[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-228; License No. R-98; EA-17-002; NRC-2012-0286]

In the Matter of Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Order Approving Indirect Transfer of Facility Operating License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving an application filed by Aerotest Operations, Inc. (Aerotest) and Nuclear Labyrinth LLC (Nuclear Labyrinth) on May 30, 2012. The application sought NRC approval of the indirect transfer of Facility Operating License No. R-98 for the Aerotest Radiography and Research Reactor (ARRR), currently held by Aerotest, to Nuclear Labyrinth. The NRC's approval of the indirect license transfer is subject to certain conditions, which are described in the order. The order also approves an amendment to the license for administrative purposes to reflect the indirect license transfer. The order is effective upon issuance.

DATES: The order was issued on February 28, 2017, and is effective for one year.

ADDRESSES: Please refer to Docket ID **NRC-2012-0286** when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to http://www.regulations.gov and search for Docket ID **NRC-2012-0286**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at http://www.nrc.gov/reading-rm/adams.html. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. For the convenience of the reader, the ADAMS accession numbers for documents related to this action are provided in a table in the "Availability of Documents" section of this document.
- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room OWFN-01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Edward Helvenston, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4067; e-mail: Edward.Helvenston@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Order

The text of the order is attached.

II. Availability of Documents

Documents related to this action, including the indirect license transfer application and other supporting documentation, are available to interested persons as indicated.

Document	ADAMS Accession No(s).
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Application for Approval of Indirect Transfer of Control of License," May 30, 2012	ML12152A233, ML12180A384
U.S. Nuclear Regulatory Commission, "Request to Aerotest Operations, Inc. and Nuclear Labyrinth LLC to Supplement the License Transfer Application," July 5, 2012	ML121740317, ML121740343
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request to Aerotest Operations, Inc. and Nuclear Labyrinth LLC to Supplement the License Transfer Application (TAC No. ME8811)," July 19, 2012	ML122021201
U.S. Nuclear Regulatory Commission, "Aerotest Operations, Inc. - Acceptance of Requested License Transfer Application (TAC No. ME8811)," August 14, 2012	ML12213A486
U.S. Nuclear Regulatory Commission, "Aerotest Operations, Inc., and Nuclear Labyrinth LLC – Request for Additional Information Re: Application for Approval of Indirect Transfer of Control of License of Aerotest Radiography and Research Reactor Pursuant to 10 CFR 50.80 (TAC No. ME8811)," September 14, 2012	ML12242A460, ML12242A479
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request for Additional Information Re: Application for Approval of Indirect Transfer of Control of License of Aerotest Radiography and Research Reactor Pursuant to 10 CFR 50.80 (TAC No. ME8811)," October 15, 2012	ML12291A508
U.S. Nuclear Regulatory Commission, "Aerotest Operations, Inc., and Nuclear Labyrinth LLC – Request for Additional Information Re: Application for Approval of Indirect Transfer of Control of License of Aerotest Radiography and Research Reactor Pursuant to 10 CFR 50.80 (TAC No. ME8811)," December 10, 2012	ML12339A181, ML12339A189
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request for Additional Information Re: Application for Approval of Indirect Transfer of Control of License of Aerotest Radiography and Research Reactor Pursuant to 10 CFR 50.80 (TAC No. ME8811)," January 10, 2013	ML13015A395

U.S. Nuclear Regulatory Commission, "Summary of December 19, 2012, Meeting with Aerotest Operations, Inc., and Nuclear Labyrinth LLC, on the Request for Additional Information on the Proposed Indirect License Transfer Application of the Aerotest Radiography and Research Reactor," January 18, 2013	ML13018A003
U.S. Nuclear Regulatory Commission, "Denial of License Renewal, Denial of License Transfer, and Issuance of Order to Modify License No. R-98 to Prohibit Operation of the Aerotest Radiography and Research Reactor, Facility Operating License No. R-98 (TAC Nos. ME8811 and MC9596)," July 24, 2013	ML13120A598, ML13129A001, ML13158A164
U.S. Nuclear Regulatory Commission, Memorandum and Order CLI-14-05, April 10, 2014	ML14100A094
U.S. Nuclear Regulatory Commission, Certification of Record to Commission (LBP-14-10), September 5, 2014	ML14248A614
U.S. Nuclear Regulatory Commission, Memorandum and Order CLI-15-26, December 23, 2015	ML15357A201
U.S. Nuclear Regulatory Commission, "Aerotest Operations Inc. and Nuclear Labyrinth LLC Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (TAC No. MF7221)," January 21, 2016	ML16020A546
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (TAC No. MF7221)," April 21, 2016	ML16117A259
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Request for Proprietary Treatment for Supplemental Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (TAC No. MF7221)," June 16, 2016	ML16176A221
U.S. Nuclear Regulatory Commission, "Aerotest Operations, Inc. and Nuclear Labyrinth LLC Request for Additional Information Re: Supplemented 2012 Application for Approval of Indirect Transfer of Control of License of Aerotest Radiography and Research Reactor (TAC No. MF7221)," July 20, 2016	ML16182A397
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (TAC No. MF7221)," August 22, 2016	ML16245A230
U.S. Nuclear Regulatory Commission, "Aerotest Operations, Inc., Notice of Consideration of Approval of Application Regarding Proposed Indirect Transfer and Conforming Amendments, Opportunity for a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information," September 8, 2016, published in the *Federal Register* on September 23, 2016 (81 FR 65677)	ML16214A125, ML16214A121
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, "Response to Request for Additional Information Re: Opportunity to Supplement 2012 License Transfer Application (TAC No. MF7221)," October 10, 2016	ML16294A250

