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 Fingerprinting Orders Teleconference

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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ADVISORY COMMITTEE ON THE MEDICAL USES OF ISOTOPES

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TELECONFERENCE

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WEDNESDAY,

AUGUST 15, 2007

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The meeting was convened in room T-08C1 of
Two White Flint North, 11545 Rockville Pike,
Rockville, Maryland, at 1:00 p.m., Leon S. Malmud,
M.D., ACMUI Chairman, presiding.

MEMBERS PRESENT:

LEON S. MALMUD, M.D., Chairman

DOUGLAS F. EGGLI, M.D.

RALPH P. LIETO

SUBIR NAG, M.D.

RICHARD J. VETTER, Ph.D.

JAMES S. WELSH, M.D.

DARRELL FISHER, Ph.D.

ORHAN SULEIMAN, Ph.D.

BRUCE THOMADSEN, Ph.D.

WILLIAM VAN DECKER, M.D.

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1 NRC STAFF PRESENT:

2 CINDY FLANNERY

3 MOHAMMAD SABA

4 ASHLEY TULL

5 SANDRA WASTLER

6 DUANE WHITE

7 ANGELA McINTOSH

8 CARLEEN SANDERS

9 RONALD ZELAC, Ph.D.

10 ALSO PRESENT:

11 RICHARD MARTIN, ASTRO

12 LYNNE FAIROBENT, AAPM

13 MIKE PETERS, SNM

14 GLORIA ROMANELLI, ACR

15 DEBBIE GILLEY, FL/OAS/CRCPD

16 REPRESENTATIVES FROM ELI LILLEY & CO.

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Dr. Vetter

Mr. Lieto

Discussion 13

Vote: Motion to grandfather all of those whom
licensees had determined were trustworthy and
reliable and had already been granted unescorted
access 24

Vote: Motion that the Committee agree to assist the
Nuclear Regulatory Commission to determine those
levels and types of material under 10 CFR Part 35 that
could be of such significance to public health and
safety to warrant fingerprinting and background checks
. 37

P-R-O-C-E-E-D-I-N-G-S

1:05 p.m.

MS. WASTLER: Then I will go ahead as the Designated Federal Officer, give our opening remarks and then I'll turn it over to you, sir.

CHAIRMAN MALMUD: Thank you.

MS. WASTLER: As the Designated Federal Officer for this meeting, I'm pleased to welcome you to this teleconference public meeting.

My name is Sandra Wastler. I'm the Chief of the Medical Safety and Events Assessment Branch. And I've been designated as the Federal Officer for this Advisory Committee in accordance with 10 CFR Part 7.11.

Present today as an alternate Designated Federal Official is Cindy Flannery.

This is an announced meeting of the Committee to discuss increased controls of fingerprinting orders being held in accordance with the rules and regulations of the Federal Advisory Committee Act and the Nuclear Regulatory Commission.

The meeting was announced in the August 1st, 2007 edition of the *Federal Register*.

The function of the Committee is to advise the Staff on issues and questions that arise under

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1 medical use of byproduct material. The Committee
2 provides counsel to the Staff but does not determine
3 or direct the actual decisions of the Staff or the
4 Commission. The NRC solicits the views of the
5 Committee and values their opinion. NRC requests that
6 whenever possible we try to reach a consensus on
7 issues that we will be discussing today, but I also
8 recognize there may be minority or dissenting
9 opinions. If you have such an opinion, please allow it
10 to be read in the record.

11 As part of the preparation for this
12 meeting I've reviewed the agenda for the members and
13 employment interests based on the general nature of
14 the discussion that we're having today, and I have not
15 identified any items that would pose a conflict.

16 At this point I would like to introduce
17 the individuals participating in today's
18 teleconference. Dr. Leon Malmud, Mr. Ralph Lieto, Dr.
19 Subir Nag, Dr. Douglas Eggli, Dr. Orhan Suleiman, Dr.
20 James Welsh, Dr. Darrell Fisher, Dr. Richard Vetter
21 and Dr. Bruce Thomadsen.

