

April 18, 2011

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Secretary
U.S. Nuclear Regulatory Commission,
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

DOCKETED
USNRC

April 19, 2011 (9:05 am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Comments of:

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**Re: Enhanced Weapons, Firearms Background Checks, and Security Event Notifications,
Docket ID NRC-2011-0018**

Dear Secretary of the U.S. Nuclear Regulatory Commission,

I. Introduction and Background

1. The Nuclear Regulatory Commission (NRC or Commission) has requested comment on the proposed regulations that would implement the NRC's authority under the new section 161A of the Atomic Energy Act of 1954 (AEA). I am pleased to submit these comments in response to this request and appreciate the Commission's effort to allow all interested parties voice their opinion on proposed regulations. Subsequently, I appreciate the time that the Commission will take in reviewing each submission. I submit these comments on my own behalf with an interest in energy and water development and not as an agent of any institution.

2. Evidenced by the NRC's previous request for comment in October of 2006 regarding its authority under section 161A of the AEA, I believe that the Commission is properly weighing all interests in dealing with the important and complicated risks of nuclear energy. The Commission must maintain a delicate yet proper balance of interests when implementing any rules regarding the security procedures of NRC licensees and certificate holders. It is my belief that, first and foremost, safety must be properly maintained when dealing with the protection of nuclear materials. This required safety I believe extends from the security personnel who employ covered weapons as part of their protective practice to the facilities of the NRC licensees and certificate holders and the general public at large. Enough flexibility must be given to security personnel and inventory agents to allow them to adequately perform their duties while keeping the facilities and the surrounding communities as safe as possible.

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3. Economics must also be accounted for because there is not an endless supply of funding available to the NRC. The cost of fingerprint background checks and weapons inventorying is quite prohibitive. With the current level of funding expected to remain relatively constant, weekly performance of these practices is not economically feasible. Finally, any proposed rule requires clarity. I believe that all facilities personnel need to understand exactly what is required of them and what is forbidden to enable the NRC to create the most efficient and effective balance of these mentioned interests. The NRC has taken significant steps towards attaining the most desirable balance possible by its proposed solutions to various issues. As this comment details, however, I believe that there are some areas to which the proposal could use alteration. I use these self-created “balancing factors” as a main point of reference throughout the remainder of this comment.

4. The following paragraphs are in response to the issues raised and the solutions proposed in 76 Federal Register 6200 (February 3, 2011). The topic headings are presented here as they are presented in the register notice. Every reference to the “register notice” in the following paragraphs refers to the notice on February 3, 2011. I give reasons for why I support many of the proposal’s intentions and offer support for how I believe some measures can be improved. As a general starting position I believe that the Commission should be commended for taking into consideration the comments received from the October, 2006 request. This proposal significantly improves upon the prior in both safety and efficiency. I also offer these comments to the NRC, however, with the hope that the areas of concern that I have detailed will be taken into account and handled appropriately.

II. Differences Between the Firearms Guidelines and the October 2006 Proposed Rule

Issue #5

5. I strongly support the proposal in Section 5 of the Firearms Guidelines to require periodic firearms background checks after the initial firearms background check. The October, 2006 proposed rule indicating that no further or recurring firearms background checks would be required after the initial background check did not adequately take into account the safety of the licensee facilities and the surrounding communities. The risk was great that one “false positive” report would have allowed an unqualified licensee employee full access to covered weapons and never have to submit to another background check. Furthermore, although inconsistent with the Firearms Guidelines, a three year periodicity is appropriate for recurring firearms background checks for security personnel whose official duties require access to covered weapons. It is also appropriate to allow each licensee or certificate holder to perform these checks more frequently than every three years at their discretion.

6. Conducting firearms background checks every five years leaves too great a risk of security personnel slipping through the cracks of the system. Not only would this interval give personnel too great of an advantage to prepare for and possibly manipulate background checks, it would also raise administrative costs. Requiring a three year periodicity for recurring checks and allowing a licensee to conduct them more frequently at their discretion will greatly enhance the security at each facility. It would instantly become markedly more difficult for nonqualified security personnel to be granted access to covered weapons. If an error did occur it would be handled within three years or less, depending on the facilities' preferences.

7. Additionally, the marginal benefit for an employee who knows that she will not "satisfactorily pass" a firearms background check to attempt to gain access to covered weapons, or to continue with access granted through a false positive, decrease significantly. Requiring only an initial check with no recurring checks, or requiring one every five years as required by the Firearms Guidelines, may provide some incentive to attempt to gain access or continue with falsely granted access to covered weapons. A required check every three years however, with any number of random checks in between that time, would nearly eradicate that incentive.

8. Furthermore, criminal history checks are currently required every three years to grant access and personal security clearance. Syncing the firearms background checks with the criminal checks would significantly decrease administrative costs and labor time. Enabling each licensee and certificate holder to submit one set of fingerprints for each employee with weapons access for both firearms background checks and criminal history records would decrease the amount of time that security personnel would be away from their official duties. This would then have the advantage of allowing other licensee employees to not have their official duties interrupted for extended periods of time. For example, one or more employees must perform a supervisory position, one must dictate when each security employee will be fingerprinted, someone must actually perform the fingerprinting, and the fingerprints must be delivered to the FBI. If the time spent performing each of these functions can be decreased by syncing the two mentioned fingerprint requirements, then it is in the best interest of the NRC and each individual licensee or certificate holder to do it.

