

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
LICENSEES AUTHORIZED TO) EA-09-205
POSSESS RADIOACTIVE MATERIAL)
QUANTITIES OF CONCERN)

**ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY
RECORDS CHECK REQUIREMENTS FOR UNESCORTED
ACCESS TO CERTAIN RADIOACTIVE MATERIAL
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment A to the Increased Controls (IC) Order (EA-09-204) hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and which may possess items containing radioactive materials in quantities of concern.

Section 149 of the AEA, as amended by Section 652 of the Energy Policy Act of 2005, requires fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records checks for “any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.” Pending the completion of rulemaking, the NRC is issuing this Order to implement these requirements, of the AEA and the Energy Policy Act of 2005, because a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern has the potential to result in significant adverse impacts to the public health and safety.

These additional requirements do not apply to individuals or classes of individuals who, under 10 C.F.R. § 73.61, are relieved from the fingerprinting, identification, and records check requirements of Section 149 of the AEA, as amended by Section 652 of the Energy Policy Act of

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2005. In addition, because the individuals listed in Attachment 1, Paragraph 3 to this Order have already satisfied the fingerprinting, identification, and records check requirements, these individuals do not need to take additional action in response to this Order.

II

The IC Order (EA-09-204) requires Licensees to increase control over their sources in order to prevent unintended radiation exposure and malicious acts. One specific requirement imposed by the IC Order is that each Licensee conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. The Commission has determined that radioactive materials possessed by the licensees listed in Attachment A of the IC Order are of such significance to public health and safety as to warrant fingerprinting and FBI identification and criminal history records checks for such persons. Therefore, in accordance with Section 149 of the AEA and the Energy Policy Act of 2005, the Commission is imposing the requirements set forth in this Order on all licensees identified in Attachment A of the IC Order, which are currently authorized to possess radioactive materials in quantities of concern. These requirements include the specific fingerprinting and criminal history records check requirements specified in Attachment 1 to this Order. All requirements will remain in effect until the Commission determines otherwise.

Because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, under 10 CFR 2.202 the NRC finds that the public health and safety require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 81, 149, 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

Parts 30 and 33, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:

A.

1. The Licensee shall, within **ninety (90) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 1 of this Order for individuals that require unescorted access to certain radioactive materials.
2. Within **twenty five (25) days** of the date of this Order, the Licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in Table 1 of Attachment B of the IC Order) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.
3. The Licensee shall, in writing, within **twenty five (25) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order or in Attachment 1 to this Order, (2) if compliance with any of the requirements is unnecessary in its 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 its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

4. The Licensee shall complete implementation of the program established in accordance with paragraph A.1 within **ninety (90) days** of the date of this Order. In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Commission within **twenty-five (25) days** after they have achieved full compliance with the requirements described in Attachment 1 to this Order. If within **ninety (90) days** of the date of this Order, the Licensee is unable, due to circumstances beyond its control, to complete implementation of this Order, the Licensee shall submit a written request to the Commission explaining the need for an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking more time to comply with the requirements of this Order.

5. Licensees shall notify the NRC's Headquarters Operations Office at 301-816-5100 within 24 hours if the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

B.

1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Attachment B to the IC Order in accordance with the requirements of IC.1. of the IC Order and the requirements of this Order.

2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.1. of the IC Order before making a determination regarding the trustworthiness

and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.

- C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this Order to that person.
- D. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the "Protection of Information" section of Attachment 1 of this Order and in requirement IC.5 of the IC Order.
- E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, within **ninety (90) days** of the date of this Order based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the IC Order to continue to have unescorted access, pending a decision by the T&R Official. After **ninety (90) days** of the date of this Order, no individual may have unescorted access to radioactive materials without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.
- F. These requirements do not apply to radioactive material contained in spent nuclear fuel.

Licensee responses to A.1, A.2., A.3. and A.4., above shall be submitted to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as "Withhold Under 10 CFR 2.390."

The Director, Division of Waste Management and Environmental Protection, 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 within **twenty five** (25) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within **twenty five** (25) days of the date of the 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 must be made, in writing, to the Director, Division of Waste Management and Environmental Protection. Office of Federal and State Materials and Environmental 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. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. 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(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 Fed. Reg. 49,139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary of the Commission by e-mail at hearingdocket@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 NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ 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 also is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public website at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings 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 of the Commission that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html> or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or locally, (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 C.F.R. 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 of the Commission, 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.

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, 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 works.

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 requesting 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 (25) 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 23rd day of November 2009

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Larry W. Camper, Director
Division of Waste Management
and Environmental Protection
Office of Federal and State Materials
and Environmental Management Programs

Attachments:

1. Specific Requirements Pertaining to
Fingerprinting and Criminal History
Records Checks