

### *Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

### *Conclusion*

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

### *Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the State of Connecticut, Department of Environmental Protection, Division of Radiation for review on September 16, 2008. On September 17, 2008, the State of Connecticut, Department of Environmental Protection, Division of Radiation responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

### **III. Finding of No Significant Impact**

The NRC staff has prepared this EA in support of the proposed action. On the

basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

### **IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

[1]. University of Connecticut letter dated February 21, 2008 (ML080710534);

[2]. University of Connecticut letter dated March 3, 2008 (ML080800358);

[3]. University of Connecticut letter dated May 15, 2008 (ML081500274);

[4]. NUREG-1757, "Consolidated NMSS Decommissioning Guidance;"

[5]. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"

[6]. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;" and

[7]. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

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 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 29th day of October 2008.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

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### **NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 72-1004, 70-1426, 72-1027, 72-1007, 72-1008, 72-1002, 72-1003, 72-1015, 72-1025, and 70-3020]

### **EA-08-289; In the Matter of: Certain 10 CFR Part 72 Certificate Holders Who Have Near-Term Plans To Access Safeguards Information Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information (Effective Immediately)**

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Issuance of Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information.

**FOR FURTHER INFORMATION CONTACT:** L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492-3316; fax number: (301) 492-3350; e-mail: [raynard.wharton@nrc.gov](mailto:raynard.wharton@nrc.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Introduction**

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of Certain 10 CFR Part 72 Certificate Holders Who Have Near-Term Plans To Access Safeguards Information Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information (Effective Immediately).

#### **II. Further Information**

##### **I**

Transnuclear, Inc., Holtec International, NAC International, and EnergySolutions Corporation, have been issued certificates, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), certifying dry cask storage designs in accordance with the Atomic Energy Act of 1954, as amended, (AEA) and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. These entities will be referred to herein as "the affected vendors." On August 8, 2005, the Energy Policy Act of 2005 (EPA) was enacted. Section 652 of the EPA

amended section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).<sup>1</sup> The EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [*see* 10 CFR 73.59, 71 FR 33,989 (June 13, 2006)], it is unlikely that licensee or certificate holder employees are excepted from the fingerprinting requirement by the “fingerprinting-relief” rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include (a) Federal, State, and local officials and law enforcement personnel; (b) Agreement State inspectors who conduct security inspections on behalf of NRC; (c) members of Congress and certain employees of members of Congress or Congressional Committees; and (d) representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have a favorably decided U.S. Government criminal history check within the last five (5) years, and individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees and certificate holders can obtain and grant access to SGI.<sup>2</sup> This Order also imposes requirements for access to SGI by any person,<sup>3</sup> from any

<sup>1</sup> Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

<sup>2</sup> The storage and handling requirements for certain SGI have been modified from the existing 10 CFR Part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI-M). However, the information subject to the SGI-M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

<sup>3</sup> Person means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy (DOE), except that the DOE shall be

person, whether or not a licensee, applicant, or certificate holder of the Commission or Agreement States. The SGI that is the subject of this Order is all SGI including aircraft impact-related data, which will be presented to the affected vendors at a one-day workshop at NRC. This aircraft impact-related information is hereby designated as SGI in accordance with section 147 of the AEA.

## II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, section 149 of the AEA requires fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know the information.

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, the affected vendors shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that, in consideration 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 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, Parts 72 and 73, it is hereby ordered, effective immediately, that the affected vendors and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, or has a favorably decided FBI identification and criminal history records check, and satisfies all other

considered a person with respect to those DOE facilities specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244); (2) any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (3) any legal successor, representative, agent, or agency of the foregoing.

applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably decided U.S. Government criminal history check within the last five (5) years, or who has an active Federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to the affected vendor’s NRC-approved reviewing official.

2. No person may have access to any SGI if NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

3. For SGI designated by the Commission as containing aircraft impact-related information, the affected vendor may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that the affected vendor has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental agency; and/or enhanced background checks, including employment and credit history. NRC must review these additional measures and approve them in writing. These additional measures are not required for individuals described in this paragraph who are seeking access to SGI that is not related to the aircraft impact-related SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. The affected vendor shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. The affected vendor shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who needs access to SGI, and

who the affected vendor nominates as the "reviewing official" for determining access to SGI by other individuals and has an established need-to-know the information. NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor's reviewing official.<sup>4</sup> The affected vendor may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. The affected vendor may allow any individual who currently has access to SGI, in accordance with the previously issued NRC Orders, to continue to have access to previously designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. The affected vendor shall make determinations on continued access to SGI, within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. The affected vendor shall, in writing, 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 the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendor responses to C.1., C.2., C.3., and C.4., above, shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, responses shall be marked as "Security-Related Information—Withhold under 10 CFR 2.390."

