

application for amendment dated February 16, 2007, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

For The Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch 1-2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72-20; EA-06-298]

In the Matter of Department of Energy—Idaho Operations Office; Three Mile Island Unit 2 Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

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), Washington, DC 20555-0001. Telephone: (301) 492-3316; fax number: (301) 492-3348; e-mail: lrw@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The attached Immediately Effective Order was issued to the licensee on February 23, 2007. However, due to an administrative error, the Order was not published in the **Federal Register** at the time the Order was issued. Accordingly, this Order is now being published in the

Federal Register to ensure that adequate notice has been given of an opportunity to request a hearing. The effective date of the Immediately Effective Order remains February 23, 2007, and its publication in the **Federal Register** does not impose any new or different requirements on the licensee. Requests for hearing from anyone other than the licensee must be filed within 20 days of the date of publication of this Notice in accordance with Section IV of the Immediately Effective Order. 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 (EPA) was enacted. Section 652 of the EPA 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 EPA fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPA. Although the EPA 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 FR 33989 (June 13, 2006)], it is unlikely that licensee 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 Federal, State, and local officials and law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress

¹ 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.

and certain employees of members of Congress or Congressional Committees; and representatives of the International Atomic Energy Agency (IAEA) 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 EPA fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPA, 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.² This Order also imposes requirements for access to SGI by any person,³ from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

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 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 satisfies all other applicable requirements (e.g., 10 CFR 73.21).

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for

² 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.

³ 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 (DOE), except that the DOE shall be considered a person with respect to those facilities of the DOE 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.

access to SGI, DOE-ID 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 103, 104, 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, parts 72 and 73, *it is hereby ordered, effective immediately, that your specific license is modified as follows:*

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and 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 FR 33989 (June 13, 2006)], or who has a favorably-decided U.S. Government criminal history records 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 DOE-ID's NRC-approved reviewing official.

2. No person may have access to any SGI, if the NRC 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.1. 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.

2. DOE-ID 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, whom continues to need access to SGI, and whom DOE-ID 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 DOE-ID's reviewing official.⁴ DOE-ID 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.

3. DOE-ID 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. DOE-ID shall make determinations on continued access to SGI by May 25, 2007, 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. DOE-ID 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 DOE-ID's justification for seeking relief from, or variation of, any specific requirement.

DOE-ID 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 20555-0001. 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 DOE-ID.

IV

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 within 20 days of the date of the Order. In

⁴ 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.

addition, DOE-ID 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 DOE-ID relies and the reasons as to why the Order should not have been issued. If a person other than DOE-ID requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which became effective on October 15, 2007. The NRC E-Filing Final Rule was issued on August 28, 2007, (72 FR 49139) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical 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 five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at HEARINGDOCKET@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 Web site 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, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site 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. Upon 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 a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the "Contact Us" link located on the NRC Web site 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 a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing 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 upon 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, 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 DOE-ID 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), DOE-ID 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.

Dated this 7th day of November 2007.

Micheal F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

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

General Requirements

Licensees shall comply with the requirements of this attachment.

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). 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 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 73.59, has a favorably decided U.S. Government criminal history 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 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 access to SGI 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 trustworthy and reliability requirements of the previously issued Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

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 access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) an arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee shall not use information received from a criminal history 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 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 access to SGI, 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: (1) writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; (2) calling (301) 415-5877; or (3) 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 from 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 re-submission, 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 re-submission. 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) 415-7739]. 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 that 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 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 it 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 provide 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 SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. A final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee that obtains a criminal history record on 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 or 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 access to SGI. No individual authorized to have access to the information may re-disseminate 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 gaining licensee receives the individual's written request to re-disseminate 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 determination of access to SGI. 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.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 72-9; EA-06-298]

In the Matter of Department of Energy—Idaho Operations Office Fort Saint Vrain Power Station Independent Spent Fuel Storage Installation Modifying License (Effective Immediately)

AGENCY: U. S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information.

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), Washington, DC 20555-0001. Telephone: (301) 492-3316; *fax number:* (301) 492-3348; *e-mail:* lrw@nrc.gov.

SUPPLEMENTARY INFORMATION:

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