

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	Docket No.: 05000170
	)	License No.: R-84
Armed Forces Radiobiology Research Institute	)	
Bethesda, Maryland	)	EA-20-056

CONFIRMATORY ORDER MODIFYING LICENSE  
EFFECTIVE UPON ISSUANCE

I

Armed Forces Radiobiology Research Institute (AFRRI or Licensee) is the holder of License No. R-84, issued by the U. S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 50 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes the operation of AFRRI Research Reactor (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Bethesda, Maryland.

This Confirmatory Order (CO) is the result of an agreement reached during an Alternative Dispute Resolution (ADR) mediation session conducted on September 18, 2020, to address an apparent violation.

II

On February 27, 2020, the NRC's Office of Investigations (OI), issued a report (1-2019-003) related to AFRRI. Based on the evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR § 50.7, "Employee protection." The NRC determined that AFRRI placed an AFRRI employee on a 2-day suspension without pay on May 14, 2018, in part, for engaging in protected activity. By letter dated June 8, 2020, the NRC notified AFRRI of the results of the investigation with an opportunity to (1) attend a pre-decisional enforcement conference or (2) to participate in an ADR mediation session in an effort to resolve this concern.

In response to the NRC's offer, AFRRRI requested the use of the NRC's ADR process to attempt to resolve this issue with the NRC. On September 18, 2020, the NRC and AFRRRI conducted an ADR session mediated by a professional mediator, arranged through Cornell University's Scheinman Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement to resolve any differences regarding the dispute. This CO is issued pursuant to the agreement reached during the September 18, 2020, ADR session.

### III

During the ADR session, AFRRRI and the NRC reached a preliminary settlement agreement. The elements of the agreement included (1) corrective actions that AFRRRI has already completed to improve the nuclear safety culture and safety conscious work environment (SCWE) at the facility (provided to the NRC during the September 18, 2020, ADR session), (2) agreed upon future actions, and (3) general provisions.

#### Previously Completed Corrective Actions:

1. Conducted industry-led AFRRRI leadership SCWE training.
2. Conducted three industry-led AFRRRI employee SCWE training sessions.
3. Established a SCWE Working Group to ensure employee involvement and capture employee insights during the development of the AFRRRI SCWE program.
4. Appointed a Safety Culture Program Officer.
5. Issued an email communication from the AFRRRI Director to all AFRRRI staff encouraging participation in the SCWE training and the command climate survey by the Uniformed Services University (USU) Brigade leadership.

6. Issued a message from the newly appointed Safety Culture Program Officer to all AFRRRI staff emphasizing leadership's focus on safety and mechanisms for reporting concerns.
7. Participated in monthly National Organization of Test, Research, and Training Reactors (TRTR) calls, and registered several AFRRRI staff for the upcoming annual conference.
8. Solicited feedback from AFRRRI staff regarding the ongoing command climate survey to serve as a baseline for future safety improvement metrics.

Agreed Upon Future Actions:

A. Communication

1. Within 60 calendar days of issuance of the CO, the Uniformed Services University (USU) President shall issue a written statement, communicating the specific strategy to improve AFRRRI's nuclear safety culture.
  - a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 2020 chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.
  - b. USU shall provide a copy of this communication to the NRC for prior review.
  - c. NRC shall provide comments within 1 week of receipt of the draft communication.
2. Within 90 calendar days of the USU President's statement, AFRRRI shall hold an all-hands meeting for management to discuss the importance of the above communication with AFRRRI employees.
  - a. AFRRRI shall conduct the all-hands meeting on multiple levels of management (i.e., Director level, Department head) with current employees. AFRRRI employees must attend at least one of the all-hands meetings.

- b. AFRRRI shall require participants to sign in, confirming their attendance. Employees unable to attend an in-person/virtual meeting shall complete a “Read and Sign” training.
- c. Future employees shall complete a “Read and Sign” training.

**B. Safety Culture and Safety Conscious Work Environment**

1. Within 150 calendar days of issuance of the CO, AFRRRI shall ensure its nuclear safety culture policy, guidance and related materials are in place and updated.
  - a. Ensure a distinct and comprehensive safety culture policy is updated, maintained and consistent with the NRC’s March 2011 Safety Culture Policy Statement and associated traits.
  - b. The safety culture policy shall include specific definitions for key safety culture terms, including examples of what constitutes a protected activity and safety/security concern(s).
  - c. The policy shall incorporate guidance from NUREG 2165, “Safety Culture Common Language,” and the industry’s common language initiative (i.e., INPO 12-012, Revision 1, April 2013).
  - d. Copies of policy statement revisions, guidance and related materials shall be provided to the NRC for review at least 60 calendar days prior to issuance.
  - e. NRC will provide comments to AFRRRI within 2 weeks.
  - f. Within 45 days of receiving communication that the NRC review is complete, AFRRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.
  - g. AFRRRI will distribute copies of these documents and materials to employees and inform employees where all related materials can be located. These

materials shall be maintained and provided to all new employees during initial orientation.