22 Has anyone else joined?

23 MS. GILLEY: Yes. Debbie Gilley, State of
24 Florida.

25 MS. WASTLER: All right.

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1 Dr. Williamson?

2 MS. TULL: Dr. Williamson will not be
3 participating.

4 MS. WASTLER: Okay. Sally Schwarz? Dr.
5 Van Decker?

6 MEMBER VAN DECKER: Yes, ma'am.

7 MS. WASTLER: All right.

8 Dr. Malmud, ACMUI Chairman, will conduct
9 today's meeting. Following a discussion of the topic,
10 the Chair at his option may entertain comments or
11 questions from members of the public who are
12 participating with us today.

13 I would remind the participants that this
14 meeting is being transcribed and ask that prior to
15 speaking each of you introduce yourself.

16 Thank you.

17 And, Dr. Malmud, I will turn the
18 discussion over to you, sir.

19 CHAIRMAN MALMUD: Dr. Malmud. Thank you.

20 The subject of today's conference call is
21 increased controls with regard to fingerprinting
22 orders. There is a briefing, and the two individuals
23 who will fill us in on this subject are Dr. Vetter and
24 Mr. Lieto.

25 I therefore am asking Dr. Vetter and Mr.

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1 Lieto which of you would like to kick off?

2 MEMBER VETTER: This is Dick Vetter.

3 I would like to make a few introductory
4 comments and then turn it over to Ralph for any
5 comments he would like to make.

6 Just a few comments about the background
7 here to remind those who aren't directly connected
8 with this issue.

9 In November of 2005 the NRC issued orders
10 to medical licensees regarding radionuclides of
11 concern. An example would be cesium-137 with an
12 activity of greater than 27 curies. Blood irradiators
13 typically contain several hundreds to several
14 thousands of curies, so they would be included in this
15 category.

16 In these orders the NRC required licensees
17 to initiate a process to determine trustworthiness and
18 reliability of all individuals who have unescorted
19 access to these radioactive materials of concern. The
20 process for determining trustworthy and reliability
21 was based on verification of employment, education of
22 the individual and personal references. And all
23 licensees, to the best of my knowledge, have gone
24 through this process and many of them have in fact had
25 an increased controls inspection to determine whether

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1 or not they meet the requirements of the Orders.
2 These Orders also indirectly required licensees to
3 increase the security of many of the sources in order
4 to limit access to only those individuals who had
5 passed the trustworthy and reliability determination.

6 Subsequent to all of that, the Commission
7 on March 12, 2007 instructed the NRC Staff to engage
8 the Agreement States in the development of a plan to
9 require fingerprinting of licensees that have been
10 identified as possessing radionuclides of concern, and
11 therefore needed to implement increased controls.

12 The purpose of that requirement was to
13 enhance the trustworthy and reliability
14 determinations. So that was March 12th.

15 On June 5th the NRC issues Regulatory
16 Information Summary 2007-14 in which they explained to
17 licensees, or sort of gave licensees a heads up, that
18 they should expect Orders that would require licensees
19 to fingerprint everyone who was allowed unescorted
20 access to radionuclides of concern. And these orders
21 should be expected in the fall of 2007.

22 Ralph and I, because of our contacts
23 within the radiation safety community, had heard a
24 number of concerns expressed about this. A lot of
25 confusion was expressed. So we requested an

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1 opportunity to visit with NRC about this. And the NRC
2 Staff arranged for Ralph Lieto and me to attend a
3 meeting of the Working Group that is working with the
4 agreement states to implement the Staff Requirements
5 Memorandum (SRM), which is the Commission direction to
6 NRC staff to require fingerprinting.

7 A meeting was held on July 31, 2007. And
8 I believe the Committee received -- I believe Ashley
9 Tull submitted a copy of the transcript and our
10 meeting notes to the Committee on August 3rd. So you
11 should have all received a transcript, had an
12 opportunity to read it if you wanted, and received the
13 notes from Ralph and me, which are basically a set of
14 bullet points from our meeting.

