

August 21, 2006

EA-06-155

To: Holders of Materials Licenses and All Other Persons Who Seek Access to Safeguards Information

SUBJECT: ISSUANCE OF ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY CHECK REQUIREMENTS FOR ACCESS TO SAFEGUARDS INFORMATION

You have previously received an Order from the U.S. Nuclear Regulatory Commission (NRC or Commission) requiring that you implement Additional Security Measures (ASMs) or Compensatory Measures (CMs) for radioactive materials. The required ASMs or CMs and your implementing procedures were designated as Safeguards Information (SGI) and thus must be protected in accordance with the SGI handling requirements that were imposed by the Order Imposing Requirements for the Protection of Certain Safeguards Information. The SGI Protection Order provided that the SGI that you were provided and generated in response to the ASM or CM Orders were subject to Safeguards Information--Modified Handling (SGI-M) requirements. These requirements were "modified" relative to the requirements in 10 C.F.R. Part 73 that apply to power reactor Licensees to reduce the requirements for storage and communication of the information based on the lower risk than that for power reactors. The requirements of the SGI Protection Order apply to all SGI described in the Order, including the SGI that is subject to the "modified" handling requirements (SGI-M). As part of the previously-issued ASM and CM Orders, you were required to determine that each person who sought access to SGI, in addition to having the requisite need-to-know, is sufficiently trustworthy and reliable. Those Orders include direction and guidance on the specific factors which must be considered when making that determination (see SGI-M guidance accompanying the Orders). The ASM, CM, and SGI Protection Orders continue in effect.

Section 652 of the Energy Policy Act of 2005 (EPAct), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAct amended Section 149 of the AEA to require fingerprinting before anyone is given access, by anyone, to SGI. Section 149, as amended, also requires a Federal Bureau of Investigation (FBI) identification and criminal records history check based on the fingerprints. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (see 10 C.F.R. § 73.59, 71 Fed. Reg. 33,989 (June 13, 2006)), it is unlikely that Licensee employees are excepted from the fingerprinting requirement by the "fingerprinting relief" rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of NRC; members of Congress and certain employees of members of Congress or Congressional Committees, and representatives of the International Atomic Energy Agency (IAEA) or certain foreign government organizations. In addition, the NRC has determined that

individuals who have active federal security clearances or who have a favorably-decided U.S. Government criminal history check within the last five (5) years have already been subjected to fingerprinting and criminal history checks and thus have satisfied the EPAct fingerprinting requirement.

Therefore, the NRC is issuing the enclosed Order (see Enclosure 1) with respect to fingerprinting and criminal history checks for individuals who seek access to SGI. Thus, before a Licensee grants an individual access to SGI (including SGI designated as SGI-M for handling) in the Licensee's possession, the Licensee must submit the fingerprints of those individuals to the NRC for an FBI criminal history check. The results of the FBI criminal history check will be provided to the Licensee and that information must be considered in conjunction with the information obtained in response to the trustworthiness and reliability determination requirements of the previous SGI Orders that were issued after September 2001, in making a determination of whether each individual who has a need-to-know SGI may be given access to SGI (see Attachment 2 to the Order and Enclosure 2 to this letter).

In order to implement the enclosed Fingerprinting Order, Licensees must nominate an individual who will review the results of the FBI criminal history check, in conjunction with the other relevant trustworthy and reliability information obtained from the previous SGI Orders, to make SGI access determinations. This individual, referred to as the "reviewing official," must be someone who previously has been granted access to SGI and who seeks continued access to SGI. Based on the results of the FBI criminal history check, the NRC staff will determine whether this individual may continue to have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. The NRC process that will govern this determination, and the rights of the individual nominated to be the "reviewing official," are described in Enclosure 3 to this letter. Once a reviewing official is approved by the NRC, the reviewing official and only the reviewing official can make SGI access determinations for other Licensee employees who have been fingerprinted and criminal history checked. The reviewing official can only make SGI access determinations for other individuals but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if a Licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he/she can act as a reviewing official.

In the event that the individual nominated as the Licensee's initial reviewing official is not approved by the NRC to have access to SGI, then the individual may appeal this decision by following the procedures in Enclosure 3, and the Licensee may nominate a different individual to be the reviewing official. If the Licensee decides to withdraw the nomination of a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will nonetheless complete the review process to determine access to SGI. If this individual is denied access to SGI by the NRC, he/she may appeal the NRC's decision by following the procedures in Enclosure 3 to this letter.

This Order does not obviate the need for Licensees to continue to meet the requirements of previous Orders, and to maintain the effectiveness of security measures taken in response to the events of September 11, 2001. These requirements, which will remain in effect until the Commission determines otherwise, supplement, but do not replace, existing requirements concerning access to SGI.

Licensees are required to submit fingerprints in accordance with the Order. The current processing fee is \$27.00 per submission and payment must accompany the request. Details regarding fingerprint submittals and payment of fees are found in Attachment 2 to the Order.

In light of the EPA Act change, the Commission has concluded that these additional fingerprinting and FBI criminal history check requirements for access to SGI should be embodied in an Order, consistent with the established regulatory framework. The enclosed Order is effective immediately. These requirements will remain in effect until the Commission determines otherwise.

The enclosed Order requires that all Licensees respond to the Order within twenty (20) days of receipt and implement the requirements of the Order prior to providing access to SGI to any individual. Please contact Ernesto Quiñones (301) 415-0271, eqp@nrc.gov, or **Tomas Herrera** (301) 415-7138, txh1@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order.

Licensee responses to the Order (not fingerprint cards) are required to be submitted to the Director, Office of Nuclear Material Safety and Safeguards, and should be addressed to the attention of Ernesto Quiñones, Mail Stop T8F3. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Office of Nuclear Material Safety and Safeguards
U.S. NRC
Washington, D.C., 20555-0001
Attn: Ernesto Quiñones, Mail Stop T8F3

For delivery services requiring a street address, mail to:

Director, Office of Nuclear Material Safety and Safeguards
U.S. NRC
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738
Attn: Ernesto Quiñones, Mail Stop T8F3

Please include the docket number listed in Attachment 1 in all your correspondence with NRC. In addition, Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 C.F.R. § 2.390." The enclosed Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

Jack R. Strosnider, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information
2. Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History (fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

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