- h. AFRRRI shall require employees to confirm their receipt of the materials by completing a "Read and Sign".
2. Within 180 calendar days of issuance of the CO, AFRRRI shall establish a nuclear SCWE program.
- a. AFRRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statements and associated guidance (i.e., the NRC's May 1996 Safety Conscious Work Environment Policy Statement, and the NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment").
  - b. Initial SCWE Program documents (guidance and related materials) shall be provided to the NRC review at least 60 calendar days prior to issuance.
  - c. Within 2 weeks of receiving the documents, NRC will provide comments to AFRRRI.
  - d. Within 45 days of receiving communication that the NRC review is complete, AFRRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.
  - e. AFRRRI shall make NRC aware of any revisions to SCWE program documents and make the revisions available for NRC review, upon request. This requirement is limited to the initial 2 years of program establishment.
  - f. AFRRRI will distribute copies of these documents and materials to employees and inform employees where all related materials can be located. These

materials shall be maintained and provided to all new employees during initial orientation.

- g. AFRRRI shall require employees to confirm their receipt of the materials by completing a "Read and Sign."
- h. Within this program, AFRRRI shall document the requirements related to the Nuclear Safety Culture Program Officer to include the following:
  - i. The Safety Culture Program Officer (Program Officer) function will report directly to the AFRRRI Director.
  - ii. The Program Officer shall complete specific training, addressing topics such as intake of allegations/safety concerns and trending of concerns (e.g., Employee Concerns Program (ECP) basics course NAECP's ECP basics course, or similar training). This training shall be completed within 180 days of designation as the Program Officer.
  - iii. The Program Officer shall assist the AFRRRI Director in the management and execution of the SCWE program to include the intake and processing of reported safety concerns.
  - iv. The Program Officer shall review AFRRRI communications related to safety culture messaging and provide feedback to the AFRRRI Director.
  - v. The Program Officer shall encourage better communication between nuclear materials safety and security committees associated with AFRRRI.

### C. Training

- 1. By no later than 180 calendar days after the issuance of the CO, AFRRRI shall develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all AFRRRI employees.
  - a. Training shall include the following areas:

- i. Case studies of discriminatory practices;
  - ii. Definitions of key industry terms/common language;
  - iii. Behavioral expectations with regard to each nuclear safety culture traits;
  - iv. Expectations for demonstrating support for raising nuclear safety concerns and all available avenues without fear of retaliation; and
  - v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRI, the NRC and Congress, or engage in any other type of protected activity without fear of being subject to disciplinary action or retaliation, as well as, provide a list of available reporting avenues.
2. Supervisory Training: In addition to the content areas described within paragraph C.1 above, supervisory training shall also include expectations specific to the role of management and include specific discussion on how to (1) effectively manage safety concerns and (2) ensure employees feel comfortable raising concerns.
- a. If AFRRI conducts the initial training, the training will be performed by AFRRI employees trained by the team who developed the training at AFRRI or the organization who developed the program.
  - b. The supervisory training shall be completed within 180 calendar days after the issuance of the CO.
  - c. Refresher training:
    - i. Shall be primarily instructor led and be provided at least every 2 years for a period of 4 years. This training may be provided by AFRRI staff.
    - ii. Thereafter, refresher training may be computer-based and shall be provided annually.

- d. AFRRRI shall conduct instructor-led training for any new supervisors hired after the initial training conducted as described in paragraphs 1 and 2 above, as part of the supervisor's initial training.
  - e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.
  - f. All training material shall be available to the NRC upon request.
3. Employee (Non-Supervisory) Training: Initial training, developed in paragraph C.1 above, shall be conducted by AFRRRI employees trained by the team who developed the training at AFRRRI.
- a. All employee training shall commence within 180 calendar days after the issuance of the CO.
  - b. All training must be completed within 330 calendar days of the issuance of the CO.
  - c. Refresher training may be computer-based and shall be provided annually.
  - d. Training will primarily be instructor-led for new employees as part of their orientation program/process.
  - e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.
  - f. All training material shall be available to the NRC upon request.
4. This training is applicable to all AFRRRI employees and management who are engaged in work associated with NRC-regulated activities.
5. AFRRRI shall provide all training materials to the NRC for review at least 60 calendar days prior to conducting training.
- a. NRC will provide comments to AFRRRI within 2 weeks of receipt.



