



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 30, 2013

EA-13-237

Mr. Fadi Diya
Vice President – Nuclear Operations
Ameren Missouri
Callaway Plant
Five Miles North of Highway 94
Portland, MO 65067

SUBJECT: ISSUANCE OF ORDER FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES AND FINGERPRINTING FOR UNESCORTED ACCESS FOR CALLAWAY PLANT INDEPENDENT SPENT FUEL STORAGE INSTALLATION

Dear Mr. Diya:

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued the enclosed Order (Enclosure 1), which modifies the general license for your proposed independent spent fuel storage installation (ISFSI). The Order requires compliance with two sets of requirements: (a) "Additional Security Measures for Physical Protection of Dry Independent Spent Fuel Storage Installations" (Enclosure 1, Attachment 1), and (b) "Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations" (Enclosure 1, Attachment 2). You will also find enclosed the supporting documents related to this Order.

The Commission, following the terrorist events of September 11, 2001, determined that the additional security measures (ASMs) included in this Order are required to ensure national safety and security.

Before placing spent fuel in the ISFSI, Ameren Missouri (AmerenUE) must meet the following conditions:

- Demonstrate the ability to comply with the required ASMs as outlined in these documents no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever occurs first.
- Implement the ASM requirements.
- Receive written verification from the NRC (Office of Nuclear Material Safety and Safeguards) that AmerenUE has adequately demonstrated compliance with the ASM requirements.

WARNING: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information," is subject to Civil and Criminal penalties.

NOTICE: Upon removal of Attachment 1 to Enclosure 1 and Enclosure 4 to this letter, this document and the enclosed Order (Enclosure 1) are DECONTROLLED.

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The Order does not obviate the need for licensees to continue to meet and maintain the effectiveness of existing security measures taken in response to the events of September 11, 2001. The requirements will remain in effect until the Commission determines otherwise.

The enclosed Order calls for responses and actions within specified timeframes. With respect to the notices and submission mandated by Sections III.B and III.C of the Order for any requirement of the ASMs that needs analysis or is contingent on the completion of another requirement of the ASMs, the licensee's response will be sufficient if its 20-day submission meets the following conditions:

- The licensee states that the completion of the requirement depends on the completion of an analysis or other requirement.
- The licensee includes the expected date of completion of the analysis or other requirement.
- The licensee states that, upon such completion, it will promptly submit the results of such analysis or will inform the NRC of the completion of the other requirement and the actions thereafter proposed with respect to the requirement at issue and of the projected date of completion.

If AmerenUE wishes to preserve its right to request a hearing on any requirement that is contingent on the completion of an analysis or other requirement, it must file a request for an extension of time to ask for a hearing within 20 days of the Order publication date in the *Federal Register*, in accordance with Section IV of the Order. Such a request may seek a reasonable period of time to request a hearing beyond the date when the staff informs the licensee whether the actions proposed and the completion date for the requirement(s), contingent on an analysis or other requirement, are satisfactory.

Please note that letters of response to Sections III.B and III.C of the Order should be addressed to ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001. Answers to the Order, as stated in Section IV of the Order, should be addressed to the Secretary, Office of the Secretary of the Commission, Washington, DC 20555-0001.

Please contact Douglas L. Garner in the Office of Nuclear Security and Incident Response at 301-287-0929 for questions related to the ASMs. Contact L. Raynard Wharton of my staff at 301-287-9196 regarding issues related to compliance with the requirements in the enclosed Order or to answer any other questions you may have. The enclosed order has been forwarded to the Office of the Federal Register for publication.

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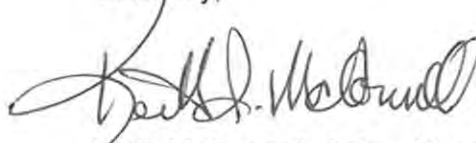
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The material in Attachment 1 to Enclosure 1 contains Safeguards Information (SGI), as defined by Title 10 of the *Code of Federal Regulations* 73.22, "Protection of Safeguards Information: Specific Requirements," and its disclosure to unauthorized individuals is prohibited by Section 147 of the Atomic Energy Act of 1954, as amended. The material in Enclosure 4 is designated as Official Use Only Security-Related Information (OUO-SRI) in accordance with agency requirements for sensitive, unclassified, non-safeguards information (SUNSI). Therefore, those documents will not be made available for public inspection. However, Enclosure 1, without Attachment 1, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System, which is accessible from the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,



