

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
HOLDERS OF MATERIAL LICENSES)
AUTHORIZED TO MANUFACTURE OR)
DISTRIBUTE ITEMS CONTAINING)
RADIOACTIVE MATERIAL OF CONCERN)

EA-06-250

**ORDER IMPOSING FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK
REQUIREMENTS FOR UNESCORTED ACCESS
TO CERTAIN RADIOACTIVE MATERIAL
AND MODIFICATION OF THE ADDITIONAL SECURITY MEASURES
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment 1¹ to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or Agreement States, authorizing them to manufacture or initially transfer items containing radioactive materials for sale or distribution. On August 8, 2005, the Energy Policy Act of 2005 (EPAAct) was enacted. Section 652 of the EPAAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted unescorted access to radioactive materials subject to regulation by the Commission, and which 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. NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to implement the provisions under the EPAAct, which is underway, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has a potential to

¹Attachment 1 contains sensitive information and will not be released to the public.

result in significant adverse impacts to the public health and safety or the common defense and security. Those exempted from fingerprinting requirements under 10 CFR 73.59 (71 Fed. Reg. 33,989 (June 13, 2006)) for access to Safeguards Information² (SGI) are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have a favorably-decided U.S. Government criminal history record check within the last five (5) years, or individuals who have an active federal security clearance (provided in each case that they make available the appropriate documentation), have satisfied the EAct fingerprinting requirement and need not be fingerprinted again. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued a security Order requiring certain Manufacturing and Distribution (M&D) Licensees to implement Additional Security Measures (ASMs) for certain radioactive materials. The requirements imposed by that Order (M&D Order), and measures licensees have developed to comply with that Order, were designated by the NRC as Safeguards Information (SGI) and were not released to the public. One specific ASM, imposed by the M&D Order, required licensees to conduct local background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. "Access" to these radioactive materials means that an individual could exercise some physical control over the material or device. At that time, the NRC did not have the authority, except in the case of power reactor licensees, to require licensees to submit fingerprints for an FBI criminal history records checks of individuals

²Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

being considered for unescorted access to radioactive materials subject to NRC regulations. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order, who possess risk-significant radioactive materials equal to or greater than the quantities listed in Attachment 3 to this Order. These requirements will remain in effect until the Commission determines otherwise.

This Order also modifies the M&D Order (EA-03-225 or EA-05-126M), to reflect recent Commission regulatory actions. The ASMs for M&D Licensees are modified to be consistent with (1) the “Order Imposing Additional Security Measures on the Transportation of Radioactive Materials Quantities of Concern” (EA-05-006), (2) the final rule on the Export and Import of Radioactive Material: Security Policies (70 Fed. Reg. 37985 and 46066), dated July 1, 2005, (3) the Order Imposing Increased Controls (EA-05-090), and (4) the International Atomic Energy Agency (IAEA) Code of Conduct on the Safety and Security of Radioactive Sources.

In addition, pursuant to 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, 149, 161b, 161i, 161o, 182, and 186 of the AEA 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 SET FORTH IN THIS ORDER.

- A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:
1. The Licensee shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program that meet the requirements of Attachment 2 to this Order, for unescorted access to radioactive materials that equal or exceed the quantities listed in Attachment 3 to this Order.
 2. The Licensee shall, in writing, within **twenty (20) days** of the date of this Order, notify, the Commission, (1) receipt and confirmation that compliance with the Order will be achieved, or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
- B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information" (EA-06-155), issued on August 21, 2006, 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 listed in Attachment 3 to this Order. Fingerprinting and the FBI identification and criminal history records check are not required for individuals that are exempted from fingerprinting requirements under 10 CFR 73.59 [71 Fed. Reg. 33,989 (June 13, 2006)] for access to SGI. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or individuals who 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 EPAAct fingerprinting requirement and need not be fingerprinted again.

- C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official under Order EA-06-155 do not need to be fingerprinted again.

- D. The Licensee may allow any individual who currently has unescorted access to radioactive materials, in accordance with the M&D 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 3 to this

Order. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by **January 15, 2007**.

E. The ASMs of the M&D Order are modified as follows:

1. ASM 7.d. is superseded in its entirety by Order EA-05-006.
2. ASM 8. is superseded by 10 CFR Part 110 - Export and Import of Nuclear Equipment and Material [see also Final Rule 10 CFR Part 110, dated July 1, 2005 (70 FR 37985 and 46066) - Export and Import of Radioactive Material: Security Policies].
3. "Table A: Radionuclides of Concern" is superseded by Attachment 3 to this Order.
4. The requirement for a local criminal history check in ASM 5.a. is superseded by the FBI criminal history records check. All other requirements in ASM 5.a. are still applicable.

Licensee responses to Condition A.2. 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 responses shall be marked as "Security-Related Information - Withhold Under 10 CFR 2.390."

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 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, 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, 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 delays 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 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. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the

manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

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 as specified above in Section III 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 as specified above 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 17th day of October 2006

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Charles L. Miller, Director
Office of Federal and State Materials
and Environmental Management Programs

Attachments:

1. List of Applicable Materials Licenses
2. Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Unescorted Access to Radioactive Materials
3. Table A: Radionuclides of Concern