

postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled, "Planned Special Exposures," is temporarily identified by its task number, DG-8032, which should be mentioned in all related correspondence. DG-8032 is a proposed Revision 1 of Regulatory Guide 8.35, dated June 1992.

In the revised Title 10, of the *Code of Federal Regulations*, Part 20, "Standards for Protection Against Radiation" (10 CFR Part 20), (10 CFR 20.1201(b) and 10 CFR 20.1206, "Planned Special Exposures," provide the conditions and limits for planned special exposures (PSEs) of adult workers (*i.e.*, doses in addition to and accounted for separately from the doses received under the limits specified in 10 CFR 20.1201, "Occupational Dose Limits for Adults." In addition, 10 CFR 20.2104(b) and 10 CFR 20.2104(e)(2) specify the requirements for obtaining prior occupational dose information, and 10 CFR 20.2105, "Records of Planned Special Exposures," and 10 CFR 20.2106, "Records of Individual Monitoring Results," specify the requirements for exposure and monitoring records applicable to PSEs. The requirements for reporting PSEs appear in 10 CFR 20.2202(e) and in 10 CFR 20.2204, "Reports of Planned Special Exposures."

This regulatory guide provides guidance on the conditions and prerequisites for permitting PSEs allowed by 10 CFR Part 20, the associated specific monitoring and reporting requirements, and examples of acceptable means of satisfying these requirements.

## II. Further Information

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC-2009-0556 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site [Regulations.gov](http://www.Regulations.gov). Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they

should not include any information in their comments that they do not want publicly disclosed.

*Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2009-0556. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2009-0556.

Requests for technical information about DG-8032 may be directed to the NRC contact, Mohammad S. Saba at (301) 251-7558 or e-mail to [Mohammad.Saba@nrc.gov](mailto:Mohammad.Saba@nrc.gov).

Comments would be most helpful if received by March 11, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG-8032 are available through the NRC's public Web

site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections/>. Electronic copies are also available in ADAMS (<http://www.nrc.gov/reading-rm/adams.html>), under Accession No. ML09177035.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4205, by fax at (301) 415-3548, and by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 7th day of December 2009.

For the Nuclear Regulatory Commission.

**Harriet Karagiannis,**

*Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. E9-29655 Filed 12-11-09; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[EA-09-205; NRC-2009-0544]

### In the Matter of Licensees Authorized To Possess Radioactive Material Quantities of Concern; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material (Effective Immediately)

#### I

The Licensees identified in Attachment A to the Increased Controls (IC) Order (EA-09-204) hold licenses issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and which may possess items containing radioactive materials in quantities of concern.

Section 149 of the AEA, as amended by Section 652 of the Energy Policy Act of 2005, requires fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records checks for "any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and

security as to warrant fingerprinting and background checks.” Pending the completion of rulemaking, the NRC is issuing this Order to implement these requirements, of the AEA and the Energy Policy Act of 2005, because a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern has the potential to result in significant adverse impacts to the public health and safety.

These additional requirements do not apply to individuals or classes of individuals who, under 10 CFR 73.61, are relieved from the fingerprinting, identification, and records check requirements of Section 149 of the AEA, as amended by Section 652 of the Energy Policy Act of 2005. In addition, because the individuals listed in Attachment 1, Paragraph 3 to this Order have already satisfied the fingerprinting, identification, and records check requirements, these individuals do not need to take additional action in response to this Order.

## II

The IC Order (EA-09-204) requires Licensees to increase control over their sources in order to prevent unintended radiation exposure and malicious acts. One specific requirement imposed by the IC Order is that each Licensee conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. The Commission has determined that radioactive materials possessed by the licensees listed in Attachment A of the IC Order are of such significance to public health and safety as to warrant fingerprinting and FBI identification and criminal history records checks for such persons. Therefore, in accordance with Section 149 of the AEA and the Energy Policy Act of 2005, the Commission is imposing the requirements set forth in this Order on all licensees identified in Attachment A of the IC Order, which are currently authorized to possess radioactive materials in quantities of concern. These requirements include the specific fingerprinting and criminal history records check requirements specified in Attachment 1 to this Order. All requirements will remain in effect until the Commission determines otherwise.

Because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, under 10 CFR 2.202, the NRC finds that the public health and safety

require that this Order be effective immediately.

## III

Accordingly, pursuant to Sections 81, 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 Parts 30, 33, 40 and 50, *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

1. The Licensee shall, within ninety (90) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 1 of this Order for individuals that require unescorted access to certain radioactive materials.

2. Within twenty five (25) days of the date of this Order, the Licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in Table 1 of Attachment B of the IC Order) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.

3. The Licensee shall, in writing, within twenty five (25) days of the date of this Order, notify the Commission, (1) If it is unable to comply with any of the requirements described in this Order or in Attachment 1 to this Order, (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 regulation or its license. The notification shall provide the Licensee’s justification for seeking relief from or variation of any specific requirement.

