *Federal Register* on August 30, 2006 (71 FR 51534).

### Public Comments

The proposed rule public comment period closed September 29, 2006, and two comment letters were received, one from the Organization of Agreement States (OAS) and one from the Nuclear Energy Institute (NEI). The OAS comment letter indicated that the NRC approach in the rulemaking seemed reasonable to the OAS Executive Board. The NEI comment letter indicated that NEI supported the proposed rule as drafted. However, NEI also stated that there were two areas of confusion regarding the applicability of the rulemaking, in particular that: there are a number of power reactor licensees that have personnel who come in contact with radioactive materials in transit but who are not covered by additional Orders nor existing rules in 10 CFR. In addition, NEI was concerned as to where this Section 656 rulemaking will end and where the referenced Section 652 rulemaking, due for issuance in late 2007, will start.

In response to the NEI concerns, it can be noted that the "Supplementary Information" in the *Federal Register* notice (FRN) issuing the proposed rule stated that this Section 656 rulemaking is relying on the framework of the system of NRC Orders, either in place or to be put into place, as the basis for codifying exceptions. This allows for a consistent approach, for radioactive materials, that NRC considers appropriate, at this time, for exception from the requirements of Section 170I of the AEA, as amended by the EPAAct. Orders for fingerprinting and criminal history checks, for persons at licensed facilities shipping RAMQC, were issued in October 2006. As noted previously, the Section 652 rulemaking will take a more comprehensive approach in establishing requirements for security background checks, for licensees, and for unescorted access to radioactive material. To the extent that personnel at a nuclear power plant handle risk-significant material and are not currently covered by regulation and/or Order with regard to background checks and fingerprinting, consideration can be given to including such licensees in NRC's framework of Orders. If such additional Orders are issued, licensees receiving any such new Orders would no longer be excepted from the security background check requirements of Section 170I, under the provisions of this Section 656 rule. With regard to the second point raised by NEI, the FRN for the proposed rule notes that NRC intends to address background checks and fingerprinting for criminal history record checks, for unescorted access to risk-significant materials, in a more comprehensive manner under the rulemaking to implement Section 652 of the EPAAct. The requirements for exceptions in this Section 656 rulemaking were issued as part of a mandate of Section 656 of the EPAAct for a limited subset of licensee employees. The requirements for exceptions in this Section 656 rulemaking will be revisited and may be modified and/or superseded by the more comprehensive Section 652 rulemaking.

### Content of Final Rule

After review of the public comments, the staff is recommending making final the approach in the August 30, 2006, proposed rule (i.e., to amend NRC's regulations to except, from the

security background check requirements of Section 170I, those licensees that have not received NRC Orders restricting unescorted access to radioactive materials to individuals who have undergone background checks, for trustworthiness and reliability, which include fingerprinting and criminal history record checks). As of October 2006, Orders for fingerprinting and criminal history record checks for unescorted access to radioactive materials have been issued to pool-type irradiator licensees, M&D licensees, and licensees that make shipments of RAMQC. Under the provisions of the final rule, if additional Orders for fingerprinting and criminal history checks for unescorted access to radioactive material are issued to licensees other than those noted above, licensees that receive any such new Orders would no longer be excepted from the security background check requirements of Section 170I.

#### NRC Strategic and Performance Goals

This final rule is consistent with NRC's strategic objectives and performance goals. The final rule contains provisions for exceptions to requirements in Section 170I of the AEA, related to secure transfer of nuclear material, which are consistent with NRC's statutory authority to ensure adequate protection of the public health and safety and the environment and common defense and security. Assuring that material is transferred in a secure manner ensures protection of public health and safety and the environment and the common defense and security. Also, specific requirements for exceptions make NRC's actions more effective and efficient. This rulemaking is being conducted in an open process, including availability for public comment. The proposed rule was published in the *Federal Register*, for a 30-day public comment period.

#### RESOURCES:

FSME has sufficient resources budgeted in FY 2007 to complete this rulemaking.

#### AGREEMENT STATE COORDINATION AND COMPATIBILITY:

The staff has analyzed the final rule, under the procedures established within Part III of Handbook 5.9 to Management Directive 5.9, "Categorization Process for NRC Program Elements." Compatibility discussions are contained in the *Federal Register* document. The staff has determined the appropriate Compatibility Category for this rulemaking to be Compatibility Category NRC. The requirements in this final rule are limited to providing exceptions to requirements in Section 170I of the AEA, as amended by the EPA Act, and are based on a system of Orders, developed under NRC's authority, to protect the common defense and security, which cannot be relinquished to the Agreement States.

