UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NEW REACTORS
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
OFFICE OF FEDERAL AND STATE MATERIALS AND
ENVIRONMENTAL MANAGEMENT PROGRAMS
WASHINGTON, DC 20555-0001

December 22, 2008

NRC REGULATORY ISSUE SUMMARY 2008-10, SUPPLEMENT 1 NOTICE REGARDING FORTHCOMING FEDERAL FIREARMS BACKGROUND CHECKS

ADDRESSEES

All U.S. Nuclear Regulatory Commission (Commission or NRC) licensees, certificate holders, and applicants for a license or certificate of compliance who use armed security personnel as part of their physical protection system and security organization. All Radiation Control Program Directors and State Liaison Officers.

INTENT

The NRC is issuing Supplement 1 to Regulatory Issue Summary (RIS) 2008-10 to update information provided in the original RIS to licensees, certificate holders, and applicants who will be affected by the forthcoming Federal firearms background checks required by section 161A of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. § 2201a). RIS 2008-10 was originally issued on May 13, 2008. The NRC recommends that affected licensees, certificate holders, and applicants discuss the contents of this supplemental RIS with their armed security personnel. This supplement to RIS 2008-10 requires no specific action or written response by the addressees.

For byproduct material licensees, the NRC has no current or planned requirements necessitating the use of armed security personnel. However, some byproduct material licensees may use armed security personnel to provide security for their overall facility rather than directly providing security for the radioactive byproduct material itself. Therefore, as with RIS 2008-10, the NRC is also issuing this supplement to RIS 2008-10 to Radiation Control Program Directors and State Liaison Officers for their information.

BACKGROUND INFORMATION

In RIS 2008-10, the NRC had provided information for advance planning by licensees, certificate holders, applicants, and their respective armed security personnel before the NRC issues new requirements on firearms background checks. These firearms background checks

ML082340897

are intended to provide assurance that such security personnel are not legally barred by Federal law from receiving, possessing, transporting, or using any covered weapons. The RIS had also provided information for affected security personnel, before they are subject to future firearms background checks, to consider applying under the Federal Bureau of Investigation (FBI) Voluntary Appeal File (VAF) program to verify that the FBI does not consider them disqualified from possessing firearms or ammunition. Based upon the NRC's understanding of the U.S. Department of Justice's (DOJ's) previous views on section 161A, RIS 2008-10 had indicated that firearms background checks would affect only the armed security personnel at facilities owned and operated by NRC licensees and certificate holders who applied to the NRC for the new enhanced weapons or preemption authority provided by section 161A.

However, subsequent to the issuance of RIS 2008-10, the DOJ informed the NRC that the DOJ had revised its views on the applicability of firearms background checks mandated by section 161A. Specifically, the DOJ has indicated that section 161A mandates that all security personnel who have duties that require access to covered weapons and who are engaged in the protection of Commission-designated facilities, radioactive material, or other property owned or operated by an NRC licensee or certificate holder must be subject to a fingerprint-based background check by the U.S. Attorney General (AG) and a firearms background check against the FBI National Instant Background Check System (NICS). The NRC expects this revised view of the statute's mandate to increase the number of security personnel who will be subject to a firearms background check.

Under DOJ's current view (as reflected in the Firearms Guidelines issued pursuant to section 161A), firearms background checks would be mandatory for security personnel of all licensees and certificate holders who meet the following conditions: (1) the licensee or certificate holder must fall within the classes of facilities, radioactive material, or other property designated by the Commission; (2) the licensee or certificate holder must employ covered weapons as part of their protective strategy; and (3) the security personnel's' access to or possession of covered weapons must be necessary to the discharge of their official duties. Covered weapons include both standard weapons (e.g., handguns, shotguns, and rifles) and enhanced weapons (e.g., machineguns). All three conditions must be met for a licensee or certificate holder to be subject to the firearms background check requirements. Applicants for a license or for a Certificate of Compliance (CoC) would not be subject to the requirements of section 161A.

