

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.

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## **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

or unrestricted area and that is not in storage.

## II

Prior to the terrorist attacks of September 11, 2001 (9/11), several national and international efforts were underway to address the potentially significant health and safety hazards posed by uncontrolled sources. These efforts recognized the need for increased control of high-risk radioactive materials to prevent both inadvertent and intentional unauthorized access, primarily due to the potential health and safety hazards posed by the uncontrolled material. Following 9/11, it was recognized that these efforts should also include a heightened awareness and focus on the need to prevent intentional unauthorized access due to potential malicious acts. These efforts, such as the International Atomic Energy Agency Code of Conduct on the Safety and Security of Radioactive Sources concerning Category 1 and 2 sources, sought to increase the control over sources in order to prevent both unintended radiation exposure and malicious acts.

A Licensee's loss of control of high-risk radioactive sources, whether it be inadvertent or through a deliberate act, has the potential to result in significant adverse health impacts and could reasonably constitute a threat to the public health and safety. For this reason, the Commission has determined that Licensees must implement certain additional controls in order to ensure adequate protection of, and minimize danger to, public health and safety. These additional controls supplement existing requirements in the NRC's regulations, including the requirements in 10 CFR 20.1801 and 10 CFR 20.1802. The Commission is imposing the requirements set forth in Attachment C on decommissioning reactor Licensees who possess, or who plan to acquire in the near future, radionuclides of concern at or above threshold limits identified in Table 1. These requirements will remain in effect until the Commission modifies its regulations to reflect increased controls.

The Commission recognizes that Licensees may have already initiated many controls set forth in Attachment C to this Order in response to previously issued advisories or on their own initiative. The Commission also recognizes that some controls may not be possible or necessary at some sites, and that certain controls may need to be tailored to accommodate the Licensees' specific circumstances, achieve the intended objectives, and avoid any

unforeseen adverse effect on the safe use and storage of licensed material.

To provide assurance that the Licensees are implementing prudent measures to achieve a consistent level of control, all Licensees who hold licenses issued by the NRC authorizing possession of radioactive material quantities of concern, as listed in Table 1, "Radionuclides of Concern" (Attachment B, Table 1), shall implement the requirements identified in Attachment C to this Order. In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse health impacts associated with failure to control high-risk radioactive sources, the NRC finds that the public health, safety, and interest require that this Order be effective immediately.

## III

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations, including regulations in 10 CFR Parts 2, 20, 30, 33, 40 and 50, *IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT A TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS OF THIS ORDER AS FOLLOWS:*

A. The Licensee shall comply with the requirements described in Attachment C to this Order. The Licensee shall complete implementation within ninety (90) days of the date of this Order, or the first day that radionuclides of concern at or above threshold limits, identified in Table 1, are possessed, whichever occurs later.

B.1. 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 Attachment C, (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.

B.2. If the Licensee considers that implementation of any of the requirements described in Attachment C to this Order would adversely impact safe operation of the facility, the Licensee must notify the Commission, in writing, within twenty-five (25) 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 the Attachment C 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. The Licensee shall, within twenty-five (25) days of the date of this Order, submit to the Commission a schedule for completion of each requirement described in Attachment C.

C.2. The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in Attachment C.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission modifies its regulations to reflect increased controls.

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

Licensee responses to Conditions B.1, B.2, C.1, and C.2 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. In addition, Licensee's responses shall be marked as "Withhold From Public Disclosure Under 10 CFR 2.390."

The Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental 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 five (25) days of the date of this Order. 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). 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 must be made in writing to the Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental 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 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, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental 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 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 be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 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).

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 Web site 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 Web site, 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.