The proposed rule was reviewed by the OAS during the public comment period. The OAS comment letter indicated that the NRC approach in the rulemaking seemed reasonable to the OAS Executive Board.

#### RECOMMENDATIONS:

That the Commission:

1. Approve the enclosed notice of final rulemaking for publication in the *Federal Register*.

2. Certify that the final rule will not have a significant economic impact on a substantial number of small entities.
3. Note:
  - a. A Regulatory Analysis and a Regulatory Flexibility Analysis have not been prepared for this rulemaking because it does not impose any regulatory burdens on licensees.
  - b. Appropriate Congressional committees will be informed of this action.
  - c. No Office of Management and Budget review under the Paperwork Reduction Act is required, because the final rule amendment contains no new or amended information collection requirements.

COORDINATION:

The Office of the General Counsel has no legal objection to the final rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

***/RA/***

Luis A. Reyes  
Executive Director  
for Operations

Enclosure:  
*Federal Register Notice*

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN: 3150-AH90

Secure Transfer of Nuclear Materials

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to implement requirements for secure transfer of nuclear materials as required by Section 656 of the Energy Policy Act of 2005 (EPAAct), signed into law on August 8, 2005. The final rule implements Section 656 by specifically excepting certain licensees from provisions of Section 1701 of the Atomic Energy Act (AEA) of 1954, as amended.

**EFFECTIVE DATE:** The final rule is effective on [insert a date 30 days from date of publication].

**ADDRESSES:** Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents can be viewed and downloaded electronically via the NRC's rulemaking web site at <http://ruleforum.llnl.gov>

Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/NRC/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at (800) 397-4209, (301) 415-4737, or by email to [pdr@nrc.gov](mailto:pdr@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Frank Cardile, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6185, e-mail: [fpc@nrc.gov](mailto:fpc@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Energy Policy Act of 2005

On August 8, 2005, the President signed into law the EAct of 2005 Pub L. No. 109-58, 119 Stat. 594 (2005). Section 656 of the EAct added Section 170I to the AEA, as amended, 42 U.S.C, 2210i, and requires that: a) a system be established by the Commission to ensure that materials transferred or received in the United States, by any party, pursuant to an import or export license issued by NRC, are accompanied by a manifest describing the type and amount of materials; b) each individual receiving or accompanying the transfer of materials shall be subject to a security background check conducted by appropriate Federal entities; and

c) the Commission issue regulations, within one year after enactment of the EAct, identifying radioactive materials or classes of individuals that, consistent with the protection of the public health and safety and the common defense and security, are appropriate exceptions to the requirements in Section 170I of the AEA.

#### Rulemaking Considerations Related to Proposed Rule to Implement Section 656 of the EAct

In preparing the proposed rule to implement Section 656 (71 FR 51534; August 30, 2006), the NRC determined that, based on existing requirements for shipping papers for radioactive materials already in place in Department of Transportation regulations and incorporated by reference in NRC regulations in 10 CFR Part 71, an appropriate system is already established to ensure that shipments of radioactive materials, that would be affected by Section 656, are accompanied by papers (i.e., a manifest) appropriately describing the materials being shipped. Thus, NRC did not include any additional requirements for manifesting of radioactive material shipments in the proposed rule.

In addition, the NRC determined that the most appropriate and comprehensive approach for establishing requirements for security background checks is as part of the broader considerations of NRC's rulemaking to implement Section 652 of the EAct. Section 652 mandates the Commission to require fingerprinting and criminal history record checks for any individual who is permitted unescorted access to risk-significant radioactive material. The individuals referred to under Section 656 are a subgroup (i.e., those transferring radioactive material pursuant to an export or import license) of the larger group of individuals at a licensed facility, with unescorted access to radioactive material, and will be covered by the



comprehensive Section 652 rulemaking. The Section 652 proposed rule is currently in preparation and its schedule calls for issuance of a proposed rule in the Fall of 2007 and a final rule in the Fall of 2008.

