

regulations, the Commission is required to adopt and communicate assessment rates; the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission on a quarterly basis.

The regulations of the Commission and the final rate being adopted today are effective for calendar year 2008. Therefore, all gaming operations within the jurisdiction of the Commission are required to self administer the provisions of these regulations, and report and pay any fees that are due to the Commission by December 31, 2008.

Dated: December 1, 2008.

**Philip N. Hogen,**

*Chairman, National Indian Gaming Commission.*

[FR Doc. E8-29062 Filed 12-8-08; 8:45 am]

BILLING CODE 7565-01-M

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Extend an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of proposed projects.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments on this notice must be received by February 9, 2009 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

### FOR ADDITIONAL INFORMATION OR

**COMMENTS:** For further information or for a copy of the collection instruments and instructions, contact Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292-7556; or send e-mail to [splimpto@nsf.gov](mailto:splimpto@nsf.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

### SUPPLEMENTARY INFORMATION:

*Title of Collection:* Survey of Earned Doctorates.

*OMB Approval Number:* 3145-0019.

*Expiration Date of Approval:* May 31, 2009.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

1. *Abstract:* The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to “\* \* \* provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.” The Survey of Earned Doctorates is part of an integrated survey system that meets the human resources part of this mission.

The Survey of Earned Doctorates has been conducted continuously since 1958 and is jointly sponsored by six Federal agencies in order to avoid duplication. It is an accurate, timely source of information on our Nation's most precious resource—highly educated individuals. Data are obtained via paper questionnaire or Web survey from each person earning a research doctorate at the time they receive the degree. Data are collected on their field of specialty, educational background, sources of support in graduate school, debt level, postgraduation plans for employment, and demographic characteristics.

The Federal government, universities, researchers, and others use the information extensively. The National Science Foundation, as the lead agency, publishes statistics from the survey in several reports, but primarily in the annual publication series, “Science and Engineering Doctorates” and the Interagency Report, “Doctorate Recipients from U.S. Universities: Summary Report.” These reports are available in print and electronically on the World Wide Web.

The survey will be collected in conformance with the Privacy Act of 1974. Responses from individuals are voluntary. NSF will ensure that all individually identifiable information collected will be kept strictly confidential and will be used for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A total response rate of 91.6% of the total 48,079 persons who earned a research doctorate was obtained in academic year 2006/2007. This level of response rate has been consistent for several years. The respondents will be individuals and the estimated number of respondents annually is around 45,000 (based on 2007 data).

3. *Estimate of Burden:* The Foundation estimates that, on average, 20 minutes per respondent will be required to complete the survey. The total annual respondent burden for the Survey of Earned Doctorates is therefore estimated at 15,000 hours, based on 45,000 respondents. This is higher than the last annual estimate approved by OMB due to the increased number of respondents (doctorate recipients).

Dated: December 4, 2008.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. E8-29091 Filed 12-8-08; 8:45 am]

BILLING CODE 7555-01-P

## NUCLEAR REGULATORY COMMISSION

### Notice; Application and Amendment to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information or Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information or Safeguards Information

#### I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding

the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of amendment containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

*Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing*

The Commission has made a proposed determination that the following amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division

of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at <http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html>. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm.html>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 28, 2007 (72 FR 49139). 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 of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/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 proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer(tm) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer(tm) 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 available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at [\[submittals.html\]\(http://www.nrc.gov/site-help/e-submittals.html\). A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing 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 documents on those participants separately. Therefore, applicants and other participants \(or their counsel or representative\) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.](http://www.nrc.gov/site-help/e-</a></p>
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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 Meta-System Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The Meta-System Help Desk can be contacted by telephone at 1-866-672-7640 or by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov).