With respect to the designation of facilities, radioactive material, and other property required by section 161A, the Commission is considering designating power reactor facilities and Category I strategic special nuclear material (SSNM) facilities in an ongoing rulemaking. The Commission intends to consider designating additional classes of facilities, radioactive material, or other property in a separate future rulemaking. The NRC expects to publish a revised proposed rule in the *Federal Register* for public comment in late 2008 or early 2009 that will designate these two classes of facilities and will provide the specific requirements to implement section 161A. Licensees and certificate holders may not begin firearms background checks until after the NRC issues a final rule implementing section 161A. The revised proposed rule would not subject applicants for a license or a CoC to these proposed regulations until after the NRC issues their respective license or CoC.

SUMMARY OF ISSUE

Because of changes in the Firearms Guidelines to the scope of applicability of the firearms background checks, the NRC is issuing this supplement to permit impacted licensees, certificate holders, applicants, and their respective armed security personnel to adjust their planning efforts before the NRC issues new regulations on firearms background checks. Because DOJ revised its views on the applicability of the firearms background checks, the NRC has significantly changed its approach in this revised proposed rule.

The firearms guidelines required to be issued by the Commission with the approval of the AG (under the mandate of section 161A) specify that firearms background checks are required of "security personnel whose official duties require access to covered weapons." The NRC staff's approach being considered for the revised proposed rule discussed above would apply firearms background checks to security personnel who handle, use, and repair covered weapons and to personnel who inventory enhanced weapons. Specifically, this would include security personnel performing security duties including: armed officers, armed responders, tactical response forces, and armed supervisors; firearms instructors; armorers repairing, maintaining, and testing weapons; armory-personnel issuing and receiving weapons; and enhanced-weapons inventory personnel. The NRC staff is not considering including warehouse or supply personnel who receive shipments of weapons, provided that the weapons remain sealed in their shipping containers, are promptly turned over to security personnel, and are promptly moved to security storage areas (e.g., armories). The NRC emphasizes that stakeholders will have an opportunity to comment on these proposals in the forthcoming revised proposed rule.

The revised proposed rule would require affected licensees and certificate holders to begin firearms background checks by submitting information to the NRC within 30 days of the effective date of a final rule designating the two classes of facilities proposed (i.e., power reactor facilities and Category I SSNM facilities). The revised proposed rule would also require all affected licensees and certificate holders within 180 days of the effective date of a final rule to remove any security personnel who have not completed a satisfactory firearms background check from duties that require access to covered weapons. After this 180-day implementation period, a "proceed" NICS response from the FBI is considered a satisfactory firearms background check. A "delayed" NICS response or a "denied" NICS response from the FBI is considered an adverse firearms background check. For other classes of facilities, radioactive material, or other property designated by the Commission in a future rulemaking, the 30-day and 180-day clocks would start after the effective date of that final rule.

During the 180-day implementation period, the revised proposed rule would provide that individuals who receive a "delayed" NICS response may continue duties that require access to standard weapons, but not to enhanced weapons. Additionally, licensees and certificate holders must remove individuals who receive a "denied" NICS response from duties that require access to covered weapons. Individuals who have been removed from such duties and who subsequently complete a satisfactory firearms background check may be returned to such duties under the revised proposed rule.

The information contained in RIS 2008-10 on disqualifying criteria for possessing and issuing firearms and ammunition currently stipulated under 18 U.S.C. § 922(d), (g), and (n) remains unchanged. The information about the FBI VAF program is repeated below as an aid to the reader.

Security Personnel Initiatives in Advance of Firearms Background Checks

Because the FBI NICS database uses a name- and descriptor-based search process, rather than a fingerprint-based search process, an individual who has a common name, has been the victim of identity theft, or on whom there may be incomplete or inaccurate records in the NICS database (e.g., the expungement of a prior conviction or the receipt of a pardon may not have been recorded) could receive a false-positive "denied" response which indicates that she or he is under a Federal firearms disability. For a "denied" response, the NICS automatically refers the individual to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for possible criminal investigation. The FBI will use the fingerprint impressions submitted by the security officer who is under a firearms background check to resolve questions of identity following the NICS search process. For example, is hypothetical security officer "John Smith," who is applying for a firearms background check, one of the 18 individuals named "John Smith" with a record in the NICS database indicating they are under a Federal firearms disability, or not? Consequently, although the use of fingerprints as part of a firearms background check will reduce the potential for misidentification of an individual as being under a Federal firearms disability, it will not completely eliminate such potential errors and subsequent "false positive" referrals to the ATF. Therefore, because many security personnel have not been previously checked against the FBI NICS database, individuals who may be subject to a firearms background check under the revised proposed rule described above may wish to apply under the FBI VAF program, before they are subject to the final firearms background check regulations.