While the Section 652 rulemaking is being conducted, NRC has a regulatory framework for security background checks through an extensive system of Orders issued during 2002-2006 that includes requirements for background checks, including fingerprinting for criminal history checks, for unescorted access to radioactive material for certain facilities which it licenses. NRC has also issued Orders to licensees for shipment of radioactive material in quantities of concern (RAMQC). The purpose of these Orders has been to impose certain security measures to supplement existing regulations at 10 CFR Part 20, and equivalent Agreement State regulations, for securing licensed materials from unauthorized access, with the intent of providing the NRC with reasonable assurance that the common defense and security is protected. The Orders note that conditions for unescorted access to risk-significant sources of radioactive material are governed by an appropriate need-to-know and by background checks as input to a determination concerning the trustworthiness and reliability of individuals who have access to the material. Most recently, in October 2006, NRC issued Orders to pool-type irradiator licensees, manufacturing and distribution (M&D) licensees, and licensees making shipments of RAMQC, to specifically require fingerprinting and criminal history checks for unescorted access to the risk-significant sources of radioactive material at their facilities.

## Issuance of Proposed Rule

Consistent with Section 656(b) of the EPCRA, the Commission proposed to amend NRC's regulations to except from the security background check requirements of Section 170I of the AEA, as amended, licensees who have not received NRC Orders containing requirements for background checks for trustworthiness and reliability, that include fingerprinting and criminal history record checks, as a prerequisite for unescorted access to risk-significant radioactive materials. As noted above, Orders restricting access based on fingerprinting and criminal history record checks have been issued for pool-type irradiator licensees, M&D licensees, and licensees who make shipments of RAMQC. These licensees can use the provisions of their existing Orders (or new or amended Orders) to comply with Section 170I. Also, if additional Orders for fingerprinting and criminal history checks for unescorted access to radioactive material are issued to licensees other than those noted here, licensees who receive any such new Orders would no longer be excepted from the security background check requirements of Section 170I.

The rationale for the exceptions is that it is consistent with the system of Orders, issued to certain licensees, that the NRC has instituted for protection of the common defense and security. The materials possessed and transferred by the licensees who have received Orders have been deemed, during the process of issuance of the Orders, to be appropriate for immediately requiring certain security measures for unescorted access based on potential higher risk resulting from malevolent use of those materials.

The proposed rule was published in the *Federal Register* on August 30, 2006 (71 FR 51534) as a proposed new § 73.28 in 10 CFR Part 73.

## **II. Discussion**

### Summary of Public Comments on the Proposed Rule

The public comment period closed on September 29, 2006. In response to the request for comments, NRC received two comment responses, one from the Organization of Agreement States (OAS) and one from the Nuclear Energy Institute (NEI).

The comment response from the OAS summarized the content of the NRC's proposed rulemaking and its effect on Agreement States, including that the proposed Agreement State Compatibility Category of the proposed rule would be "NRC." The comment response from the OAS concluded by stating that the NRC approach in the rulemaking seemed reasonable to the OAS Executive Board.

The comment response letter from NEI stated that NEI supports the proposed rule as drafted. However, NEI also stated that there were two areas of confusion regarding the applicability of the rulemaking. In particular, NEI noted that there are a number of power reactor licensees that were not issued additional orders, but that have personnel who come in contact with radioactive materials in transit and who are not covered by existing rules in 10 CFR 73.57. Particularly noted were personnel in shipping and receiving operations located outside of the protected area who are considered outside of the nuclear power facility and do not

require access to Safeguards Information. The second area of confusion related to a NEI concern as to where this Section 656 rulemaking will end and where the referenced Section 652 rulemaking, due for issuance in late 2007, will start.

With regard to the first point raised by NEI, the Supplementary Information in the *Federal Register* Notice, issuing the proposed rule, stated that this Section 656 rulemaking is relying upon the framework of the existing system of NRC Orders, either in place or to be put into place, as the basis for codifying exceptions. This allows for a consistent approach for radioactive materials which NRC considers appropriate, at this time, for exception from the requirements of Section 170I of the AEA as amended by the EPA Act. The materials possessed and transferred by licensees who have received Orders have been deemed, during the process of issuance of the Orders, to be appropriate for immediately requiring certain security measures for unescorted access based on potential higher risk resulting from malevolent use of those materials. Orders for fingerprinting and criminal history checks for persons at licensed facilities shipping RAMQC were issued in October 2006. As noted previously, the Section 652 rulemaking will take a more comprehensive approach in establishing requirements for security background checks for licensees, and for licensee employees, for unescorted access to radioactive material. To the extent that personnel at a nuclear power plant handle risk-significant material and are not currently covered by regulation and/or order with regard to background checks and fingerprinting, consideration can be given to including such licensee personnel in NRC's framework of orders. If such additional Orders are issued, those licensees who have not previously received any such Orders would no longer be excepted from the security background check requirements of Section 170I, under the provisions of this final rule.

