



Federal Bureau of Investigation



U.S. Nuclear Regulatory Commission

**Memorandum of Understanding on
Implementation of
Firearms Background Check Provisions Under
Section 161A of the *Atomic Energy Act of 1954*, as
amended, Revision 0**

March 21, 2017

ML16215A117

I. PARTIES

This Memorandum of Understanding (MOU) is entered into by the Federal Bureau of Investigation (FBI), acting through its Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section, and the U.S. Nuclear Regulatory Commission (NRC), hereinafter "the parties." When officials are identified in various sections of this MOU, these officials include their designees.

II. PURPOSE

The purpose of this MOU is to document the agreed roles, responsibilities, and functions of the FBI and the NRC regarding the accomplishment of firearm background checks on armed security personnel of NRC licensees, pursuant to section 161A, "Use of Firearms by Security Personnel," of the *Atomic Energy Act of 1954*, as amended (AEA) (42 U.S.C. § 2201a).

III. AUTHORITIES

This MOU is entered into under the authority provided by the *Gun Control Act of 1968*, as amended (Title 18, United States Code (U.S.C.), Chapter 44); the *National Firearms Act* (Title 26 U.S.C. Chapter 53); the *Brady Handgun Violence Prevention Act of 1993* (Brady Act), as amended (18 U.S.C. § 922 note); Title 28, Code of Federal Regulations (CFR), Part 25, Subpart A (National Instant Criminal Background Check System); the *Atomic Energy Act of 1954*, as amended, section 161A.c (Title 42 U.S.C. § 2201a(c)); and Title 10, CFR Part 73 (Physical Protection of Plants and Materials).

IV. DEFINITIONS

For the purposes of this MOU, the terms "covered weapons"; "firearms background checks"; and "Proceed, Delay, and Denied NICS Responses" have the meanings specified in section 8 of the Firearms Guidelines issued by the NRC. On September 11, 2009, the NRC, with the approval of the U.S. Attorney General (AG), published the approved Firearms Guidelines in the *Federal Register* (74 FR 46800). On June 25, 2014, the NRC, with the approval of the AG, published Revision 1 to the Firearms Guidelines in the *Federal Register* (79 FR 36100).

V. BACKGROUND

On August 8, 2005, President George W. Bush signed the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005). Section 653 of the Energy Policy Act of 2005 amended the AEA by adding section 161A, "Use of Firearms by Security Personnel," (42 U.S.C. § 2201a). Section 161A of the AEA provides the NRC with new authority that will enhance security at Commission-designated facilities and activities of NRC licensees and certificate holders by permitting these NRC licensees and certificate holders to obtain weapons not previously permitted to be owned or possessed under NRC authority. Section 161A also authorizes for official purposes the preemption of any State, local, and certain Federal firearms laws (including regulations) that prohibit the transfer, receipt, possession, transport, import, or use of one or more handguns, rifles, shotgun, short barreled shotgun, short-barreled rifle, machine gun, semi-automatic assault weapon, ammunition for such guns or weapons, or large capacity ammunition

feeding devices provided that the Commission makes the determination required by section 161A.b.

Section 161A.c of the AEA mandates that any person, including the security personnel of an NRC licensee or certificate holder, who receives, possesses, transports, imports, or uses a weapon, ammunition, or a device specified under section 161A.b shall be subject to a fingerprint-based background check by the Attorney General and a background check under section 103(b) of the Brady Handgun Violence Prevention Act (Pub. L. 103–159; 18 U.S.C. § 922 note). Security personnel with official 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 shall be subject to a firearms background check. The purpose of these background checks is to determine whether a person is prohibited from possessing or receiving a firearm under Federal or State law.

NOTE: This MOU does not address the fingerprint-based check other than to acknowledge it is a separate requirement of section 161A of the AEA. Fingerprint-based checks are conducted pursuant to a separate arrangement between the NRC and another entity of the FBI's CJIS Division, namely, its Biometric Services Section (BSS).

VI. SPECIFIC RESPONSIBILITIES

a. The NRC shall –

1. Follow the provisions contained in this MOU, as well as all other FBI rules and regulations that govern the use of the NICS.
 - a. Adhere to security measures set forth by the FBI for system access.
 - b. Safeguard all data, access numbers, user names, codewords, passwords, equipment, and security processes from unauthorized disclosure or use.
2. Submit identifying information received from NRC licensees or certificate holders for security personnel to the FBI for the accomplishment of firearms background checks via the FBI's NICS E-Check. This includes both initial and periodic recurring firearm background checks for security personnel of licensees or certificate holders, as specified in accordance with the NRC's applicable regulations in 10 CFR Part 73 or Orders.
3. Retrieve the results of all NICS transactions via the NICS E-Check.
4. Forward the results of the firearms background checks and the associated NICS transaction number(s) (NTN(s)) received via the NICS E-Check to the submitting NRC licensee or certificate holder.

The submitting NRC licensee or certificate holder will forward to each individual (i.e., security personnel), subject to a firearms background check, the results of his or her firearms background check and the associated NTN(s).

b. The FBI shall –

1. Follow the provisions contained in this MOU, as well as all other FBI rules and regulations that govern the use of the NICS.
2. Keep the NRC informed of system use and issues through e-mail communications and system messages.
3. Provide customer service to the NRC concerning the use of the NICS E-Check and the NICS in general.

