

April 30, 2007

EA-07-074

TO: Holders of Licenses for Research and Test Reactors as Listed in Attachment 1 to the Enclosed Order

SUBJECT: ISSUANCE OF ORDER IMPOSING FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS FOR UNESCORTED ACCESS TO RESEARCH AND TEST REACTORS

Recently you received an Order from the U.S. Nuclear Regulatory Commission (NRC or Commission) requiring fingerprinting and criminal history records check for access to Safeguards Information (SGI), Order EA-06-203 dated September 29, 2006, as part of the implementation of Section 652 of the Energy Policy Act of 2005 (EPAAct), which was signed on August 8, 2005. As a result of the implementation of EA-06-203, the NRC has approved one or more designated individuals at the request of the licensee to act as a reviewing official. The reviewing official is responsible for determining other licensee employees' need-to-know SGI, and for reviewing the results of the Federal Bureau of Investigation (FBI) fingerprint-based criminal history records check in conjunction with other applicable requirements to make SGI access determinations for those individuals.

Although the NRC has previously taken several steps to provide additional regulatory oversight for unescorted access to the research and test reactors, the EPAAct granted the NRC additional authority to impose FBI identification and criminal history records checks based on fingerprints of any person permitted unescorted access to various NRC-regulated facilities, including research and test reactors. The NRC is now imposing fingerprinting requirements for unescorted access on the applicable RTR licensees by Order (Enclosure 1).

Under this Order, the licensee must submit fingerprints of individuals who seek or currently have unescorted access. Individuals who have previously been subjected to fingerprinting that would satisfy the requirements for unescorted access in accordance with the enclosed Order do not need to be fingerprinted again. This Order also requires that a reviewing official must consider the results of the FBI criminal history records check in conjunction with other applicable requirements to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official may be one that has previously been approved by NRC in accordance with the "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)," (EA-06-203) dated September 29, 2006, (71 FR 59140, Oct. 6, 2006) (ML061510049). Licensees may nominate additional reviewing officials in accordance with the September 29, 2006, Order (EA-06-203). A reviewing official, and only a reviewing official, who has been approved by NRC, can make unescorted access determinations in accordance with the enclosed Order. The enclosed Order also specifies that no person may have access to Safeguards Information or unescorted access to any utilization facility, or radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal

history records check, either that the person may not have access to SGI or that the person may not have unescorted access to a utilization facility, or radioactive material or property subject to regulation by the NRC.

This Order does not obviate the need for licensees to continue to meet other applicable requirements and to maintain the effectiveness of security measures taken in response to the events of September 11, 2001. The requirements of the Order, which will remain in effect until the Commission determines otherwise, supplement, but do not replace, existing requirements and measures concerning unescorted access.

Licensees must pay a processing fee of \$27.00 per fingerprint submission. Payments made payable to "U.S. NRC" must accompany the request. Details regarding fingerprint submissions and payment of fees are found in Attachment 2 to the Order.

In addition, all licensees must respond to this Order within 20 days of the date of its issuance and implement the requirements before allowing unescorted access to any individual. **Please include the docket number listed in Attachment 1 and mark all licensee responses "Security-Related Information—Withhold Under 10 CFR 2.390" in all of your correspondence with NRC regarding the enclosed Order.**

Licensee responses to the enclosed Order (not fingerprint cards) are required to be submitted to the Director, Office of Nuclear Reactor Regulation, and should be addressed to the attention of Mr. William Schuster, Mail Stop O-12G15. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Office of Nuclear Reactor Regulation
Attn: William Schuster, Mail Stop O-12G15
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

For delivery services requiring a street address, mail to:

Director, Office of Nuclear Reactor Regulation
Attn: William Schuster, Mail Stop O-12G15
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

Licensee fingerprint cards are required to be submitted to the Director, Division of Facilities and Security, and should be addressed to the attention of the Criminal History Program, Mail Stop T-6E46. The following mailing addresses should be used:

For normal postal delivery, mail to:

Director, Division of Facilities and Security
Attn: Criminal History Program, Mail Stop T-6E46

U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

For delivery services requiring a street address, mail to:
Director, Division of Facilities and Security
Attn: Criminal History Program, Mail Stop T-6E46
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Please contact Marvin Mendonca at 301-415-1128, mmm@nrc.gov, or William Schuster at 301-415-3934, wcs1@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order. This Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

