

September 29, 2006

EA-06-203

To: Holders of Licenses and All Other Persons Who Seek Access to Safeguards Information as Specified in the Enclosed Order

SUBJECT: ISSUANCE OF ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR ACCESS TO SAFEGUARDS INFORMATION

Section 652 of the Energy Policy Act of 2005 (EPAcT), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act (AEA). Specifically, the EPAcT amended Section 149 of the AEA to require fingerprinting before anyone is given access, by anyone, to Safeguards Information (SGI). Section 149, as amended, also requires a Federal Bureau of Investigation (FBI) identification and criminal history records check based on the fingerprints. 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 records check requirements for access to SGI were immediately effective upon enactment of the EPAcT.

Therefore, the enclosed Order (Enclosure 1 to this letter) implements the EPAcT of 2005 fingerprinting and criminal history records check requirements for individuals who seek access to SGI, consistent with the established regulatory framework. The NRC has taken this action to ensure compliance with the EPAcT and because access to SGI is needed to ensure adequate protection of specific licensed facilities and associated material. The requirements of this Order apply to all SGI described, including the SGI that is subject to the "modified" handling requirements (Safeguards Information-Modified Handling or SGI-M).

Although the EPAcT permits 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 Licensee employees are excepted from the fingerprinting requirement by the "fingerprinting relief" rule. In addition to individuals exempted from the fingerprinting requirements by 10 C.F.R. § 73.59, the NRC has determined that individuals who have active federal security clearances, or who have a favorably-decided U.S. Government criminal history records check within the last five (5) years, have already been subjected to fingerprinting and criminal history records checks in accordance with this Order and thus have satisfied the EPAcT fingerprinting requirement.

To implement the enclosed Order, Licensees must nominate an individual who will review the results of the FBI criminal history records check along with other applicable requirements (e.g., 10 CFR 73.21), to make SGI access determinations. This individual, referred to as the "reviewing official," must be someone who previously has been granted access to SGI and who seeks continued access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may continue to have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. The NRC process that will govern this determination, and the rights of the individual nominated to be the "reviewing official," are

described in Enclosure 3 to this letter. Once a reviewing official is approved by the NRC, the reviewing official and only the reviewing official can make SGI access determinations for others who have been fingerprinted for a criminal history records check. The reviewing official can only make SGI access determinations for other individuals but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official; therefore, if a Licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he/she can act as a reviewing official.

In the event that the individual nominated as the Licensee's initial reviewing official is not approved by the NRC to have access to SGI, then the individual may appeal this decision by following the procedures in Enclosure 3, and the Licensee may nominate a different individual to be the reviewing official. If the Licensee decides to withdraw the nomination of a reviewing official after submitting fingerprints to the FBI through the NRC, the NRC will nonetheless complete the review process to determine access to SGI.

Thus, before anyone grants an individual access to SGI (including SGI designated as SGI-M), they must ensure that fingerprints of those individuals have been submitted to the NRC for an FBI criminal history records check and evaluated by a licensee reviewing official, or that the individual otherwise meets the provisions of the enclosed Order. For Licensees that send in fingerprints for individuals, the results of the FBI criminal history records check will be provided to the Licensee and that information must be considered in addition to other applicable requirements for access to SGI, e.g., 10 C.F.R. 73.21. Attachment 2 to the Order and Enclosure 2 to this letter provide additional requirements and guidance.

This Order does not obviate the need for Licensees or others to continue to meet applicable requirements, and to maintain the effectiveness of security measures. This Order supplements, but does not replace, applicable requirements concerning access to SGI (e.g., 10 CFR 73.21). The enclosed Order is effective immediately and will remain in effect until the Commission determines otherwise.

Licensees are required to submit fingerprints in accordance with the Order. The current processing fee is \$27.00 per submission and payment must accompany the request. Details regarding fingerprint submittals and payment of fees are found in Attachment 2 to the Order.

The enclosed Order requires that all Licensees respond to the Order within twenty (20) days of receipt and implement the requirements of the Order prior to providing access to SGI to any individual. Please contact Marvin Mendonca (301) 415-1128, [mmm@nrc.gov](mailto:mmm@nrc.gov) to facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order.

