

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

DATE, 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, (originally issued on May 13, 2008), to correct information provided to licensees, certificate holders, and applicants who will be affected by forthcoming Federal firearms background checks. 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 addressees.

For byproduct material licensees, there are no current or planned NRC 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, this supplement is also issued to Radiation Control Program Directors and State Liaison Officers for their information only.

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. The RIS had also provided information for impacted security personal, in advance of their being subject to a future firearms background check, to consider applying under the Federal Bureau of Investigation's (FBI's) Voluntary Appeal File (VAF) program to verify that the FBI does not consider them disqualified

ML082340897

Enclosure 2

from possessing firearms or ammunition. The RIS had indicated that firearms background checks would affect the armed security personnel at NRC licensees and certificate holders who apply to the NRC for the new enhanced weapons or preemption authority provided by section 161A of the Atomic Energy Act of 1954, as amended (AEA). However, subsequent to the issuance of the RIS, the U.S. Department of Justice (DOJ) informed the NRC that the DOJ had revised its views on the applicability of firearms background checks mandated by section 161A (see 42 U.S.C. § 2201a). These firearms background checks will provide assurance that such security personnel are not barred under federal and state law from receiving, possessing, transporting, or using any covered weapons.

Specifically, DOJ indicated that section 161A mandates that all security personnel with duties requiring access to covered weapons 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's National Instant Background Check System (NICS). Covered weapons include both standard weapons and enhanced weapons (e.g., machineguns).

The Commission will designate the classes of facilities, radioactive material, and other property that are subject to firearms background checks under section 161A by promulgating regulations. The NRC staff is currently developing a proposed rule to implement the provisions of section 161A that will be published in the *Federal Register* for public comment. Licensees and certificate holders cannot begin firearms background checks until after the NRC issues a final rule implementing section 161A.

SUMMARY OF ISSUE

Due to changes in 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 advance planning efforts before the NRC issues new regulations on firearms background checks. Due to the revision of the DOJ's views on the applicability of the firearms background checks, the NRC's approach in this proposed rule has changed significantly.

Under the revised proposed rule, firearms background checks would be mandatory for all licensees and certificate holders who meet the following two test criteria. First, the licensee or certificate holder must fall within one of the classes of facilities, radioactive material, and other property designated by the Commission. Second, the licensee or certificate holder must also employ covered weapons as part of their protective strategy. Both criteria must be met to be subject to the firearms background check requirements. For those licensees and certificate holders, firearms background checks would be required of all security personnel whose official duties require access to covered weapons. Applicants for a license or a certificate of compliance would not be subject to these proposed regulations until the NRC issues their respective license or certificate of compliance.

The firearms guidelines (issued by the Commission, with the approval of 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." Covered weapons include both standard weapons (e.g., handguns, rifles, and shotguns) and enhanced weapons (e.g.,

machineguns). The NRC intends to apply this requirement to security personnel who handle, use, and repair covered weapons and who inventory enhanced weapons. For example, this would include security individuals performing armed duties; firearms instructor duties; armorer duties involving repair, issuance and receipt of weapons; and enhanced-weapons inventory personnel. This would not include warehouse or supply personnel who receive shipments of weapons, provided the weapons remain in their shipping containers, are promptly turned over to security personnel, and are promptly moved to security storage areas (e.g., armories).

The proposed rule would indicate that affected licensees and certificate holders must begin firearms background checks within 30 days of the NRC issuing a final rule designating classes of facilities, radioactive material, and other property. Within 180 days of a final rule taking effect, all affected licensees and certificate holders must remove from access to covered weapons any security personnel who have not completed a satisfactory firearms background check. A "proceed" NICS response is considered a satisfactory firearms background check. A "delayed" NICS response or a "denied" NICS response is considered an adverse firearms background check.

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

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 on the FBI's VAF program is repeated below as aid to the reader.

Security Officer Initiatives in Advance of Firearms Background Checks

Because the FBI's 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 may have 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 indicating 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 under a firearms background check to resolve questions of identity following the NICS search process, e.g., is hypothetical security officer "John Smith" (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. Consequently, while 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 events and subsequent "false positive" referrals to the ATF. Therefore, since many security personnel have not been previously checked against the FBI's NICS database, the NRC recommends security personnel consider applying to the FBI under the FBI's VAF program, in advance of being subject to a future firearms background check pursuant to an NRC regulation.

Individuals applying for entry into the VAF program submit descriptive data and fingerprint impressions to the FBI which are then examined against the NICS databases to determine whether the individual is under a Federal firearms disability. If no prohibitive criteria exist, the application would be approved and the applicant would be placed in the VAF. These individuals are issued a unique personal identification number (UPIN). Security officers would be able to include their UPIN on the proposed NRC Form 754 they would submit under future firearms background checks and thus would reduce the potential for misidentification and consequent delays in completing their firearms background check. Additionally, applicants to the VAF program whose entry is rejected due to the presence of prohibitive criteria are not automatically referred to ATF. Further information on the FBI's VAF program can be found on the FBI's Web site (Reference 1). Furthermore, an individual who believes they should not be included in the NICS database can appeal to the FBI to correct any inaccurate or incomplete records or provide proof of their identity.