James T. Wiggins, Acting Director
Office of Nuclear Reactor Regulation

Enclosures:

1. Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to All Research and Test Reactors Identified in Attachment 1
2. Guidance for Licensee's Evaluation of Criminal History (Fingerprint) Checks

For delivery services requiring a street address, mail to:
Director, Division of Facilities and Security
Attn: Criminal History Program, Mail Stop T-6E46
U.S. Nuclear Regulatory Commission
Two White Flint North
11545 Rockville Pike
Rockville, MD 20852-2738

Please contact Marvin Mendonca at 301-415-1128, mmm@nrc.gov, or William Schuster at 301-415-3934, wcs1@nrc.gov, to facilitate resolution of any issues or questions related to compliance with the requirements in the enclosed Order. This Order has been forwarded to the Office of the Federal Register for publication.

Sincerely,

/RA/

James T. Wiggins, Acting Director
Office of Nuclear Reactor Regulation

Enclosures:

1. Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to All Research and Test Reactors Identified in Attachment 1
2. Guidance for Licensee's Evaluation of Criminal History (Fingerprint) Checks

DISTRIBUTION:

Public	PRT r/f	RidsNrrDprPrta	RidsNrrDprPrtb
RidsNrrDpr	RidsNrrAdra	RidsNrrOd	RidsOgcMailCenter
RidsOeMailCenter		RidsNsrOd	

*see previous concurrence **includes review of Commission Plan ***via email ****via telecon

ADAMS Accession Nos.:

ML070750140 Package No.: ML070750058 Enclosure No.: ML070750103

OFFICE	RTRB:PM	RTRA:LA	RTRA:BC	Tech Ed.	FSME/DILR	FSME/DWMEP
NAME	MMendonca*	EHylton*	DCollins*	LCulp***	RVirgilio***	CCraig****
DATE	3/14/07	3/16/07	3/20/07	3/15/07	3/14/07	4/13/07
OFFICE	ADM/DFS*	OE	NSIR	DPR:ADD*	OGC*	NRR:OD
NAME	APretzello	MBurrell*	RWay*	JGolder	JZorn	Jdyer/JWiggins for
DATE	3/27/07	3/23/07	3/26/07	3/27/07	4/12/07	04/30/07

UNITED STATES
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
ALL RESEARCH AND TEST)
REACTOR LICENSEES)
IDENTIFIED IN ATTACHMENT 1)

EA-07-074

**ORDER IMPOSING FINGERPRINTING
AND CRIMINAL HISTORY RECORDS CHECK
REQUIREMENTS FOR UNESCORTED ACCESS
TO ALL RESEARCH AND TEST REACTOR LICENSEES
IDENTIFIED IN ATTACHMENT 1
(EFFECTIVE IMMEDIATELY)**

I

The Licensees identified in Attachment 1¹ to this Order hold licenses as research and test reactors (RTRs) issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission). On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. 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 unescorted access to a utilization facility, which includes the RTRs listed in Attachment 1 to this Order.

II

Prior to September 11, 2001, the Commission established physical protection requirements applicable to RTRs, which included storing and using the special nuclear material in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities.

Subsequent to the terrorist events of September 11, 2001, the NRC took various actions to ensure the acceptability of individuals for unescorted access to RTRs. RTRs were advised to

¹Attachment 1 contains sensitive information and will not be released to the public.

consider taking additional precautions including observation of activities within their facility, and licensee precautions were evaluated at specific RTR sites in the remainder of 2001. From 2002 through 2004, RTRs implemented compensatory measures (CMs), which included site-specific background investigations or checks. Additionally, in January 2003, NRC sent the names of and information on all individuals with unescorted access at RTRs to U.S. intelligence agencies for review. This review found no issues. Individuals with unescorted access since January 2003 have undergone site-specific background investigations or checks, which were implemented as part of CMs implemented at RTRs in response to NRC initiatives.

