

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of

UNIVERSITY OF FLORIDA)	Docket No. 50-83
AND ALL OTHER PERSONS WHO SEEK)	License No. R-56
OR OBTAIN ACCESS TO NEW)	
SAFEGUARDS INFORMATION)	EA-06-190
DESCRIBED HEREIN)	

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

I

The University of Florida (the Licensee) holds a license issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing it to engage in an activity subject to regulation by 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 Investigations (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 EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits

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 Commission by rule to except certain categories of individuals from the fingerprinting requirement, which the Commission has done (see 10 C.F.R. § 73.59, 71 Fed. Reg. 33,989 (June 13, 2006)), it is unlikely that many 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 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 active federal security clearances have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to new SGI², as set forth by this Order, so that the Licensee can obtain new SGI. This Order also imposes requirements for access to new SGI by any person³, from any person, whether or not a Licensee, Applicant or Certificate Holder of the Commission or Agreement States.

II

² “New SGI” means SGI generated subsequent to August 8, 2005, the date of enactment of the EPAct. “New SGI” also means any SGI, regardless of when it was generated, that is being accessed by an individual who has never been previously granted access to SGI.

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, 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.

The Commission has broad statutory authority to protect SGI and prohibit its unauthorized disclosure. Section 147 of the AEA grants the Commission explicit authority to issue such orders as necessary to prohibit the unauthorized disclosure of safeguards information. Furthermore, Section 652 of the EPAct 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 order to provide assurance that the Licensee is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to new SGI, the Licensee shall implement the requirements of this Order. In addition, pursuant to 10 C.F.R. § 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 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 C.F.R. § 2.202, 10 C.F.R. Parts 50 and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT THE LICENSEE AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO NEW SAFEGUARDS INFORMATION, AS DESCRIBED ABOVE, SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

- A. No person may have access to new Safeguards Information unless that person has a need to know the new SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, which has been favorably decided, 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 C.F.R. § 73.59 (71 Fed. Reg. 33,989 (June 13, 2006)) or who has an active federal security clearance.

- B. No person may provide new SGI to any other person except in accordance with condition III.A. above. Prior to sharing new SGI with any other person, a copy of this Order shall be provided to that person.

The Director, Office of Nuclear Reactor Regulation, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 C.F.R. § 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 Nuclear Reactor Regulation, 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 of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be

sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials 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 C.F.R. § 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 C.F.R. § 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.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Bruce A. Boger, Acting Director
Office of Nuclear Reactor Regulation

Dated this 11th day of August 2006