



FOI/PA REQUEST

Case No.: 2005-0047
Date Rec'd: 11-19-04
Specialist: Brown
Related Case: _____

Buyers Up • Congress Watch • Critical Mass • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

November 19, 2004

FOIA Officer
U.S. Nuclear Regulatory Commission
Mail Stop T6-D8
Washington, DC 20555-0001

Re: Freedom of Information Act Request

To Whom It May Concern:

On behalf of Public Citizen, a national, non-profit consumer advocacy organization with over 150,000 members, I am filing a request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, for full and complete copies of all records concerning the August 25, 2004, license modification order for Independent Spent Fuel Storage Installations (ISFSI), as published in the *Federal Register* (69 FR 52314 – see attached).

Specifically, I am seeking all records filed pursuant to Part III B.1 of the order, that which allows affected licensees twenty (20) days from the date of the order to “notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachment 1, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee’s justification for seeking relief from or variation of any specific requirement.” I also request any relevant Commission documents related to such licensee filings, especially those in which requests for exemption from the rule are granted or denied. I also seek similar records filed pursuant to Part III B.2.

Public Citizen requests a waiver of fees associated with processing this FOIA request and duplicating responsive records. Public Citizen is a national, non-profit organization that analyzes and disseminates information related to the energy policy without benefiting commercially from doing so. Public Citizen intends to publish the information we receive pursuant to this FOIA request in press releases, fact sheets, and articles to our membership, the public, Congress, and the media, because doing so will contribute significantly to public understanding of the operations or activities of the United States government in developing energy policy. Please provide the records described above irrespective of the outcome of your evaluation of our fee waiver request. In order to prevent delay in NRC’s provision of the requested records, Public Citizen will pay fees under protest if necessary, but such payment will not constitute any waiver

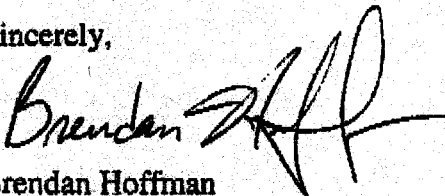
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of Public Citizen's right to seek administrative or judicial review of any denial of its fee waiver request. Please obtain my approval, however, before undertaking any action that would cause the fee to exceed \$100.

I will expect a response within 20 working days as provided by law. If this request is denied in whole or in part, I expect a detailed justification for withholding the records. I also request any segregable portions that are not exempt to be disclosed.

Please feel free to contact me with any further questions regarding this request. I can be reached at (202) 454-5130.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendan Hoffman", with a stylized flourish extending from the end.

Brendan Hoffman
Organizer, Nuclear Energy
Critical Mass Energy and Environment Program

Revision 9 includes a number of changes that the NRC staff believes will maintain operational safety and public confidence, while reducing the regulatory burden on facility licensees and improving efficiency: notably, the RO written examination has been shortened from 100 to 75 questions, the design of the 100-question SRO written examination has been clarified and simplified, the administrative and systems portions of the walk-through operating test have been combined and reapportioned, and the grading criteria for the simulator operating test have been clarified to enhance consistency. A number of additional changes have been made to address questions raised since Revision 8, Supplement 1, was issued and to conform with other regulatory activities. The changes in Revision 9 are outlined in the Executive Summary, and the new or revised text is identified with vertical lines in the margins.

Revision 9 will become effective for operator licensing examinations that are administered 180 or more days after the date of this notice, or at an earlier date agreed upon by the facility licensee and its NRC Regional Office. After the effective date, facility licensees that elect to prepare their examinations will be expected to do so based on the guidance in Revision 9 of NUREG-1021, unless the NRC has reviewed and approved the facility licensee's alternative examination procedures.

Copies of Revision 9 are being mailed to the plant or site manager at each nuclear power facility regulated by the NRC. A copy is available for inspection and/or copying for a fee in the NRC's Public Document Room, located at 11555 Rockville Pike, Rockville, Maryland. NUREG-1021 is also available for downloading from the NRC's Web site (<http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1021/>). If you do not have electronic access to NRC documents, you may request a single copy of Revision 9 by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 (facsimile: 301-512-2289). Telephone requests cannot be accommodated. NUREG documents are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 18th day of August 2004.