The RTR site-specific background investigations and checks were established using a graded approach, considering the specific configuration, uses and radiological risk of each facility, to provide acceptable protection of the nuclear material and any associated radioactive materials. The background investigations and checks at a minimum verify identity, nationality, immigration status (if applicable), and determine whether the individual demonstrates a pattern of trustworthy and reliable behavior through facility-specific verification of various aspects of a person's background. These verifications include consideration of educational, military, employment and criminal histories. With regard to criminal history, some of the RTR facilities use FBI fingerprint-based criminal history records checks, while others use either State fingerprint-based criminal history records checks or criminal history records checks which do not include fingerprints. These background investigations or checks, through a combination of various elements, have provided additional assurance for the protection of the specific facility from potential radiological risk from insider threats.

Further, RTRs are required by Orders dated September 29, 2006, to have FBI fingerprint-based identification and criminal history records checks for persons allowed access to Safeguards Information.² These individuals are those who are allowed access to the details of security plans or procedures at the specific facility and, therefore, have actual knowledge and

²“Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately),” (EA-06-203) dated September 29, 2006, (71 FR 59140, Oct. 6, 2006) (ML061510049).

ability to affect the facility security. Therefore, those Orders provide additional assurance that security information and associated RTRs facilities are adequately protected.

Previously, AEA Section 149 only required fingerprinting and criminal history records checks of persons seeking unescorted access to facilities licensed under Sections 103 and 104b of the AEA, e.g., power reactors. Power reactors are required by 10 CFR 73.57 to have fingerprint-based criminal history records checks performed as part of granting unescorted access to the facility. RTRs have not been subject to this requirement, and have only been required to control access to authorized persons and screen those persons for access in accordance with their security plans or procedures.

Congress left intact the Commission's authority to relieve persons by rule from the fingerprinting, identification, and criminal history records check requirements of AEA Section 149 "if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public."³ Currently, the NRC has no rule that would provide relief from or require the implementation of AEA section 149 for fingerprinting for unescorted access to RTRs.

The NRC is planning a rulemaking to reexamine the extent of fingerprint-based criminal history records checks for unescorted access to RTRs that it finds to be necessary to ensure adequate protection of the public health and safety and common defense and security. In the interim, the NRC has decided to implement this requirement, in part, prior to the completion of the rulemaking to provide acceptable, additional assurance that an individual with unescorted access to a RTR facility will not adversely impact the common defense and security or the public health and safety. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing the FBI criminal history records check requirements, as set forth in this Order, including Attachment 2 to this Order, on all Licensees identified in Attachment 1 to this Order. These requirements will remain in effect until the Commission determines otherwise.

³AEA § 149.b.

The AEA requires fingerprint-based criminal history records checks at utilization facilities. Section 11cc of The AEA defines utilization facility as

- (1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or
- (2) any important component part especially designed for such equipment or device as determined by the Commission.

The Commission's rules, in 10 CFR 50.2, define a "[u]tilization facility" as "any nuclear reactor other than one designed or used primarily for the formation of plutonium or U-233." Further, "Nuclear reactor" is defined as "an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction." These definitions include the RTRs listed in Attachment 1.

For purposes of this Order, an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal. At RTRs, such individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or remove the special nuclear material from the utilization facility in an

unauthorized manner without detection, assessment and response by the physical protection system or related provisions or persons.

In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security 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 53, 104, 149, 161b, 161i, 161o, 182, and 186 of the AEA of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Part 50 and 10 CFR Part 73, IT IS HEREBY ORDERED, **EFFECTIVE IMMEDIATELY**, THAT ALL LICENSEES IDENTIFIED IN ATTACHMENT 1 TO THIS ORDER SHALL COMPLY WITH THE REQUIREMENTS SET FORTH IN THIS ORDER.

- A. All licensees identified in Attachment 1 to this Order shall comply with the following requirements:
1. The Licensee shall, within **twenty (20) days** of the date of this Order, establish and maintain a fingerprinting program for unescorted access that meets the requirements of Attachment 2 to this Order.
 2. The Licensee shall, in writing, within **twenty (20) days** of the date of this Order, notify the Commission (1) of receipt and confirmation that compliance with the Order will be achieved or (2) if it is unable to comply with any of the requirements described in Attachment 2, or (3) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.
- B. In accordance with the NRC's "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information (Effective Immediately)" (EA-06-203) issued on September 29, 2006, (71 FR 59140, October 6, 2006), only the NRC-approved reviewing official shall review results from a FBI criminal history records check. In accordance with all other applicable requirements

and the evaluation of the results of the FBI criminal history records check as specified in this Order, the reviewing official shall determine whether an individual may have, or continue to have, unescorted access. No person may have access to Safeguards Information or unescorted access to any utilization facility, or radioactive material or property subject to regulation by the NRC if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and criminal history records check, either that the person may not have access to SGI or that the person may not have unescorted access to a utilization facility, or radioactive material or property subject to regulation by the NRC.