Keith McConnell, Acting Director
Office of Nuclear Material Safety
and Safeguards

Docket No.: 72-1045

Enclosures:

1. "Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to the Callaway Plant Independent Spent Fuel Storage Installation" (with Attachment 1 [**SGI**] and Attachment 2)
 2. "Guidance for Licensee's Evaluation of Access Authorization to Spent Fuel Storage Facilities with the Inclusion of Criminal History (Fingerprint) Records Checks"
 3. "Process to Challenge NRC Denials or Revocations of Unescorted Access to Independent Spent Fuel Storage Installations"
 4. "Regulatory Information Summary 2002-12D," Revision 1 (**OUO-SRI**)
- cc: Distribution via ListServ (without **SGI** and **OUO-SRI**)
Eric Olson, Security Manager (with **SGI** and **OUO-SRI**)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
AMEREN MISSOURI)	DOCKET NO. 72-1045
CALLAWAY PLANT)	EA-13-237
INDEPENDENT SPENT FUEL STORAGE)	
INSTALLATION)	
FIVE MILES NORTH OF HIGHWAY 94)	
PORTLAND, MO. 65067)	

ORDER FOR IMPLEMENTATION OF ADDITIONAL SECURITY MEASURES AND FINGERPRINTING FOR UNESCORTED ACCESS TO CALLAWAY PLANT INDEPENDENT SPENT FUEL STORAGE INSTALLATION (EFFECTIVE IMMEDIATELY)

I

The U.S. Nuclear Regulatory Commission (NRC or the Commission), has issued a general license to Union Electric Company d/b/a Ameren Missouri (AmerenUE) authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI), in accordance with the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* Part 72. This Order is being issued to AmerenUE because AmerenUE has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR Part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to

WARNING: Violation of Section 147 of the Atomic Energy Act, "Safeguards Information," is subject to Civil and Criminal Penalties.

Document transmitted herewith contains sensitive unclassified information. When separated from Attachment 1, this document is DECONTROLLED.

Enclosure 1

respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR Part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, using large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current

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threat environment in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at AmerenUE's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions should be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

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III

Accordingly, pursuant to Sections 53, 103, 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 CFR 2.202 and 10 CFR Parts 50, 72, and 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT YOUR GENERAL LICENSE IS MODIFIED AS FOLLOWS:

- A. AmerenUE shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Callaway Plant physical security plan. AmerenUE shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order **no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI**, whichever is earlier. AmerenUE must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, AmerenUE must receive written verification from the NRC (Office of Nuclear Material Safety and Safeguards) that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.
- B. 1. AmerenUE shall, 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 Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause AmerenUE to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide AmerenUE justification for seeking relief from, or variation of, any specific requirement.
2. If AmerenUE considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of

spent fuel, AmerenUE must notify the Commission, within **twenty (20) days** of the date of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachment 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, AmerenUE must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

- C. 1. AmerenUE shall, within **twenty (20) days** of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.
- 2. AmerenUE shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.
- D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

AmerenUE's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by AmerenUE as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV

In accordance with 10 CFR 2.202, AmerenUE must, and any other person adversely

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affected by this Order may, submit an answer to this Order within 20 days of its publication in the *Federal Register*. In addition, AmerenUE and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the *Federal Register*. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which AmerenUE relies and the reasons as to why the Order should not have been issued. If a person other than AmerenUE 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 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents electronically, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital

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ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing

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is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff.

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Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at http://ehd.nrc.gov/EHD_Proceeding/home.asp, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by AmerenUE 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 CFR 2.202(c)(2)(i), AmerenUE may, in addition to requesting 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 grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

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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 in Section III, shall be final twenty (20) days from the date this Order is published in the *Federal Register*, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provision as specified 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.

FOR THE NUCLEAR REGULATORY COMMISSION



Keith McConnell, Acting Director
Office of Nuclear Material Safety
and Safeguards

Dated this 30th day of December, 2013.