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the affected vendor.

<sup>4</sup> The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

#### IV

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, the affected vendor, and any other person adversely affected by this Order, may request a hearing on this Order, within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, 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 affected vendor relies and the reasons as to why the Order should not have been issued. If a person other than the affected vendor requests a hearing, that person shall set forth, with particularity, the manner in which his or her 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 before the submission of a request for hearing or petitions 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 NRC promulgated in August 2007, 72 FR 49139 (August 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 before the filing deadline, the requestor must contact the Office of the Secretary, by e-mail, at [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@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 is also 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, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format, 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. On 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, digital ID certificates, before hearing requests are filed, so that they may obtain access to the documents 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 motions, in accordance with 10 CFR 2.302(g), with their initial paper filings,

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, on 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>, 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 affected vendor 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 affected vendor 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 grounds 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, as specified in section III, 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, as 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 28th day of October 2008.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's and/or Certificate Holder's Reviewing Official Is Determining Access to Safeguards Information**

**General Requirements**

Licensees and certificate holders shall comply with the requirements of this attachment.

A.1. Each licensee and/or certificate holder subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee and certificate holder 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 and/or certificate holder 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 need not be taken if an employed individual (e.g., a licensee and/or certificate holder employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history check must be provided. The licensee and/or certificate holder must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's and/or certificate holder's activities.

4. All fingerprints obtained by the licensee and/or certificate holder pursuant to this Order must be

submitted to the Commission for transmission to the FBI.

5. The licensee and/or certificate holder shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued U.S. Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee and/or certificate holder 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.

7. The licensee and/or certificate holder shall document the basis for its determination whether to grant access to SGI.

B. The licensee and/or certificate holder shall notify NRC of any desired change in reviewing officials. NRC will determine whether the individual nominated as the new reviewing official may have access to SGI, based on a previously obtained or new criminal history check, and, therefore, will be permitted to serve as the licensee's and/or certificate holder's reviewing official.

**Prohibitions**

A licensee and/or certificate holder shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee and/or certificate holder 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 and/or certificate holder use the information in any way that 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 and/or certificate holders shall, using an appropriate method listed in 10 CFR 73.4, submit to 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 unescorted access to an independent spent fuel storage installation, 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) 415-5877, 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 and/or certificate holder shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

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 and/or certificate holder 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. The licensee and/or certificate holder shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees and/or certificate holders will need to establish an account with Pay.Gov (<https://www.pay.gov>). To request an account, the licensee and/or certificate holder shall send an e-mail to [det@nrc.gov](mailto:det@nrc.gov). The e-mail must include the licensee's and/or certificate holder's company name, address, point of contact (POC), POC e-mail address, and phone number. NRC will forward the request to Pay.Gov, who will contact the licensee and/or certificate holder with a password and user ID. Once licensees and/or certificate holders have established an account and submitted payment to Pay.Gov, they shall obtain a receipt. A licensee and/or certificate holder shall submit the receipt from Pay.Gov to NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7739. Combined payment for multiple applications is acceptable.

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 NRC on behalf of a licensee and/or certificate holder, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee and/or certificate holder fingerprint submissions. The Commission will directly notify licensees and/or certificate holders subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee and/or certificate holder all data received from the FBI as a result of the licensee's and/or certificate holder's application(s) for criminal history records checks, including the FBI fingerprint record.

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

Prior to any final adverse determination, the licensee and/or certificate holder 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. The individual's written confirmation of receipt of this notification must be maintained by the licensee and/or certificate holder 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 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 and/or certificate holder 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 and/or certificate holder may make a final SGI access determination based on 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, the licensee and/or certificate holder shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

#### **Protection of Information**

1. Each licensee and/or certificate holder that 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 and/or certificate holder 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. 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 records check may be transferred to another licensee and/or certificate holder if the gaining licensee and/or certificate holder receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee and/or certificate holder 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 and/or certificate holder shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee and/or certificate holder 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 determination of access to SGI. 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.