15 I would say that the NRC staff was very
16 open to our comments. However, it became clear during
17 the meeting that the NRC Staff was simply following or
18 implementing an order from the Commission, and
19 therefore many of the concerns that we had perhaps
20 the Staff could not react to because they're simply
21 carrying out orders from the Commission.

22 But I would like to make just a couple of
23 points, or underscore a couple of points, from our
24 meeting, which come from feedback from licensees.

25 First of all, there's a lot of confusion

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1 among licensees about how the fingerprinting might
2 impact their current procedure for determining
3 trustworthiness and reliability. And so we
4 recommended that the NRC send out a communication of
5 some sort as soon as possible to try to clarify some
6 of these issues.

7 And the NRC has been holding meetings with
8 various groups around the country in order to receive
9 input. So they're well aware of many of these issues.

10 There are two points I'd like to
11 underscore in particular, and these are based on the
12 feedback that Ralph Lieto and I have received. I
13 would personally conclude that there's a strong
14 consensus among licensees that the cost of
15 fingerprinting and FBI checks is simply not justified.
16 Whether it is justified or not perhaps is another
17 question, but many licensees do not feel it's
18 justified.

19 In our notes you'll notice that we
20 indicated that the direct cost alone for
21 fingerprinting and then doing the FBI checks is going
22 to be probably somewhere between \$50 and \$100 per
23 person. Many of the larger academic medical centers
24 have as many as 500, in fact I'm aware of one that has
25 more than 500 personnel, who have unescorted access.

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1 So you multiply those out and you've got \$50,000 for
2 a single academic medical center to implement this in
3 direct costs alone. Indirect costs were if you
4 consider each staff person would have to be taken away
5 from the clinic or research lab for perhaps a half
6 hour to go get the fingerprints, add that up and
7 there's more than another \$10,000 or more in indirect
8 costs, not counting the time for Radiation Safety and
9 Human Resources staff to deal with this issue.

10 So this is a very, very expensive , nd I
11 guess many licensees simply question whether or not
12 it's justified.

13 The second issue I'd like to underscore,
14 is that there's a very strong consensus among
15 licensees that if fingerprinting is going to be
16 required, that all of those individuals who have
17 already been determined to be trustworthy and reliable
18 should be grandfathered and that we shouldn't have to
19 go back and essentially do an additional trustworthy
20 and reliability determination.

21 I know the NRC considers this to be an
22 enhancement of the current process. I don't think
23 anyone would disagree that it is an enhancement, but
24 the strong consensus is that it should not be a
25 retroactive requirement. And I think that it is also

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1 confusing to a lot of licensees about how they should
2 handle an individual who has already been determined
3 to be trustworthy and reliable, and now we're going to
4 require them to be fingerprinted.

5 Going forward may make a little bit more sense.

6 So after just underscoring those two
7 comments, I'd like to turn it over to Ralph to see if
8 he has any additional comments and then we'd open it
9 up to questions or turn it back to you, Dr. Malmud.

10 Thank you.

11 CHAIRMAN MALMUD: This is Malmud.

12 Thank you, Dr. Vetter.

13 Mr. Lieto?

14 MEMBER LIETO: Thank you.

15 This is Ralph Lieto. And just probably
16 two comments that I would like to make in addition to
17 what Dick has already said is that the cost that Dick
18 identified regarding this order would be in addition
19 to the expenses that licensees have implemented with
20 the increased orders to date, which in many cases is
21 on the order of high hundreds to tens of thousands of
22 dollars already.

23 The other point that I would like to make
24 is that, as was pointed out to us, is that the
25 Commission can affect regulation, if you will, by

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1 three mechanisms. One is by Orders. One is by
2 rulemaking. And the third is by license amendment.

3 They indicated that the increased controls
4 Orders must be or will be followed by a rulemaking
5 process where licensees would have input into maybe
6 appropriateness of the Orders to certain classes or
7 categories of licenses and so forth. To me I think
8 that's, you know, addressing the issue after the
9 horses have left the barn. Because these orders will
10 have been in effect probably for years before the
11 rulemaking process is done. And so during this whole
12 time period there will be, I think in many cases, an
13 outlay of money, time and other human resources that
14 probably were not justified and would have been in
15 place. And it'll determined that, you know, this
16 license category or classification really didn't need
17 to go through all this.