Individuals who apply for entry into the VAF program must submit descriptive data and fingerprint impressions to the FBI. The FBI will examine the fingerprints and descriptive data against the NICS databases to determine whether the individual is under a Federal firearms disability. If no prohibitive information is discovered, the FBI approves the application and the individual is placed in the VAF program. These individuals are issued a unique personal identification number (UPIN). Security personnel would include their UPIN on the NRC Form 754 that they would submit under the future firearms background checks, thus reducing the potential for misidentification and consequent delays in completing their firearms background check. Additionally, applicants to the VAF program whose entry is rejected because of the presence of prohibitive information are not automatically referred to ATF. Furthermore, an individual who believes she or he is erroneously included in the NICS databases can appeal to the FBI to correct any inaccurate or incomplete records. Further information on the FBI VAF program can be found on the FBI Web site (Reference 1).

Accordingly, the NRC recommends that licensees, certificate holders, and applicants discuss the contents of this supplemental RIS with their security personnel whose duties require, or will require, access to covered weapons.

BACKFIT DISCUSSION

This supplemental RIS does not impose a regulatory staff position interpreting Commission rules that is either new or different from a previously applicable staff position. Therefore, it is not a backfit as defined by the NRC's "backfit" regulations under 10 CFR 50.109, 70.76, 72.62, or 76.76. This supplemental RIS concerns licensee, certificate holder, and security personnel's compliance with new statutory obligations under 42 U.S.C. § 2201a regarding firearms background checks and the voluntary participation by security personnel in the FBI VAF program. This supplemental RIS requires no action or response by the addressees. Furthermore, this supplemental RIS describes draft approaches the NRC staff is considering for proposed regulations implementing the firearms guidelines. The public and stakeholders will have an opportunity to provide comments on the revised proposed rule setting forth these potential approaches to implementing the firearms guidelines, particularly with respect to the identification of the specific "security personnel" who would be subject to the rule's requirements. Consequently, this supplemental RIS does not constitute a final regulatory position of the NRC staff. Accordingly, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

The NRC did not publish a notice of opportunity in the *Federal Register* requesting public comment on this supplemental RIS, because this RIS is informational. However, the NRC posted a draft of this supplemental RIS to the NRC's "Documents for Comment" Web page and requested comments. The NRC also discussed this supplemental RIS at a public meeting with various stakeholders on September 3, 2008, at the Bethesda North Marriott Hotel & Conference Center in Rockville, MD. Additionally, the NRC posted a draft of this supplemental RIS in advance of the public meeting to the NRC's "Public Meeting Schedule" Web page, along with the meeting notice and agenda. Handouts of the draft supplemental RIS were also available at the public meeting. Stakeholders provided written and verbal comments on the draft supplemental RIS and the NRC staff considered these comments in developing this supplemental RIS.

CONGRESSIONAL REVIEW ACT

The NRC has determined that this action is not subject to the Congressional Review Act (5 U.S.C. §§ 801-808).

PAPERWORK REDUCTION ACT STATEMENT

This supplemental RIS discusses existing information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, *et seq.*). The Office of Management and Budget (OMB) approved these information collection requirements under control number 3150-0002. This supplemental RIS also discusses proposed information collection requirements that will be subject to the Paperwork Reduction Act of 1995. However, as of the date of issuance of this RIS, OMB has not approved these information collection requirements which are associated with the proposed firearms background checks required by 42 U.S.C. § 2201a and the proposed NRC Form 754.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

REFERENCE

1. Information on the FBI Voluntary Appeal File (VAF) program may be found at the FBI's Web site http://www.fbi.gov/hq/cjisd/nics/index.htm under the heading "General Information about NICS" in the link to the "NICS Voluntary Appeal File Brochure – (in English)." The ".pdf" link under this brochure includes the form and instructions to apply to the VAF program.