- b. Within 45 days of receiving communication that the NRC review is complete, AFRRRI will either incorporate NRC comments or provide acknowledgement of NRC comments and why comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. By no later than 18 months after the issuance of the CO, AFRRRI shall hire a third-party independent organization and complete a tailored comprehensive nuclear safety culture assessment to ensure the effectiveness of the nuclear safety culture and SCWE programs.
  - a. The assessment will evaluate all program components, including insights from employee surveys, anonymous reports, interviews and the conduct of focus groups to assess effectiveness of the programs.
  - b. AFRRRI shall conduct the initial assessment within 1 year of the establishment of the SCWE program.
  - c. AFRRRI must address and implement corrective actions as a result of the assessment report.
2. A follow-up assessment shall be conducted within 2 years after the initial assessment. The follow-up assessment shall be comparable to the initial assessment to allow for effective evaluation of trends. This assessment does not require the use of a third-party organization.
3. AFRRRI shall make available to the NRC, upon request, the results of the assessments, surveys, AFRRRI's analysis of the trends, results and proposed corrective actions (if any) AFRRRI will take to address the results in order to verify that a healthy nuclear safety culture and SCWE exists at AFRRRI.

#### E. Independent Third-Party Organization

1. Within 120 calendar days of the issuance of the CO, AFRRRI will hire a third-party, independent organization to assist AFRRRI with updates to its nuclear safety culture policy and the establishment of its safety conscious work environment program and associated tasks, as described within the CO. AFRRRI may utilize the same organization as described in paragraph D above.
  - a. The third-party organization shall be unrelated to the proceedings at issue and experienced within NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and SCWE policies/programs.
  - b. AFRRRI shall ensure they receive assistance from the third-party organization for the following tasks:
    - i. Initial revisions/updates to AFRRRI's nuclear safety culture policy, as AFRRRI ensures consistency with NRC and industry guidance;
    - ii. Establishment of AFRRRI's SCWE program; and
    - iii. Development and conduct of AFRRRI's initial Nuclear Safety Culture and SCWE program assessment.
  - c. AFRRRI will ensure the organization is provided with all materials to comprehensively assist AFRRRI, including NRC inspection reports associated with AFRRRI's SCWE and the March 2020 CEL.

#### F. Work Process

1. Within 270 calendar days of the issuance of the CO, AFRRRI will develop a program for AFRRRI employees to raise concerns.
  - a. The program shall include the following:

- i. An electronic, telephonic, or physical reporting mechanism for AFRRRI employees to submit safety concerns. This mechanism shall allow for both standard and anonymous submission capability.
- ii. A means to evaluate information collected through the reporting mechanisms available, in order to analyze the data over time, related to AFRRRI's nuclear safety culture.
- iii. A means to ensure AFRRRI's nuclear safety culture and SCWE policies, and associated guidance/materials, are readily accessible for employee viewing.
- iv. The opportunity for departing AFRRRI employees to participate in an exit interview/survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

#### General Provisions

1. As part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, "Violations Identified Because of Previous Enforcement Action," the NRC will consider enforcement discretion for violations of the NRC Employee Protection Rules that occurred prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the CO.
2. The NRC will not cite a violation or issue a civil penalty in connection with the NRC's June 8, 2020, letter to AFRRRI.
3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases, as long as the future action is not related to the NRC Employee Protection Rule.
4. The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by AFRRRI of good cause.

5. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 8, 2020, letter to AFRRRI.
6. In the event of the transfer of the operating license of AFRRRI to another entity, the terms and conditions set forth hereunder shall continue to apply to AFRRRI and accordingly survive any transfer of ownership or license.

On November 10, 2020, AFRRRI consented to issuing this CO with the commitments, as described in Section V below. AFRRRI further agreed that this CO is to be effective upon issuance, that the agreement memorialized in this CO settles the matter between the parties, and that it has waived its right to a hearing.

#### IV

I find that AFRRRI's completed actions, as described in Section III above, combined with the commitments as set forth in Section V, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that AFRRRI's commitments be confirmed by this CO. Based on the above and AFRRRI's consent, this CO is effective upon issuance.

