

NUCLEAR REGULATORY COMMISSION

In the Matter of

TOSHIBA AMERICA NUCLEAR ENERGY CORPORATION)	EA-10-152
AND ALL OTHER PERSONS)	Project No.: 52-0001
WHO SEEK OR OBTAIN ACCESS TO)	
SAFEGUARDS INFORMATION)	
DESCRIBED HEREIN)	

ORDER IMPOSING SAFEGUARDS INFORMATION
PROTECTION REQUIREMENTS FOR ACCESS
TO SAFEGUARDS INFORMATION
(EFFECTIVE IMMEDIATELY)

[NRC-2010-0368]

I

On June 12, 2009, the U.S. Nuclear Regulatory Commission (the Commission or NRC) published a rulemaking in the *Federal Register* (74 FR 28112), that requires applicants for a variety of licensing activities, including nuclear power plant designers, to perform a design-specific assessment of the effects of a large, commercial aircraft impact and to incorporate design features and functional capabilities into the nuclear power plant design to provide additional inherent protection with reduced operator actions. Section V of the *Federal Register* notice contains specific requirements for applicants for new nuclear power reactors. To assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that reactor vendors and architect/engineers who have the need to know and who meet the NRC's requirements for the disclosure of such information should use as reasonable input in studies of the inherent capabilities of their designs.

The NRC derived these characteristics from agency analyses performed on operating reactors to support, in part, the development of a broadly effective set of mitigation strategies to

combat fires and explosions from a spectrum of hypothetical aircraft impacts. Although the NRC did not select these detailed characteristics as a basis for designing new reactors, the staff is suggesting that designers use them as a starting point for aircraft impact assessments. As stated in the rulemaking, the Commission will specify, in a safeguards information (SGI) guidance document, the detailed aircraft impact characteristics that should be used in a required assessment of the new reactor designs. The agency is working to finalize the form and values of those detailed characteristics. On July 10, 2009, the NRC issued Draft Regulatory Guide (DG)-1176, "Guidance for the Assessment of Beyond-Design-Basis Aircraft Impacts," to assist applicants in the completion of the assessment. The agency did not receive any comments on DG-1176. The staff is currently finalizing the regulatory guide. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, applicants should consider the information preliminary and subject to authorized stakeholder comment. The detailed aircraft characteristics that are the subject of this Order are hereby designated as SGI¹, in accordance with Section 147 of the Atomic Energy Act of 1954, as amended (AEA).

On October 24, 2008, the NRC revised Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, Section 73.21, "Protection of Safeguards Information: Performance Requirements," to include applicants in the list of entities required to protect SGI (73 FR 63546). The NRC is issuing this Order to Toshiba America Nuclear Energy Corporation (TANE) to impose requirements for the protection of SGI in addition to the requirements in the revised 10 CFR 73.21. These additional requirements include nomination of a reviewing official, restrictions on the storage of SGI, and access to SGI by certain individuals.

To implement this Order, TANE must nominate an individual, known as the "reviewing official," who will review the results of the Federal Bureau of Investigation (FBI) criminal history

¹ SGI 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.

records check to make SGI access determinations. The reviewing official must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may 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. Once the NRC determines that the nominated individual may have access to SGI, and after TANE has completed the background check on the reviewing official and has determined that he or she is trustworthy and reliable, and has approved the individual as the reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by TANE as having a need to know SGI and who have been fingerprinted and have had a criminal history records check in accordance with this Order. The reviewing official can only make SGI access determinations for other individuals; he or she cannot approve other individuals to act as reviewing officials. If TANE wishes to nominate a new or additional reviewing official, the NRC must first determine whether that individual may have access to SGI before he or she can act in the capacity of a reviewing official.

The regulations at 10 CFR 73.59, "Relief from Fingerprinting, Identification and Criminal History Records Checks and Other Elements of Background Checks for Designated Categories of Individuals," relieve certain categories of individuals from fingerprinting requirements. Those individuals include (1) Federal, State, and local law enforcement personnel, (2) Agreement State inspectors who conduct security inspections on behalf of the NRC, (3) members of Congress, (4) employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check, and (5) certain representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, the NRC has determined that individuals who have had a Favorably-decided U.S. Government criminal history check within the last 5 years or individuals who have active Federal security clearances (provided, in either case, that they make available

the appropriate documentation) have already been subjected to fingerprinting and criminal history records checks and, therefore, have satisfied the fingerprinting requirement in the Energy Policy Act of 2005.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized 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 Energy Policy Act of 2005 amended Section 149 of the AEA to require fingerprinting and an FBI identification and criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless that person has an established need to know and satisfies the trustworthiness and reliability requirements of the regulations.