For the Nuclear Regulatory Commission,
David C. Trimble,
Chief, Operator Licensing and Human
Performance Section, Reactor Operations
Branch, Division of Inspection Program
Management, Office of Nuclear Reactor
Regulation.

(FR Doc. 04-19403 Filed 8-24-04; 8:45 am)

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

(Docket Nos. (as shown in Attachment 2)
EA-03-097)

In the Matter of All Independent Spent Fuel Storage Installation Licensees Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory
Commission.

ACTION: Issuance of order for
implementation of additional security
measures associated with access
authorization.

FOR FURTHER INFORMATION CONTACT:

Cynthia Barr, Project Manager,
Licensing and Inspection Directorate,
Spent Fuel Project Office, Office of
Nuclear Material Safety and Safeguards,
U.S. Nuclear Regulatory Commission,
Rockville, MD 20852. Telephone: (301)
415-4015; fax number: (301) 415-8555;
e-mail CSB2@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, the Nuclear
Regulatory Commission (NRC) is
providing notice in the matter of all
independent spent fuel storage
installation licensees order modifying
license (effective immediately).

II. Further Information

1

The licensees identified in
Attachment 2 to this Order hold licenses
issued by the U.S. Nuclear Regulatory
Commission (NRC or the Commission)
authorizing the operation of
Independent Spent Fuel Storage
Installation (ISFSI) facilities in
accordance with the Atomic Energy Act
of 1954 and Title 10 of the Code of
Federal Regulations (10 CFR) part 50
and/or 10 CFR part 72. Commission
regulations at 10 CFR 72.184 and 10
CFR 72.212 require these licensees to
have a safeguards contingency plan to
respond to threats of radiological
sabotage, and to protect the spent fuel
against the threat of radiological
sabotage.

Inasmuch as an insider has an
opportunity equal to or greater than any

other person to commit radiological
sabotage, the Commission has
determined these measures to be
prudent. This Order is being issued to
all licensees who currently store spent
fuel or have identified near term plans
to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists
simultaneously attacked targets in New
York, N.Y., and Washington, DC,
utilizing large commercial aircraft as
weapons. In response to the attacks and
intelligence information subsequently
obtained, the Commission issued a
number of Safeguards and Threat
Advisories to its licensees in order to
strengthen licensees' capabilities and
readiness to respond to a potential
attack on a nuclear facility. On October
16, 2002, the Commission issued Orders
to the licensees of operating
independent spent fuel storage
installations to put the actions taken in
response to the Advisories in the
established regulatory framework and to
implement additional security
enhancements which emerged from the
NRC's ongoing comprehensive review.
The Commission has also
communicated with other Federal,
State, local government agencies and
industry representatives to discuss and
evaluate the current threat environment
in order to assess the adequacy of
security measures at licensed facilities.
In addition, the Commission has been
conducting a comprehensive review of
its safeguards and security programs
and requirements.

As a result of its consideration of
current safeguards and security
requirements, as well as a review of
information provided by the intelligence
community, the Commission has
determined that certain additional
security measures are required to
address the current threat environment
in a consistent manner throughout the
nuclear ISFSI community. Therefore,
the Commission is imposing
requirements, as set forth in Attachment
1¹ of this Order, on all licensees of these
facilities. These requirements, which
supplement existing regulatory
requirements, will provide the
Commission with reasonable assurance
that the public health and safety and
common defense and security continue
to be adequately protected in the current
threat environment. These requirements
will remain in effect until the
Commission determines otherwise.

