

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
[LICENSEE]	)	
	)	Docket Nos. 50-xxx and 50-yyy
	)	
[Facility]	)	License Nos. XXX, YYY
	)	
	)	EA-12-xxx

CONFIRMATORY ORDER MODIFYING LICENSE

I

[Licensee] is the owner and operator of [facility] and holder of Facility Operating License Nos. XXX and YYY, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," Part 70, "Domestic Licensing of Special Nuclear Material;" or Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." The licenses authorize the operation of [facility] in accordance with the conditions specified therein. The facility is located on the owner's site in [site location].

II

By application dated [date], and as supplemented by letter(s) dated [date], [Licensee] requested, pursuant to Commission Order (EA\_xxxxx), that under the provisions of

Section 161A of the Atomic Energy Act of 1954, as amended, the Commission permit the transfer, receipt, possession, transport, import, and use of certain weapons and large capacity ammunition feeding devices, by security personnel who protect the [Site Name]. Section 161A confers upon the Commission the authority to permit a licensee's security personnel to possess and use weapons, devices, ammunition, or other firearms, notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use.

Upon review of the (Site Name) application dated XXXXX, the NRC staff has found the following:

- (1) The [Licensee] application for Commission authorization to use Section 161A preemption authority complies with the standards and requirements of Section 161A and the Commission's rules and regulations set forth in 10 CFR Part 73, "Physical Protection of Plants and Materials."
- (2) The facilities will operate in conformity with the application, the provisions of the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission.
- (3) There is reasonable assurance that the activities authorized by the proposed Commission authorization to use Section 161A preemption authority can be conducted without endangering the health and safety of the public, and that such activities will be conducted in compliance with the Commission's regulations and the requirements of this Confirmatory Order.

- (4) The issuance of Commission authorization to use Section 161A preemption authority will not be inimical to the common defense and security or to the health and safety of the public.
- (5) The issuance of this Commission authorization to use Section 161A preemption authority will be in accordance with 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," of the Commission's regulations.

The Commission authorization to use Section 161A preemption authority will be effective upon confirmation that all applicable requirements of Section IV and the Attachment to this Confirmatory Order have been satisfied. The findings set forth above are supported by an NRC staff technical evaluation dated [date].

### III

To carry out the statutory authority discussed above, the Commission has determined that the licenses for [facility name] must be modified to include provisions with respect to the Commission authorization to use Section 161A preemption authority as identified in Section II of this Confirmatory Order. The requirements needed to exercise the foregoing are set forth in Section IV below. By letter dated [date], the licensee consented to the license modifications set forth in Section IV below. The licensee further agreed in its letter dated [date] that it has waived its right to a hearing on this Confirmatory Order.

The staff has found that the license modifications set forth in Section IV are acceptable and necessary, and it concluded that, with the effective implementation of these provisions, the licensee's physical protection program will be consistent with the specific physical protection program requirements set forth in (insert applicable regulations (10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage," (for nuclear power reactors); 10 CFR 73.45, "Performance Capabilities for Fixed Site Physical Protection Systems;" 10 CFR 73.46, "Fixed Site Physical Protection Systems, Subsystems, Components, and Procedures," (for Category-I special nuclear material facilities); 10 CFR 73.51, "Requirements for the Physical Protection of Stored Spent Nuclear Fuel and High-Level Radioactive Waste;" and portions of 10 CFR 73.55 (for specific-license, at-reactor co-located independent spent fuel storage installations)).

On [month, day, year] [licensee name] consented to the issuance of this Order. The [Licensee name] further agreed that this Order will be effective 20 days after the date of issuance and that it has waived its right to a hearing on this Order.

#### IV

Accordingly, pursuant to Sections 53, [103 or 104b depending on the license], 161b, 161i, 161o, 161A., 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 50, 10 CFR Part 52 "Licenses Certifications and Approvals for Nuclear Power Plants," 10 CFR Part 70, and 10 CFR Part 72, IT IS HEREBY ORDERED, that the [Licensee Name] application for Commission authorization to use Section 161A preemption authority is approved and permission for security personnel at [facility name] to possess and use weapons, devices, ammunition, or other firearms,

notwithstanding local, State, and certain Federal firearms laws that may prohibit such possession and use, is granted. [Facility Name] shall implement and maintain the requirements of the Attachment to this Confirmatory Order until such time that this Confirmatory Order is modified or rescinded by the Commission.

The Commission is engaged in an ongoing rulemaking to implement the Commission's authority under Section 161A. Upon the effective date of that final rulemaking, the Commission may take action to relax or rescind any or all of the requirements set forth in this Confirmatory Order.

The Commission may, in writing, modify, revise, or rescind this Confirmatory Order and the requirements of the Attachment to this Confirmatory Order, upon demonstration by the licensee of good cause.

Should the licensee fail to notify the NRC of the completion of the requirements in the Attachment to this Confirmatory Order within 1 year of the date of this Confirmatory Order, this Confirmatory Order shall become null and void; provided, however, upon written application and good cause shown, such date may be extended, in writing, by the Commission.

This Confirmatory Order is effective 20 days after the date of issuance.

For further details with respect to this confirmatory order, see the initial application dated [date] (Agencywide Documents Access and Management System (ADAMS) Accession No. MLxxxxxxxx, as supplemented by letter(s) dated [date] and [date] (ADAMS Accession

No(s). MLyyyyyyyyy and MLzzzzzzzzz, respectively), and the application review summary dated [date], which are available for public inspection, with the exception of security-related information, at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

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 20 days of its publication in the *Federal Register*. In addition, any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

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 hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participants (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at

<http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange, users will be required to install a web browser plug-in from the NRC web site. Further information on the web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (pdf) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing 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 E-Filing 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 that they wish to participate in the proceeding, so that the filer need not



serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 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, 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. A presiding officer, having granted an exemption

request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

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](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the 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, unless an NRC regulation or other law requires submission of such information. 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 submission.

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) and (f).

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 IV above shall be final 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 IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, Maryland this        day of [month year].

FOR THE NUCLEAR REGULATORY COMMISSION

[NAME], Director  
Office of XXXXXXX

Attachments:  
Requirements To Be Completed  
Before Using Section 161A preemption authority

DRAFT

## **Requirements to be Completed Before Using Section 161A Preemption Authority**

The following information sets forth U.S. Nuclear Regulatory Commission (NRC or Commission) requirements that shall be met by the licensee to maintain Commission authorization to use Section 161A preemption authority and permission for the transfer, receipt, possession, transport, import, and use of certain weapons and large capacity ammunition feeding devices, notwithstanding local, State, and certain Federal firearms laws (and implementing regulations) that would otherwise prohibit such actions.

This Confirmatory Order does not authorize the licensee to transfer, receive, possess, transport, import, and use “enhanced weapons” as this term is defined in Section 8 of the “Guidelines on the Use of Firearms by Security Personnel in Protecting U.S. NRC-Regulated Facilities, Radioactive Material, and Other Property” (“Firearms Guidelines”) (74 *Federal Register* 46800; September 11, 2009). Furthermore, this Confirmatory Order does not authorize the licensee to transfer, receive, possess, transport, import, and use destructive devices as defined under 27 United States Code Chapter 53, including explosive devices such as grenades or weapons with a bore diameter greater than 12.7 millimeter (0.5 inches or 50 caliber).

The licensee shall comply with all applicable U.S. Department of Alcohol, Tobacco, Firearms, and Explosives requirements and other Federal, State, and local firearms laws and regulations consistent with the Commission authorization for the use of Section 161A preemption permitted by this Confirmatory Order.

### **A. Program Requirements**

1. The licensee shall review and revise its NRC-approved security plans, as necessary, to describe how the requirements of this Confirmatory Order and other affected Title 10 of the *Code of Federal Regulations* (CFR) Part 73, “Physical Protection of Plants and Materials,” requirements, to include appendices to 10 CFR Part 73, will be met.
2. The licensee shall subject all security personnel who require access to firearms in the discharge of their official duties to a firearms background check as described in Section B, below.
3. The licensee shall revise its site training and qualification program as needed to ensure armed personnel are properly trained and qualified on assigned weapons and to provide each individual with instructions on events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
4. Individuals who require access to firearms shall notify the licensee’s security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, “Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons,” the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.

5. The licensee shall notify the NRC in writing of its readiness to meet the requirements stated in this order. This notification shall be based upon:
  - a. The satisfactory completion of a sufficient number of firearms background checks to continue the effective implementation of its physical protection program, specifically, its NRC-approved security plans, site protective strategy, and implementation procedures, while meeting applicable fatigue requirements.
  - b. The satisfactory completion of training and qualification by armed security officers to include the requirements to notify the licensee of any disqualifying event or status.

**B. Firearms Background Check Requirements**

1. The licensee shall submit a hard copy FD-258 as specified below, for each armed member of the security organization who receives, possesses, transports, imports, or uses a firearm in the discharge of official duties. The firearms background check requires both a fingerprint-based check and a name-based check through the Federal Bureau of Investigation (FBI) National Instant Criminal Background Check System (NICS). Due to the nature of this interim process, a hard copy FD-258, must be completed as described in paragraph 2 below and submitted to the NRC. A hard-copy FD-258 is necessary because the format of Electronic Information Exchange (EIE) system does not support the transfer of all required information for processing through the FBI NICS database. If desired, licensees may submit fingerprint impressions electronically *in addition to* the hard-copy FD-258.
2. The following 10 information fields specified on the FBI Form FD-258 shall be completely and accurately filled-in with appropriate identifying information. Specifically, individuals must complete the following fields as follows:
  1. First Name
  2. Last Name
  3. Place of Birth
  4. Gender
  5. Date of Birth
  6. Race: (choose one of the following codes)
    - American Indian or Alaska Native
    - Asian
    - Black or African American
    - Hispanic or Latino
    - Native Hawaiian or other Pacific Islander
    - White
  7. Residence of Person Fingerprinted:

Complete mailing addresses of current residence is required. (NICS check includes query of State records for disqualifying information in both State of residence and State of employment.)

    - Street Number (Post Office box numbers cannot be accepted)
    - Street Name
    - City

- State (required)
  - Zip Code
  - 8. Citizenship
  - 9. Reason Fingerprinted:
    - Firearms Background Check (42 U.S.C. 2201a)
  - 10. Social Security Number
3. The NRC is working to update the EIE system that is currently used for submitting and processing electronic fingerprint cards for access authorization purposes under 10 CFR 73.56. Upon notification from the NRC, licensees may choose to submit all information required for a firearms background check through the EIE system. Until such time as the EIE is updated and in use, all designated facilities shall provide a hard-copy FBI Form FD-258 for the purpose of conducting required firearms background checks. The licensee shall retain a copy of all information submitted and received for firearms background checks for a minimum of 5 years after the information is superseded through periodic reinvestigation or the termination of an individual's access to firearms.
  4. In accordance with the NRC-approved security plans, the licensee shall remove from any current armed duties any individual who has not completed a satisfactory firearms background check. Additionally, the licensee may not assign an individual to any armed duties unless the individual has completed a satisfactory firearms background check. A satisfactory firearms background check means a "proceed" response has been received by the licensee, from the FBI, through the NRC.
  5. The licensee shall submit for firearms background checks the required information and fingerprints using the hard copy FD-258 for each member of the security organization whose official duties require, or will require, the possession and use of any firearm, to include covered weapons as defined in the firearms guidelines and as identified in Section 161A(b).
  6. During the 180-day transition period, individuals who receive a "delayed" response from the FBI to their firearms background check may continue to have access to firearms (i.e., standard weapons) as part of their official duties not to exceed midnight of the 180<sup>th</sup> day.
  7. The licensee shall remove from armed duties, without delay, any individual who has received a "denied" response from the FBI.
  8. Licensees may return an individual to armed duties if the individual receives a "proceed" response from the FBI, subsequent to receiving a "delayed" or "denied" response.
  9. The licensee shall provide instructions to all personnel subject to a firearms background check for appealing "delayed" or "denied" responses. An individual security officer is responsible for appealing a "denied" response or resolving a "delayed" response directly with the FBI.

10. The licensee shall revise its site training and qualification program as needed to provide each individual with instructions on identifying events or status that would disqualify the individual from possession or use of firearms and the continuing responsibility of each individual to promptly notify the licensee of the occurrence of any such event or status.
11. Individuals who require access to firearms shall notify the licensee's security management within 3 working days of the occurrence or existence of any disqualifying event or status. Disqualifying events or status are discussed in 27 CFR 478.32, "Prohibited Shipment, Transportation, Possession, or Receipt of Firearms and Ammunition by Certain Persons," the Gun Control Act of 1968 (18 U.S.C. 922(g) and (n)), and any applicable State laws.
12. The licensee shall remove from armed duties, without delay, any individual for whom disqualifying information has become known or where a satisfactory firearms background check re-investigation has not been completed. When the individual is on duty at the time disqualifying information is received, the term "without delay" means that the licensee shall complete this action within the timeframe specified for reconstitution of the minimum staffing levels, as described in the NRC-approved security plans and applicable 10 CFR Part 73 requirements, or sooner if practicable.
13. The licensee shall subject all individuals who require access to firearms as part of their official duties to a periodic firearms background check re-investigation at least once every 5 years, following the initial or most recent satisfactory firearms background check. Licensees may conduct periodic firearms background checks at a period shorter than 5 years, at their discretion. Re-investigations shall be satisfactorily "completed" within the same calendar month as the initial or most recent firearms background check, with an allowance to midnight of the last day of the month of expiration. The licensee may continue the individual's access to firearms pending completion of the re-investigation, not to exceed midnight of the last day of the month of expiration.
14. The licensee shall complete a "new" firearms background check or reinvestigation for individuals who have:
  - a. Had a break in employment of greater than 7 consecutive calendar days (1 week) with the licensee or the licensee's security contractor. Temporary active duty in the military Reserves or National Guard is not considered to be a break in employment for the purpose of this confirmatory order and the required firearms background check.
  - b. Transferred to the employment of the licensee or the licensee's security contractor. A satisfactorily completed firearms background check performed by a previous employer or completed for employment within a State other than the State in which the individual will be performing armed duties, is not transferable.
15. The licensee shall notify the NRC Headquarters Operations Center by telephone within 72 hours after removing an individual from armed duties as a result of the discovery of any disqualifying status or event. Applicable telephone numbers are specified in Appendix A, "Physical Protection of Plants and Materials," to 10 CFR Part 73.

Notification timeliness shall commence from time of discovery by the licensee or the time of reporting by the individual security officer. The licensee is not required to notify the NRC if the individual security officer has disclosed the disqualifying event or status to the licensee as specified in Appendix B.4, "Weapons Qualification and Requalification Program," to 10 CFR Part 73.