To provide assurance that TANE is continuing to implement the appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI and to comply with the fingerprinting, criminal history records check, and background check requirements for access to SGI, TANE shall implement the requirements for the protection of SGI in 10 CFR 73.21, 10 CFR 73.22 and this Order. In addition, under 10 CFR 2.202, "Orders," the NRC finds that in light of the matters identified above, which warrant the issuance of this Order, public health and safety and the public interest require that this Order be effective immediately.

III

Accordingly, under Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA and under the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 73, "Physical Protection of Plants and Materials," IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT TANE AND ALL OTHER PERSONS WHO SEEK OR OBTAIN ACCESS TO SGI AS DESCRIBED HEREIN SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN 10 CFR 73.21, 10 CFR 73.22, AND THIS ORDER.

- A.
1. No person may have access to any SGI if the NRC, when determining SGI access for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check that the person nominated may not have access to SGI.
 2. TANE shall store SGI designated by this Order only in the facility or facilities specifically approved in writing by the NRC for storage of SGI designated by this Order. TANE may request, in writing, NRC approval of additional facilities for the storage of the SGI designated by this Order that the NRC will consider on a case-by-case basis.
 3. TANE may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check are not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order and that TANE has implemented measures, in addition to those set forth in this Order, to ensure that

the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign government agency, and/or enhanced background checks, including employment and credit history. The NRC must review these additional measures and approve them in writing.

B. No person may provide SGI to any other person except in accordance with Section III.A above. Before providing SGI to any person, a copy of this Order shall be provided to that person.

C. TANE shall comply with the following requirements:

1. TANE shall, within 20 days of the date of this Order, submit the fingerprints of one individual who (a) TANE nominates as the “reviewing official” for determining access to SGI by other individuals and (b) has an established need to know the information. The NRC will determine whether this individual (or any subsequent nominated reviewing official) may have access to SGI and, therefore, will be permitted to serve as TANE’s reviewing official.² TANE may, at the same time or later, submit the fingerprints of other individuals to whom TANE seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.

² 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.

2. TANE shall, within 20 days of the date of this Order, notify, in writing, the Commission: (a) if it is unable to comply with any of the requirements described in the Order, including the attachment; or (b) if compliance with any of the requirements is unnecessary in its specific circumstances.

The notification shall provide TANE's justification for seeking relief from, or variation of, any specific requirement.

TANE shall submit responses to Section III.C.1 and Section III.C.2 above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, TANE shall mark its responses as "Security-Related Information—Withhold under 10 CFR 2.390."

Except for the requirements for fingerprinting, the Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by TANE.

IV

In accordance with 10 CFR 2.202, TANE 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 20 days of the date of its publication in the *Federal Register*. Where good cause is shown, the NRC will consider extending the time to answer or request a hearing. A request for an extension of time in which to submit an answer or to request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension.

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 over the internet, 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 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 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 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 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, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. 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.

The answer may consent to this Order. If the answer, on the other hand, includes a request for hearing, it shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which TANE relies and the reasons as to why the NRC should not have issued this Order. If a person other than TANE 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).

If TANE or a person whose interest is adversely affected requests a hearing, 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 this hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), TANE 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.

In the absence of any request for a 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 20 days from the date this Order is published in the *Federal Register*, without further issuance of an order or proceedings.

If the agency approves an extension of time in which to request a hearing, the provisions, as specified above in Section III, shall be final when the extension expires if the NRC has not received a hearing request.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, MD, this 19th day of November, 2010.

For the Nuclear Regulatory Commission,

/RA/

Michael R. Johnson, Director
Office of New Reactors

Guidance for the Evaluation of Access to Safeguards Information with the Inclusion of Criminal History Records (Fingerprint) Checks

When a licensee or other person¹ submits fingerprints to the U.S. Nuclear Regulatory Commission (NRC) in accordance with an NRC Order, that licensee or other person will receive a criminal history summary of information, as provided in federal records, since the individual's 18th birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Enclosure 3. The licensee will receive the information from the criminal history records check for those individuals who require access to Safeguards Information (SGI), and the reviewing official will 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 when determining an individual's access to SGI, including the criminal history information pertaining to that individual as required by the NRC Order. The reviewing official must use the criminal history records check when determining whether an individual has a record of criminal activity that indicates that he or she should not have access to SGI. The reviewing official must document each determination of access to SGI, including a review of criminal history information and the basis for the decision that he or she made as follows:

- If the reviewing official discovers negative information that the individual did not provide or that is different in any material respect from the information that the individual provided, the reviewing official should consider this information and must document his or her decisions made based on these findings.
- The reviewing official should carefully evaluate any record that contains information on a pattern of behaviors that indicates that the behaviors could be expected to recur or

¹ As used herein, "licensee" means any licensee or other person who must conduct fingerprinting.

continue or on recent behaviors that cast questions on whether an individual should have access to SGI before any authorization of access to SGI.

