

a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, and to the Director of the Division of Regulatory Improvement Programs at the same address. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for 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 the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR § 2.309(d) and (f).

If a hearing is requested by 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 Confirmatory Order shall be sustained. An answer or a request for a hearing shall not stay the effectiveness date of this order.

Dated this 27th day of January, 2006.

For the Nuclear Regulatory Commission.

Michael Johnson,

Director, Office of Enforcement.

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NUCLEAR REGULATORY COMMISSION

[EA-05-136]

In the Matter of Digirad Imaging Solutions, Inc.; Confirmatory Order (Effective Immediately)

Digirad Imaging Solutions, Incorporated (DIGIRAD or Licensee) is the holder of Byproduct Material License 31-30666-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Parts 30 and 35. This mobile medical license authorizes possession of radionuclides for medical diagnosis, including uptake, dilution and excretion studies permitted by 10 CFR 35.100; and imaging and localization studies

permitted by 10 CFR 35.200. The license further authorizes possession and use of byproduct material at specified facilities located in Indiana, Michigan, Missouri, New Jersey, Pennsylvania, Virginia, and West Virginia. The license also authorizes use of byproduct material at temporary jobsites of the licensee anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material, including areas of exclusive Federal jurisdiction within Agreement States. The license was originally issued on August 21, 2001, was due to expire on July 31, 2005, and is currently under timely renewal pursuant to 10 CFR 30.36(a)(1).

On August 6, 2004, the NRC Office of Investigations (OI) initiated an investigation (OI Case No. 1-2004-034) to determine if a physician listed on the DIGIRAD NRC license submitted false information to DIGIRAD in October 2003 to become an Authorized User (AU) on its existing NRC license. Based on the evidence developed during its investigations, OI substantiated that false and/or inaccurate information was submitted to DIGIRAD by the physician for the purpose of adding that physician as an AU on the existing DIGIRAD NRC license. The results of the investigation completed on June 15, 2005, were sent to DIGIRAD in a letter dated September 15, 2005. This letter stated that a physician listed as an AU on DIGIRAD's NRC license deliberately provided inaccurate information to DIGIRAD to become an AU on DIGIRAD's license, but that DIGIRAD did not knowingly submit the false information to the NRC in an amendment request dated October 16, 2003, that it submitted to the NRC to add the physician to the list of AUs on the license.

Subsequent to becoming aware of the NRC investigation and of the apparent violation, DIGIRAD took several actions to assure that these events would not recur. These actions included: (a) Immediately removing two AUs from its license; (b) cancelling a contract it had with one of the physicians; (c) attaching to physicians and preceptors statement form a notice equivalent to the following: "*Notice to Physician and Preceptor*: 10 CFR 30.9(a) and 30.10(a) require that all information provided to the Nuclear Regulatory Commission by a licensee or its agents shall be complete and accurate in all material respects. The submission of false information constitutes a serious violation of applicable regulations and may cause you or us to be fined, to lose licensing privileges, or to suffer other significant penalties."; and (d) requiring any physician that is added to its license to

sign and date a document containing a statement equivalent to the following: "In connection with my application to be named as an Authorized User on Digirad Imaging Solution's ("DIS") radioactive materials license, I am aware that the submission of information that is not complete and accurate in all material respects is a violation of 10 CFR Sections 30.9(a) and 30.10(a). I hereby represent and warrant that, to the best of my knowledge, the information I have submitted to DIS in connection with my application to be named as an Authorized User is complete and accurate in all material respects."

Also, in response to the NRC's September 15, 2005, letter, DIGIRAD requested the use of Alternative Dispute Resolution (ADR) to resolve this apparent violation and pending enforcement action. ADR is a process in which a neutral mediator, with no decision-making authority, assists the NRC and DIGIRAD to resolve any disagreements on whether a violation occurred, the appropriate enforcement action, and the appropriate corrective actions. An ADR session was held between DIGIRAD and the NRC in King of Prussia, PA, on November 14, 2005, and was mediated by a professional mediator, arranged through Cornell University's Institute of Conflict Management. Based on discussions at the ADR mediation session, as well as subsequent discussions held on December 14 and 15, 2005, between Vera Pardee, Vice President and General Counsel for DIGIRAD, and Karl Farrar, Region I Counsel, a settlement agreement was reached. The elements of the settlement agreement consisted of the following:

1. The NRC and DIGIRAD agreed to disagree on the violation being in careless disregard of NRC requirements.
2. DIGIRAD took the corrective actions described in Section II above prior to attending the ADR Mediation Session on November 14, 2005.
3. As a means to provide added assurance to meet the requirements of 10 CFR 30.9(a) and 30.10(a), DIGIRAD agreed that for all future NRC AU applicants, on a yearly basis, it will audit the training and experience credentials of the first 10 AU applicants and 25% of any applications received after the first 10. DIGIRAD will audit by endeavoring to locate and call preceptors as well as Continuing Medical Education providers to verify the information given by the AU applicants. This does not eliminate the requirement that DIGIRAD provide complete and accurate information to the NRC on all AU applicants. The

results of this audit will be documented and submitted to the NRC at the end of a two-year period. However, DIGIRAD will notify the NRC as soon as practicable after identification of any discrepancies identified as a result of the audit. If no falsifications are uncovered during the two-year period, DIGIRAD will discontinue the practice.

4. In addition, DIGIRAD will take other actions to ensure that similar violations will not recur. These actions will include the Vice President and Corporate Radiation Safety Officer preparing and submitting a commentary to (a) the Journal of Nuclear Medicine, (b) the Journal of Nuclear Medicine Technology, and (c) the Journal of Medical Physics to provide an opportunity for other licensees in the industry to learn from this incident. DIGIRAD will advise NRC upon completion of these items and not later than one year from the date of this agreement.

5. In light of the corrective actions that DIGIRAD has taken or has committed to take as described in Items 2, 3 and 4, the NRC agreed to issue a Severity Level III Notice of Violation to DIGIRAD (10 CFR 30.9(a)), but to not issue a Civil Penalty. This action will be publicly available in ADAMS and on the NRC "Significant Enforcement Actions" Web site, and the NRC will issue a press release announcing this action, as well as the actions DIGIRAD has taken and committed to take to address the violation.

6. DIGIRAD agreed to issuance of a Confirmatory Order confirming this agreement.

In light of the actions DIGIRAD has taken and agreed to take to correct the violation and prevent recurrence, as set forth in section III above, the NRC has concluded that its concerns regarding the violation can be resolved through the NRC's confirmation of the commitments as outlined in this Confirmatory Order.

I find that DIGIRAD's commitments as set forth in section III above are acceptable. However, in view of the foregoing, I have determined that these commitments shall be confirmed by this Confirmatory Order. Based on the above and DIGIRAD's consent, this Confirmatory Order is immediately effective upon issuance.

Accordingly, pursuant to Sections 103, 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 part 30 and 35, it is hereby ordered, that by August 23, 2006:

1. DIGIRAD will audit, for all future NRC AU applicants, on a yearly basis,

the training and experience credentials of the first 10 AU applicants and 25% of any applications received after the first 10. DIGIRAD will audit by endeavoring to locate and call preceptors as well as Continuing Medical Education providers to verify the information given by the AU applicants. This does not eliminate the requirement that DIGIRAD provide complete and accurate information to the NRC on all AU applicants. The results of this audit will be documented and submitted to the NRC at the end of a two-year period. However, DIGIRAD will notify the NRC as soon as practicable after identification of any discrepancies identified as a result of the audit. If no falsifications are uncovered during the two-year period, DIGIRAD will discontinue the practice.

2. The DIGIRAD Vice President and Corporate Radiation Safety Officer will prepare and submit a commentary regarding this violation to the Journals of Nuclear Medicine, Nuclear Medicine Technology, and Medical Physics to provide an opportunity for other licensees in the industry to learn from this incident.

3. DIGIRAD will advise NRC upon completion of these items and not later than one year from the date of this agreement.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by DIGIRAD of good cause.

Any person adversely affected by this Confirmatory Order, other than DIGIRAD, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemaking and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, to the Director of the Division of Regulatory Improvement Programs at the same address, and to MSHMC. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for 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 the General Counsel by means of facsimile transmission to 301-415-3725 or e-mail to OGCMailCenter@nrc.gov. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by 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 Confirmatory Order shall be sustained. *An answer or a request for a hearing shall not stay the effectiveness date of this order.*

Dated this 27th day of January 2006.

For the Nuclear Regulatory Commission.

Michael Johnson,

Office of Enforcement.

[FR Doc. E6-1568 Filed 2-3-06; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Entergy Nuclear Operations, Inc.; Notice of Receipt and Availability of Application for Renewal of Pilgrim Nuclear Power Station Facility Operating License No. DPR-35 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated January 25, 2006, from Entergy Nuclear Operations, Inc., filed pursuant to Section 104b (DPR-35) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew the operating license for the Pilgrim Nuclear Power Station. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for the Pilgrim Nuclear Power Station (DPR-35) expires on June 8, 2012. The Pilgrim Nuclear Power Station is a Boiling Water Reactor designed by General Electric. The unit is located in Plymouth, MA. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the