

justified with sufficient information/documentation for each county proposed in the petition.

(f) If the petition proposes to designate additional counties to an already established HIDTA region, the petition shall include a letter from the Chairman of that HIDTA's Executive Committee indicating that the Executive Committee has reviewed the petition and sets forth its position related to the petition for designation.

(g) Petitions may be submitted to the Executive Office of the President, Office of National Drug Control Policy, Office of State, Local and Tribal Affairs, Washington, DC 20503 via facsimile at (202) 395-6721 or electronic mail at [ondcp\\_hidta@ondcp.eop.gov](mailto:ondcp_hidta@ondcp.eop.gov).

Comments or questions regarding this notice should be directed to Mr. Daniel Grayson, ONDCP Policy Analyst at (202) 395-4582.

### Sec. 3 Processing of Petitions

(a) Acknowledgements of Petitions. Upon receipt of a petition, the Office shall send an acknowledgement letter to the requester to confirm receipt of the petition and provide an assigned number for further reference.

(b) Petitions will be reviewed by the Office on a regular basis. The review will include a recommendation regarding the merit of the petition to the Director by a panel of qualified, independent experts who are designated by the Director.

(c) Notification of merit of petition. After the review is completed the requestor will be notified in writing regarding the disposition of the petition.

(d) The Director, Office of National Drug Control Policy, is solely responsible for making designation and funding decisions relating to the HIDTA Program.

**Edward H. Jurith,**

*General Counsel, Office of National Drug Control Policy.*

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## NUCLEAR REGULATORY COMMISSION

[EA 07-019]

### In the Matter of All Licensees Authorized To 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 1<sup>1</sup> to this Order hold licenses issued in accordance with the Atomic Energy Act of 1954 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.

#### II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, DC, 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

<sup>1</sup> Attachment 1 contains sensitive information and will not be released to the public.

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 2<sup>2</sup> 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 individuals when 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 recognizes that Licensees may have already initiated many measures set forth in Attachment 2 to this Order in response to previously issued advisories or on their own. It is also recognized that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the Licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe use and storage of the sealed sources. Although the additional security measures implemented by the Licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of public health and safety, 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-06-241 or EA-06-289

<sup>2</sup> Attachment 2 contains some requirements that are SAFEGUARDS INFORMATION, and cannot be released to the public, and have therefore been redacted. The remainder of the requirements contained in Attachment 2 that are not SAFEGUARDS INFORMATION will be released to the public.

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-06-241 or EA-06-289 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-06-242 or EA-06-290 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-06-242 or EA-06-290 as applicable) do not need to be fingerprinted again for purposes of being considered for unescorted access.

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 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.

### III

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. The Licensee shall immediately start implementation of the requirements in Attachments 2 and 3 to the Order and shall complete implementation by November 18, 2007, or the first day that radionuclides of concern at or above threshold limits (*i.e.*, high-risk radioactive material), also identified in Attachment 2, are possessed, whichever is later.

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-06-242 or EA-06-290 as applicable), only the NRC-approved reviewing official shall review results from an FBI criminal history records check. 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 Energy Policy Act of 2005 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 Order EA-06-242 or EA-06-290 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. The licensee shall complete implementation of the requirements of Attachments 2 and 3 to this Order by November 18, 2007.

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, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing 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, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Federal and State Materials and

Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to [hearingdocket@nrc.gov](mailto:hearingdocket@nrc.gov) and also to the Office of the General Counsel either by means of facsimile transmission to 301-415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). 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).

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 demanding 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 22nd day of May 2007.

For the Nuclear Regulatory Commission.

**Charles L. Miller,**

*Director, Office of Federal and State Materials and Environmental Management Programs.*

#### **Attachment 1: Service List of Materials Licensees—Redacted**

#### **Attachment 2: Additional Security Measures for Manufacturing and Distribution Materials Licensees (U)—(Revision 1)**

These Additional Security Measures (ASMs) and new requirements are established to delineate licensee responsibility in response to the current threat environment. The following security measures apply to Radioactive Material Manufacturing and Distribution Licensees who, at any given time, possess greater than or equal to the quantities of concern of radioactive material defined in Table 1 (unless the licensee documents the basis for concluding that radioactive material possessed cannot be easily aggregated into quantities in excess of the limits defined in Table 1). As with the additional security measures previously provided to other licensees who possess risk significant radioactive sources, these increased security measures and requirements address licensees who are authorized to possess high-activity radioactive material which poses a high risk to human health if not managed safely and securely.

1. Establish a security zone (or zones). A security zone is an area, determined by the licensee, that provides for both isolation of radioactive material and access control.

a. Only use and store the radioactive material within the established security zone(s); and

b. The licensee shall demonstrate for each security zone, a means to deter, detect and delay any attempt of unauthorized access to licensed material. The security zone is not required to be the same as the restricted area or controlled area, as defined in 10 CFR Part 20 or equivalent agreement state regulations; and

c. Security zones can be permanent or temporary to meet transitory or intermittent business activities (such as during periods of maintenance, source delivery, source replacement, and temporary job sites.). Different isolation/access control measures may be used for periods during which the security zone is occupied versus unoccupied.