Licensee responses to the Order (not fingerprint cards) are required to be submitted to the Director, Office of Nuclear Reactor Regulation, and should be addressed to the attention of Marvin Mendonca, Mail Stop O12-G15. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Office of Nuclear Reactor Regulation  
Attn: Marvin Mendonca, Mail Stop O12-G15  
U.S. NRC  
Washington, D.C., 20555-0001

For delivery services requiring a street address, mail to:

Director, Office of Nuclear Reactor Regulation  
Attn: Marvin Mendonca, Mail Stop O12-G15  
U.S. NRC  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852-2738

Fingerprint cards along with payment are required to be submitted to the Director, Division of Facilities and Security, and should be addressed to the attention of the Criminal History Program, Mail Stop T-6E46. A short cover letter should be included listing the nominated reviewing official(s) and the docket number(s). The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Division of Facilities and Security  
Attn: Criminal History Program, Mail Stop T6-E46  
U.S. NRC  
Washington, D.C., 20555-0001

For delivery services requiring a street address, mail to:

Director, Division of Facilities and Security  
Attn: Criminal History Program, Mail Stop T6-E46  
U.S. NRC  
Two White Flint North  
11545 Rockville Pike  
Rockville, MD 20852-2738

**Please include the docket number for your facility in all your correspondence with NRC.**

In addition, Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 C.F.R. § 2.390." The enclosed Order has been forwarded to the Office of the Federal Register for publication.

Although this Order is not subject to the requirements of the Paperwork Reduction Act, there is nonetheless a clearance from the Office of Management and Budget, OMB approval number 3150-0012, that covers the information collections contained in the Order.

Sincerely,

***/RA/***

J. E. Dyer, Director  
Office of Nuclear Reactor Regulation

Enclosures:

1. Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information
2. Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History Records (fingerprint) Checks
3. Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

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\*see previous concurrence \*\*includes review of Commission Plan \*\*\*concurred via email

**ADAMS Accession Nos.:**

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**Enclosure No.: ML062350422**

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NAME	MMendonca**	EHylton*	BThomas**	EKraus***	BSt.Mary*	RVirgilio**
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OFFICE	ADM/DFS	OE	NSIR	OGC	DPR	NRR:OD
NAME	MLombard**	MBurrell**	RWay**	JGoldberg	HNieh	JDyer
DATE	9/13/06	9/22/06	9/1/06	9/26/06	9/28/06	9/29/06

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

In the Matter of

EA-06-203

ALL LICENSEES IDENTIFIED IN ATTACHMENT 1  
AND ALL OTHER PERSONS WHO SEEK OR  
OBTAIN ACCESS TO SAFEGUARDS INFORMATION  
DESCRIBED HEREIN

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

I

The Licensees identified in Attachment 1<sup>1</sup> to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or Agreement States, authorizing them to engage in an activity subject to regulation by the Commission or Agreement States. 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>2</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 records check requirements for access to SGI were immediately effective upon enactment of the EPAcT. Although the EPAcT permits 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

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<sup>1</sup>Attachment 1 contains sensitive information and will not be released to the public.

<sup>2</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.

(June 13, 2006)), it is unlikely that licensee employees or others are excepted from the fingerprinting requirement by the “fingerprinting relief” rule. Individuals relieved from fingerprinting and criminal history records 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 a favorably-decided U.S. Government criminal history records check within the last five (5) years, or individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAAct, 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.<sup>3</sup> This Order also imposes requirements for access to SGI by any person<sup>4</sup>, 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

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<sup>3</sup>The storage and handling requirements for certain SGI have been modified from the existing 10 C.F.R. 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>4</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.

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 EAct 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).

In order to provide assurance that the Licensees identified in Attachment 1 are implementing appropriate measures to comply with the fingerprinting and criminal history records check requirements for access to SGI, all Licensees identified in Attachment 1 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 ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO SAFEGUARDS INFORMATION, AS DESCRIBED ABOVE, 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 who has a favorably-decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI (e.g., 10 CFR 73.21). 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 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 each case that the appropriate documentation is made available to the Licensee'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. All Licensees identified in Attachment 1 to this Order 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 that meets the requirements of Attachment 2 to this Order.