Attachments:

1. "Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs)"
(This attachment contains Safeguards Information.)
2. "Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations"

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**Additional Security Measures for Access Authorization and
Fingerprinting at Independent Spent Fuel Storage Installations**

**Version Dated:
June 14, 2013**

ADDITIONAL SECURITY MEASURES FOR ACCESS AUTHORIZATION AND FINGERPRINTING AT INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.
2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of Sections B through G, below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of Section B through G of these ASMs.
3. Licensees shall clearly distinguish, in their 20-day response, which method they intend to use, to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or the common defense and security, including a potential to commit radiological sabotage.
 - a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past three years and, as a minimum, must include:
 - i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than three years from the date of the application for unescorted access.
 - ii. Verification of employment with each previous employer for the most recent year from the date of application.
 - iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent two years.
 - iv. A full credit history review.
 - v. An interview with not less than two character references, developed by the investigator.
 - vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth-issued certificate of birth) to allow comparison of personal information data provided by the applicant. The

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the "reviewing official," must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.¹ Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.
2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.
3. All fingerprints obtained by the licensee, under this Order, must be submitted to the Commission for transmission to the FBI.
4. The licensee shall notify each affected individual that the fingerprints will be used to conduct 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," in Section F of these ASMs.
5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last five years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of three years from the date the individual no longer requires access to the facility.

¹ The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than one 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.
2. A licensee shall not use information received from a CHRC 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 that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. 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-03B46M, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, 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 (603) 829-9565, or by e-mail to forms.resource@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 because of illegible or incomplete cards.
2. 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.
3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (<https://www.pay.gov>). To request an account, the licensee shall send an e-mail to paygo@nrc.gov. The e-mail must include the licensee's company name, address, point of contact (POC), POC e-mail address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user ID. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7513. Combined payment for multiple applications is acceptable.

The application fee (currently \$26) 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.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for CHRCs, including the FBI fingerprint record.

F. Right to Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history 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 year from the date of notification.
2. 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 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on 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 an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.
2. 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.

3. 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 suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.
4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee 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.
5. 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.

— END —

GUIDANCE FOR LICENSEE'S EVALUATION OF ACCESS AUTHORIZATION TO SPENT FUEL STORAGE FACILITIES WITH THE INCLUSION OF CRIMINAL HISTORY (FINGERPRINT) RECORDS CHECKS

When a licensee submits fingerprints to the U.S. Nuclear Regulatory Commission (NRC) pursuant to an NRC Order, it will receive a criminal history review, provided in Federal records, of information since the individual's 18th birthday. Individuals retain the right to correct and complete information and to initiate the challenge procedures described in Enclosure 3, "Process To Challenge NRC Denials or Revocations of Unescorted Access to Independent Spent Fuel Storage Installations." The licensee will receive the information from the criminal history records check for those individuals requiring unescorted access to spent fuel storage facilities. The licensee's NRC-approved reviewing official should evaluate that information using the guidance below. Furthermore, licensees must meet the requirements of all orders that apply to the facilities to which unescorted access is being granted.

When making a determination to allow unescorted access to the spent fuel storage facility, the licensee's reviewing official must evaluate all pertinent and available information, including the criminal history record information pertaining to the individual, as required by the NRC Order. The criminal history records check is used to determine if the individual has a record of criminal activity that indicates that the individual should not have unescorted access to the spent fuel storage facility subject to this Order. Each determination of unescorted access to the spent fuel storage facility that includes a review of criminal history information should be documented to include the basis for the decision made. In addition, the reviewing official should consider the following conditions:

- When negative information is discovered that the individual did not provide or that differs in any material respect from the information provided by the individual, the reviewing official should consider this information and should document actions taken based on these considerations and findings.
- Before granting any authorization of unescorted access to the spent fuel storage facility, the reviewing official should carefully evaluate a record containing a pattern of behaviors that indicates that the behaviors could be expected to recur or continue, or containing information about recent behaviors that raise questions about whether an individual should have unescorted access to the spent fuel storage facility subject to this Order.

The licensee must resubmit fingerprints under one of the following two conditions:

- (1) The Federal Bureau of Investigation (FBI) has determined that the fingerprints cannot be classified because of poor quality in the mechanics of taking the initial impressions.
- (2) The initial submission has been lost. In this case, the NRC will waive the processing fee for the resubmission of the lost fingerprints.

If the FBI advises the NRC that six sets of the fingerprints are unclassifiable, based on conditions other than poor quality, the licensee may submit a request to the 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 UNESCORTED ACCESS TO INDEPENDENT SPENT FUEL STORAGE INSTALLATIONS

1. Policy

This policy establishes a process for individuals, 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 are thus to be considered by the NRC for initial or continued unescorted access to the 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 the record 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. The individual challenging the record may make direct application to the agency (i.e., law enforcement agency) that contributed the questioned information, or 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, in writing, 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 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 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 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.