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-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 B**

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
Pu-238 .....	0.6 .....	16
Pu-239/Be .....	0.6 .....	16
Ra-226 .....	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>3</sup> .....	See Footnote Below <sup>4</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>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>4</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. \* \* \* ≥ 1

### Attachment C—Increased Controls for Licensees That Possess Sources Containing Radioactive Material Quantities of Concern

The purpose of the increased controls (IC) for radioactive sources is to enhance control of radioactive material in quantities greater than or equal to values described in Table 1, to reduce the risk of unauthorized use of radioactive materials, through access controls to aid prevention, and prompt detection, assessment, and response to mitigate potentially high consequences that would be detrimental to public health and safety. These increased controls for radioactive sources are established to delineate licensee responsibility to maintain control of licensed material and secure it from unauthorized removal or access. The following increased controls apply to licensees which, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Table 1.

IC 1. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references, and fingerprinting and the review of an FBI

identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e., seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

c. All individuals requiring access to radioactive material quantities of concern or devices shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. In the case of a service provider's employee, the licensee shall obtain from the service provider written verification attesting to or certifying the employee's trustworthiness and reliability before granting unescorted access.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radioactive material quantities of concern. The licensee shall maintain a list of persons approved for unescorted access to such radioactive material and devices by the licensee.

IC 2. In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, where the delivery or shipment exceeds 100 times the Table 1 values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a Local Law Enforcement Agency (LLEA).

b. The licensee shall have a pre-arranged plan with LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing

with a realistic potential vulnerability of the sources containing such radioactive material. The pre-arranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Pre-arranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between, and among, the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify NRC Operations Center at (301) 816-5100.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

IC 3. a. In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee, for quantities that equal or exceed those in Table 1 but are less than 100 times Table 1 quantities, per consignment, the licensee shall:

1. Use carriers which:
  - A. Use package tracking systems,
  - B. Implement methods to assure trustworthiness and reliability of drivers,
  - C. Maintain constant control and/or surveillance during transit, and
  - D. Have the capability for immediate communication to summon appropriate response or assistance. The licensee shall verify and document that the carrier employ the measures listed above.

2. Contact the recipient to coordinate the expected arrival time of the shipment;

3. Confirm receipt of the shipment; and

4. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined the shipment has become lost, stolen, or missing, the licensee shall immediately notify the NRC Operations Center at

(301) 816–5100. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the NRC Operations Center at (301) 816–5100.

b. For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Table 1 per consignment, the licensee shall:

1. Notify the NRC<sup>1</sup>, in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship this material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by NRC.

2. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 3.b.1 shall not apply to future shipments of licensed radioactive material that exceeds 100 times the Table 1 quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

c. If a licensee employs an M&D licensee to take possession at the licensee's location of the licensed radioactive material and ship it under its M&D license, the requirements of 3.a. and 3.b above shall not apply.

d. If the licensee is to receive radioactive material greater than or equal to the Table 1 quantities, per consignment, the licensee shall coordinate with the originator to:

1. Establish an expected time of delivery; and

2. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originator and assist in any investigation.

IC 4. In order to ensure the safe handling, use, and control of licensed material in use and in storage each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Table 1 values, shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

1. that are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

2. that are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, licensees shall also utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee

IC 5. The licensee shall retain documentation required by these increased controls for three years after they are no longer effective:

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after the individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 1.d., or the documented program required by 2, the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

IC 6. Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern, is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information, and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these

requirements. The policies and procedures shall include the following:

1. General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information, protect the information from unauthorized disclosure,

2. Protection of sensitive information during use, storage, and transit,

3. Preparation, identification or marking, and transmission,

4. Access controls,

5. Destruction of documents,

6. Use of automatic data processing systems, and

7. Removal from the licensee's sensitive information category.

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## NUCLEAR REGULATORY COMMISSION

[NRC–2009–0549; Docket No. 50–113]

### Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(B)(5) Concerning Proposed Action To Decommission the University of Arizona Reactor Facility

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the University of Arizona to approve a decommissioning plan dated May 21, 2009, for the University of Arizona Nuclear Reactor Laboratory (Facility License No. R–52) located in Tuscon, Arizona.

In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum, such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site.

Comments should be provided within 30 days of the date of this notice. You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0549 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

<sup>1</sup> Director, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555