

NUCLEAR REGULATORY COMMISSION

[EA-07-231 Docket Nos. 52-001, 52-003, 52-006, 52-010, and Project Nos. 0733 and 0751]

In the Matter of Westinghouse Electric Company, General Electric-Hitachi Nuclear Energy, Mitsubishi Nuclear Energy Systems, Inc., AREVA NP, and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)

I

Westinghouse Electric Company, LLC (WEC), holds certificates for the AP600 and AP1000 reactor designs issued by the U.S. Nuclear Regulatory Commission (NRC) in accordance with the Atomic Energy Act of 1954, as amended (AEA). General Electric-Hitachi Nuclear Energy (GEH) holds a certificate for the ABWR reactor designed and has submitted an application for design certification for the Economic and Simplified Boiling Water Reactor design in accordance with the AEA and Title 10, Part 52, "Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants," of the *Code of Federal Regulations* (10 CFR Part 52), which the NRC staff is currently considering. Mitsubishi Nuclear Energy Systems, Inc. (Mitsubishi), and AREVA NP (AREVA) have both indicated to the NRC that they plan to submit applications for design certifications in the near future. WEC, GEH, Mitsubishi, and AREVA will be referred to herein as "the affected vendors."

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of a large commercial aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the detailed aircraft impact characteristics that should be used as reasonable inputs for reactor vendors and architect/engineers who have the need to know and who meet the NRC's requirements for the disclosure of such information to use 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 these detailed characteristics were not selected as a basis for designing new reactors, the staff is suggesting them as a starting point for aircraft impact assessments. As proposed by the Commission, the Commission would specify in a Safeguards Information guidance document the detailed aircraft impact characteristics that should be used in a required assessment of the new reactor designs. The agency will finalize the form and values of those detailed characteristics when completing the associated rulemaking. In addition, the staff recognizes that no national or international consensus has been reached on the selection of appropriate characteristics for such analyses. Therefore, the information should be considered preliminary and subject to authorized stakeholder comment. The detailed aircraft characteristics that are the subject of this Order are hereby designated as Safeguards Information (SGI),¹ in accordance with Section 147 of the AEA.

The NRC is issuing this Order to the affected vendors to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI. This Order supercedes EA-07-154, issued to WEC on June 8, 2007, and EA-07-159, issued to GEH, formerly General Electric Company (GE), on June 15, 2007. Except for the restrictions on storage of SGI and access to SGI by certain individuals, this Order is identical to the Orders previously issued to WEC and GEH. Therefore, since both vendors have already complied with those orders, WEC and GEH need only respond to this Order with an answer consenting to the Order pursuant to Section IV.

On August 8, 2005, Congress enacted the Energy Policy Act of 2005 (EPAct). Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking,

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.

which is underway, because the EPAct fingerprinting and criminal history records check requirements for access to SGI were effective immediately upon enactment of the EPAct. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that the affected vendors can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21, "Requirements for the Protection of Safeguards Information," and imposes requirements for access to and protection of SGI by any person,² whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

To implement this Order, the affected vendors must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as 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 approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by the affected vendors 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, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the affected vendors wish 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 Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, (except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59, "Relief from Fingerprinting and Criminal History Records Check for Designated Categories of Individuals." Those individuals include: Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or congressional committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, 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 checks and, thus, have satisfied the EAct fingerprinting requirement.

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, as discussed above, Section 652 of the EAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need to know.

To provide assurance that the affected vendors are continuing to implement appropriate measures to ensure a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history records check requirements for access to SGI, the affected vendors shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and this Order. In addition, pursuant to 10 CFR 2.202, "Orders," I find that in light of the matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954 as amended, and 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 the affected vendors and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.*

A. 1. No person may have access to SGI unless that person has a need to know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59, who has had a favorably decided U.S. Government criminal history check within the last 5 years, or who has an active Federal security clearance, provided in the latter two cases that the affected vendor's NRC-approved reviewing official has documented the existence of an active clearance or the basis for relief.

2. No person may have access to any SGI if the NRC, when making an SGI access determination 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.

3. The affected vendor 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. The affected vendor 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.

4. The affected vendor 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 is 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 the affected vendor 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 governmental 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 Condition III.A. above. Before providing SGI to any person, a copy of this Order shall be provided to that person.

C. Each of the affected vendors shall comply with the following requirements:

1. The affected vendor shall, within 20 days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the attachment to this Order.

2. The affected vendor shall, within 20 days of the date of this Order, submit the fingerprints of one individual whom (a) the affected vendor 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 reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor's reviewing official.³ The affected vendor may, at the same time or later, submit the fingerprints of other individuals to whom the affected vendor seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the attachment to this Order.

3. The affected vendor may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. The affected vendor shall make determinations on continued access to SGI within 90 days of the date of this Order, in part, based on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. The affected vendor shall, in writing, within 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 the Order, including the attachment; or (2) if

³ 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.

compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendors shall submit responses to C.1., C.2., C.3, and C.4 above to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, the affected vendors shall mark their responses as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the affected vendor.

IV

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within 20 days of the date of this Order. Where good cause is shown, the NRC will consider extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which the affected vendor or other entities adversely affected rely, and the reasons as to why the NRC should not have issued this Order. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the affected vendor, if the answer or hearing request is by an entity other than the affected vendor. Because of possible delays in delivery of mail to U.S. Government offices, the agency asks that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415-1101 or via e-mail to hearingdocket@nrc.gov, and also to the

Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or via e-mail to OGCMailCenter@nrc.gov. If an entity other than the affected vendor requests a hearing, that entity shall set forth, with particularity, the manner in which this Order adversely affects its interest and shall address the criteria set forth in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions."

If the affected vendor, 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 such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the affected vendor may, in addition to demanding 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 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 of this Order without, further order or proceedings. If the agency approves an extension of time for requesting a hearing, the provisions, as specified above 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.

Dated this 12th day of September, 2007.

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For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of New Reactors.

Enclosure 3—Process To Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process for individuals whom the Nuclear Regulatory Commission (NRC) licensees or other person¹ nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee

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

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

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

4. Procedures To Challenge the Contents of Records Obtained From the FBI

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI will forward the challenge to the agency that submitted the data and request 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 necessary changes in accordance with the information supplied by that agency.

(ii) Be afforded ten (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 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

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of 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 Determination To Deny or Revoke Access to SGI

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

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

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within twenty (20) days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take

place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within sixty (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. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing, and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

Attachment—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When a Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees and other persons who are required to conduct fingerprinting shall comply with the requirements of this attachment.²

A. 1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure 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" section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active federal security clearance. Written confirmation from the Agency/ employer which granted the federal

² As used herein, "licensee" means any licensee or other person who is required to conduct fingerprinting in accordance with these requirements.

security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements included in Attachment 2 to this Order, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) 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.

A licensee shall not use information received from a criminal history check 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 which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

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-6E46, one completed, legible standard

fingerprint card (Form FD-258, ORIMDNRCOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, 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 (301) 415-5877, or by e-mail to forms@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 due to 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 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.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by 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]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) 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.

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

Right To Correct and Complete Information

Prior to 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 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 (1) year from the date of the notification.

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 ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/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. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. 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.

2. 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 access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and 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.

4. 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.

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

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NUCLEAR REGULATORY COMMISSION

[Docket No. 070-00348]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Special Nuclear Materials License No. SNM-348, for Termination of the License and Unrestricted Release of the Department of the Army's Facility in Adelphi, MD

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.