CONTACT

This supplemental RIS requires no specific action or written response. If you have any questions about this supplemental RIS, please contact one of the technical contacts listed below.

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Enclosure: List of Recently Issued FSME Generic Communications
Note: A complete listing of recent NRC generic communications may be found on the NRC's public Web site http://www.nrc.gov under the link to: Electronic Reading Room>Document Collections.

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DATE:	08/13/08	08/15/08	08/18/08	08/20/08	09/09/08	08/26/08
OFC:	DWMEP:RDB	FCSS:FMB	DILR:ILB	DOLR:D	OE	OGC:NLO
NAME:	APersinko [DWS]*	PHabighorst*	RTurtil*	JGiitter*	CCarpenter [RB]*	JZorn*
DATE:	08/29/08	08/26/08	08/24/08	09/02/08	09/02/08	10/06/08
OFC:	OGC:[illegible]	NRR:PMDA	OIS	FSME:MSEAB	LA:PGCB	PGCB
NAME:	MSmith	LHill*	MJenney*	AMcIntosh*	CHawes*	AMarkley*
DATE:	09/[illegible]	10/07/08	10/14/08	10/24/08	11/05/08	11/05/08
OFC:	PGCB:BC	SFST:D	FCSS:D	DWMEP:D	DSER:D	DRIP:D
NAME:	MMurphy	EWBrach	DDorman	LCamper	SFlanders	TMcGinty
DATE:	12/19/08	12/5/08	12/11/08	12/18/08	12/19/08	12/19/08

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List of Recently Issued FSME Generic Communications

Date	GC No.	Subject	Addressees
05/13/08	RIS-2008-10	Notice Regarding Forthcoming Federal Firearms Background Checks	All NRC licensees, certificate holders, and applicants for a license or certificate of compliance who use armed security personnel as part of their physical protection system and security organization. All Radiation Control Program Directors and State Liaison Officers.
06/16/08	RIS-2008-13	Status and Plans for Implementation of NRC Regulatory Authority for Certain Naturally Occurring and Accelerator-Produced Radioactive Material	All NRC materials licensees. All Radiation Control Program Directors and State Liaison Officers. The NRC's Advisory Committee on the Medical Uses of Isotopes
07/18/08	RIS-2008-17	Voluntary Security Enhancements for Self-Contained Irradiators Containing Cesium Chloride Sources	All NRC materials licensees authorized to possess self-contained irradiators containing cesium chloride (CsCl). All Agreement State Radiation Control Program Directors and State Liaison Officers. The NRC's Advisory Committee on the Medical Uses of Isotopes.
10/03/08	RIS-2008-23	The Global Threat Reduction Initiative (GTRI) Domestic Threat Reduction Program & Federally Funded Voluntary Security Enhancements For High-Risk Radiological Material	All NRC Materials Licensees authorized to possess Category 1 or Category 2 quantities of radioactive materials. All Agreement State Radiation Control Program Directors and State Liaison Officers. The NRC's Advisory Committee on the Medical Uses of Isotopes
10/03/08	RIS-2008-24	Security Responsibilities of Service Providers and Client Licensees	All NRC licensees that hire service providers to install, service, repair, maintain, relocate, exchange, or transport radioactive materials in quantities of concern, and service provider licensees. All Agreement State Radiation Control Program Directors and State Liaison Officers
05/16/08	IN-2008-03	Precautions to Take Before Sharing Sensitive Security-Related Information	All NRC licensees who are implementing the NRC's order imposing increased controls (IC Order) or implementing IC requirements by license condition. All Agreement State Radiation Control Program Directors and State Liaison Officers

Note: This list contains the six most recently issued generic communications, issued by the Office of Federal and State Materials and Environmental Management Programs (FSME). A full listing of all NRC generic communications may be viewed on the NRC's public Web site at the following address: http://www.nrc.gov/reading-rm/doc-collections/gen-comm/index.html.