

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of

ALL LICENSEES WHO POSSESS ) EA-07-050  
RADIOACTIVE MATERIAL IN QUANTITIES OF )  
CONCERN AND ALL OTHER PERSONS )  
WHO OBTAIN SAFEGUARDS )  
INFORMATION DESCRIBED HEREIN )

**ORDER IMPOSING REQUIREMENTS FOR THE  
PROTECTION OF CERTAIN  
SAFEGUARDS INFORMATION  
(EFFECTIVE IMMEDIATELY)**

I

The Licensees, identified in Attachment 1<sup>1</sup> to this Order, are applicants for or 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 possess, use, and transfer items containing radioactive material quantities of concern. NRC intends to issue security Orders to these licensees in the near future. Orders will be issued to both NRC and Agreement State materials licensees who may possess or transfer radioactive material quantities of concern. The Orders will require compliance with specific Compensatory Measures to enhance the security for certain radioactive material quantities of concern. 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. The Commission has determined that these documents will contain Safeguards

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<sup>1</sup> Attachment 1 contains sensitive information and will not be released to the public.

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 Attachments 2 and 3 to this Order and in Order EA-07-051, so that affected Licensees can receive these documents. This Order also imposes requirements for the protection of Safeguards Information in the hands of any person,<sup>2</sup> 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 transfer of special nuclear material, source material, and byproduct

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<sup>2</sup> Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the 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.

material. 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 Attachments 2 and 3 to this Order. The Commission hereby provides notice that it intends to treat violations of the requirements contained in Attachments 2 and 3 to this Order 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 security of the United States. Access to Safeguards Information is limited to those persons who have established the need-to-know the information, are considered to be trustworthy and reliable, and meet the requirements of Order EA-07-051. 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 Attachments 2 and 3 to this Order. 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 Attachments 2 and 3 to this Order 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; removal of the Safeguards Information category; the need-to-know the information; and background checks to determine access to the information.

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 NRC or an Agreement State authorizing them to possess and who may transport items containing radioactive material quantities of concern shall implement the requirements identified in Attachments 2 and 3 to this Order. The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 2 and 3 to this Order for handling of Safeguards Information in conjunction with current NRC license requirements or previous NRC Orders. Additional measures set forth in Attachments 2 and 3 to this Order should be incorporated into the licensee's current program for Safeguards Information. In addition, pursuant to 10 CFR 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, 147, 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, 10 CFR Part 30, 10 CFR Part 32, 10 CFR Part 35, and 10 CFR Part 70, 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 ATTACHMENTS 2 AND 3 TO THIS ORDER.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the licensee.

#### 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 or request a hearing must be made in writing to the Director, Office of Federal and State Materials and Environmental Management Programs, 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 delays 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](mailto: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](mailto: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 CFR 2.309.

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 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 8<sup>th</sup> day of March 2007

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

Charles L. Miller, Director  
Office of Federal and State Materials  
and Environmental Management Programs

Attachments:

1. List of Applicable Materials Licensees
2. Modified Handling Requirements for the Protection of Certain Safeguards Information (SGI-M)
3. Trustworthy and Reliability Requirements for Individuals Handling Safeguards Information