¹ Attachment 1 contains SAFEGUARDS
INFORMATION and will not be released to the
public.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 1 to this Order in response to previously issued advisories, the October 2002 Order, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, may need to be tailored to accommodate the specific circumstances existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, the Commission concludes that these actions must be supplemented further because the current threat environment continues to persist. Therefore, it is appropriate to require certain additional security measures and these measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.40 and 10 CFR 72.210 to the licensees identified in Attachment 2 to this Order shall be modified to include the requirements identified in Attachment 1 to this Order. In addition, pursuant to 10 CFR 2.202, I find that in the circumstances described above, the public health, safety and interest require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 103, 104, 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 and 10 CFR parts 50, 72 and 73, it is hereby ordered, effective immediately, that all licenses identified in Attachment 2 to this order is modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 1 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 1 to the Order and shall complete implementation no later than 180 days from the date of this Order with the exception of the additional security measures B.4, which shall be

implemented no later than 365 days from the date of this Order, or the first day that spent fuel is initially placed in the ISFSI, whichever is later.

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

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

C. 1. All licensees shall, within twenty (20) days of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 1.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 1.

D. Notwithstanding the provisions of 10 CFR 72.186 and 10 CFR 72.212(b)(5), all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise. Licensee's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 72.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21. The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator for NRC Region I, II, III or IV as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that requests for a hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov and also to the Office of General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to OCCMailCenter@nrc.gov. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

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

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding 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 specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 18th day of August, 2004.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment 2 To Order Independent Spent Fuel Storage Installation Addressee List

James E. Ellis, Manager, Morris Operation, General Electric Company, GE Morris Operation Plant, Docket No. 72-1, 7555 East Collins Road, Morris, IL 60450-9740.

David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, Surry Power Station, Units 1 and 2, Docket No. 72-2, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060-8711.

J. W. Moyer, Senior Vice President and Chief Nuclear Officer, Progress Energy, H. B. Robinson Steam Electric Plant, Unit 2, Docket No. 72-3, 3581 West Entrance Road, Hartsville, NC 29550.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, Oconee Nuclear Station, Units 1, 2 and 3, Docket No. 72-4, 526 South Church Street, EC07H, P.O. Box 1006 (28201-1006), Charlotte, NC 28202.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Point Beach Nuclear Plant, Units 1 and 2, Docket No. 72-5, 700 First Street, Hudson, WI 54016.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC,

Palisades Nuclear Plant, Docket No. 72-7, 700 First Street, Hudson, WI 54016.

George Vanderheyden, Vice President, Calvert Cliffs Nuclear Power Plant, Inc. Calvert Cliffs Nuclear Power Plant, Units 1 and 2, Docket No. 72-8, 1650 Calvert Cliffs Parkway, Lusby, MD 20357-4702.

Elizabeth D. Sellers, Manager, INEEL c/o Deeann Long-Security, U.S. DOE, Idaho Operations Office, South, Fort Saint Vrain Power Station, Docket No. 72-9, 785 DOE Place, Mailstop 1170, Idaho Falls, ID 83401-1203.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Prairie Island Nuclear Generating Plant, Docket No. 72-10, 700 First Street, Hudson, WI 54016.

Steve Redecker, Plant Manager, Rancho Seco Nuclear Generating Station, Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station, Docket No. 72-11, 14440 Twin Cities Road, Herald, CA 95638-9799.

Michael Kansler, President, Entergy Nuclear Operations, Inc. James A. FitzPatrick Nuclear Power Plant, Docket No. 72-12, 440 Hamilton Avenue, White Plains, NY 10601.

Jeffrey S. Forbes, Site Vice President, Entergy Nuclear Operations, Inc., Arkansas Nuclear One, Units 1 and 2, Docket No. 72-13, 1448 S. R. 333, Russellville, AR 72802.

Gary Leidich, Vice President, First Energy, Davis-Besse Nuclear Power Station, Docket No. 72-14, 76 S. Main Street, Akron, OH 44308.

Christopher M. Crane, President and Chief Nuclear Officer, Exelon Generation Company, LLC, Oyster Creek Nuclear Generating Station, Docket No. 72-15, 4300 Winfield Road, Warrenville, IL 60555.

David A. Christian, Senior Vice President and Chief Nuclear Officer, Virginia Electric and Power Company, North Anna Power Station, Docket No. 72-16, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060-8711.

Stephen M. Quennoz, Vice President Power Supply Generation, Portland General Electric Company, Trojan Nuclear Power Plant, Docket No. 72-17, 121 South West Salmon Street, Portland, OR 97204.

