

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

LOUISIANA ENERGY SERVICES, L.P.)	EA-06-264
(NATIONAL ENRICHMENT FACILITY))	Docket No.: 70-3103
AND ALL OTHER PERSONS WHO)	License No.: SNM-2010
SEEK OR OBTAIN ACCESS TO)	
SAFEGUARDS INFORMATION)	
DESCRIBED HEREIN)	

**ORDER IMPOSING FINGERPRINTING
AND CRIMINAL HISTORY CHECK REQUIREMENTS
FOR ACCESS TO SAFEGUARDS INFORMATION
(EFFECTIVE IMMEDIATELY)**

I

Louisiana Energy Services, L.P. (LES) holds a license, issued in accordance with the Atomic Energy Act (AEA) of 1954, by the U.S. Nuclear Regulatory Commission (NRC), authorizing it to construct and operate a uranium enrichment facility in Lea County, New Mexico. 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 to be permitted to have access to Safeguards Information (SGI)¹. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EPAAct. The EPAAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [see 10 CFR 73.59, 71 *Federal Register* 33989 (June 13, 2006)].

¹Safeguards 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.

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 the NRC; members of Congress and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any person², from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement States.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures (ASMs) or Interim Compensatory Measures (ICMs) for certain radioactive materials. The requirements imposed by these Orders, and certain measures that licensees have developed to comply with the Orders, were designated by the NRC as SGI. For some materials licensees, the storage and handling requirements for the SGI have been modified from the existing 10 CFR Part 73 SGI

² Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

requirements for reactors and fuel cycle facilities that require a higher level of protection; such SGI is designated as Safeguards Information-Modified Handling (SGI-M). However, the information subject to the SGI-M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPA Act amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, as required by existing Orders, which remain in effect, no person may have access to SGI unless the person has an established need-to-know, and satisfies the trustworthiness and reliability requirements of those Orders.

In order to provide assurance that LES is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, LES shall implement the requirements of this Order. 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 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR PART 30, 10 CFR PART 40, 10 CFR PART 70, and 10 CFR PART 73, IT

IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT LES AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO SAFEGUARDS INFORMATION DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

- A.
 - 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted or has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 *Federal Register* 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in each case that the appropriate documentation is made available to LES's NRC-approved reviewing official.
 - 2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.
- B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. LES shall comply with the following requirements:

1. LES shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.
2. LES shall, within **twenty (20) days** of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, who continues to need access to SGI, and who LES nominates as the “reviewing official” for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as LES’s reviewing official.³ LES may, at the same time or later, submit the fingerprints of other individuals to whom LES seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.
3. LES may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthiness and reliability determination) that the individual may

³The NRC’s determination of this individual’s access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

continue to have access to SGI. LES shall make determinations on continued access to SGI within **ninety (90) days** of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. LES shall, in writing, within **twenty (20) days** of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in the Order, including the Attachment, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide LES's justification for seeking relief from or variation of any specific requirement.

Licensee responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, 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 Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions on demonstration of good cause by LES.

IV.

In accordance with 10 CFR 2.202, LES must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing regarding 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 an extension of time in which to submit an answer or request a hearing must be made in writing to

the Director, Office of Nuclear Material Safety and Safeguards, 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 by which LES or other entities adversely affected rely, 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 shall also be sent to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to LES if the answer or hearing request is by a person other than LES. 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 via 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 via e-mail to OGCMailCenter@nrc.gov. If an entity other than LES requests a hearing, that entity shall set forth, with particularity, the manner in which their 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 LES 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 a such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), LES may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer set aside the immediate effectiveness of the Order on the grounds 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 20th day of December 2006

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

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

Attachment:
Requirements for Fingerprinting and
Criminal History Checks of Individuals
When Licensee's Reviewing Official
is Determining Access to Safeguards
Information