9. Additionally, the register notice does not clearly state whether security personnel would continue to be granted access while the results of their background checks are pending. It is clear that new applicants must have firearms background checks completed for all security personnel before they are granted access to covered weapons. Procedures are also clear regarding those who receive a response of "delayed" or "denied." In the interest of clarity, however, it would be helpful to note the restrictions, if any, placed on individuals awaiting their results. Facility efficiency and safety, more than any due process related concerns, would likely be the greatest disadvantage to restricting access during the period of waiting. If restrictions during this period were to be considered it would be best to alternate the security personnel of

various sectors of each facility to ensure that operations continued to run efficiently and with the least amount of interruption. Therefore, a three year periodicity is appropriate for recurring firearms background checks with the ability of the licensee to perform them more frequently at their discretion. It would also be appropriate, however, for the Commission to state any restrictions to access during the period where background check results are pending.

10. I would also like to note that requiring firearms background checks for all employees at Commission-designated facilities with access to covered weapons will likely result in a significant increase in applications for enhanced weapons authority. Requiring background checks only for access to enhanced weapons was a deterrent to applying for such weapons. Removing this deterrent by requiring the background checks regardless of the weapons' classification should therefore lead to an increase in applications. Additionally, with the expected increase in enhanced weapons, the amount of time spent inventorying these weapons can also be expected to increase in unison.

Issue #8

11. The requirement under Section 6 of the Firearms Guidelines for merely annual checks on accountability and inventory of enhanced weapons did not go far enough. I support the Commission's proposal for licensees and certificate holders to conduct two types of inventories but I do not agree with the periodicity set out by the NRC for the more stringent of the two inventories.

12. In direct response to *Question D* in the register notice, semi-annual accountability inventories are not an appropriate periodicity for inventories that would physically verify the serial number of each enhanced weapon possessed by a licensee or certificate holder. The Rules already require a monthly inventory to verify the number of enhanced weapons present at each licensed facility. Therefore, the resources and manpower to conduct more intensive serial number inventories are in place twelve times per year making it unacceptable to perform this task only twice annually. There are obvious drawbacks economically to conducting a serial number inventory each month, and effectively doing away with the "piece-count" inventory, and that is why a periodicity of every three months would be the ideal balance for serial count inventories of enhanced weapons.

13. As the Commission stated in the register notice it takes approximately two days from two individuals to conduct a serial number inventory, as opposed to one day for the piece-count inventory. Therefore, by adding two more serial number inventories per year, and thus eliminating the need for two scheduled piece-count inventories per year, each facility would only be losing two additional days per year. I realize that this is four times more than is required by the Firearms Guidelines but the NRC and subsequently each licensed facility must ensure that

stolen or lost weapons do not create an unacceptable security risk to the facility itself, local law enforcement, and the surrounding community. Two days of two individuals' manpower is a relatively small price to pay to verify the serial number of all enhanced weapons present at the licensee facility and increase the level of safety and security dramatically for those who may be affected by a lost or stolen weapon. As I mentioned in paragraph 10, however, with a likely increase in enhanced weapons applications, inventorying time may increase more than initially expected.

III. *Changes to Safeguard Event Notifications*

14. The requirements for reporting and recording security events should be consolidated into a single section of part 73 similar to Section 73.71 "**Reporting and recording of safeguards events.**" In Section 73.71 there are italicized headings, for example "*(a) 15-minute notifications—facilities*" that easily break up the different topics within the section. Section 73.71 expectedly covers the entirety of reporting and recording of safeguards events. These same italicized headings should be used within the consolidated single section of part 73 as follows: Section 73.71 "**Reporting and Recording Security Events: (a) Telephonic Communications, (b) Written Follow-up Reports, and (c) Safeguards Events Log.**"

15. The NRC's concerns about clarity if security event reporting and recording requirements continue to be located in separate portions of part 73 are well-founded. The entirety of each topic named in the corresponding topic heading in Section 73 is fully covered within that same section. This gives readers reason to believe that every option for reporting and recording security events will be covered under one consolidated section and not located in a series of three adjacent sections. Furthermore, having all three requirements for reporting and recording consolidated under one section would make the regulations easier to use. If it is clearer to the facilities what they must do in any given situation, then it follows that the regulations would be easier to implement. Reporters would thus be less likely to commit errors, overlook a regulation, or spend needless time searching for a regulation or requirement that is expected to be covered within a single section. Therefore, due to clarity and efficiency concerns, all requirements for reporting and recording security events should be consolidated into a single section of part 73.

IV. *Concluding Remarks*

16. Once again I would like to thank the Nuclear Regulatory Commission for the opportunity to comment on this rule proposal and for the efforts to properly deal with the complex issues that arise when dealing with nuclear energy. Many of the elements of the new rule proposal provide the framework for vastly safer and more efficient NRC licensees and certificate holders. I generally support the regulations that the NRC has proposed, but as I have

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detailed above I do have concerns with certain areas. I would also like to thank the NRC for the time spent reviewing this comment. Please do not hesitate to contact me if any questions should arise.

Sincerely,

Craig Renitsky

Rulemaking Comments

From: Craig J. Renitsky [CRenitsky@law.villanova.edu]
Sent: Monday, April 18, 2011 4:07 PM
To: Rulemaking Comments
Subject: NRC-2011-0018
Attachments: NRC Comment to NRC.docx

Thank you for the time you spend reviewing my comment.

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