**V**

Accordingly, pursuant to Sections 104c, 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 and 10 CFR Part 50, IT IS HEREBY ORDERED, EFFECTIVE UPON ISSUANCE, THAT License No. R-84 IS MODIFIED AS FOLLOWS:

A. Communication

1. Within 60 calendar days of issuance of the Confirmatory Order (CO), the Uniformed Services University (USU) President shall issue a written statement communicating the specific strategy to improve AFRRRI's nuclear safety culture.
  - a. The communication is to include (1) a brief summary regarding the employee protection regulations, (2) the NRC's concerns expressed in its March 18, 2020, chilling effect letter, (3) specific lessons learned from previously applied corrective actions, and (4) corrective actions both taken and planned.
  - b. USU shall provide a copy of this communication to the NRC for prior review.
  - c. NRC shall provide comments within 1 week of receipt of the draft communication.
2. Within 90 calendar days of the USU President's statement, AFRRRI shall hold all-hands meetings for management to discuss the importance of the communication, described within Section A.1 above, with AFRRRI employees.
  - a. AFRRRI shall conduct the all-hands meetings on multiple levels of management (i.e., AFRRRI Director, Department Heads), with current

employees. AFRRRI employees must attend at least one of the all-hands meetings.

- b. AFRRRI shall require participants to sign-in, confirming their attendance. Employees unable to attend an in-person/virtual meeting, shall confirm their receipt of the communication by completing a “Read and Sign.”
- c. Future AFRRRI employees shall complete this requirement via a “Read and Sign.”

#### B. Safety Culture and Safety Conscious Work Environment

- 1. Within 150 calendar days of issuance of the CO, AFRRRI shall ensure its nuclear safety culture policy (NSC Policy), guidance, and related materials are in place and updated.
  - a. Ensure a distinct and comprehensive NSC Policy is updated, maintained, and consistent with the NRC’s June 14, 2011, Safety Culture Policy Statement and associated traits.
  - b. The NSC Policy shall include specific definitions for key safety culture terms, including examples of what constitutes a protected activity and safety/security concern(s).
  - c. The NSC Policy shall incorporate guidance from NUREG-2165, “Safety Culture Common Language” and the industry’s common language initiative (i.e., INPO 12-012, Revision 1, April 2013).
  - d. Copies of NSC Policy, guidance, and related materials shall be provided to the NRC for review at least 60 calendar days prior to issuance.
  - e. NRC will provide comments to AFRRRI within 2 weeks of receipt of the document(s)/material(s).

- f. Within 45 days of receiving communication that NRC's review is complete, AFRRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.
  - g. AFRRRI will distribute copies of the NSC Policy, guidance, and related materials to AFRRRI employees and inform AFRRRI employees how to access the documents and materials. These materials shall be maintained and provided to all new AFRRRI employees during initial employee orientation.
  - h. AFRRRI shall require both current and new AFRRRI employees to confirm their receipt of the NSC Policy, guidance, and related materials by completing a "Read and Sign."
- 2. Within 180 calendar days of issuance of the CO, AFRRRI shall establish a nuclear safety conscious work environment (SCWE) program.
  - a. AFRRRI shall ensure that the SCWE program is consistent with the NRC Safety Conscious Work Environment Policy Statement and associated guidance (i.e., NRC's May 14, 1996, policy statement "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," and the NRC's Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment").
  - b. Initial SCWE program documents (guidance and related materials) shall be provided to the NRC review at 60 calendar days prior to issuance.
  - c. NRC will provide comments to AFRRRI, within 2 weeks of receipt of the documents.
  - d. Within 45 days of receiving communication that NRC's review is complete, AFRRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

- e. For a period of 2 years following the establishment of the SCWE program, AFRRRI shall inform NRC of any pending major revisions to AFRRRI's SCWE program documents and make the revisions available for NRC review upon request. Major revisions, for the purpose of this CO condition, are considered to be, but not limited to, removal/addition of any program element (i.e., avenues to report safety concerns, program trending and analysis standards, etc.).
- f. AFRRRI will distribute copies of the SCWE program documents and materials to AFRRRI employees and inform AFRRRI employees how to access the documents and materials. These materials shall be maintained and provided to all new AFRRRI employees during initial employee orientation.
- g. AFRRRI shall require both current and future AFRRRI employees to confirm their receipt of the materials by completing a "Read and Sign."
- h. Within the SCWE program, AFRRRI shall document the requirements related to the Safety Culture Program Officer (Program Officer) to include the following:
  - i. The Program Officer function will report directly to the AFRRRI Director.
  - ii. The Program Officer shall complete specific training addressing topics such as intake of allegations/safety concerns and trending of concerns (e.g., National Association of Employee Concerns Professionals' (NAECP's) Employee Concerns Program basics course, or similar training). This training shall be completed within 180 days of designation as the Program Officer.



- iii. The Program Officer shall assist the AFRRRI Director in management and execution of the SCWE program to include the intake and processing of reported safety concerns.
- iv. The Program Officer shall review AFRRRI communications related to safety culture messaging and provide feedback.
- v. The Program Officer shall encourage better communication between nuclear materials safety and security committees associated with AFRRRI.

### C. Training

1. Within 210 calendar days of issuance of the CO, AFRRRI shall develop and/or revise its employee protection, nuclear safety culture and safety conscious work environment training for all AFRRRI employees and supervisors.
  - a. Training shall include the following:
    - i. Case studies of discriminatory practices;
    - ii. Definitions of key industry terms/common language;
    - iii. Behavioral expectations with regard to each nuclear safety culture trait as defined in NRC's June 14, 2011, Safety Culture Policy Statement;
    - iv. Expectations for demonstrating support for raising nuclear safety concerns without fear of retaliation; and
    - v. A statement that all employees have the right to raise nuclear safety concerns to USU/AFRRRI, the NRC and Congress, or engage in any other type of protected activity without being subject to disciplinary action or retaliation, as well as, providing a list of available reporting avenues.
2. Supervisory Training: In addition to the content areas described within paragraph C.1.a above, supervisory training shall also include expectations specific to the role

of management and include discussion on (1) effectively managing safety concerns and (2) ensuring employees feel comfortable raising concerns.

- a. The supervisory training shall be conducted by either the independent third-party organization hired to assist AFRRRI, as described in paragraph E below, or AFRRRI employees trained by the independent third-party organization.
  - b. The initial supervisory training shall be completed within 210 calendar days after the issuance of the CO.
  - c. Refresher supervisory training:
    - i. Initial refresher training sessions shall be primarily instructor-led and shall be provided to all supervisors at least every 2 years for a period of 4 years from the issuance of the CO. This training may be provided by AFRRRI staff.
    - ii. Thereafter, refresher training may be computer-based and shall be provided to all supervisors annually.
  - d. AFRRRI shall conduct instructor-led training for any new supervisors hired after the initial training, described in paragraphs C.1 and C.2.b, as part of the supervisor's initial training.
  - e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.
  - f. All training material shall be made available to the NRC upon request.
3. Employee (Non-Supervisory) Training: The initial AFRRRI employee training described in paragraph C.1 above shall be conducted by AFRRRI employees trained by the team who developed the training.

- a. The initial AFRRRI employee training shall be primarily instructor-led and all AFRRRI employee training shall commence within 180 calendar days after the issuance of the CO.
  - b. All initial AFRRRI employee training must be completed within 330 calendar days of the issuance of the CO.
  - c. Refresher employee training may be computer-based and shall be provided to all AFRRRI employees annually.
  - d. AFRRRI shall conduct instructor-led training for any new AFRRRI employee hired after the initial training, described in paragraphs C.1 and C.3.a, as part of the employee's orientation program/process.
  - e. Training records shall be retained for 4 years after the completion of applicable training and made available to the NRC upon request.
  - f. All training material shall be made available to the NRC upon request.
4. The training described in paragraphs C.1, C.2 and C.3 is applicable to all AFRRRI employees and management who are engaged in work associated with NRC-regulated activities.
  5. AFRRRI shall provide all initial training materials to the NRC for review at least 60 calendar days prior to conducting training.
  6. NRC will provide comments to AFRRRI within 2 weeks of receipt of the documents.
  7. Within 45 days of receiving communication that NRC's review is complete, AFRRRI will either incorporate NRC's comments or provide acknowledgement of NRC's comments and state why NRC's comments were not incorporated.

D. Assess and Monitor Nuclear Safety Culture and Safety Conscious Work Environment

1. By no later than 18 months after the issuance of the CO, AFRRRI shall hire an independent third-party organization and complete a tailored, comprehensive nuclear safety culture assessment.
  - a. The assessment will evaluate all program components, including insights from employee surveys, anonymous reports, interviews and the conduct of focus groups to assess effectiveness of the program.
  - b. AFRRRI shall conduct the initial assessment within 1 year of the establishment of the SCWE program and the assessment must result in a comprehensive report.
  - c. AFRRRI must address and implement corrective actions as a result of the assessment report.
2. A follow-up assessment shall be conducted within 2 years after the initial assessment. The follow-up assessment shall be comparable to the initial assessment, described in paragraph D.1, to allow for effective evaluation of trends. This follow-up assessment does not require the use of an independent third-party organization.
3. AFRRRI shall make available to the NRC, upon request, the results of the initial and follow-up assessments (including surveys and AFRRRI's analysis of trends) and the proposed corrective actions (if any) AFRRRI will take to address the results, in order for the NRC to verify that a healthy nuclear safety culture and SCWE exist at AFRRRI.