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

BACKFIT DISCUSSION

This RIS does not impose a regulatory staff position interpreting Commission rules that is either new or different from a previously applicable staff position, and, therefore, it is not a backfit as defined by 10 CFR 50.109, 70.76, 72.62, or 76.76. This RIS concerns licensee, certificate holder, and security personnel's compliance with statutory obligations under 42 U.S.C. § 2201a regarding firearms background checks and with security personnel's voluntary participation in the FBI's VAF program. This RIS requires no action or response. Consequently, for the reasons described above, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because this RIS is informational. However, the NRC did hold a public meeting on September 3, 2008, with the Nuclear Energy Institute at the Bethesda North Marriott Hotel & Conference Center in Rockville, MD, to discuss the supplemental RIS. A draft of the supplemental RIS was available on the NRC's public Web site prior to the meeting for stakeholder review. Stakeholders provided both oral and subsequent written comments to the NRC staff on the draft supplemental RIS and the staff considered those 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 RIS discusses existing information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501, *et seq.*). These information collection requirements were approved by the Office of Management and Budget (OMB) under control

number 3150-0002. This RIS also discusses proposed information collection requirements that will be subject to the Paperwork Reduction Act of 1995. However, these information collection requirements (which are associated with the proposed firearms background checks required by section 161A and the proposed NRC Form 754) have not been approved by OMB as of the date of issuance of this RIS.

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. FBI's VAF program information — FBI's Web site <http://www.fbi.gov/hq/cjisd/nics/index.htm> under the "General Information about NICS" heading in the link to the "NICS Voluntary Appeal File Brochure." The "pdf" link for this brochure contains the form to apply to the VAF program.

CONTACT

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

Michael J. Case, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

James E. Lyons, Director
Division of Site and Environmental Reviews
Office of New Reactors

Larry W. Camper, Director
Division of Waste Management and
Environmental Protection
Office of Federal and State Materials and
Environmental Management Programs

Daniel H. Dorman, Director
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

Technical Contacts:

Philip Brochman, NSIR
(301) 415-6557

E-mail: Phil.Brochman@nrc.gov

Bob Beall, NRR
(301) 415-3874

E-mail: Robert.Beall@nrc.gov

John Hickman, FSME
(301) 415-3017

E-mail: John.Hickman@nrc.gov

Peter Habighorst, NMSS
(301) 492-3136

E-mail: Peter.Habighorst@nrc.gov

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.

CONTACT

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

Michael J. Case, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

James E. Lyons, Director
Division of Site and Environmental Reviews
Office of New Reactors

Larry W. Camper, Director
Division of Waste Management and
Environmental Protection
Office of Federal and State Materials and
Environmental Management Programs

Daniel H. Dorman, Director
Division of Fuel Cycle Safety and Safeguards
Office of Nuclear Material Safety and Safeguards

Technical Contacts:
Philip Brochman, NSIR
(301) 415-6557
E-mail: Phil.Brochman@nrc.gov

Bob Beall, NRR
(301) 415-3874
E-mail: Robert.Beall@nrc.gov

John Hickman, FSME
(301) 415-3017
E-mail: John.Hickman@nrc.gov

Peter Habighorst, NMSS
(301) 492-3136
E-mail: Peter.Habighorst@nrc.gov

Enclosure:
List of Recently Issued FSME Generic Communications

Note: A complete listing of recent NRC generic communications may be found on the NRC public Web site <http://www.nrc.gov> under the link to: Electronic Reading Room>Document Collections.

DISTRIBUTION: (NSIR-08-0444)
RidsNsirDsp RidsNsirOd RidsNsirMailCenter

SUNSI Review performed by: P. Brochman
ADAMS Accession # ML08dddxxxx
 Non-Public Public Sensitive Non-Sensitive

* See previous concurrence

OFC:	MWISB	DDMS	DDRSR	DSP:D	QTE	SFST:RIOB
NAME:	PBrochman*	MShaffer*	SMorris [CE]*	RCorreia*		DPstrak
DATE:	08/13/08	08/15/08	08/18/08	08/20/08	08/ /08	08/ /08
OFC:	DWMEP:RDB	FCSS:FMB	DILR:ILB	DOLR:D	OE	OGC:NLO
NAME:	APersinko	PHabighorst	RTurtill	JGitter	CCarpenter	JZorn
DATE:	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08
OFC:	OGC:CRA	NRR:PMDA	OIS	FSME:MSEAB	LA:PGCB	PGCB
NAME:	TRothschild	LHill	MJenney	AMcIntosh	EHylton	AMarkley
DATE:	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08
OFC:	PGCB:BC	SFST:D	FCSS:D	DWMEP:D	DSER:D	DRIP:D
NAME:	MMurphy	EWBrach	DDorman	LCamper	JLyons	MCase
DATE:	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08	08/ /08

OFFICIAL RECORD COPY

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.
05/12/08	RIS-2008-11	Precautions to Protect Children Who May Come in Contact with Patients Released After Therapeutic Administration of Iodine-131	All NRC medical-use licensees, master material licensees, Agreement State Radiation Control Program Directors, and State Liaison Officers
05/09/08	RIS-2008-12	Considerations for Extended Interim Storage of Low-level Radioactive Waste by Fuel Cycle and Materials Licensees	All holders of NRC fuel cycle and materials licenses. 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, Radiation Control Program Directors, State Liaison Officers, and 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; all members of the Advisory Committee on the Medical Uses of Isotopes.
05/16/08	IN-2008-03	Precautions to Take Before Sharing Sensitive Security-Related Information	All NRC licensees who are implementing U.S. Nuclear Regulatory Commission'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
<p>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 at the NRC's public Web site at the following address: http://www.nrc.gov/reading-rm/doc-collections/gen-comm/index.html.</p>			