

UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of

TRANSNUCLEAR, INC.,	)	EA-08-289
HOLTEC INTERNATIONAL,	)	Docket Nos. 72-1004, 70-1426,
NAC INTERNATIONAL,	)	72-1027, 72-1007, 72-1008,
ENERGYSOLUTIONS CORPORATION,	)	72-1002, 72-1003, 72-1015,
AND ALL OTHER PERSONS WHO SEEK	)	72-1025, and 70-3020
OR OBTAIN ACCESS TO SAFEGUARDS	)	
INFORMATION DESCRIBED HEREIN	)	

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

I

Transnuclear, Inc., Holtec International, NAC International, and EnergySolutions Corporation, have been issued certificates, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), certifying dry cask storage designs in accordance with the Atomic Energy Act of 1954, as amended, (AEA) and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72. These entities will be referred to herein as "the affected vendors." 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).<sup>1</sup> The EAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon 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 *Fed. Reg.* 33,989 (June 13, 2006)], it is unlikely that licensee or certificate holder employees are excepted from the fingerprinting requirement by the “fingerprinting-relief” rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include (a) Federal, State, and local officials and law enforcement personnel; (b) Agreement State inspectors who conduct security inspections on behalf of NRC; (c) members of Congress and certain employees of members of Congress or Congressional Committees; and (d) 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 and certificate holders can obtain and grant access to SGI.<sup>2</sup> This Order also imposes requirements for access to SGI by any person,<sup>3</sup> from

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<sup>1</sup> Safeguards 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.

<sup>2</sup> The storage and handling requirements for certain SGI have been modified from the existing 10 CFR Part 73 SGI requirements 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.

<sup>3</sup> Person means: (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy (DOE), except that the DOE shall be considered a person with respect to those DOE facilities specified in

any person, whether or not a licensee, applicant, or certificate holder of the Commission or Agreement States. The SGI that is the subject of this Order is all SGI including aircraft impact-related data, which will be presented to the affected vendors at a one-day workshop at NRC. This aircraft impact-related information is hereby designated as SGI in accordance with Section 147 of the AEA.

## 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 149 of the AEA requires 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 the information.

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, the affected vendors shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that, in consideration 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 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic

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Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244); (2) 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 (3) any legal successor, representative, agent, or agency of the foregoing.

Energy Act 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 THE AFFECTED VENDORS 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, 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 *Fed. Reg.* 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 the latter two cases, that the appropriate documentation is made available to the affected vendor's NRC-approved reviewing official.
  2. No person may have access to any SGI if NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.
  3. For SGI designated by the Commission as containing aircraft impact-related information, the affected vendor may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that the affected vendor has

implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental agency; and/or enhanced background checks, including employment and credit history. NRC must review these additional measures and approve them in writing. These additional measures are not required for individuals described in this paragraph who are seeking access to SGI that is not related to the aircraft impact-related SGI.

- B. No person may provide SGI to any other person except in accordance with Condition III.A. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.
- C. 1. The affected vendor 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. The affected vendor shall, within **twenty (20) days** of the date of this Order, submit the fingerprints of one (1) individual who needs access to SGI, and who the affected vendor nominates as the “reviewing official” for determining access to SGI by other individuals and has an established need-to-know the information. NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor’s reviewing official.<sup>4</sup> The affected vendor may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

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<sup>4</sup>The 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.

3. The affected vendor 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 trustworthy and reliability determination) that the individual may continue to have access to SGI. The affected vendor 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. The affected vendor 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 the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendor 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, 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 affected vendor.

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, the affected vendor, and any other person adversely affected by this Order, may request a hearing on this Order, within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the affected vendor relies and the reasons as to why the Order should not have been issued. If a person other than the affected vendor requests a hearing, that person shall set forth, with particularity, the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 C.F.R. 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petitions to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which NRC promulgated in August 2007, 72 Fed. Reg. 49139 (August 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver, in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10)

days before the filing deadline, the requestor must contact the Office of the Secretary, by e-mail, at [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov), or by calling (301) 415-1677, to request: (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at <http://www.nrc.gov/site-help/e-submittals/install-viewer.html>. Information about applying for a digital ID certificate is also available on NRC's public website, at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>.

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format, in accordance with NRC guidance, available on the NRC public website, at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m., Eastern Time, on the due date. On receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive, digital ID certificates, before hearing requests are filed, so that they may obtain access to the documents via the E-Filing system.

A person filing electronically may seek assistance through the "Contact-Us" link located on the NRC website at <http://www.nrc.gov/site-help/e-submittals.html>, or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397-4209 or, locally (301) 415-4737.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper filings, requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first-class mail, addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete, by first-class mail, as of the time of deposit in the mail – or by courier, express mail, or expedited delivery service, on depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair-Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the affected vendor 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 affected vendor may, in addition to requesting 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 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 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.

FOR THE NUCLEAR REGULATORY COMMISSION

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

Dated this 28th day of October 2008.

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