

From: Elizabeth Thompson
Sent: Thursday, March 19, 2009 10:41 AM
To: michael.valenzano@transnuclear.com; a.soler@holtec.com; paucion@nacintl.com; ssisley@energysolutions.com; elr@nei.org
Cc: Raynard Wharton; Larry Campbell; Daniel Forsyth; Jeremy Smith
Subject: RE: Follow-up Information from call on SGI Rule

All,

During our call on March 12, regarding access requirements for Safeguards Information (Orders vs. Rule), you raised a few questions. This e-mail confirms the responses that we gave during the call and provides a response to the question submitted after the call.

The questions that were raised and their answers are provided below (both questions and answers are paraphrased, and answers are supplemented by information from discussions with the staff):

1) Question: If someone already had access to Safeguards information (SGI) before the rule went into effect, then aren't they okay to continue having access to Safeguards information?

Response: They are okay if the Licensee has documentation to indicate that a trustworthiness and reliability determination was made based on a background check that includes a fingerprint criminal history records check, employment history, education and personal reference check as stated in 10 CFR 73.22(b). However, if the person had previously been fingerprinted for access to SGI, the individual does not have to be re-fingerprinted for purposes of compliance with the new rule. This is covered in Q & A #19 from the Webinar held on February 5 and 6.

2) Question: What if a company has been bought (or absorbed) by another company (& another) and the personnel records are no longer readily available, and the employee (with access to SGI) has worked for the organization(s) for a long time (10 – 15 years) ... ?

Response: The difficulties supposed in this question do not really affect what needs to be demonstrated. The employer needs to be able to show the requirements in the new SGI rule are met. This is also covered in Q & A #19 from the Webinar held on February 5 and 6. Note that the current regulations (10 CFR 73.57(f)(5)) require the retention of fingerprint and criminal history records obtained for the purpose of granting access to Safeguards Information. Additionally, the Attachment to the Order specifies that the vendor must "document the basis for its determination whether to grant access to SGI."

3) Question: How is the trustworthy and reliability determination made for the reviewing official?

Response: (Note: this response is not quite as involved as that presented during the phone call.) The process for approving the reviewing official is provided in the October 2008 Order. In short, the NRC will determine, based on the fingerprint-based criminal history records check, whether the nominated reviewing official should have access to SGI. Once conditionally approved by the NRC, the licensee is still obligated to determine that that individual is trustworthy and reliable based on the other elements of the background check before that person can be assigned reviewing official responsibilities. See 10 CFR 73.22(b).

4) Question: What kind of checks need to be done for employment and education history and reference checks?

Response: There are no specific criteria in the rule with regard to the background checks. There is some information on this topic in Q & A's #10 and #19 from the Webinar held on February 5 and 6. Employment, education, and reference checks done in the context of the hiring process may satisfy the requirement for those items in the background check. The key factor is that the person granting access can document a basis for their decision.

5) Question: a) The regulations do not appear to state who performs the background check (i.e., employment history, education history, and personal references check), although I assume it is a "responsible party" in the individuals company and not the NRC or FBI. Please confirm that this is the case. b) Also, what documentation does NRC need for the background check. c) Is it sufficient for the Licensee or Certificate Holder to send a letter to NRC stating that the background check has been performed and the individual has been found to be trustworthy and reliable?

Response: a) Yes, the individual's employer must determine the individual is trustworthy and reliable. Completing all of the elements of the background check is part of this. b) Ordinarily, the NRC does not need any documentation indicating completion of a background check. However, when the NRC is providing SGI to an individual or individuals as part of a meeting, it will typically ask for the participants to provide the names of individuals who have been approved for access to SGI by the licensee, certificate holder, etc. The NRC does not ask for additional documentation other than the letter certifying that all regulatory requirements have been met with regard to access to SGI. As with any documentation submitted to the NRC, such submittals must be truthful and accurate in all material respects. c) In the instance of the proposed meeting with cask vendors, it would be sufficient for the vendor to send the NRC a letter stating that the background check has been performed and the individual has been found to be trustworthy and reliable and suitable for access to SGI.

At this point, we have issued letters approving the Reviewing Official for three vendors, and are in the process of approving the Reviewing Official for a fourth Vendor. We'll need to know when you have completed the trustworthiness and reliability determinations for those who will be attending the briefing so that we may schedule the briefing. Either an e-mail or letter will suffice for that communication. Note that whichever form of communication is sent, it will most likely be entered into ADAMS.

Please let us know if you have any further questions.

Best regards,
Liz Thompson

Elizabeth A. Thompson, CHP
U.S. Nuclear Regulatory Commission
NMSS, Mailstop: EBB 3D-02M
Washington, DC 20555
(301) 492-3334

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From: Elizabeth Thompson

Created By: Elizabeth.Thompson@nrc.gov

Recipients:

michael.valenzano@transnuclear.com (michael.valenzano@transnuclear.com)

Tracking Status: None

a.soler@holtec.com (a.soler@holtec.com)

Tracking Status: None

paucion@nacintl.com (paucion@nacintl.com)

Tracking Status: None

ssisley@energysolutions.com (ssisley@energysolutions.com)

Tracking Status: None

elr@nei.org (elr@nei.org)

Tracking Status: None

Raynard.Wharton@nrc.gov (Raynard Wharton)

Tracking Status: None

Larry.Campbell@nrc.gov (Larry Campbell)

Tracking Status: None

Daniel.Forsyth@nrc.gov (Daniel Forsyth)

Tracking Status: None

Jeremy.Smith@nrc.gov (Jeremy Smith)

Tracking Status: None

Post Office:

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