2. The Licensee 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

applicable requirements (e.g., 10 C.F.R. 73.21), who continues to need access to SGI, and who the Licensee 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 the Licensee’s reviewing official.<sup>5</sup> The Licensee may at the same time or later submit the fingerprints of other individuals to whom the Licensee seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 of this Order.

3. The Licensee may allow any individual who currently has access to SGI in accordance with the applicable requirements (e.g., 10 CFR 73.21) 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 satisfying other applicable requirements) that the individual may continue to have access to SGI. The Licensee shall make determinations on continued access to SGI by December 1, 2006, in part on the results of the fingerprinting and criminal history records check, for those individuals that were previously granted access to SGI before the issuance of this Order.

4. The Licensee 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 this Order, including Attachment 2, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee’s

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<sup>5</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.

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 Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as "Security-Related Information - Withhold Under 10 C.F.R. 2.390."

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, 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, and to the Assistant General Counsel for Materials Litigation and Enforcement at the same address. 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](mailto: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](mailto: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.

Dated this 29<sup>th</sup> day of September 2006

FOR THE NUCLEAR REGULATORY COMMISSION

**/RA/**

J. E. Dyer, Director  
Office of Nuclear Reactor Regulation

Attachments:

1. List of Applicable Licensees
2. Requirements for Fingerprinting and Criminal History Records Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information

## **Requirements for Fingerprinting and Criminal History Records 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 C.F.R. § 73.59, has 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 applicable requirements (e.g., 10 CFR 73.21) 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 records 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 records 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 C.F.R. § 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 Safeguards Information, 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 C.F.R. § 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 C.F.R. § 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 check record 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 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.

## **Guidance for Licensee's Evaluation of Access to Safeguards Information With the Inclusion of Criminal History Records (fingerprint) Checks**

When a Licensee submits fingerprints to the NRC pursuant to an NRC Order, it will receive a criminal history summary of information, provided in federal records, since the individual's eighteenth birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Attachment 2 of Enclosure 1. The Licensee will receive the information from the criminal history records check of those individuals requiring access to Safeguards Information, and the reviewing official should evaluate that information using the guidance below. Furthermore, the requirements of all Orders which apply to the information and material to which access is being granted must be met.

The Licensee's reviewing official is required to evaluate all pertinent and available information in making a determination of access to SGI, including the criminal history information pertaining to the individual as required by the NRC Order. The criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have access to SGI. Each determination of access to SGI, which includes a review of criminal history information, must be documented to include the basis for the decision made.

- (i) If negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information should be considered, and decisions made based on these findings, must be documented.
- (ii) Any record containing a pattern of behaviors which indicates that the behaviors could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have access to SGI, should be carefully evaluated prior to any authorization of access to SGI.

It is necessary for a Licensee to resubmit fingerprints only under two conditions:

- 1) the FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions; or
- 2) the initial submission has been lost.

If the FBI advises that six sets of fingerprints are unclassifiable based on conditions other than poor quality, the licensee may submit a request to NRC for alternatives. When those search results are received from the FBI, no further search is necessary.

## **Process to Challenge NRC Denials or Revocations of Access to Safeguards Information**

### 1. Policy.

This policy establishes a process for individuals whom NRC licensees nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person, nor shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

### 2. Applicability.

This policy applies solely to those employees of licensees who are nominated as a reviewing official, and who are thus to be considered by the NRC for initial or continued access to SGI in that position.

### 3. SGI Access Determination Criteria.

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

### 4. Procedures to Challenge the Contents of Records Obtained from the FBI.

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. 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 C.F.R. § 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.

(ii) Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (i), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures to Provide Additional Information.

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures to Notify an Individual of the NRC Facilities Security Branch Chief Determination to Deny or Revoke Access to SGI.

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures to Appeal an NRC Determination to Deny or Revoke Access to SGI.

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within 20 days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within 60 days after receipt of the appeal.

8. Procedures to Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal.

a. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.