- C. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 to this Order. Individuals who have been fingerprinted and granted access to SGI by the NRC-approved reviewing official in accordance with EA-06-203 (September 29, 2006), do not need to be fingerprinted again for purposes of authorizing unescorted access. In addition, individuals who have a favorably decided U.S. Government criminal history records check within the last five (5) years, or who have an active Federal security clearance have satisfied the EAct fingerprinting requirement and need not be fingerprinted again, provided in each case that the appropriate documentation is made available to the Licensee's reviewing official. However, all other applicable requirements must be satisfied to allow any individual unescorted access to the facility.
- D. The Licensee may allow any individual who currently has unescorted access, in accordance with applicable requirements, to continue to have unescorted access, pending a decision by the reviewing official (based on fingerprinting and a FBI criminal history records check) that the individual may continue to have unescorted access. The licensee shall complete implementation of the requirements of Attachment 2 to this Order by July 30, 2007.

Licensee responses to Condition A.2. shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee 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 twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to 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 Nuclear Reactor Regulation, 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 on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. 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 also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Material Litigation and Enforcement at the same address, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible delays in delivery of mail to United States Government offices, it is requested 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 by 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 by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee 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.

If a hearing is requested by the Licensee 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), the Licensee 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 ground 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 twenty (20) days from the date of this Order without further Order or proceedings.

If an extension of time for requesting a hearing has been approved, 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 30th day of April 2007.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

James T. Wiggins, Acting Director
Office of Nuclear Reactor Regulation

Attachments:

1. List of Applicable Research and Test Reactor Licensees
2. Requirements for Fingerprinting and Criminal History Checks of Individuals for Determining Unescorted Access

Requirements for Fingerprinting and Criminal History Checks of Individuals for Determining Unescorted Access

General Requirements

Licensees shall comply with the following requirements of this attachment.

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access as defined in the associated Order. 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 for unescorted access need not be taken again if an individual who has a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, which included a U.S. Government criminal history check. Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the criminal history check must be provided for these cases. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access.
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 other requirements for unescorted access, in making a determination whether to grant, or continue to allow, unescorted access.
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 unescorted access.
7. The Licensee shall document the basis for its determination whether to grant, or continue to allow, unescorted access.

Prohibitions

A Licensee shall not base a final determination to deny an individual unescorted access 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, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access, 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 submissions 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 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 Part 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 determination on unescorted access 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 unescorted access, the Licensee shall provide the individual its documented basis for denial. Unescorted access shall not be granted to an individual during the review process, except as allowed by the Order.

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 unescorted access. 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 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.
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 denial to unescorted access. 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.

Guidance for Licensee's Evaluation of Criminal History (Fingerprint) 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, since the individual's eighteenth birthday. The Licensee will receive the information from the criminal history check of those individuals requiring unescorted access as defined in the associated Order, and the NRC-approved reviewing official should evaluate that information using the guidance below. Furthermore, the requirements of all Orders and regulations, which apply to the unescorted access is being granted must be met.

The Licensee's reviewing official is required to evaluate all available information in making a determination of unescorted access, including the criminal history record information pertaining to the individual as required by the NRC Order. The criminal history records check is used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access as defined in the associated Order. Each determination of unescorted access, which includes a review of criminal history information, must be documented to include the basis for the decision made.

- (i) When negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information should be considered, and actions taken based on these findings should be documented.
- (ii) A record containing a pattern of behaviors which indicates that the behaviors could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have unescorted access in accordance with the associated Order, should be carefully evaluated prior to any authorization of unescorted access.

It is necessary for a Licensee to resubmit fingerprints only under two conditions:

- 1) The 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 the fingerprints are unclassifiable based on conditions other than poor quality, the licensee must submit a request to NRC for alternatives. When those search results are received from the FBI, no further search is necessary.