[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Docket No. 72-20

EA-07-124

In the Matter of DEPARTMENT OF ENERGY - IDAHO OPERATIONS OFFICE
THREE MILE ISLAND UNIT 2
INDEPENDENT SPENT FUEL STORAGE INSTALLATION
MODIFYING LICENSE (EFFECTIVE IMMEDIATELY)
NUCLEAR REGULATORY COMMISSION

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Unescorted Access to Certain Spent Fuel Storage Facilities.

FOR FURTHER INFORMATION, CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492-3316; fax number: (301) 492-3348; e-mail: lrw@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.202, NRC (or the Commission) is providing notice, in the matter of Three Mile Island Unit 2 (TMI-2) Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I

The NRC has issued a specific license, to the Department of Energy, Idaho Operations Office (DOE-ID), authorizing storage of spent fuel in an ISFSI in accordance with the Atomic Energy Act (AEA) of 1954 as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149, of the AEA, to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any individual who is permitted unescorted access to radioactive material or other property subject to regulation by the Commission, 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. The Commission has determined that spent fuel storage facilities meet the requisite threshold warranting these additional measures. Though a rulemaking to implement the fingerprinting provisions of the EPAct is currently underway, the NRC has decided to implement this particular requirement by Order, in part, prior to the completion of the rulemaking because a deliberate malevolent act by an individual with unescorted access to spent fuel storage facilities has a potential to 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 73.61 [72 *Federal Register* 4945 (February 2, 2007)] are also exempt from the fingerprinting requirements under this Order. In addition, individuals who have had a favorable decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearance (provided in either case that they make available the appropriate

documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Also, individuals who have been fingerprinted and granted access to Safeguards Information (SGI) by the reviewing official under the previous fingerprinting order, "Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information" (EA-06-298) do not need to be fingerprinted again.

Subsequent to the terrorist events of September 11, 2001, the NRC issued security Orders requiring certain entities to implement Interim Compensatory Measures (ICMs) and Additional Security Measures (ASMs) for certain radioactive material. The requirements imposed by these Orders and the measures licensees have developed to comply with these Orders, were designated by the NRC as SGI and were not released to the public. These Orders included a local criminal history records check to determine trustworthiness and reliability of individuals seeking unescorted access to spent fuel storage facilities. "Access" means that an individual could exercise some physical control over the material or device. In accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing FBI criminal history records check requirements, as set forth in the Order for all individuals allowed unescorted access to protected areas, secure areas, and critical target areas, for certain spent fuel facility licensees. These requirements will remain in effect until the Commission determines otherwise. 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.

II

Accordingly, pursuant to Sections 51, 53, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR SPECIFIC LICENSE IS MODIFIED AS FOLLOWS:

A. DOE-ID 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, for unescorted access to spent fuel storage facilities.

B. DOE-ID shall, in writing, within **twenty (20) days** from the date of this Order, notify the Commission: (1) of receipt and confirmation that compliance with the Order will be achieved, (2) if unable to comply with any of the requirements described in the Attachment, or (3) if compliance with any of the requirements are unnecessary in its specific circumstances. The notification shall provide DOE-ID's justification for seeking relief from, or variation of, any specific requirement.

C. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," only an NRC-approved reviewing official shall review the results of a FBI criminal history records check. The reviewing official shall determine whether an individual may have, or continue to have, unescorted access to spent fuel storage facilities. Fingerprinting and the FBI identification and criminal history records check are not required for individuals who are exempted from fingerprinting requirements under 10 CFR 73.61 [72 *Federal Register* 4945 (February 2, 2007)]. In addition, individuals who have had a favorably

decided U.S. Government criminal history records check within the last five (5) years, or have an active Federal security clearance (provided in each case that the appropriate documentation is made available to DOE-ID's reviewing official), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again.

D. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order. Individuals who have been fingerprinted and granted access to SGI by the reviewing official, under the NRC's Order No. EA-06-298 do not need to be fingerprinted again for purposes of authorizing unescorted access. No person may have access to SGI or unescorted access to any radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to radioactive material or property subject to regulation by the NRC.

E. DOE-ID may allow any individual who currently has unescorted access to spent fuel storage facilities, in accordance with the ICM and ASM Security Orders, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthiness and reliability determination) that the individual may continue to have unescorted access to spent fuel storage facilities. DOE-ID shall complete implementation of the requirements of the Attachment to this Order within **ninety (90) days** from the date of issuance of this Order.

DOE-ID responses to Condition B. 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 are security-related information or official use only and shall be properly marked.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by DOE-ID.

III

In accordance with 10 CFR 2.202, DOE-ID 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 from the date of this Order. Where good cause is shown, consideration will be given to extending the time, to either submit an answer, or 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 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 for which DOE-ID, or any 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 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 DOE-ID, if the answer or hearing request is by an individual other than DOE-ID. 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 a person other than DOE-ID 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 DOE-ID or an individual whose interest is adversely affected, the Commission will issue an Order designating the time and place of a 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), DOE-ID 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 A HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Michael F. Weber, Director
Office of Nuclear Material
Safety and Safeguards

Dated this 29th day of May 2007.

Attachment

REQUIREMENTS FOR FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECKS OF INDIVIDUALS WHEN LICENSEE'S REVIEWING OFFICIAL IS DETERMINING UNESCORTED ACCESS TO SPENT FUEL STORAGE FACILITIES

General Requirements

Licensees shall comply with the following requirements of this Attachment.

1. Each licensee subject to the provisions of this Attachment shall fingerprint each individual who is seeking or permitted unescorted access to the spent fuel storage facility. The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) 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 for unescorted access, has had a favorably decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history records 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 the spent fuel storage facility 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.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements established by the previous ICM and ASM Security Orders, in making a determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

6. 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 the spent fuel storage facility.

7. The licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access to the spent fuel storage facility.

Prohibitions

A licensee shall not base a final determination to deny an individual access to the spent fuel storage facility solely on information received from the FBI, involving an arrest more than one (1) year old, for which there is no information as to disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history records 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 that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the Nuclear Regulatory Commission's (NRC's) Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to the spent fuel storage facility, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or via e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one resubmission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the resubmission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of

licensee fingerprint submissions. The Commission will directly notify licensees, who are subject to this regulation of any fee changes.

The Commission will forward, to the submitting licensee, all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

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 the record 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 Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 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 Identification Division makes any changes necessary, in accordance with the information supplied by that agency. The licensee must allow at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee may make a final determination for unescorted access to the spent fuel storage facility based on the criminal history records check, only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination for unescorted access to the spent fuel storage facility, the licensee shall provide the individual its documented basis for denial. During this review process for assuring correct and complete information, unescorted access to the spent fuel storage facility shall not be granted to an individual.

Protection of Information

1. Each licensee that obtains a criminal history records check for 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 nor 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 the spent fuel storage facility. No individual authorized to have access to the information may redisseminate 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 records check may be transferred to another licensee if the licensee holding the criminal history record receives the individual's written request to redisseminate 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 NRC representative, to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or denial to unescorted access to the spent fuel storage facility. 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.