Process to Challenge NRC Denials or Revocations of Unescorted Access to Certain Radioactive Material

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 certain radioactive material. Any individual designated as a licensee Reviewing Official whom the NRC has determined may not have unescorted access to certain radioactive material 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 create a liberty or property interest of any kind in the unescorted access of any individual to certain radioactive material.

2. Applicability.

   This policy applies solely to those employees of licensees who are designated as a Reviewing Official, and who are thus to be considered by the NRC for initial or continued unescorted access to certain radioactive material in that position.

3. Unescorted Access Determination Criteria.

   Determinations for granting a designated Reviewing Official unescorted access to certain radioactive material will be made by the NRC staff. Unescorted access 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 unescorted access to certain radioactive material shall be resolved in favor of national security and result in denial or revocation of unescorted access.

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

   Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked unescorted access to certain radioactive material, the individual shall:

   a. 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.

b. Be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described in (a), 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.

Prior to a determination by the NRC Facilities Security Branch Chief that an individual designated as a Reviewing Official is denied or revoked access to certain radioactive material, the individual shall 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 unescorted access to certain radioactive material 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 Certain Radioactive Material.

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to certain radioactive material, 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 Certain Radioactive Material.

Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to certain radioactive material, 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 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 certain radioactive material is final and not subject to further administrative appeals.