

NUCLEAR REGULATORY COMMISSION

In the Matter of all Licensees Authorized to Manufacture or Initially Transfer Items Containing Radioactive Material for Sale or Distribution and Possess Certain Radioactive Material of Concern and All Other Persons Who Obtain Safeguards Information Described Herein; Order ISSUED ON NOVEMBER 25, 2003 Imposing Requirements For The Protection of Certain Safeguards Information (Effective Immediately)

I

The Licensees identified in Attachment 1¹ to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State authorizing them to manufacture or initially transfer items containing radioactive material for sale or distribution. The NRC intends to issue security Orders to certain manufacturing and distribution licensees in the near future. Orders will be issued to both NRC and Agreement State materials licensees who may possess radioactive material of concern. The Orders will require compliance with specific Additional Security Measures to enhance the security of certain radioactive materials. The NRC will issue Orders to both NRC and Agreement State Licensees under its authority to protect the common defense and security, which has not been relinquished to the Agreement States. Before issuing Orders for Additional Security Measures, the Commission seeks comments from affected licensees on the draft Additional Security Measures, Implementing Guidance, and Regulatory Issue Summary Table "Threat Conditions and Specific Actions for Manufacturing and

¹ Attachment 1 contains OFFICIAL USE ONLY sensitive information and will not be released to the public.

Distribution Licensees.” However, the Commission has determined that these draft documents are Safeguards Information, will not be released to the public, and must be protected from unauthorized disclosure. Therefore, the Commission is imposing the requirements, as set forth in Attachment 2 of this Order, so that affected Licensees can receive these draft documents for review and comment. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,² whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of Safeguards Information. Section 147 of the Atomic Energy Act of 1954, as amended, grants the Commission explicit authority to “issue such orders, as necessary to prohibit the unauthorized disclosure of safeguards information” This authority extends to information concerning special nuclear material, source material, and byproduct material, as well as production and utilization facilities. Licensees and all persons who produce, receive, or acquire Safeguards Information must ensure proper handling and protection of Safeguards Information to avoid unauthorized disclosure in accordance with the specific requirements for the protection of Safeguards Information contained in Attachment 2. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 applicable to the handling and unauthorized disclosure of Safeguards Information as serious breaches of adequate protection of the public health and safety and the common defense and

² Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department, except that the Department shall be considered a person with respect to those facilities of the Department specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

security of the United States. Access to Safeguards Information is limited to those persons who have established the need to know the information, and are considered to be trustworthy and reliable. A need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment. Licensees and all other persons who obtain Safeguards Information must ensure that they develop, maintain and implement strict policies and procedures for the proper handling of Safeguards Information to prevent unauthorized disclosure, in accordance with the requirements in Attachment 2. All licensees must ensure that all contractors whose employees may have access to Safeguards Information either adhere to the Licensee's policies and procedures on Safeguards Information or develop, maintain and implement their own acceptable policies and procedures. The Licensees remain responsible for the conduct of their contractors. The policies and procedures necessary to ensure compliance with applicable requirements contained in Attachment 2 must address, at a minimum, the following: the general performance requirement that each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure; protection of Safeguards Information at fixed sites, in use and in storage, and while in transit; correspondence containing Safeguards Information; access to Safeguards Information; preparation, marking, reproduction and destruction of documents; external transmission of documents; use of automatic data processing systems; and removal of the Safeguards Information category.

In order to provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of protection to prohibit the unauthorized disclosure of Safeguards Information, all Licensees who hold licenses issued by the U.S. Nuclear Regulatory Commission or an Agreement State authorizing them to manufacture or initially transfer items

containing radioactive material for sale or distribution and may possess certain radioactive material of concern shall implement the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 C.F.R. § 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 C.F.R § 2.202, 10 CFR Part 30, and 10 CFR Part 32, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER AND ALL OTHER PERSONS WHO PRODUCE, RECEIVE, OR ACQUIRE THE ADDITIONAL SECURITY MEASURES IDENTIFIED ABOVE (WHETHER DRAFT OR FINAL) OR ANY RELATED SAFEGUARDS INFORMATION SHALL COMPLY WITH THE REQUIREMENTS OF ATTACHMENT 2.