With regard to the second point raised by NEI, the Supplementary Information in the proposed rule notes that the NRC intends to address background checks and fingerprinting for criminal history record checks for licensees in a more comprehensive manner under the rulemaking to implement Section 652 of the EPAAct. One of the elements of that rulemaking, as mandated by Section 652(B)(i)(II), will be determining requirements for access to quantities of radioactive material, subject to regulation by the Commission, that the Commission determines to be of such significance to the public health and safety or to the common defense and security as to warrant fingerprinting and background checks. The requirements for exceptions in this Section 656 rulemaking were issued as part of a mandate of Section 656 of the EPAAct for a limited subset of licensee employees. If necessary, the requirements now codified at 10 CFR § 73.28 will be revisited, and may be amended and/or superseded by the more comprehensive Section 652 rulemaking.

#### Summary of Revisions to Proposed Rule

After review of the public comments, the NRC has decided to make final the approach in the August 30, 2006, proposed rule (i.e., to amend NRC's regulations to except from the security background check requirements of Section 170I those licensees that have not received NRC Orders restricting unescorted access to radioactive materials to individuals who have undergone background checks, for trustworthiness and reliability, that include fingerprinting and criminal history record checks). As of October 2006, Orders for fingerprinting and criminal history checks for unescorted access to radioactive materials have been issued to pool-type irradiator licensees, M&D licensees, and licensees who make shipments of RAMQC. Under the provisions of the final rule, if additional Orders for fingerprinting and criminal history checks

for unescorted access to radioactive material are issued to licensees other than those noted above, licensees who receive any such new Orders would no longer be excepted from the security background check requirements of Section 170I of the AEA.

### **III. Section by Section Analysis of Final Rule**

New § 73.28 has not been revised from the wording in the proposed rule and continues to except licensees from the security background check provisions of Section 170I of the AEA if they have not received Orders from the NRC containing requirements for background checks for trustworthiness and reliability that include fingerprinting and criminal history checks as a prerequisite for unescorted access to radioactive materials. Licensees subject to Orders are not excepted from the security background check provisions, and would use the requirements in their existing Orders to comply with Section 170I of the AEA.

### **IV. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, NRC is indicating specific exceptions to the requirements of Section 656 of the EPA Act. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

## **V. Agreement State Compatibility**

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs,” which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories (Compatibility Category A through D). In addition, NRC program elements also can be identified as having particular health and safety significance or as being reserved solely to NRC.

The amendment to 10 CFR Part 73 is a program element designated “NRC” based on implementation of the procedure in NRC’s Management Directive 5.9, “Adequacy and Compatibility of Agreement States.” The requirements in this amendment are limited to providing exceptions to requirements in Section 170I of the AEA and are based on a system of Orders that were developed under NRC’s authority to protect the common defense and security which are areas of exclusive NRC regulatory authority and cannot be relinquished to the Agreement States. Therefore, the requirements of this amendment should not be adopted by the Agreement States.

## **VI. Environmental Impact: Categorical Exclusion**

NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(3)(ii) as a categorical exclusion. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

## **VII. Paperwork Reduction Act Statement**

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

Existing requirements were approved by the Office of Management and Budget, approval number 3150-0002.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

## **IX. Regulatory Analysis**

A regulatory analysis has not been prepared for this regulation because it relieves restrictions and does not impose any additional burdens on licensees.

## **X. Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendment does not impose any additional burdens on licensees.



## **XI. Backfit Analysis**

NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) does not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

## **XII. Congressional Review Act**

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; NRC is adopting the following amendment to 10 CFR Part 73.

## PART 73 - PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.28 is added to read as follows:

§ 73.28 Security background checks for secure transfer of nuclear materials.

Licensees are excepted from the security background check provisions in Section 170I of the AEA if they have not received Orders from the Nuclear Regulatory Commission containing requirements for background checks for trustworthiness and reliability that include fingerprinting and criminal history record checks as a prerequisite for unescorted access to radioactive materials.

Dated at Rockville, Maryland, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Annette L. Vietti-Cook,  
Secretary of the Commission.