Aerotest Operations, Inc. and Nuclear Labyrinth LLC, Electronic mail providing clarification on license transfer proposed technical specifications, October 19, 2016	ML16294A549
Aerotest Operations, Inc. and Nuclear Labyrinth LLC, Electronic mail providing clarification on non-proprietary treatment of certain financial information, and a correction to license transfer proposed technical specifications, November 2, 2016	ML16312A345

Dated at Rockville, Maryland, this 28th day of February 2017.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Spyros A. Traiforos, Project Manager,
Research and Test Reactors Licensing Branch,
Division of Policy and Rulemaking,
Office of Nuclear Reactor Regulation.

ATTACHMENT - Order Approving Indirect Transfer of Facility Operating License and Conforming Amendment

In the Matter of Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor;

[Docket No. 50-228; License No. R-98; EA-17-002; NRC-2012-0286]

(EFFECTIVE UPON ISSUANCE)

I.

Aerotest Operations, Inc. (Aerotest) is the holder of Facility Operating License No. R-98 for the Aerotest Radiography and Research Reactor (ARRR), located in San Ramon, Contra Costa County, California. Aerotest is a wholly owned subsidiary of OEA Aerospace, Inc., a wholly owned subsidiary of OEA, Inc., which, in turn, is a wholly owned subsidiary of Autoliv ASP, Inc. (Autoliv). The ultimate owner is Autoliv, Inc.

II.

By application dated May 30, 2012, as supplemented by letters dated July 19, 2012; October 15, 2012; January 10, 2013; April 21, 2016; June 16, 2016; August 22, 2016; and October 10, 2016, Aerotest and Nuclear Labyrinth LLC (Nuclear Labyrinth) (collectively, "the applicants") requested U.S. Nuclear Regulatory Commission (NRC) approval, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.80 (10 CFR 50.80), of the indirect transfer of control of the license for the ARRR. The indirect transfer of control would involve the transfer of ownership of Aerotest from OEA Aerospace, Inc. to Nuclear Labyrinth, and would result from the acquisition of Aerotest by Nuclear Labyrinth through a stock transfer. Nuclear Labyrinth would indirectly own 100 percent of the ARRR through its ownership of Aerotest. There would be no direct transfer of the license. Aerotest would continue to own and operate the facility and hold the license. Although the license would be amended for administrative purposes to reflect the transfer, no physical changes to the ARRR facility or operational

changes were proposed in the application. Except for the installation of the Chief Executive Officer and sole owner of Nuclear Labyrinth, Dr. David Slaughter, as president of Aerotest, no management or organizational changes were proposed.

By the application dated May 30, 2012, as supplemented by letters dated July 19, 2012, October 15, 2012, and January 10, 2013, the applicants originally requested NRC consent for the subject indirect license transfer. By letter dated July 24, 2013, the NRC staff denied the applicants' original indirect license transfer application on the grounds that the applicants had failed to satisfy the NRC's financial qualifications requirements and that the applicants had not shown that there would be sufficient funds to cover the annual cost of fuel storage until the U.S. Department of Energy accepts the fuel once the facility permanently ceases operations. The applicants filed a joint demand for a hearing on the denial and, on August 12, 2014, a hearing was conducted, at which the applicants presented new information, relevant to the indirect license transfer application, which had not previously been provided to the NRC staff. Based on the information presented by the applicants and the NRC staff at the hearing, the Commission issued an order, dated December 23, 2015, remanding the license transfer application to the NRC staff for further consideration. Subsequently, the applicants further supplemented the application by letters dated April 21, 2016, June 16, 2016, August 22, 2016, and October 10, 2016.