IV.

In accordance with 10 C.F.R. § 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 or request a hearing 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, 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 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 either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee 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 C.F.R. § 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 C.F.R. § 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 ground 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 25th of November 2003

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Martin J. Virgilio, Director
Office of Nuclear Material Safety
and Safeguards

Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI-M)

General Requirement

Information and material that the U.S. Nuclear Regulatory Commission (NRC) determines are safeguards information must be protected from unauthorized disclosure. In order to distinguish information needing modified protection requirements from the safeguards information for reactors and fuel cycle facilities that require a higher level of protection, the term "Safeguards Information-Modified Handling" (SGI-M) is being used as the distinguishing marking for certain materials licensees. Each person who produces, receives, or acquires SGI-M shall ensure that it is protected against unauthorized disclosure. To meet this requirement, licensees and persons shall establish and maintain an information protection system that includes the measures specified below. Information protection procedures employed by state and local police forces are deemed to meet these requirements.

Persons Subject to These Requirements

Any person, whether or not a licensee of the NRC, who produces, receives, or acquires SGI-M is subject to the requirements (and sanctions) of this document. Firms and their employees that supply services or equipment to materials licensees would fall under this requirement if they possess facility SGI-M. A licensee must inform contractors and suppliers of the existence of these requirements and the need for proper protection. (See more under Conditions for Access)

State or local police units who have access to SGI-M are also subject to these requirements. However, these organizations are deemed to have adequate information protection systems. The conditions for transfer of information to a third party, i.e., need-to-know, would still apply to the police organization as would sanctions for unlawful disclosure. Again, it would be prudent for licensees who have arrangements with local police to advise them of the existence of these requirements.

Criminal and Civil Sanctions

The Atomic Energy Act of 1954, as amended, explicitly provides that any person, "whether or not a licensee of the Commission, who violates any regulations adopted under this section shall be subject to the civil monetary penalties of section 234 of this Act." Section 147a. of the Act. Furthermore, willful violation of any regulation or order governing safeguards information is a felony subject to criminal penalties in the form of fines or imprisonment, or both. *See sections 147b. and 223 of the Act.*

Conditions for Access

Access to SGI-M beyond the initial recipients of the order will be governed by the background check requirements imposed by the order. Access to SGI-M by licensee employees, agents, or contractors must include both an appropriate need-to-know determination by the licensee, as well as a determination concerning the trustworthiness of individuals having access to the information. Employees of an organization affiliated with the licensee's company, e.g., a parent company, may be considered as employees of the licensee for access purposes.

Need-to-Know

Need-to-know is defined as a determination by a person having responsibility for protecting SGI-M that a proposed recipient's access to SGI-M is necessary in the performance of official, contractual, or licensee duties of employment. The recipient should be made aware that the information is SGI-M and those having access to it are subject to these requirements as well as criminal and civil sanctions for mishandling the information.

Occupational Groups

Dissemination of SGI-M is limited to individuals who have an established need-to-know and who are members of certain occupational groups. These occupational groups are:

- (I) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government;
- (II) A member of a duly authorized committee of the Congress;
- (III) The Governor of a State or his designated representative;
- (IV) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;
- (V) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or
- (VI) A person to whom disclosure is ordered pursuant to Section 2.744(e) of Part 2 of part 10 of the Code of Federal Regulations.
- (VII) State Radiation Control Program Directors (and State Homeland Security Directors) or their designees.

In a generic sense, the individuals described above in (II) through (VII) are considered to be trustworthy by virtue of their employment status. For non-governmental individuals in group (I) above, a determination of reliability and trustworthiness is required. Discretion must be exercised in granting access to these individuals. If there is any indication that the recipient would be unwilling or unable to provide proper protection for the SGI-M, they are not authorized to receive SGI-M.

Information Considered for Safeguards Information Designation

Information deemed SGI-M is information the disclosure of which could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of materials or facilities subject to NRC jurisdiction.

