

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

GENERAL ATOMICS
TRIGA Mark I and Mark F

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EA-07-098
Dockets: 50-89, 50-163

**ORDER IMPOSING FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK
REQUIREMENTS FOR UNESCORTED ACCESS
TO THE GENERAL ATOMICS' RESEARCH AND TEST REACTORS
(EFFECTIVE IMMEDIATELY)**

I

General Atomics (GA or the licensee) holds two licenses, R-38 and R-67, for TRIGA reactors, that are classified as research and test reactors (RTRs), issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or the Commission). 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 person who is permitted unescorted access to a utilization facility, which includes the GA RTRs.

II

Prior to September 11, 2001, the Commission established physical protection requirements applicable to RTRs, which included storing and using special nuclear material in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities.

Subsequent to the terrorist events of September 11, 2001, the NRC took various actions to ensure the acceptability of individuals for unescorted access to RTRs. RTRs were advised to

consider taking additional precautions including observation of activities within their facility. Licensee's precautions were evaluated at specific RTR sites during the remainder of 2001. From 2002 through 2004, RTRs implemented compensatory measures (CMs), which included site-specific background investigations or checks. Additionally, in January 2003, NRC sent the names of, and information on, all individuals with unescorted access at RTRs to U.S. intelligence agencies for review. This review found no issues. Individuals with unescorted access since January 2003 have undergone site-specific background investigations or checks, which were implemented as part of CMs implemented at RTRs in response to NRC initiatives.

The RTR site-specific background investigations and checks were established using a graded approach, considering the specific configuration, uses and radiological risk of each facility, to provide acceptable protection of the special nuclear material and any associated radioactive materials. The background investigations and checks, at a minimum, verify identity, nationality, immigration status (if applicable), and determine whether the individual demonstrates a pattern of trustworthy and reliable behavior through facility-specific verification of various aspects of the person's background. This verification includes consideration of educational, military, employment and criminal histories. With regard to criminal history, some of the RTR facilities use FBI fingerprint-based criminal history records checks, while others use either State fingerprint-based criminal history records checks or criminal history records checks which do not include fingerprints. These background investigations or checks, through a combination of various elements, have provided additional assurance for the protection of the specific facility from insider threats.

Further, RTRs are required by Order dated September 29, 2006, to have FBI fingerprint-based identification and criminal history records checks for persons that are allowed access to

Safeguards Information (SGI).¹ These individuals are allowed access to the details of security plans or procedures at the specific facility and, as such, have actual knowledge and ability to affect facility security. This Order provides additional assurance that security information and the associated RTR facilities are adequately protected.

Previously, AEA Section 149 only required fingerprinting and criminal history records checks of persons seeking unescorted access to facilities licensed under Sections 103 and 104b of the AEA (i.e., power reactors). Power reactors are required by 10 CFR 73.57 to have fingerprint-based criminal history records checks performed as part of the granting of unescorted access to the facility. RTRs have not been subject to this requirement, and have only been required to limit access to authorized persons and to screen those persons for access in accordance with their security plans or procedures.

Congress left intact the Commission's authority to relieve persons by rule from the fingerprinting, identification, and criminal history records check requirements of Section 149 of the AEA "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public."² Currently, the NRC does not have a rule that would provide relief from, or require, the implementation of AEA section 149 for fingerprinting for unescorted access to RTRs.

The NRC is planning a rulemaking to reexamine the extent of fingerprint-based criminal history records checks for unescorted access to RTRs to ensure adequate protection of the public health and safety and common defense and security. In the interim, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to provide acceptable, additional assurance that an individual with unescorted access to an RTR

¹"Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)," (EA-06-203) dated September 29, 2006, (71 FR 59140, Oct. 6, 2006) (ML061510049).

²AEA § 149.b.

facility will not adversely impact the common defense and security or the public health and safety. Therefore, in accordance with Section 149 of the AEA, as amended by the EPA Act, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including the Attachment to this Order, on RTR licensees, including GA. These requirements will remain in effect until the Commission determines otherwise.

The AEA requires fingerprint-based criminal history records checks at utilization facilities. Section 11cc of the AEA defines a utilization facility as

- (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or
- (2) any important component part especially designed for such equipment or device as determined by the Commission.

The Commission's rules, in 10 CFR 50.2, define a "[u]tilization facility" as "any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233." Further, "Nuclear reactor" is defined as "an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction." These definitions include the GA RTRs.

For purposes of this Order, an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which

would be of significance to the common defense and security or could adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal. At RTRs, such individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or remove the special nuclear material from the utilization facility in an unauthorized manner without detection, assessment, and response by the physical protection system or related provisions or persons.

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, 104, 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 50 and 10 CFR Part 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT GENERAL ATOMICS SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

A. General Atomics 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 for unescorted access that meets the requirements of the Attachment to this Order.
2. The Licensee shall, in writing, within **twenty (20) days** of the date of this Order, notify the Commission (1) of 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 the Attachment, 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 Records Check Requirements for Access to Safeguards Information (Effective Immediately)" (EA-06-203) issued on September 29, 2006, (71 FR 59140, October 6, 2006), only the NRC-approved reviewing official shall review results from a FBI criminal history records check. In accordance with all other applicable requirements and the evaluation of the results of the FBI criminal history records check as specified in this Order, the reviewing official shall determine whether an individual may have, or continue to have, unescorted access. No person may have access to SGI or unescorted access to any utilization facility, or 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 a utilization facility, or radioactive material or property subject to regulation by the NRC.
- C. 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 NRC-approved reviewing official in accordance with EA-06-203 (September 29, 2006), do not need to be fingerprinted again for purposes of authorizing unescorted access. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or who have an active Federal security clearance have satisfied the EAct fingerprinting requirement and need not be fingerprinted again, provided in each case that the appropriate documentation is made available to the Licensee's reviewing official.

However, all other applicable requirements must be satisfied to allow any individual unescorted access to the facility.

- D. The Licensee may allow any individual who currently has unescorted access, in accordance with applicable requirements, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting and a FBI criminal history records check) that the individual may continue to have unescorted access. The licensee shall complete implementation of the requirements of the Attachment to this Order by **October 30, 2007**.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

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 Material 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 1st day of August 2007

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

George Pangburn, Acting Director
Office of Federal and State Materials
and Environmental Management Programs