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2008 Annual Review

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** With respect to the Annual Review under the ATPA, the Office of the United States Trade Representative (USTR) received no new petitions in August-September 2008 to review certain practices in a beneficiary developing country to determine whether such country is in compliance with the ATPA eligibility criteria. USTR received updates to two petitions that are currently under review and a request to withdraw a petition that was under review. This notice specifies the status of the petitions filed in prior years that have remained under review. This notice does not relate to the Bolivia-specific review initiated on October 1, 2008 (73 FR 57158).

**FOR FURTHER INFORMATION CONTACT:** Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395-9446.

**SUPPLEMENTARY INFORMATION:** The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107-210) and the Act to Extend the Andean Trade Preference Act (Pub. L. 110-436), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2008 Annual ATPA Review is the fifth such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 14, 2008, USTR initiated the 2008 ATPA Annual Review and announced a deadline of September 15, 2008 for the filing of petitions (73 FR 47633). Chevron submitted information updating the petition it originally filed in 2004, which remains under review. USTR also received updated information from the U.S./Labor Education in the Americas Project (US/

LEAP) concerning its petition related to worker rights in Ecuador, which has been under consideration since the 2003 ATPA review. The AFL-CIO filed a submission which indicated that it is no longer seeking a removal of ATPA benefits from Ecuador over worker rights issues. The Trade Policy Staff Committee (TPSC) is therefore terminating its review of the AFL-CIO petition filed in 2003.

Following is the list of all petitions from prior years that will remain under review through December 31, 2009, which is the period that the ATPA is in effect:

*Ecuador* Human Rights Watch.  
*Ecuador* U.S./Labor Education in the Americas Project.  
*Ecuador* Chevron Texaco.  
*Peru* Princeton Dover.  
*Peru* Duke Energy.

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR-2008-0036]

### Review of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Measures Concerning Meat and Meat Products

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments.

**SUMMARY:** The interagency section 301 Committee is soliciting written comments on possible modifications to the action taken by the United States Trade Representative ("Trade Representative") in connection with the World Trade Organization ("WTO") authorization in the *EC-Beef Hormones* dispute to the United States to suspend concessions and related obligations with respect to the European Communities ("EC"). The *EC-Beef Hormones* dispute concerned the EC's ban on the import of U.S. meat and meat products produced from animals treated with any of six hormones for growth promotion purposes. Annex I to this notice contains a list of EC products with respect to which the United States is currently imposing increased rates of duty (100 percent *ad valorem*) pursuant to the WTO's authorization. Annex II to this notice contains a list of potential alternative products under consideration for the imposition of increased duties. Comments are

requested with respect to (i) whether products listed in Annex I should be removed from the list or remain on the list (and if a product remains on the list, whether the currently applied rate of duty should be increased), (ii) whether products listed in Annex II should be included on a revised list and be subjected to increased rates of duty, and (iii) the products of which member States of the EC should be subjected to increased rates of duty.

**DATES:** To be assured of consideration, comments should be submitted by 5 p.m. on December 8, 2008.

**ADDRESSES:** Comments should be submitted (i) electronically via the Internet at <http://www.regulations.gov>, or (ii) by fax to Sandy McKinzy at (202) 395-3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Gwendolyn Diggs, Staff Assistant to the section 301 Committee, (202) 395-5830, for questions concerning procedures for filing submissions in response to this notice; Roger Wentzel, Director, Agricultural Affairs, (202) 395-6127 or David Weiner, Director for the European Union, (202) 395-4620 for questions concerning the *EC-Beef Hormones* dispute; or William Busis, Associate General Counsel (202) 395-3150 and Chair of the Section 301 Committee, for questions concerning procedures under Section 301. For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.

#### SUPPLEMENTARY INFORMATION:

##### A. The EC-Beef Hormones Case

The EC bans the import of beef and beef products produced from animals to which any of six hormones<sup>1</sup> have been administered for growth promotion purposes. The effect of the EC ban is to prohibit the import of substantially all U.S.-produced beef and beef products. In February 1998, the WTO Dispute Settlement Body ("DSB") found that the EC ban was inconsistent with EC obligations under the WTO Agreement. In July 1999, a WTO arbitrator determined that the EC import ban on U.S. beef and beef products has nullified or impaired U.S. benefits under the WTO Agreement in the amount of \$116.8 million each year. On July 26, 1999, the DSB authorized the

<sup>1</sup> The six hormones at issue are estradiol 17- $\beta$ , testosterone, progesterone, zeranol, trenbolone acetate ("TBA") and melengestrol acetate ("MGA").