SGI-M identifies safeguards information which is subject to these requirements. These requirements are necessary in order to protect quantities of nuclear material significant to the health and safety of the public or common defense and security.

The overall measure for consideration of SGI-M is the usefulness of the information (security or otherwise) to an adversary in planning or attempting a malevolent act. The specificity of the information increases the likelihood that it will be useful to an adversary.

Protection While in Use

While in use, SGI-M shall be under the control of an authorized individual. This requirement is satisfied if the SGI-M is attended by an authorized individual even though the information is in fact not constantly being used. SGI-M, therefore, within alarm stations, continuously manned guard posts or ready rooms need not be locked in file drawers or storage containers.

Under certain conditions the general control exercised over security zones or areas would be considered to meet this requirement. The primary consideration is limiting access to those who have a need-to-know. Some examples would be:

Alarm stations, guard posts and guard ready rooms;

Engineering or drafting areas if visitors are escorted and information is not clearly visible;

Plant maintenance areas if access is restricted and information is not clearly visible;

Administrative offices (e.g., central records or purchasing) if visitors are escorted and information is not clearly visible;

Protection While in Storage

While unattended, SGI-M shall be stored in a locked file drawer or container. Knowledge of lock combinations or access to keys protecting SGI-M shall be limited to a minimum number of personnel for operating purposes who have a "need-to-know" and are otherwise authorized access to SGI-M in accordance with these requirements. Access to lock combinations or keys shall be strictly controlled so as to prevent disclosure to an unauthorized individual.

Transportation of Documents and Other Matter

Documents containing SGI-M when transmitted outside an authorized place of use or storage shall be enclosed in two sealed envelopes or wrappers. The inner envelope or wrapper shall contain the name and address of the intended recipient, and be marked both sides, top and bottom with the words "**Safeguards Information-Modified Handling.**" The outer envelope or wrapper must be addressed to the intended recipient, must contain the address of the sender, and must not bear any markings or indication that the document contains SGI-M.

SGI-M may be transported by any commercial delivery company that provides nation-wide overnight service with computer tracking features, US first class, registered, express, or certified mail, or by any individual authorized access pursuant to these requirements.

Within a facility, SGI-M may be transmitted using a single opaque envelope. It may also be transmitted within a facility without single or double wrapping, provided adequate measures are taken to protect the material against unauthorized disclosure. Individuals transporting SGI-M should retain the documents in their personal possession at all times or ensure that the information is appropriately wrapped and also secured to preclude compromise by an unauthorized individual.

Preparation and Marking of Documents

While the NRC is the sole authority for determining what specific information may be designated as "SGI-M," originators of documents are responsible for determining whether those documents contain such information. Each document or other matter that contains SGI-M shall be marked "**Safeguards Information-Modified Handling**" in a conspicuous manner on the top and bottom of the first page to indicate the presence of protected information. The first page of the document must also contain (i) the name, title, and organization of the individual authorized to make a SGI-M determination, and who has determined that the document contains SGI-M, (ii) the date the document was originated or the determination made, (iii) an indication that the document contains SGI-M, and (iv) an indication that unauthorized disclosure would be subject to civil and criminal sanctions. Each additional page shall be marked in a conspicuous fashion at the top and bottom with letters denoting "**Safeguards Information- Modified Handling.**"

In addition to the "**Safeguards Information - Modified Handling**" markings at the top and bottom of page, transmittal letters or memoranda which do not in themselves contain SGI-M shall be marked to indicate that attachments or enclosures contain SGI-M but that the transmittal does not (e.g., "When separated from SGI-M enclosure(s), this document is decontrolled").

In addition to the information required on the face of the document, each item of correspondence that contains SGI-M shall, by marking or other means, clearly indicate which portions (e.g., paragraphs, pages, or appendices) contain SGI-M and which do not. Portion marking is not required for physical security and safeguards contingency plans.

All documents or other matter containing SGI-M in use or storage shall be marked in accordance with these requirements. A specific exception is provided for documents in the

possession of contractors and agents of licensees that were produced more than one year prior to the effective date of the order. Such documents need not be marked unless they are removed from file drawers or containers. The same exception applies to old documents stored away from the facility in central files or corporation headquarters.