Elizabeth D. Sellers, Manager, INEEL, c/o Deeann Long-Security, US DOE, Idaho Operations Office, South, Three Mile Island Power Station, Unit 2, Docket No. 72-20, 785 DOE Place, Mailstop 1170, Idaho Falls, ID 83401-1203.

Bryce L. Shriver, Senior Vice President and CNO, Susquehanna Steam

Electric Company, Susquehanna Steam Electric Station, Units 1 and 2, Docket No. 72-28, 2 North Ninth Street, Allentown, PA 18101.

Christopher M. Crane, President and CNO, Exelon Generation Company, LLC, Peach Bottom Atomic Power Station, Units 2 and 3, Docket No. 72-29, 4300 Winfield Road, Warrenville, IL 60555.

Michael Meisner, Chief Nuclear Officer, Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station, Docket No. 72-30, 321 Old Ferry Road, Wiscasset, ME 04578-4922.

Richard Kackick, Chief Nuclear Officer, Yankee Atomic Electric Company, Yankee Rowe Nuclear Power Station, Docket No. 72-31, 19 Midstate Drive, Suite 200, Auburn, MA 01501.

John Paul Cowan, Executive Vice President and Chief Nuclear Officer, Nuclear Management Company, LLC, Duane Arnold Energy Center, Docket No. 72-32, 700 First Street, Hudson, WI 54016.

Karl Singer, Chief Nuclear Officer, Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2, Docket No. 72-34, 1101 Market Street 6A Lookout Place, Chattanooga, TN 37402-2801.

J.V. Parrish, Chief Nuclear Officer, Energy Northwest MD 1023, Columbia Generating Station, Docket No. 72-35, Snake River Warehouse North Power Loop, Richland, WA 99352.

Louis Suraner, Site Vice President, Southern Nuclear Operating Company, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Docket No. 72-36, 40 Inverness Center Parkway, Birmingham, AL 35242.

Christopher M. Crane, President and Chief Nuclear Officer, Exelon Generation Company, LLC, Dresden Nuclear Power Station, Units 2 and 3, Docket No. 72-37, 4300 Winfield Road, Warrenville, IL 60555.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, William B. McGuire Nuclear Station, Units 1 and 2, Docket No. 72-38, 526 South Church Street, EC07H, P.O. Box 1006 (28201-1006), Charlotte, NC 28202.

Wayne A. Norton, President, Connecticut Yankee Atomic Power Company, Haddam Neck Nuclear Plant, Docket No. 72-39, 362 Injun Hollow Road, East Hampton, CT 06424-3099.

Henry B. Barron, Group Vice President Nuclear Generation and Chief Nuclear Officer, Duke Power Company, Oconee Nuclear Station, Docket No. 72-40, 526 South Church Street, EC07H, P.O. Box 1006 (28201-1006), Charlotte, NC 28202.

Harold B. Ray, Executive Vice President, Southern California Edison,

San Onofre Nuclear Station, Units 2 and 3, Docket No. 72-41, 8631 Rush Street, Rosemead, CA 91770.

Mike Stinson, Site Vice President, Southern Nuclear Operating Company, Joseph M. Farley Nuclear Plant, Units 1 and 2, Docket No. 72-42, 40 Inverness Center Parkway, Birmingham, AL 35242.

Robert A. Fenech, Senior Vice President, Nuclear, Fossil, and Hydro Operations, Consumer Energy Company, Big Rock Point Restoration Site, Docket No. 72-43, 1945 W. Parnell Road, Jackson, MI 49201.

Gregg R. Overbeck, Senior Vice President, Arizona Public Service Company, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Docket No. 72-44, 5801 South Wintersburg Road Mail Station 7602, Tonopah, AZ 85354-7529.

David A. Christian, Senior Vice President, Chief Nuclear Officer, Virginia Electric and Power Company, Millstone Power Station, Units 2 and 3, Docket No. 72-47, Innsbrook Technical Center, 5000 Dominion Boulevard, Glen Allen, VA 23060-6711.