A licensee must resubmit fingerprints only under either one of the following two conditions:

- (1) the Federal Bureau of Investigation (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 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 Access to Safeguards Information

1. Policy

This policy establishes a process by which individuals who are nominated as a reviewing official by a U.S. Nuclear Regulatory Commission (NRC) licensee or other person¹ are afforded the opportunity 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 considered, by the NRC, for initial or continued access to SGI in that position.

3. SGI Access Determination Criteria

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

¹ As used herein, "licensee" means any licensee or other person who must conduct fingerprinting.

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

Before the NRC Facilities Security Branch Chief makes the determination to deny or revoke access to SGI by an individual nominated as a reviewing official, that individual shall be afforded the following:

- (1) The individual shall have access to the contents of records obtained from the FBI for the purpose of ensuring correct and complete information. If, after reviewing the record, an individual 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 record, he or she 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 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 will forward the challenge to the agency that submitted the data and will request that the agency verify or correct the challenged entry. Once the FBI receives an official communication directly from the agency that contributed the original information, the FBI's Identification Division makes any necessary changes in accordance with the information supplied by that agency.
- (2) The individual shall have 10 days to initiate an action challenging the results of an FBI criminal history records check (described in provision 1 above) after the record is made available for the individual's review. If the individual initiates such a challenge, 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

Before the NRC Facilities Security Branch Chief makes a determination to deny or revoke access to SGI by an individual nominated as a reviewing official, that individual shall be given the opportunity to submit information relevant to the his or her trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity and of 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's Determination to Deny or Revoke Access to Safeguards Information

Once the NRC Facilities Security Branch Chief makes a determination to deny or revoke access to SGI by an individual nominated as a reviewing official, that 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 Safeguards Information

Once the NRC Facilities Security Branch Chief makes a determination to deny or revoke access to SGI by an individual nominated as a reviewing official, that 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

determination by the Facilities Security Branch Chief, 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 determination made 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 shall 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.

General Requirements

Licenses and other persons who are required to conduct fingerprinting shall comply with the requirements of this enclosure.¹

The licensee shall notify the U.S. Nuclear Regulatory Commission (NRC) of any desired change in reviewing officials in compliance with Section III.C.1 of the subject order. The NRC will determine whether the individual nominated as the new reviewing official may have access to Safeguards Information (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.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in Title 10 of the *Code of Federal Regulations* (10 CFR) 73.4, "Communications," submit to the NRC's Division of Facilities and Security, Mail Stop T-6 E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI to the Director, Division of Facilities and Security, marked to the attention of the Division's Criminal History Check Section.

Licenses may obtain copies of these forms by written request to the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by telephone at (301) 415-5877; or by e-mail at *forms@nrc.gov*. Practicable alternative formats appear in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken minimizes the rejection rate of fingerprint cards because of 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 resubmission if the Federal

¹ As used herein, "licensee" means any licensee or other person who must conduct fingerprinting in accordance with these requirements.

Bureau of Investigation (FBI) returns the initial submission because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI transaction control number reflected on it. 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 a 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.) A 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's handling of licensee fingerprint submissions. The Commission will directly notify licensees that are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI resulting from the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Before 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 ensuring correct and complete information. The licensee must maintain the individual's written confirmation of receipt of this notification for a period of 1 year from the date of the notification. If, after reviewing the record, an individual 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 record, he or she 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, "Purpose and Scope," through 28 CFR 16.34, "Procedure to Obtain Change, Correction or Updating of Identification Records"). In the latter case, the FBI will forward the challenge to the agency that submitted the data and will request that the agency verify or correct the challenged entry. Once the FBI receives an official communication directly from the agency that contributed the original information, the FBI's Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must allow an individual at least 10 days to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his or 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. The licensee shall not grant an individual access to SGI during the review process.

Protection of Information

Each licensee who obtains a criminal history record on an individual under this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

The licensee may not disclose the record or personal information that it collects and maintains to persons other than the subject individual or his or her representative or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may

redisseminate the information to any other individual who does not have a need to know.

The licensee may transfer personal information obtained on an individual from a criminal history records check to another licensee if the licensee holding the criminal history records check receives the individual's written request to redisseminate the information contained in his or her file and if the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

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.

The licensee shall retain all fingerprint and criminal history records that it receives from the FBI or a copy of these records if the individual's file has been transferred for 3 years after termination of employment or upon determination of access to SGI (whether access was approved or denied). After the required 3-year period, the licensee shall destroy these documents by a method that will prevent the reconstruction of the information in whole or in part.

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