Since information protection procedures employed by state and local police forces are deemed to meet NRC requirements, documents in the possession of these agencies need not be marked as set forth in this document.

Removal from SGI-M Category

Documents containing SGI-M shall be removed from the SGI-M category (decontrolled) only after the NRC determines that the information no longer meets the criteria of SGI-M. Licensees have the authority to make determinations that specific documents which they created no longer contain SGI-M information and may be decontrolled. Consideration must be exercised to ensure that any document decontrolled shall not disclose SGI-M in some other form or be combined with other unprotected information to disclose SGI-M.

The authority to determine that a document may be decontrolled may be exercised only by, or with the permission of, the individual (or office) who made the original determination. The document should indicate the name and organization of the individual removing the document from the SGI-M category and the date of the removal. Other persons who have the document in their possession should be notified of the decontrolling of the document.

Reproduction of Matter Containing SGI-M

SGI-M may be reproduced to the minimum extent necessary consistent with need without permission of the originator. Newer digital copiers which scan and retain images of documents represent a potential security concern. If the copier is retaining SGI-M information in memory, the copier cannot be connected to a network. It should also be placed in a location that is cleared and controlled for the authorized processing of SGI-M information. Different copiers have different capabilities, including some which come with features that allow the memory to be erased. Each copier would have to be examined from a physical security perspective.

Use of Automatic Data Processing (ADP) Systems

SGI-M may be processed or produced on an ADP system provided that the system is assigned to the licensee's or contractor's facility and requires the use of an entry code/password for access to stored information. Licensees are encouraged to process this information in a computing environment that has adequate computer security controls in place to prevent unauthorized access to the information. An ADP system is defined here as a data processing system having the capability of long term storage of SGI-M. Word processors such as typewriters are not subject to the requirements as long as they do not transmit information off-site. (Note: if SGI-M is produced on a typewriter, the ribbon must be removed and stored in the same manner as other SGI-M information or media.) The basic objective of these restrictions is to prevent access and retrieval of stored SGI-M by unauthorized individuals, particularly from

remote terminals. Specific files containing SGI-M will be password protected to preclude access by an unauthorized individual. The National Institute of Standards and Technology (NIST) maintains a listing of all validated encryption systems at <http://csrc.nist.gov/cryptval/140-1/1401val.htm>. SGI-M files may be transmitted over a network if the file is encrypted. In such cases, the licensee will select a commercially available encryption system that NIST has validated as conforming to Federal Information Processing Standards (FIPS). SGI-M files shall be properly labeled as “**Safeguards Information-Modified Handling**” and saved to removable media and stored in a locked file drawer or cabinet.

Telecommunications

SGI-M may not be transmitted by unprotected telecommunications circuits except under emergency or extraordinary conditions. For the purpose of this requirement, emergency or extraordinary conditions are defined as any circumstances that require immediate communications in order to report, summon assistance for, or respond to a security event (or an event that has potential security significance).

This restriction applies to telephone, telegraph, teletype, facsimile circuits, and to radio. Routine telephone or radio transmission between site security personnel, or between the site and local police, should be limited to message formats or codes that do not disclose facility security features or response procedures. Similarly, call-ins during transport should not disclose information useful to a potential adversary. Infrequent or non-repetitive telephone conversations regarding a physical security plan or program are permitted provided that the discussion is general in nature.

Individuals should use care when discussing SGI-M at meetings or in the presence of others to insure that the conversation is not overheard by persons not authorized access. Transcripts, tapes or minutes of meetings or hearings that contain SGI-M should be marked and protected in accordance with these requirements.

Destruction

Documents containing SGI-M should be destroyed when no longer needed. They may be destroyed by tearing into small pieces, burning, shredding or any other method that precludes reconstruction by means available to the public at large. Piece sizes one half inch or smaller composed of several pages or documents and thoroughly mixed would be considered completely destroyed.

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*see previous concurrence

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