

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

TRANSPORTATION CARRIERS/BROKERS) EA No.:
LICENSEES AND ALL OTHER PERSONS)
WHO 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

The Licensees identified in Attachment 1 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), authorizing it to engage in an activity subject to regulation by the Commission.

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

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.

the EAct fingerprinting and criminal history check requirements for access to SGI were immediately effective on enactment of the EAct. Although the EAct 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)], it is unlikely that licensee employees will be 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 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 had 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 person,² from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders

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.

requiring certain entities to implement Additional Security Measures or Interim Compensatory Measures 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. As a carrier of spent nuclear fuel and/or special nuclear material individuals within your company have a need to know and access to SGI during their normal course of business for compliance with 10 CFR 73.

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 EAct, 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, no person may have access to SGI unless the person has an established need-to-know, and satisfies the trustworthiness and reliability requirements described in Attachment 3 to this Order.

To provide assurance that licensees are implementing appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, licensees shall implement the requirements of 10 CFR 73.21 and 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 AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR PART 40, and 10 CFR PART 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT TRANSPORTATION CARRIERS/BROKER LICENSEES AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO SAFEGUARDS INFORMATION AS DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN 10 CFR 73.21 AND THIS ORDER.

- A. 1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, 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 the requirement by 10 CFR 73.59 [71 *Federal Register* 33989 (June 13, 2006)], or who has had 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 the latter two (2) cases that the appropriate documentation is made available to licensees 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. Licensees shall comply with the following requirements:
1. Licensees shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order.
 2. Licensees shall, within **twenty (20) days** of the date of this Order, submit the fingerprints of one (1) individual who: a) the licensee nominates as the “reviewing official” for determining access to SGI by other individuals; and b) has an established need-to-know the information and has been determined to be trustworthy and reliable in accordance with the requirements described in Attachment 3 to this Order. 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 licensee reviewing official.³ Licensees may, at the same time or later, submit the fingerprints of other individuals to whom licensee seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order.
 3. Licensees 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 continue to have access to SGI. Licensees shall make determinations on continued access to SGI within **ninety (90) days** of the date of this Order, in part on the results

³ The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. Licensees 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 Attachment 2; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide licensee justification for seeking relief from, or variation of, any specific requirement.

Licensees responses to C.1., C.2., C.3, and C.4, above shall be submitted to the Director, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensees 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 upon demonstration of good cause by the licensee.

IV

In accordance with 10 CFR 2.202, licensee must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to 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 Nuclear Security and Incident Response, 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 licensee 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 Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to licensee, if the answer or hearing request is by an entity 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 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 the licensee 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 a 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 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 th day of 2007

FOR THE NUCLEAR REGULATORY COMMISSION

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

Attachments:

1. List of Applicable Licensees
2. Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information
3. Trustworthiness and Reliability Requirements for Individuals Handling Safeguards Information