

*Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas*

*Date of amendment request:* February 1, 2006, as supplemented by letter dated May 24, 2006.

*Brief description of amendment:* The amendment revised the Inservice Testing Program in Section 5.5.8 of the Technical Specifications, "Administrative Controls, Programs and Manuals," to adopt the Commission-approved Technical Specification Task Force (TSTF)-479, Revision 0, "Changes to Reflect Revision of 10CFR50.55a."

*Date of issuance:* November 15, 2006.

*Effective date:* Effective as of its date of issuance and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 172.

*Facility Operating License No.* NPF-42. The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* February 28, 2006 (71 FR 10079).

The supplemental letter dated May 24, 2006, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 2006.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this December 26, 2006.

For the Nuclear Regulatory Commission.

**Timothy J. McGinty,**

*Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. E6-22492 Filed 12-29-06; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[EA-06-264]

### In the Matter of Louisiana Energy Services, L.P. National Enrichment Facility 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

Louisiana Energy Services, L.P. (LES) holds a license, issued in accordance with the Atomic Energy Act (AEA) of 1954, by the U.S. Nuclear Regulatory Commission (NRC), authorizing it to construct and operate a uranium enrichment facility in Lea County, New Mexico. 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 to be permitted to have access to Safeguards Information (SGI).<sup>1</sup> 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 on enactment of the EPAct. The EPAct 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)].

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 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 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 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,<sup>2</sup> from any person, whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement States.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures (ASMs) or Interim Compensatory Measures (ICMs) 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. For some materials licensees, the storage and handling requirements for the SGI have been modified from the existing 10 CFR Part 73 SGI requirements for reactors and fuel cycle facilities 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.

#### 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 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 addition, as required by existing Orders, which

<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> 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.

remain in effect, no person may have access to SGI unless the person has an established need-to-know, and satisfies the trustworthiness and reliability requirements of those Orders.

In order to provide assurance that LES is implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, LES shall implement the requirements 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 Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 70, and 10 CFR Part 73, it is hereby ordered, effective immediately, that LES and all other persons who seek or obtain access to safeguards information described herein shall comply with the requirements set forth in 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 **Federal Register** 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 each case that the appropriate documentation is made available to LES's 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. LES shall comply with the following requirements:

1. LES 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. LES 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, who continues to need access to SGI, and who LES 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 LES's reviewing official.<sup>3</sup> LES may, at the same time or later, submit the fingerprints of other individuals to whom LES seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. LES 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. LES 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. LES 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 LES's justification for seeking relief from or variation of any specific requirement.

Licensee 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, licensee responses shall be marked as "Security-

<sup>3</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.

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 on demonstration of good cause by LES.

### IV

In accordance with 10 CFR 2.202, LES must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing regarding 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 an extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, 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 LES 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 Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to LES if the answer or hearing request is by a person other than LES. 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](mailto: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](mailto:OGCMailCenter@nrc.gov). If an entity other than LES 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 LES 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 a such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), LES may, in addition to demanding a hearing, at the time the answer is filed, or sooner, move that the presiding officer 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 20th day of December 2006.

For the Nuclear Regulatory Commission.

**Jack R. Strosnider,**

*Director, Office of Nuclear Material Safety and Safeguards.*

**Attachment: 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 had a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/ employer which granted the federal security clearance or reviewed the criminal history records 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 included in Attachment 3 to this Order, in making a determination 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: an arrest more than one (1) year old for which there is no information of the disposition of the case, or 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 which 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 writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to [forms@nrc.gov](mailto: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 due to 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) 415-7404]. 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 who 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 records 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 upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon 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 who 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 Safeguards Information. 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 record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current 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 representative of the NRC 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 (whether access was approved or denied). 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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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27609; 812-13329]

### ProShares Trust, et al.; Notice of Application

December 22, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**APPLICANTS:** ProShares Trust ("Trust"), ProShare Advisors LLC ("Adviser"), and SEI Investments Distribution Company ("Distributor").

**SUMMARY OF APPLICATION:** Applicants request an order to amend a prior order that permits: (a) Series of an open-end management investment company to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; and (d) affiliated persons of a series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares ("Prior Order").<sup>1</sup> Applicants seek to amend the Prior Order to permit the series described in the application for the Prior Order ("Initial Funds") as well as certain new series ("Additional Funds," and together with the Initial Funds, "Funds") to be offered using equity securities indices different than those permitted under the Prior Order ("New Underlying Indices").

**FILING DATES:** The application was filed on September 15, 2006, and amended on December 20, 2006.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

<sup>1</sup> ProShares Trust, et al., Investment Company Act Release Nos. 27323 (May 18, 2006) (notice) and 27394 (June 13, 2006) (order).