A notice entitled "Aerotest Operations, Inc.; Aerotest Radiography and Research Reactor; Consideration of Approval of Indirect License Transfer and Conforming Amendment" was published in the *Federal Register* on September 23, 2016 (81 FR 65677). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. Upon review of the information in the application, as supplemented, and other information before the Commission, the NRC staff has determined that the indirect transfer of Facility

Operating License No. R-98, as described above, is consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed amendment to the license for administrative purposes to reflect the indirect license transfer complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment 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; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated February 28, 2017.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act, 42 USC Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer, as described herein, is approved, subject to the following conditions:

1. A cash secured irrevocable standby letter of credit from a federally insured bank in the amount of $300,000 that conforms to the guidance provided in NRC Regulatory Guide 1.159 must be executed at the time of, or before, the transfer.

2. A decommissioning trust fund for the Aerotest Radiography and Research Reactor (ARRR) that conforms to the guidance provided in NRC Regulatory Guide 1.159 must be established at the time of, or before, the transfer.

3. Autoliv, Inc. shall enter into a Funding Agreement with Nuclear Labyrinth, LLC (Nuclear Labyrinth) at the time of, or before, the transfer. Written notice must be given to the NRC of any changes to the Funding Agreement.

4. The Funding Agreement between Autoliv, Inc. and Nuclear Labyrinth shall provide that upon the closing of the transaction of the acquisition by Nuclear Labyrinth of all of the issued and outstanding shares of stock of Aerotest Operations, Inc. (Aerotest) from the previous ultimate owner of this stock, Autoliv, Inc., or its subsidiaries, will make the following transfers of funds:

A. The sum of $943,225 to an account designated in writing by Nuclear Labyrinth for the benefit of Aerotest intended to fund the operations and maintenance costs of the ARRR for approximately 12 months (Operating Funds). The Operating Funds may only be used as needed to fund the operations and maintenance costs of the ARRR and may not be used by Nuclear Labyrinth for any other purpose. Upon the written request of Aerotest, Nuclear Labyrinth shall distribute such funds from the Operating Funds as Aerotest determines to be necessary to operate and maintain the ARRR.

B. The sum of $3,376,030 to the decommissioning trust fund for the ARRR.

C. The sum of $742,410 (plus the interest on this sum to be calculated from October 1, 2010, to the date of acquisition based on the 13-week Treasury bill rate) and the sum of $625,000 to a segregated account in the decommissioning trust fund for the ARRR (Nuclear Fuel Disposal Funds). The Nuclear Fuel Disposal Funds may only be used to fund the disposal of the ARRR's nuclear fuel elements pursuant to U.S. Department of Energy Contract DE-CR01-83NE44484, as amended, and to fund the acquisition of fuel element storage casks, respectively, and may not be used for any other purpose.

D. The sum of $1,500,000 to the financial protection standby trust for the ARRR.

E. The sum of $1,125,000 to a segregated account in the decommissioning trust fund for the ARRR (Spent Fuel Management Funds). The Spent Fuel Management Funds may only be used to fund the management of the ARRR's nuclear fuel elements after the permanent cessation of operations of the ARRR and before the acceptance of the fuel by the U.S. Department of Energy.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the conforming license amendment that makes administrative changes to reflect the subject indirect license transfer is approved. The amendment shall be issued and made effective at the time the proposed indirect license transfer action is completed.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed indirect license transfer action, Aerotest shall inform the Director of the Division of

Policy and Rulemaking in writing of such receipt and of the date of closing of the transfer no later than 7 business days prior to the date of the closing of the transfer. Should the proposed indirect license transfer not be completed by February 28, 2018, this Order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated May 30, 2012, as supplemented by letters dated July 19, 2012, October 15, 2012, January 10, 2013, April 21, 2016, June 16, 2016, August 22, 2016, and October 10, 2016 (Agencywide Documents Access and Management System (ADAMS) Accession Nos. for these documents are listed in the "Availability of Documents" section of the *Federal Register* notice to which this order is attached); other documents listed in the "Availability of Documents" section of the *Federal Register* notice; and the NRC Safety Evaluation dated February 28, 2017, which are available for public inspection 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 are accessible electronically through ADAMS in the NRC Library at http://www.nrc.gov/reading-rm/adams.html. Persons who encounter problems

with ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail at pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 28th day of February, 2017.

For the Nuclear Regulatory Commission.

/RA/

Louise Lund, Director,
Division of Policy and Rulemaking,
Office of Nuclear Reactor Regulation.