4. Transmit the results of NRC E-Check queries to the NRC's Division of Facilities and Security (DFS), Facilities Security Branch (FSB), Criminal History Program (CHP), through the NICS E-Check.
5. Monitor the system to ensure NICS E-Check statuses are being retrieved. If a transaction is not retrieved within the designated time frame, the FBI will notify the Chief, FSB at the NRC.
6. Monitor the NICS E-Check Web site in order to detect misuse. If misuse is detected, the FBI will forward a warning letter to the Chief, FSB at the NRC outlining the finding. If further monitoring demonstrates continued misuse, the FBI has the authority to suspend the NRC's NICS privileges.
7. Process all appeals of Denied and Delayed NICS Responses in a timeliness consistent with available FBI resources and other statutory commitments associated with the NICS, after an individual submits an appeal form and the required supporting information to the FBI.
8. Provide quarterly performance statistics to the NRC FSB/CHP technical points of contact regarding the firearms background checks that were conducted and of appeals of Denied NICS Responses, including:
 - a. Number of firearms background checks received, processed, and rejected;
 - b. Number of Proceed, Delay, Denied, Open, and Cancelled NICS Responses; and
 - c. Number of appeals received, pending, and resolved.
9. FBI/CJIS, per this MOU, is not providing NRC with direct access to information in FBI databases. If FBI/CJIS becomes aware that the information it has received from NRC pursuant to this MOU is inaccurate, it will notify NRC so that corrective action can be taken.

c. Both parties shall –

1. The parties acknowledge that the information involved in this MOU may identify U.S. persons, whose information is protected by the Privacy Act of 1974 (Pub. L. 93-570) and/or Executive Order (E.O.) 12333 (or any successor E.O.), or as Personally Identifiable Information (PII). All such information will be handled pursuant to the applicable provisions of the Privacy Act and E.O. 12333, or any successor E.O.
2. Each party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, timely, relevant, and complete.
3. Before using PII shared pursuant to this MOU, the recipient agency will make reasonable efforts to ensure that the information is accurate, timely, relevant, and complete.
4. Each party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing party, and that information is only made available to the receiving party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing party.
5. Each party agrees that it will provide appropriate training regarding the responsibilities under this MOU to individuals whose information-sharing activities are covered by the provisions of this MOU.
6. Each party will immediately report to the other party each instance in which data received from the other party is used, disclosed, or accessed in an unauthorized manner, including any data losses or breaches.

VII. POINTS OF CONTACT

The NRC's point of contact (POC) for technical implementation of firearms background check process, receipt of responses from NICS and CJIS Division, and billing is:

Chief, Facilities Security Branch, Division of Facilities and Security, Office of Administration; telephone: (301) 415-5768; e-mail: CRIMHIST.Resource@nrc.gov.
The NRC's POC for policy issues regarding firearms background checks and the Firearms Guidelines is:

Director, Division of Physical and Cyber Security Policy, Office of Nuclear Security and Incident Response; telephone: (301) 287-3598; e-mail: RidsNSIRMailCenter.Resource@nrc.gov.

FBI's POC for this MOU is:

NCIS Management and Program Analyst, NICS Section, FBI, Module A-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0001, telephone: (304) 625-7089.

VIII. GENERAL PROVISIONS

- a. **Funding and Reimbursement.** The parties will each fund their respective costs incurred in providing the necessary activities required to meet their responsibilities defined in this MOU.
Specifically, this MOU does not affect any existing or future agreement between the NRC and FBI (acting through CJIS/BSS) regarding the collection and reimbursement to the FBI of fees collected from NRC licensees and certificate holders associated with the submission and examination of fingerprints against the FBI's databases.
- b. **Severability.** Nothing in this MOU is intended to alter or conflict with statutory provisions, regulations, orders, or directives of the FBI, NRC, or any other Federal Agency or entity. If a provision of this MOU is in conflict with such authority, then that provision will be invalid to the extent of the inconsistency, but the remainder of that provision and all other provisions, terms, and conditions of this MOU will remain in full force and effect.
- c. **Period of Agreement and Termination.** This MOU will become effective as of the date of the final signature of the parties. This MOU shall continue in effect, unless terminated by any party upon 120 days written notice to all other parties. The parties agree to review this MOU every 3 years. This review may be waived, if the parties agree, in writing, that such a review is not necessary.
- d. **Amendments and Modification.** Amendments or modifications to this MOU must be in writing and require the mutual agreement of all parties to the MOU.

- e. **Rights and Benefits.** Nothing in this MOU is intended to diminish or otherwise affect the authority of the FBI or the NRC to carry out statutory, regulatory, or other official functions. This MOU shall not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any manner, civil or criminal. This MOU shall not be construed to provide a private right of action for or by any person or entity against the U.S., its departments, agencies, officers, or employees.

APPROVED BY:

For the Federal Bureau of Investigation

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4/24/2017

Douglas E. Lindquist, Assistant Director
Criminal Justice Information Services Division

Date

For the Nuclear Regulatory Commission

//RA//

5/17/2017

Cynthia A. Carpenter, Director
Office of Administration

Date

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| OFC: | DSP/MWSB | DSP/MWSB | DSF/FSB | DSF/FSB:BC | ADM/DFS:D |
| NAME: | PBrochman | TMossman | ARoundtree | DBrady | TPulliam |
| DATE: | 8/10/16 | 8/10/16 | 8/11/16 | 8/11/16 | 9/7/16 |
| OFC: | NSIR/DSP:D | OGC | NSIR:OD | ADM:OD | ADM:OD |
| NAME: | MGalloway | NStAmour | BHolian | CCarpenter | CCarpenter |
| DATE: | 9/8/16 | 10/5/16 | 11/02/16 | 11/11/16 | 05/17/2017 |

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