4. The Licensee shall complete implementation of the program established in accordance with paragraph A.1 within ninety (90) days of the date of this Order. In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Commission within twenty-five (25) days after they have achieved full compliance with the requirements described in Attachment 1 to this Order. If within ninety (90) days of the date of this Order, the Licensee is unable, due to circumstances beyond its control, to complete implementation of this Order,

the Licensee shall submit a written request to the Commission explaining the need for an extension of time to implement the requirements. The request shall provide the Licensee’s justification for seeking more time to comply with the requirements of this Order.

Licensees shall notify the NRC’s Headquarters Operations Office at 301-816-5100 within 24 hours if the results from an FBI identification and criminal history records check indicate that an individual is identified on the FBI’s Terrorist Screening Data Base.

### B

1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Attachment B to the IC Order in accordance with the requirements of IC.1. of the IC Order and the requirements of this Order.

2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.1. of the IC Order before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.

C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this Order to that person.

D. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the “Protection of Information” section of Attachment 1 of this Order and in requirement IC.5 of the IC Order.

E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, within ninety (90) days of the date of this Order based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the IC Order to continue to have unescorted access, pending a decision by the T&R Official. After ninety (90) days of the date of this Order, no individual may have unescorted access to radioactive materials without a determination by the T&R Official (based upon fingerprinting, an FBI identification and

criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

F. These requirements do not apply to radioactive material contained in spent nuclear fuel.

Licensee responses to A.1, A.2., A.3. and A.4., above shall be submitted to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as "Withhold Under 10 CFR 2.390."

The Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

#### IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within twenty five (25) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within twenty five (25) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Division of Waste Management and Environmental Protection, 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. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other

document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, (72 FR 49139, Aug. 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public website at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the website, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's on-line, web-based submission form. In order to serve documents through EIE, users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the

installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta-System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta-System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have 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 requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery

service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. 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 works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty-five (25) 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 23rd day of November 2009.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

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

#### **Attachment A:—Increased Controls Licensee List**

EA-09-204

*Dresden 1*

Exelon Generation Company, LLC  
License No.: DPR-2  
Docket No. : 050-00010

*Fermi 1*

Detroit Edison Company  
License No.: DPR-9  
Docket No. : 050-00016

*GE BWR*

General Electric Company  
License No.: DPR-1  
Docket No. : 050-00018

*Humboldt 3*

Pacific Gas and Electric Company  
License No.: DPR-7  
Docket No.: 050-00133

*Indian Point-1*

Entergy Nuclear Operations  
License No.: DPR-5  
Docket No.: 050-00003

*Lacrosse*

Dairyland Power Cooperative  
License No.: DPR-45  
Docket No.: 050-00409

*Millstone 1*

Dominion Nuclear Connecticut, Inc.

*License No.: DPR-21*

Docket No.: 050-00245

*Nuclear Ship Savannah*

U. S. Department of Transportation  
License No.: NS-1  
Docket No.: 050-00238

*Peach Bottom 1*

Exelon Nuclear  
License No.: DPR-12  
Docket No.: 050-00171

*Rancho Seco*

Sacramento Municipal Utility District  
License No.: DPR-54  
Docket No.: 050-00312

*San Onofre 1*

Southern California Edison  
License No.: DPR-13  
Docket No.: 050-00206

*TMI 2*

FirstEnergy Corporation  
License No.: DPR-73  
Docket No.: 050-00320

*Zion 1 & 2*

Exelon Generation Company, LLC  
License No.: DPR-39 and DPR-48  
Docket No.: 050-00295 and 050-00304

#### **Attachment 1: Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks**

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Attachment B to the IC Order (EA-09-204). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in the subject 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 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 73.61, or any person who has been favorably decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part

555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program<sup>1</sup>) within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation<sup>2</sup>). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material 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. Additionally, the Licensee shall submit a certification of the trustworthiness and reliability of the T&R Official as determined in accordance with paragraph B.2 of this Order. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the IC Order, in making a determination whether to grant unescorted access to certain radioactive materials.

5. 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 unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Attachment B.

6. The Licensee shall document the basis for its determination whether to grant, or continue to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in Attachment B.

#### *Prohibitions*

A Licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material 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.

<sup>1</sup> The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

<sup>2</sup> This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

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.

#### *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 Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod.D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 (as set forth in 28 CFR Part 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 CJIS 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 identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination 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 unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material 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 unescorted access to certain radioactive material. 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 check 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 from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). 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.

[FR Doc. E9-29653 Filed 12-11-09; 8:45 am]

BILLING CODE 7590-01-P

## **NUCLEAR REGULATORY COMMISSION**

[EA-09-204; NRC-2009-0543]

### **In the Matter of: Licensees Authorized To Possess Radioactive Material Quantities of Concern; Order Imposing Increased Controls (Effective Immediately)**

#### **I**

The Licensees identified in Attachment A 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) authorizing them to possess certain quantities of radioactive material of concern. Under NRC regulations, Licensees must take measures to ensure the security and control of such material. Among these regulations, 10 CFR 20.1801 requires Licensees to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas, while 10 CFR 20.1802 requires Licensees to control and maintain constant surveillance of licensed material that is in a controlled