

Process to Challenge U.S. Nuclear Regulatory Commission Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process that individuals nominated by U.S. Nuclear Regulatory Commission (NRC) licensees as reviewing officials can follow 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 be afforded, to the extent provided below, 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 who are nominated by licensees as reviewing officials and will thus be considered by the NRC for initial or continued access to SGI in that position.

3. Safeguards Information Access Determination Criteria

The NRC staff will make determinations for granting a nominated reviewing official access to SGI. Access to SGI shall be denied or revoked whenever the NRC determines that an individual does not meet the applicable standards. The NRC shall resolve any doubt about an individual's eligibility for initial or continued access to SGI in favor of common defense and security and, therefore, deny or revoke access.

4. Procedures to Challenge the Contents of Records Obtained from the Federal Bureau of Investigation

Before the NRC Personnel Security Branch Chief determines that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded the following process to challenge the determination:

- (i) An individual shall be provided with the contents of records obtained from the Federal Bureau of Investigation (FBI) to ensure that the information is correct and complete. The individual may initiate challenge procedures if, after reviewing the records, he or she believes that the information is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency or to explain any matter in the records. These procedures include either direct application by the individual challenging the record to the 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 Title 28 of the *Code of Federal Regulations* (28 CFR) 16.30, "Purpose and Scope," through 28 CFR 16.34, "Procedure To Obtain Change, Correction, or Updating of Identification Records"). In the latter case, FBI forwards the challenge to the law enforcement agency that submitted the data and requests that the agency verify or correct the challenged entry. Once the FBI Identification Division receives an official communication directly from the law

enforcement agency that contributed the original information, it makes any changes necessary in accordance with the information supplied by that agency.

(ii) The individual will be afforded 10 days to initiate an action challenging the results of an FBI criminal history records check (described above in (i)) after the record is made available for the individual's review. If the individual initiates such a challenge, the NRC Personnel Security Branch Chief may determine the denial or revocation of access to SGI based on the criminal history record only upon receipt of FBI's ultimate confirmation or correction of the record.

5. Procedures to Provide Additional Information

Before the NRC Personnel Security Branch Chief determines that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Personnel Security Branch Chief shall, in writing, notify the individual of this opportunity and of any deadlines for submitting this information. The NRC Personnel Facilities Security Branch Chief may determine 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 Personnel Security Branch Chief's Determination to Deny or Revoke Access to SGI

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

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

Once the NRC Personnel Security Branch Chief determines 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 individual must appeal the determination within 20 days of receipt of the written notice of the NRC Personnel Security Branch Chief's determination and may make the appeal either 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 Director, Division of Facilities and Security, shall render a determination within 60 days after receipt of the appeal.

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

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