Paul Hinnenkamp, Vice President Operations, Entergy Operations, Inc., River Bend Station, Unit 1, Docket No. 72-49, 5485 U.S. Highway 61, St. Francisville, LA 70775.

Michael Kansler, President, Entergy Nuclear Operations, Indian Point Nuclear Generating Station, Units 2 and 3, Docket No. 72-51, 440 Hamilton Avenue, White Plains, NY 10601.

Karl Singer, Chief Nuclear Officer, Tennessee Valley Authority, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Docket No. 72-52, 1101 Market Street 6A Lookout Place, Chattanooga, TN 37402-2801.

[FR Doc. 04-19404 Filed 8-24-04; 8:45 am]
BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50221; File No. SR-NASD-2004-121]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. To Include Failures To Submit Timely Amendments to Form U5 in its Minor Rule Violation Plan

August 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,²

notice is hereby given that on August 11, 2004, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. On August 17, 2004, NASD filed Amendment No. 1 to the proposed rule change.³ On August 19, 2004, NASD filed Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD proposes to amend NASD Interpretative Material 9216 ("IM-9216") (Violations Appropriate for Disposition Under the Plan Pursuant to SEC Rule 19d-1(c)(2)) to expand the list of violations eligible for disposition under NASD's Minor Rule Violation Plan ("MRVP") to include failure to submit timely amendments to Form U5, as required by Article V, Section 3(a) of the NASD By-Laws. The proposed rule filing also changes "U-4" to "U4," to be consistent with the most recent amendments to that form. The text of the proposed rule change is available at the principal office of NASD and the Commission's Public Reference Room.⁵

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act⁶ to allow a self-regulatory organization to adopt, with Commission approval, plans for the disposition of minor violations of the rules of such self-regulatory organization.⁷ In 1993, pursuant to Commission Rule 19d-1(c), NASD established the MRVP for the disposition of minor violations of certain NASD rules.⁸ In 2001, the Commission approved significant amendments to the MRVP⁹ and, in February 2004, NASD proposed additional amendments to the MRVP.¹⁰

According to NASD, the MRVP provides for meaningful sanctions for minor or technical violations of certain NASD rules when the initiation of a NASD disciplinary proceeding through the NASD formal complaint process would be more costly and time-consuming than would be warranted. NASD represents that inclusion of an NASD rule in the MRVP does not mean that such rule is unimportant; rather, a minor or technical violation of such rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings for a minor or technical violation of such rule.

NASD Rule 9216(b) authorizes NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of NASD rules specified in IM-9216. NASD staff reviews the number and seriousness of the violation, as well as the previous disciplinary history of the violator, to determine if a matter is appropriate for disposition under the MRVP, and, if appropriate for disposition under the MRVP, to determine the amount of the fine. Once NASD has fined an individual or a member firm for a minor or technical violation pursuant to the MRVP, NASD may, at its discretion,

⁶ 17 CFR 240.19d-1(c).

⁷ See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

⁸ See NASD Rule 9216(b). See also Exchange Act Release No. 32078 (March 31, 1993), 58 FR 18291 (April 8, 1993); and Notice to Members 93-42 (SEC Approves NASD's Minor Rule Violation Plan) (July 1993).

⁹ See Exchange Act Release No. 44512 (July 3, 2001), 66 FR 36812 (July 13, 2001).

¹⁰ See SR-NASD-2004-025.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (August 16, 2004) ("Amendment No. 1"). In Amendment No. 1, NASD alphabetically rearranged the contents of Exhibit 3 to the proposed rule change. Exhibit 3 included comment letters NASD received from its members with respect to the proposed rule change.

⁴ See letter from Shirley H. Weiss, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (August 19, 2004) ("Amendment No. 2"). In Amendment No. 2, NASD made technical corrections to conform the proposed rule text with the rule text of current IM-9216.

⁵ On February 10, 2004, NASD proposed additional amendments to the MRVP. See SR-NASD-2004-025. NASD has stated that it would amend the rule text set forth in this proposed rule change in the event the Commission approves SR-NASD-2004-025 before approval of this proposed rule change.