



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 27, 2017

TO: Holders of Materials Licenses (Identified in Enclosure 1) that Received U.S. Nuclear Regulatory Commission Security Orders Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Materials for Service Providers that are not Manufacturers and Distributors

SUBJECT: RESCISSION OF U.S. NUCLEAR REGULATORY COMMISSION SECURITY ORDER IMPOSING TRUSTWORTHINESS AND RELIABILITY REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIALS FOR SERVICE PROVIDERS THAT ARE NOT MANUFACTURERS AND DISTRIBUTORS (IDENTIFIED IN ENCLOSURE 2)

This letter is being sent to non-manufacturer and distributor (non-M&D) service provider licensees that requested and received the "Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Materials" (Non-M&D Service Provider Order), to notify licensees of the Order's rescission. The Order was issued by the U.S. Nuclear Regulatory Commission (NRC) under its common defense and security authority to non-M&D service provider licensees at their request to codify licensees' voluntary commitment to implement requirements to assess the trustworthiness and reliability of employees as a means to allow these non-M&D service provider licensees to have unescorted access to clients' Category 1 or Category 2¹ quantities of radioactive material while providing services.

The security Order described above is available on the NRC's public Web site at <http://www.nrc.gov/security/byproduct/orders.html>.

The NRC has determined that the subject Order can be rescinded because Title 10 of the *Code of Federal Regulations* (10 CFR) Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," Subpart B, "Background Investigations and Access Control Program," can be implemented by non-M&D service provider licensees if such licensees wish to have unescorted access to Category 1 or Category 2 quantities of radioactive material while providing services at client facilities. Pursuant to 10 CFR Part 37.21(a)(1), licensees that are not authorized to possess Category 1 or Category 2 quantities of radioactive material or whose possession is incidental to service, such as non-M&D service provider licensees, do not automatically fall within the provisions of Subpart B and therefore are not required to establish access authorization programs under Subpart B. Rather, 10 CFR 37.29(a)(13) permits "any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for

¹ The Category 1 and Category 2 thresholds are based on the quantities established by the International Atomic Energy Agency in its "Code of Conduct on the Safety and Security of Radioactive Sources," which the United States has committed to, and the NRC has endorsed. Category 1 and Category 2 quantities of radioactive material are considered risk significant and are listed in Table A-1 of Appendix A, "Category 1 and Category 2 Radioactive Materials," to 10 CFR Part 37.

unescorted access to Category 1 or Category 2 quantities of radioactive material” to be granted

unescorted access by the client licensee. To demonstrate that this requirement has been met, the regulation requires service providers to give written verification of their employees’ trustworthiness and reliability to client licensees, as was previously required under the Non-M&D Service Provider Order. Therefore, although 10 CFR Part 37 does not require non-M&D service provider licensees to establish access authorization programs, non-M&D service provider licensees must establish access authorization programs compliant with 10 CFR Part 37, Subpart B if they intend to take advantage of the 10 CFR 37.29(a)(13) provision. This determination was also communicated in a Regulatory Information Summary issued on February 8, 2017, entitled, “Applicability of Title 10 of the *Code of Federal Regulations* Part 37 to Non-Manufacturing and Distribution Service Provider Licensees” (RIS 2017-02).

Accordingly, effective March 27, 2017, the Non-M&D Service Provider Orders are being rescinded. All of the previously-issued Non-M&D Service Provider Orders that are being rescinded are identified in Enclosure 2 to this letter.

Those non-M&D service provider licensees that have previously implemented the Non-M&D Service Provider Order may continue to maintain access authorization programs upon rescission of the Order; however, those programs must be in compliance with 10 CFR Part 37, Subpart B, or the Agreement State equivalent. One important difference between the access authorization programs under the Order and those compliant with 10 CFR Part 37, Subpart B, is that under Subpart B, licensees, not the NRC, are responsible for determining the trustworthiness and reliability of reviewing officials. However, reviewing officials previously approved in accordance with the Order may continue to serve as reviewing officials under 10 CFR Part 37 without further action. Under 10 CFR 37.23(b)(2), licensees are required to provide to the NRC (or appropriate Agreement State), under oath and affirmation, a certification that any new reviewing officials are deemed to be trustworthy and reliable by the licensees.

Additionally, as noted in 10 CFR 37.25(b)(1), individuals who were previously determined to be trustworthy and reliable for the purposes of unescorted access to Category 1 or Category 2 quantities of radioactive material are “grandfathered” and do not need to undergo further investigation. However, such individuals are subject to the 10-year reinvestigation requirement in 10 CFR 37.25(c). The reinvestigation must be completed within 10 years of the date on which the elements were last completed under the Non-M&D Service Provider Order. Until the reinvestigation is completed, licensees must retain all the documentation that validates individuals as trustworthy and reliable, as well as documentation of the NRC’s approval of the reviewing officials who were approved under the Order.

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If you have specific questions or concerns regarding the rescission of the Non-M&D Service Provider Order, you may contact Kim Lukes (301-415-6701, Kim.Lukes@nrc.gov).

Sincerely,

/RA/

Marc L. Dapas, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. List of Applicable Materials Licensees
2. Table of Specific Orders for Rescission

SUBJECT: RESCISSION OF U.S. NUCLEAR REGULATORY COMMISSION SECURITY ORDER IMPOSING TRUSTWORTHINESS AND RELIABILITY REQUIREMENTS FOR UNESCORTED ACCESS TO CERTAIN RADIOACTIVE MATERIALS FOR SERVICE PROVIDERS THAT ARE NOT MANUFACTURERS AND DISTRIBUTORS (IDENTIFIED IN ENCLOSURE 2) DATE: MARCH 27, 2017

DISTRIBUTION:

See next page

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OFFICE	NMSS/MSTR	NMSS/MSTR	NMSS/ASPB	NMSS/MSTR
NAME	KLukes	SAtack	PMichalak	PHenderson for DCollins
DATE	2/6/2017	2/6/2017	2/13/2017	2/23/2017
OFFICE	OGC – NLO	OE	Tech Ed	NMSS
NAME	ACoggins	DFurst for PHolahan	WMoore	MDapas
DATE	3/13/2017	3/20/2017	3/20/2017	3/27/2017

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MSTR r/f

Applicable Materials Licensees

License No.: NR-12345-67
Docket No.: 030-12345
John Doe Company, Inc.
123 Brick Road
Any City, ST 01234

Will appear with specific licensee information when mailed out. There will be a master list for internal purposes.

**Specific Orders Identified for Rescission,
Effective Immediately**

Non-M&D Service Provider Order

Issuance Date	Order No.	Order Description	Recipients
12/16/2009 07/15/2013 10/02/2014 04/27/2015	EA 09-293 EA 13-147 EA 14-156 EA 15-036	The "Order Imposing Trustworthiness and Reliability Requirements for Unescorted Access to Certain Radioactive Material" imposed additional security measures on service provider licensees that are not manufacturers or distributors and that requested unescorted access to Category 1 or Category 2 quantities of radioactive material.	Licensees authorized to perform services on devices containing radioactive material for customers licensed by the NRC or an Agreement State to possess and use Category 1 or Category 2 quantities of radioactive material