

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, DC 20555-0001

February 11, 1998

NRC INFORMATION NOTICE 98-05: CRIMINAL HISTORY RECORD INFORMATION

Addressees

All holders of operating licenses for power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice to alert addressees to a recent clarification of the legal constraints associated with Criminal History Record Information (CHRI) from the Federal Bureau of Investigation (FBI). Specifically, the FBI has reiterated its position that CHRI provided by the FBI to the NRC and its licensees may not be released to third parties, such as contractors. The information provided herein is not an NRC requirement and, therefore, no written response is required from addressees. It is expected that addressees will review this information for applicability to their facilities and consider actions, as appropriate, to avoid unauthorized use and/or dissemination of CHRI.

Background

Each licensee authorized to operate a nuclear power reactor under 10 CFR Part 50 is required by 10 CFR 73.57 to submit fingerprint cards for those individuals to whom the licensee intends to grant access to Safeguards Information and/or unescorted access to the protected area of the nuclear power facility. In accordance with 10 CFR 73.57(b)(6), these fingerprint cards are submitted to the NRC for initial review and subsequent submission to the Attorney General of the United States. The FBI uses the fingerprint cards to conduct a criminal history check and to develop the CHRI report. The FBI CHRI report is sent to the NRC for subsequent forwarding to the licensee. The licensee reviews the data provided by the FBI and considers the data in making a decision on granting access to Safeguards Information and/or unescorted access to the plant's protected area.

The statutory authority governing collection and release of FBI CHRI is Title 28, United States Code (U.S.C.), Section 534, which states, in part, that "The Attorney General shall . . . (4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions." The authority granted to the Attorney General under Section 534 has been delegated to the Director of the FBI. Access to FBI CHRI is also regulated by Title 28, Code of Federal Regulations (CFR), Section 20.33(a)(2), which allows the dissemination of FBI CHRI to "Federal agencies authorized to receive it pursuant to Federal statute or Executive order." In this context, the statutory authority pertinent to the NRC (the "Commission") is in Section 149 of the Atomic Energy Act, which is codified at 42 U.S.C. 2169.

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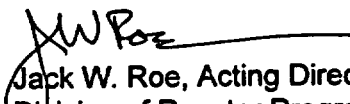
Description of Circumstances

Legal constraints on the use of FBI CHRI were clarified in a letter dated October 24, 1997, from the Department of Justice (DOJ) Criminal Justice Information Services Division to the NRC. In this letter, the DOJ noted that 42 U.S.C. 2169 says that "Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to the Commission, and, in accordance with regulations prescribed under this section, the Commission may provide such results to the licensee or applicant submitting such fingerprints" (emphasis added by the DOJ). Referring to 42 U.S.C. 2169, the DOJ letter said, "In analyzing this statute, we do not see any language that would authorize dissemination of FBI CHRI data to a third party private contractor working directly for the NRC or for the licensee" and that "an independent contractor is not rendered an agent simply because he is compensated by the principal for his services." The letter continued, "In any event, nothing in Section 534(b) authorizes the release of CHRI to agents of authorized users" and that "we must conclude that the use of private contractors by the NRC and its licensees to receive and process FBI CHRI is prohibited by Section 534 and 42 U.S.C. 2169."

Discussion

The DOJ clarification of the legal constraints associated with FBI CHRI means that only licensee employees will be authorized to have access to FBI CHRI. Licensees that employ contractors to receive FBI CHRI or that divulge the FBI CHRI to contractors whose employees have been processed for access to Safeguards Information or to protected areas of nuclear power facilities may risk violation of 28 U.S.C. 534 and 42 U.S.C. 2169.

If you have any questions about the information in this notice, please contact the technical contact listed below or the cognizant Office of Nuclear Reactor Regulation (NRR) project manager.


Jack W. Roe, Acting Director
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

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301-415-3209
E-mail: chh@nrc.gov

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List of Recently Issued NRC Information Notices

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LIST OF RECENTLY ISSUED
NRC INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
98-04	1997 Enforcement Sanctions for deliberate Violations of NRC Employee Protection requirements	2/9/98	All U.S. Nuclear Regulatory Commission licensees
98-03	Inadequate Verification of Overcurrent Trip Setpoints in Metal-Clad, Low-Voltage Circuit Breakers	1/21/98	All holders of operating licenses for nuclear power reactors
98-02	Nuclear Power Plant Cold Weather Problems and Protective Measures	1/21/98	All holders of operating licenses for nuclear power reactors
98-01	Thefts of Portable Gauges	1/15/98	All portable gauge licensees
97-91	Recent Failures of Control Cables Used on Amersham Model 660 Posilock Radiography Systems	12/31/97	All industrial radiography licensees
97-90	Use of Nonconservative Acceptance Criteria in Safety-Related Pump Surveillance Tests	12/30/97	All holders of OLs for nuclear power reactors except those who have ceased operations and have certified that fuel has been permanently removed from the vessel
97-89	Distribution of Sources and Devices Without Authorization	12/29/97	All sealed source and device manufacturers and distributors
97-88	Experiences During Recent Steam Generator Inspections	12/16/97	All holders of OLs for pressurized-water reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor

OL = Operating License
CP = Construction Permit

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†Original signed by|
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DOCUMENT NAME: 98-05.IN

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