Participants who believe that they have a 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the

Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

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 submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*FPL Energy, Point Beach, LLC, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of amendment request: July 24, 2008.*

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). This amendment requests changes to Operating Licenses DPR-24 and DPR-27, Point Beach Nuclear Plant (PBNP) Units 1 and 2. The proposed changes to the PBNP Operating Licenses will revise the Technical Specifications (TS) to incorporate the results of a new spent fuel pool criticality analysis. The results of the new criticality analysis will provide the basis necessary for changes to TS 3.7.12—Spent Fuel Pool Storage and TS 4.3.1—Criticality.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No

Operation of the facility in accordance with the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated. The presence of soluble boron in the SFP [spent fuel pool] water being used for criticality control does not increase the probability of a dropped fuel assembly accident. The handling of the fuel assemblies in the SFP has always been performed and will continue to be performed in borated water.

There is no increase in the probability of the accidental misloading of fuel assemblies into the SFP fuel storage racks when considering the presence of soluble boron for criticality control. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and in accordance with the spent fuel storage rack limitations specified in the TS. There is no increase in the consequences for an accidental misloading of fuel assemblies in the SFP fuel storage racks because the criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading.

Soluble boron credit is used to provide margin to offset uncertainties, tolerances, and off-normal/accident conditions, and to provide subcritical margin such that the SFP is keff maintained less than or equal to 0.95. The plant-specific criticality analysis results demonstrate that the spent fuel rack keff [effective multiplication factor] will remain <1.0 (at a 95/95 percent probability and confidence level) even with the SFP flooded with unborated water.

There is no increase in the probability of the loss of normal cooling to the SFP when considering the presence of soluble boron criticality control since a high concentration of soluble boron has always been maintained in the SFP water. A loss of normal cooling to the SFP will result in a reactivity increase for fuel assemblies stored in the All-Cell storage configuration. Maintaining 664 ppm [parts per million] boron in the SFP ensures that keff remains less than or equal to 0.95 for this accident scenario. Because adequate soluble boron will be maintained in the SFP water the consequences of a loss of normal cooling to the SFP will not be increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No

Under the proposed amendment, no changes are being made to the fuel storage

racks themselves, to any other systems, or to the physical structures of the primary auxiliary building. Therefore, there are no changes proposed to the plant configuration, equipment design, or installed equipment.

Criticality accidents in the SFP are not new or different types of accidents. They have been analyzed in the FSAR and in fuel storage criticality analysis reports associated with specific license amendments. The proposed new SFP storage limitations are those made in the new criticality analysis. They will not have a significant effect on normal SFP operations and maintenance. The most limiting accident scenario changes from a misloaded fresh fuel assembly adjacent to the storage racks, to a misloaded fuel assembly in a 1 out of 4 storage pattern. Established administrative controls will prevent a misloading event in the SFP. Administrative controls include use of independently prepared and reviewed fuel movement authorization paperwork, use of qualified fuel handling operators and oversight of fuel handling operations by an SRO [senior reactor operator].

The current TS include a SFP boron concentration limit that conservatively bounds the required boron concentration of the new criticality analysis. Since soluble boron has always been maintained in the SFP water, implementation of this requirement for SFP criticality control purposes has no effect on normal pool operations and maintenance. Since soluble boron has always been present in the SFP, a dilution event has always been a possibility. The loss of substantial amounts of soluble boron from the SFP that could lead to keff exceeding 0.95 was evaluated as part of the analyses in support of this license amendment request. The evaluation demonstrates that if a dilution event were to occur, plant operators would have sufficient time to detect and mitigate the accident before the minimum boron concentration is reached.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment result in a significant reduction in a margin of safety?

*Response:* No

The proposed amendment uses a different methodology to ensure the SFP will remain subcritical. The current licensing basis requires the SFP keff be less than or equal to 0.95 when flooded with unborated water. Approval of this license amendment request will change licensing basis to 10 CFR 50.68, which allows credit for soluble boron. The new methodology calculates the minimum boron concentration to ensure the SFP keff will be less than or equal to 0.95 when flooded with borated water.