2. Control access at all times to the security zone and limit admittance to those individuals who are approved and require access to perform their duties.

3. Implement a system to monitor, detect, assess and respond to

unauthorized entries into or activities in the security zone.

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. Provide a positive measure to detect unauthorized removal of the radioactive material from the security zone; and

c. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

4. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

5. Licensees shall document the basis for concluding that there is reasonable assurance that individuals granted access to safeguards information or unescorted access to the security zone are trustworthy and reliable, and do not constitute an unreasonable risk for malevolent use of the regulated material. "Access" means that an individual could exercise some physical control over the material or device containing radioactive material.

a. The trustworthiness and reliability of individuals shall be determined based on a background investigation. The background investigation shall address at least the past 3 years and, as a minimum, include fingerprinting and a Federal Bureau of Investigation (FBI) criminal history check, verification of work or education references as appropriate to the length of employment, and confirmation of employment eligibility.

b. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 3 to this Order.

c. A reviewing official that the licensee nominated and has been approved by the NRC, in accordance with NRC "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," is the only individual that may make trustworthiness and reliability determinations.

d. Individuals for whom the licensee has not made a determination of

trustworthiness and reliability, based on the appropriate background investigation above, shall be escorted within the security zone to prevent unauthorized access or actions to the licensed radioactive material. The licensee shall also ensure these individuals are clearly identifiable as needing an escort while in the security zone.

6. Before transfer of radioactive materials that exceed the quantities in Table 1, Licensees shall:

a. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

b. [This paragraph contains SAFEGUARDS INFORMATION and will not be publicly disclosed]

c. Assure that the material is shipped to an address authorized in the license and that the address is valid,

d. Verify the address for deliveries to temporary job site, and

e. Document the verification or validation process.

7. For domestic highway and rail shipments of materials in quantities greater than or equal to the quantities in Table 1, per conveyance, the licensee shall:

a. Only use carriers who:

(1) Use established package tracking systems,

(2) Implement methods to assure trustworthiness of drivers,

(3) Maintain constant control and/or surveillance during transit, and

(4) Have the capability for immediate communication to summon appropriate response or assistance.

The licensee shall verify and document that the carrier employs the measures listed above.

b. Coordinate departure and arrival times with the recipient.

c. Immediately initiate an investigation with the carrier and intended recipient If the shipment does not arrive by close of business on the day of the previously coordinated arrival time. Not later than one hour after the time when, through the course of the investigation, it is determined the

shipment has become lost or stolen, the licensee shall notify the appropriate local law enforcement agency, the NRC Operations Center at (301) 816-5100, and the appropriate Agreement State regulatory agency. If after 24 hours of initiating the investigation, the radioactive material cannot be located, it shall be presumed lost and the licensee shall immediately notify the NRC Operations Center and, for Agreement State licensees, the appropriate Agreement State regulatory agency.

d. In addition to a and b above, for highway and rail shipments of material in quantities greater than or equal to 100 times the quantities in Table 1, per conveyance, the licensee shall implement the NRC Order for Additional Security Measures on the Transportation of Radioactive Material Quantities of Concern.

8. For imports and exports of material in quantities greater than the quantities in Table 1, per conveyance, the licensee shall follow the requirements in the Final Rule 10 CFR Part 110, July 1, 2005, (70 FR 37985 and 46066) Export and Import of Radioactive Materials: Security Policies.

9. The licensee shall protect pre-planning, coordinating, and reporting information required by ASM 7 related to shipments of radioactive material, and the radioisotopes identified in Table 1 as sensitive information (proprietary business financial or confidential). Licensees shall restrict access to this information to those licensee and contractor personnel with a need to know. Licensees shall require all parties receiving this information to protect it similarly. Information may be transmitted either in writing or electronically and shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

10. The licensee shall maintain all documentation required by these ASMs for a period of not less than three (3) years after the document is superseded or no longer effective.

TABLE 1.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern <sup>1</sup> (TBq)	Quantity of concern <sup>2</sup> (Ci)
Am-241 .....	0.6 .....	16
Am-241/BE .....	0.6 .....	16
Cf-252 .....	0.2 .....	5.4
Cm-244 .....	0.5 .....	14
Co-60 .....	0.3 .....	8.1
Cs-137 .....	1 .....	27
Gd-153 .....	10 .....	270
Ir-192 .....	0.8 .....	22
Pm-147 .....	400 .....	11,000

TABLE 1.—RADIONUCLIDES OF CONCERN—Continued

Radionuclide	Quantity of concern <sup>1</sup> (TBq)	Quantity of concern <sup>2</sup> (Ci)
Pu-238 .....	0.6 .....	16
Pu-239/Be .....	0.6 .....	16
Ra-226 <sup>3</sup> .....	0.4 .....	11
Se-75 .....	2 .....	54
Sr-90 (Y-90) .....	10 .....	270
Tm-170 .....	200 .....	5,400
Yb-169 .....	3 .....	81
Combinations of radioactive materials listed above <sup>4</sup> .....	See Footnote Below <sup>5</sup> .	