#### E. Independent Third-Party Organization

1. Within 120 calendar days of the issuance of the CO, AFRRRI will hire an independent third-party organization to assist AFRRRI with updates to its NSC Policy and the

establishment of its SCWE program and associated tasks, as described within the CO. AFRRRI may utilize the same organization as described in paragraph D above.

- a. The independent third-party organization shall be unrelated to the proceedings at issue and experienced within NRC employee protection regulations, Section 211 of the Energy Reorganization Act, as amended, and nuclear safety culture and SCWE policies/programs.
- b. AFRRRI shall receive assistance from the independent third-party organization for the following tasks:
  - i. Initial revisions/updates to AFRRRI's NSC Policy, as AFRRRI ensures consistency with NRC and industry guidance, as described in paragraph B.1;
  - ii. Establishment of AFRRRI's SCWE program, as described in paragraph B.2; and
  - iii. Development and implementation of AFRRRI's initial Nuclear Safety Culture and SCWE program assessment, as described in paragraph D.1.
- c. AFRRRI will ensure that the independent third-party organization is provided all materials to comprehensively assist AFRRRI, including NRC inspection reports associated with AFRRRI's SCWE and the March 18, 2020, Chilling Effect Letter.

#### F. Work Process

1. Within 270 calendar days of the issuance of the CO, AFRRRI will develop a program for AFRRRI employees to raise nuclear safety and security concerns.
  - a. The program shall include the following:
    - i. An electronic, telephonic or physical reporting mechanism for AFRRRI employees to submit nuclear safety or security concerns. This

mechanism shall allow for both standard and anonymous submission capability.

- ii. A means to evaluate information collected through the available reporting mechanisms in order to analyze the data related to AFRRI's nuclear safety culture over time.
- iii. A means to ensure AFRRI's NSC Policy, SCWE program, and associated guidance/materials are readily accessible for employee viewing.
- iv. The opportunity for departing AFRRI employees to participate in an exit interview/survey to facilitate identification of nuclear safety issues, resulting trends and conclusions.

In consideration for the actions and/or initiatives that AFRRI agrees to undertake, as outlined above, the NRC agrees to the following:

1. As part of its deliberations and consistent with the philosophy of the Enforcement Policy, Section 3.3, "Violations Identified Because of Previous Enforcement Action," the NRC will consider enforcement discretion for violations with similar root causes (i.e., associated with the NRC Employee Protection Rules) that occur prior to or during implementation of the corrective actions aimed at correcting that specific condition as specified in the CO.
2. The NRC will not cite a violation or issue a civil penalty in connection with the NRC's June 8, 2020, letter to AFRRI.
3. This CO will not count as escalated enforcement in the civil penalty assessment process for future cases as long as the future action is not related to the NRC Employee Protection Rules.

4. The NRC agrees not to pursue any further enforcement action in connection with the NRC's June 8, 2020, letter to AFRRRI.

In the event of the transfer of the operating license of AFRRRI to another entity, the terms and conditions set forth hereunder shall continue to apply to AFRRRI and accordingly survive any transfer of ownership or license.

The Director, Office of Enforcement may, in writing, relax or rescind any of the above conditions upon demonstration by AFRRRI of good cause.

## VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than AFRRRI, may request a hearing within 30 calendar days of the date of issuance of this Confirmatory 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 Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), 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 that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). 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. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at <https://www.nrc.gov/site-help/e-submittals.html>. 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 (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (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 the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at <https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>. A filing is considered complete at the time the document is 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's 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 adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public Web site at <https://www.nrc.gov/site-help/e-submittals.html>, by e-mail to [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 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 stating why there is good cause for not filing electronically and 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, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents 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 <https://adams.nrc.gov/ehd>, unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the *Federal Register* and served on the parties to the hearing.

If a person (other than AFRRRI) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

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 Confirmatory Order should be sustained.

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 V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission

George A. Wilson, Director  
Office of Enforcement

Dated this 19<sup>th</sup> day of November 2020