The current TS SFP boron requirement significantly exceeds the required boron concentration determined in the new criticality analysis. Supporting analysis determined there is sufficient time for plant operators to detect and mitigate a boron dilution event in the SFP. Should an undetected dilution event occur, the new methodology also demonstrates the SFP keff will be less than 1.0 when flooded with unborated water. Therefore, the proposed

changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Antonio Fernandez, Esquire, Senior Attorney, FPL Energy Point Beach, LLC, P.O. Box 14000, Juno Beach, FL 33408-0420.

*NRC Branch Chief:* Lois M. James.

### **Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation**

*FPL Energy, Point Beach, LLC, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov) and [ogcmailcenter.resource@nrc.gov](mailto:ogcmailcenter.resource@nrc.gov).

respectively.<sup>1</sup> The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-415-0320.<sup>2</sup> The other completed forms must

be signed in original ink, accompanied by a check or money order payable in the amount of \$191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop TWB-05-B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. **Note:** copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding<sup>3</sup> and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI

from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.<sup>4</sup> Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,<sup>5</sup> and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer

After providing this information, the requester usually should be able to obtain access to the online form within one business day.

<sup>3</sup> Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

<sup>4</sup> If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

<sup>5</sup> Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

<sup>1</sup> See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

<sup>2</sup> The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address.

within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is

unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to § 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by

the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>6</sup>

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR

Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 2nd day of December 2008.

For the Nuclear Regulatory Commission.  
**Annette L. Vietti-Cook,**  
*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

| Day   | Event/Activity   |
|-------|--|
| 0     | Publication of FEDERAL REGISTER notice/other notice of proposed action and opportunity for hearing, including order with instructions for access requests.   |
| 10    | Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.   |
| 60    | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).   |
| 20    | NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections. |
| 25    | If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.  |
| 30    | Deadline for NRC staff reply to motions to reverse NRC staff determination(s).   |
| 40    | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.   |
| 190   | (Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.  |
| 205   | Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.   |
| A     | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.   |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.   |

<sup>6</sup> As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the

filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI

requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING—Continued

| Day          | Event/Activity   |
|--------------|--|
| A + 28 ..... | Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline. |
| A + 53 ..... | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.   |
| A + 60 ..... | (Answer receipt +7) Petitioner/Intervenor reply to answers.  |
| B .....      | Decision on contention admission.  |

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**NUCLEAR REGULATORY COMMISSION**

[DOCKET NO. 030-31474]

**Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 06-28473-01, for Termination of the License and Unrestricted Release of the Neurogen Corporation's Facility in Branford, CT**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:**

Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337-5040; fax number (610) 337-5268; or by e-mail: [Elizabeth.Ullrich@nrc.gov](mailto:Elizabeth.Ullrich@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 06-28473-01. This license is held by Neurogen Corporation (the Licensee), for its Neurogen Branford facility (the Facility), located on Northeast Industrial Road in Branford, Connecticut. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated September 1, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10

CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

**II. Environmental Assessment**

*Identification of Proposed Action*

The proposed action would approve the Licensee's September 1, 2008, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 06-28473-01 was issued on May 8, 1990, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is situated on 8.8 acres, and consists of four one- and two-story buildings located at 15, 35, and 45 Northeast Industrial Road. The buildings contain approximately 132,200 square feet of office space and laboratories. The Facility is located in a mixed industrial/commercial area. Within the Facility, use of licensed materials was confined to 15 areas: Laboratories 055, 071, 073, 215, 313, 314, 315, 316, 320, 335, 362, and 662, used for research activities; and Rooms 134 and 361, used for low-level radioactive waste storage.

In March 2008, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and

procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR part 20 for unrestricted release and for license termination.

*Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: Hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides. The Licensee conducted a final status survey between March 28 and August 11, 2008. This survey covered the 15 areas where licensed materials were used or stored. The final status survey report was attached to the Licensee's amendment request dated September 1, 2008. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG-1757, "Consolidated NMSS Decommissioning Guidance," Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR