

~~SAFEGUARDS INFORMATION – MODIFIED HANDLING~~

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ALL LICENSEES AUTHORIZED TO) EA-13-189
MANUFACTURE OR INITIALLY TRANSFER)
ITEMS CONTAINING RADIOACTIVE)
MATERIAL FOR SALE OR DISTRIBUTION)
AND POSSESS HIGH-RISK RADIOACTIVE)
MATERIAL OF CONCERN)

**ORDER IMPOSING ADDITIONAL SECURITY MEASURES
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment 1¹ to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954, as amended, 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. Commission regulations at 10 CFR § 20.1801 or equivalent Agreement State regulations require Licensees to secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas. Commission regulations at 10 CFR § 20.1802 or equivalent Agreement States regulations require Licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Warning: Violation of Section 147 of the Atomic Energy Act of 1954, as amended, "Safeguards Information" is subject to Civil or Criminal penalties.

Document transmitted herewith contains Safeguards Information. When separated from Attachments 1 and 2, and Enclosures 2 and 3 this document is Decontrolled.

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

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and near Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and license requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by Licensees as prudent measures to address the current threat environment. Therefore, the Commission is imposing the requirements set forth in Attachment 2² on certain Manufacturing and Distribution Licensees identified in Attachment 1 of this Order who currently possess, or have near term plans to possess, high-risk radioactive material of concern. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. Attachment 3 of this Order contains the requirements for fingerprinting and criminal history record checks for

² Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION will be released to the public.

individuals when a licensee's reviewing official is determining access to Safeguards Information or unescorted access to the radioactive materials. These requirements will remain in effect until the Commission determines otherwise.

The Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. Furthermore, the Commission has determined that some of the security measures contained in Attachment 2 of this Order contain Safeguards Information and will not be released to the public as per the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-12-193 or EA-13-040, as applicable), regarding the protection of Safeguards Information. The Commission hereby provides notice that it intends to treat all violations of the requirements contained in Attachment 2 to the NRC's "Order Imposing Requirements for the Protection of Certain Safeguards Information" (EA-12-193 or EA-13-040, as applicable), 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 a need-to-know the information, are considered to be trustworthy and reliable, have been fingerprinted, and undergone a Federal Bureau of Investigation (FBI) identification and criminal history records check in accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-12-194 or EA-13-041, as applicable). 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. Individuals who have been fingerprinted and granted access to

Safeguards Information by the reviewing official under the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-12-194 or EA-13-041, as applicable) do not need to be fingerprinted again for purposes of being considered for unescorted access.

This Order also requires that a reviewing official must consider the results of the Federal Bureau of Investigations criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-12-194 or EA-13-041, as applicable). Licensees may nominate additional reviewing officials for making unescorted access determinations in accordance with NRC Orders EA-12-194 or EA-13-041, as applicable. The nominated reviewing officials must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties.

To provide assurance that Licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, Manufacturing and Distribution Licensees identified in Attachment 1 to this Order shall implement the requirements identified in Attachments 2 and 3 to this Order. 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.

Accordingly, pursuant to Sections 81, 147, 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 Part 30, and 10 CFR Part 32, 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. The Licensee shall, notwithstanding the provisions of any Commission or Agreement State regulation or license to the contrary, comply with the requirements described in Attachments 2 and 3 to this Order. This Order is effective immediately.

- B.
 - 1. The Licensee shall, within **twenty (20) days** of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in Attachments 2 or 3, (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 or Agreement State regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

 - 2. If the Licensee considers that implementation of any of the requirements described in Attachments 2 or 3 to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, within **twenty (20) days** of this Order, of the adverse safety impact, the basis for its

determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 2 or 3 requirement in question, or a schedule for modifying the facility to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B.1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B.1.

- C. 1. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information" (EA-12-194 or EA-13-041, as applicable) only the NRC-approved reviewing official shall review results from an FBI criminal history records check. The licensee may use a reviewing official previously approved by the NRC as its reviewing official for determining access to Safeguards Information or the licensee may nominate another individual specifically for making unescorted access to radioactive material determinations, using the process described in EA-12-194 or EA-13-041, as applicable. The reviewing official must have access to Safeguards Information or require unescorted access to the radioactive material as part of their job duties. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to radioactive materials that equal or exceed the quantities in Attachment 2 to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals exempted from fingerprinting requirements under 10 CFR 73.61 [72 FR 4945 (February 2, 2007)]. In addition, individuals who have a

favorably decided U.S. Government criminal history records check within the last five (5) years, or have an active federal security clearance (provided in each case that the appropriate documentation is made available to the Licensee's reviewing official), have satisfied the Atomic Energy Act of 1954, as amended, fingerprinting requirement and need not be fingerprinted again for purposes of being considered for unescorted access.

2. No person may have access to Safeguards Information or unescorted access to radioactive materials if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to Safeguards Information or that the person may not have unescorted access to a utilization facility or radioactive material or other property subject to regulation by the NRC.
- D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order. Individuals who have been fingerprinted and granted access to Safeguards Information by the reviewing official under Orders EA-12-194 or EA-13-041, as applicable, do not need to be fingerprinted again for purposes of being considered for unescorted access.
- E. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with this Order, to continue to have unescorted

access without being fingerprinted, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 2.

- F. 1. The Licensee shall, **within twenty (20) days** of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachments 2 and 3.

 - 2. The Licensee shall report to the Commission when they have achieved full compliance with the requirements described in Attachments 2 and 3.
- G. Notwithstanding any provisions of the Commission's or an Agreement State's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B.1, B.2, F.1, and F.2 above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee submittals that contain specific physical protection or security information considered to be Safeguards Information shall be put in a separate enclosure or attachment and, marked as "SAFEGUARDS INFORMATION - MODIFIED HANDLING" and mailed (no electronic transmittals i.e., no e-mail or FAX) to the NRC.

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 by the Licensee of good cause.

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 (20) 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 (20) 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 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 20555-0001, 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).

All documents filed in the 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 ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (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 a hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the 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 document 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 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 the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/EHD/>, 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 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 (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 29th day of October 2013

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Brian E. Holian, Acting Director
Office of Federal and State Materials
and Environmental Management Programs

Attachments:

1. Service List of Applicable Materials

Licenses

2. Additional Security Measures
3. Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information or Unescorted Access to Radioactive Materials