



PR 73

(75FR42000)

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DOCKETED
USNRC

04-October-2010

ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 - 0001

October 5, 2010 (10:30am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Rulemakings and Adjudications Staff,

I wish to respectfully submit comments on the proposed 10 CFR Part 73 rulemaking (Docket ID NRC-2008-0619, ***Requirements for Fingerprint-Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Research or Test Reactors***) published in the Federal Register (Vol. 75, No. 138 / Tuesday, July 20, 2010). The comments are as follows:

Comment #1:

The proposed language in Section 73.57(g)(1) states:

No person shall be permitted unescorted access to a nonpower reactor facility unless that person has been determined by an NRC-approved reviewing official to be trustworthy and reliable based on ...

The use of this phrasing could result in the misinterpretation that fingerprinting requirements must be met for access to ***any*** part of a nonpower reactor facility, which is not the stated intention of the proposed rule. Such a misinterpretation might be avoided by stating that

No person shall be permitted unescorted access ***at*** a nonpower reactor facility unless that person has been determined by an NRC-approved reviewing official to be trustworthy and reliable based on ...

and by then defining unescorted access as was done in NRC Order EA-07-074

an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal

Comment #2:

As is stated on page 42003 of the Federal Register posting referenced above, the "provisions in this proposed rule are constructed to provide flexibility, providing both an "area" criterion (unescorted access to vital areas) and a "material" criterion (unescorted access to SNM)."



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However, the proposed rule as written in Section 73.57(g)(2) (page 42012 of the Federal Register posting) could be interpreted such that licensees would have to satisfy fingerprinting requirements for any personnel that would have access to vital areas or to materials. This could have the unintended result that licensees would have to meet **both** area and material criteria, which is at odds with the stated intention of providing flexibility. To avoid such an interpretation, it might be more clear to specify that fingerprinting requirements must be met for unescorted access, where the definition of unescorted access is from NRC Order EA-07-074

an individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal

and to then state that licensees **may** specify vital areas for which fingerprinting requirements must be met to ensure that those without unescorted access could not exercise physical control over materials.

Comment #3:

The proposed wording in Section 73.57(g)(2)(ii) states that fingerprinting requirements must be met for "unescorted access to special nuclear material in the nonpower reactor facility ...". This could result in the interpretation that fingerprinting requirements must be met for access to any amount of SNM, regardless of significance. Adding some wording from NRC Order EA-07-074 would be useful to clarify the statement:

special nuclear material ... which would be of significance to the common defense and security or would adversely affect the health and safety of the public

Best regards,

A handwritten signature in black ink, appearing to read "AL Kf".

Andrew Kauffman, Associate Director
The Ohio State University Nuclear Reactor Lab

Rulemaking Comments

From: Andrew Kauffman [kauffman.9@osu.edu]
Sent: Monday, October 04, 2010 4:01 PM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0619 comments
Attachments: Docket ID NRC-2008-0619 comments from OSU.pdf

Please see the attached pdf document for comments regarding the proposed rulemaking in Docket ID NRC-2008-0619 regarding fingerprinting requirements at RTRs.

Best regards,
Andrew Kauffman, Associate Director
The Ohio State University Nuclear Reactor Lab

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Date: Mon, 4 Oct 2010 16:00:52 -0400
From: Andrew Kauffman <kauffman.9@osu.edu>
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