<sup>1</sup> The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

<sup>2</sup> The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

<sup>3</sup> The Atomic Energy Act, as amended by the Energy Policy Act of 2005, authorizes NRC to regulate Ra-226 and NRC is in the process of amending its regulations for discrete sources of Ra-226.

<sup>4</sup> Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

<sup>5</sup> If several radionuclides are aggregated, the sum of the ratios of the activity of each source,  $i$  of radionuclide,  $n$ ,  $A_{i(n)}$ , to the quantity of concern for radionuclide  $n$ ,  $Q_{(n)}$ , listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) / (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) / (quantity of concern for radionuclide B)] + etc. . . .  $\geq 1$ .

*Guidance for Aggregation of Sources*

NRC supports the use of the International Atomic Energy Association's (IAEA) source categorization methodology as defined in IAEA Safety Standards Series No. RS-G-1.9, "Categorization of Radioactive Sources," (2005) (see [http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf)) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see [http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf)). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in Table 1.) and Category 3, the smallest (equal or exceeding one-tenth the quantity of concern values listed in Table 1.). Additional security measures apply to sources that are equal to or greater than the quantity of concern values listed in Table 1, plus aggregations of smaller sources that are equal to or greater than the quantities in Table 1. Aggregation only applies to sources that are collocated.

Licensees who possess individual sources in total quantities that equal or exceed the Table 1 quantities are required to implement additional security measures. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table 1 values, licensees are to implement additional security measures.

Some source handling or storage activities may cover several buildings, or several locations within specific buildings. The question then becomes, "When are sources considered collocated for purposes of aggregation?" For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci), and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields:  $(0.12 \div 0.2) + (0.18 \div 0.3) + (0.3 \div 0.6) = 0.6 + 0.6 + 0.5 = 1.7$ . Therefore, the sources would require additional security measures.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require additional security measures, regardless of location, because they each exceed the quantities in Table 1.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require additional security measures while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage—"operations" (active source usage) and "shutdown" (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require additional security measures for each location.

Use the following method to determine which sources of radioactive material require implementation of the Additional Security Measures (ASMs):

- Include any single source equal to or greater than the quantity of concern in Table
- Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern
- For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) / (quantity of concern of radionuclide A)] + [(amount of radionuclide B) / (quantity of concern of radionuclide B)] + etc..... $\geq 1$

**Attachment 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**

*General Requirements*

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to safeguards information (SGI) or unescorted access to radioactive materials equal to, or greater than, the quantities listed in Attachment 2 to this Order. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in this Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints for access to SGI or unescorted access need not be taken if an employed individual (*e.g.*, a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59 for access to SGI or 10 CFR 73.61 for unescorted access, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for either of the latter two cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI or unescorted access to radioactive materials associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of this Order, in making a determination whether to grant, or continue to allow,

access to SGI or unescorted access to radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order.

*Prohibitions*

A Licensee shall not base a final determination to deny an individual access to radioactive materials solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

*Procedures for Processing Fingerprint Checks*

For the purpose of complying with this Order, Licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to [forms@nrc.gov](mailto:forms@nrc.gov). Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the

fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

*Right To Correct and Complete Information*

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged

deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (*i.e.*, law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order, the Licensee shall provide the individual its documented basis for denial. Access to SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order shall not be granted to an individual during the review process.

#### *Protection of Information*

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI or unescorted access to radioactive

materials equal to or greater than the quantities used in Attachment 2 to this Order. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or denial to access SGI or unescorted access to radioactive materials equal to or greater than the quantities used in Attachment 2 to this Order. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

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## **NUCLEAR REGULATORY COMMISSION**

[EA-07-003]

### **In the Matter of Certain Licensees Authorized To Possess and Transfer Items Containing Radioactive Material Quantities of Concern; Order Imposing Additional Security Measures (Effective Immediately)**

#### **I**

The Licensees identified in Attachment A<sup>1</sup> to this Order, hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) or an Agreement State, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30, 32, 70 and 71, or equivalent Agreement State regulations. The

<sup>1</sup> Attachment A contains sensitive information and will not be released to the public.

licenses authorize them to possess and transfer items containing radioactive material quantities of concern. This Order is being issued to all such Licensees who may transport radioactive material quantities of concern under the NRC's authority to protect the common defense and security, which has not been relinquished to the Agreement States. The Orders require compliance with specific additional security measures to enhance the security for transport of certain radioactive material quantities of concern.

#### **II**

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, 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 Licensees in order to strengthen Licensees' capabilities and readiness to respond to a potential attack on this regulated activity. 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 the current security measures. In addition, the Commission commenced a comprehensive review of its safeguards and security programs and requirements.

As a result of its initial consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain security measures are required to be implemented by Licensees as prudent, interim measures to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment B<sup>2</sup> of this Order, on all Licensees identified in Attachment A of this Order. These additional security measures, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. Attachment C of this

<sup>2</sup> Attachment B contains some requirements that are SAFEGUARDS INFORMATION, and can not be released to the public, and have therefore been redacted. The remainder of the requirements contained in Attachment B that are not SAFEGUARDS INFORMATION will be released to the public.