PROCESS TO CHALLENGE NRC DENIALS OR REVOCATIONS OF UNESCORTED ACCESS TO INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS

1. Policy

This policy establishes a process for individuals, who have been nominated by U.S. Nuclear Regulatory Commission (NRC) licensees as reviewing officials, to challenge and appeal NRC denials or revocations of unescorted access to independent spent fuel storage installations (ISFSIs). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have unescorted access to the ISFSI 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 unescorted access for any person, nor shall it be construed to create a liberty or property interest of any kind in the unescorted access for any individual.

2. Applicability

This policy applies solely to those licensee employees who are nominated as reviewing officials and who the NRC would thus consider for initial or continued unescorted access to an ISFSI.

3. Unescorted Access Determination Criteria

The NRC staff will make determinations for granting unescorted access to a nominated reviewing official. The NRC shall deny or revoke unescorted access to the ISFSI whenever it 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 unescorted access in favor of the common defense and security and, therefore, shall deny or revoke access.

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

Before the NRC Facilities Security Branch Chief makes a determination to deny or revoke unescorted access to the ISFSI for an individual nominated as a reviewing official, the individual shall be afforded the following process to challenge the determination:

(i) The individual will be provided the contents of records obtained from the Federal Bureau of Investigation (FBI) for the purpose of ensuring correct and complete information. If, after reviewing the record, the 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 one of the following challenge procedures.

a. The individual challenging the record may make direct application to the agency (i.e., the law enforcement agency) that contributed the questioned information,

b. The individual may submit a 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, the FBI forwards the challenge to the agency that submitted the data and requests that the agency 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) The individual will 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 on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures To Provide Additional Information

Before the NRC Facilities Security Branch Chief makes a determination to deny or revoke unescorted access to the ISFSI for an individual nominated as a reviewing official, the individual shall be afforded an opportunity to submit information relevant to his or her trustworthiness and reliability. The NRC Facilities Security Branch Chief shall notify the individual, in writing, of this opportunity and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of unescorted access 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's Determination To Deny or Revoke Unescorted Access to the ISFSI

When the NRC Facilities Security Branch Chief makes a determination to deny or revoke unescorted access for an individual nominated as a reviewing official, 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 Unescorted Access to the ISFSI

When the NRC Facilities Security Branch Chief makes a determination to deny or revoke unescorted access for an individual nominated as a reviewing official, the individual can appeal this determination to the Director, Division of Facilities and Security. The individual must make the appeal within 20 days of receipt of the written notice of the determination from the NRC Facilities Security Branch Chief. The individual may make the appeal either in writing or in person. Any appeal made in person shall take place at NRC headquarters and shall be at the individual's own expense. The Director, Division of Facilities and Security, shall render the determination 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

The Director, Division of Facilities and Security, shall provide to the individual a written determination that explains the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the NRC Facilities Security Branch Chief's determination to deny or revoke an individual's unescorted access is final and not subject to further administrative appeals.