18 So I think those would just be the two
19 points that I would like to add to what Dr. Vetter has
20 already said.

21 CHAIRMAN MALMUD: Thank you, Mr. Lieto.
22 Are there comments from others?

23 MEMBER NAG: Yes. This is Dr. Nag.

24 I have one thing I wanted to bring up. Is
25 the additional fingerprinting going to increase

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1 security? For example, if the individuals have been
2 fingerprinted because of the driver's license or
3 because of employment, is that not enough? Because
4 all of that data is already on file.

5 And secondly, having fingerprints by
6 themselves, does that add anything to the security?

7 CHAIRMAN MALMUD: Thank you, Dr. Nag.

8 Any further comments regarding Dr. Nag's
9 points in question?

10 MEMBER VETTER: This is Dick Vetter.

11 Just to clarify, perhaps clarify. For the
12 fingerprinting that is going to be required by the
13 NRC, licensees will need to do fingerprints on
14 everyone who they wish to have unescorted access. The
15 fingerprints need to be sent to the NRC, and the NRC
16 will send them to the FBI.

17 So this is over and above any local
18 security issues. Some licensees I know will
19 fingerprint new employees and send it to the local
20 police department or the state police department, but
21 they don't send them to the FBI. So the
22 fingerprinting Orders are over and above any
23 fingerprinting that's done at the state or local
24 level.

25 MEMBER NAG: This is Dr. Nag.

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1 So my question is does a fingerprinting at
2 the FBI level add anything to a local fingerprinting
3 that has already been done, either for driver's
4 license or for employment? And most of the time most
5 hospitals and most states require fingerprinting for
6 these reasons.

7 MEMBER VETTER: Right. This is Dick
8 Vetter. Right. But the local fingerprinting would
9 basically determine whether or not the individual has
10 any issues with the local police or with the state
11 police. The FBI database is national and perhaps even
12 international.

13 So I guessed we could conclude that it
14 definitely is an enhancement over whatever the
15 hospitals do now.

16 MEMBER NAG: Dr. Nag.

17 And in that case can the fingerprints that
18 have already been done, can that be transmitted so
19 that instead of requiring the whole process all over
20 again, you use available data and just transmit it to
21 the FBI?

22 MEMBER VETTER: This is Dick Vetter.

23 We were informed that the NRC is looking
24 into that issue. Currently other Federal Government
25 branches require a new set of fingerprints. NRC

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1 doesn't know yet whether they will be able to use any
2 previous fingerprints. So at this time we simply
3 don't know. At this time I guess we would have
4 conclude that a new set of fingerprints would have to
5 be taken.

6 MEMBER LIETO: This is Ralph Lieto.

7 The impression that I had was that even if
8 you had submitted fingerprints for another purpose
9 that, say, several years ago because I understand that
10 in some university academic settings you have to be
11 fingerprinted in order to handle certain toxic and
12 hazardous chemicals, that this fingerprinting would
13 still have to occur even if you had the fingerprinting
14 before. So it will not recognize, if you will, a
15 previous set that it was on there.

16 I would also like to mention is that it's
17 still yet to be determined whether the fingerprinting
18 will have to be repeated at some time period. So, for
19 example, you go through the process for the Orders,
20 but probably after the rulemaking process, individuals
21 may have to have their fingerprints resubmitted a time
22 period after the initial approval.

23 CHAIRMAN MALMUD: Malmud.

24 I think the issue for us probably should
25 be limited to whether or not this is practical and

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1 whether or not, most importantly, it improves
2 security.

3 With regard to the way the Government
4 handles the receipt of the fingerprints, I don't think
5 that we're competent to answer the question. My
6 previous experience, which sounds very much similar to
7 yours, is that I have been fingerprinted on numerous
8 occasions by the hospital, in terms of dealing with
9 children, by the Federal Government for the Department
10 of Defense twice, and for the Federal Government by
11 the NRC once and by the Air Force. So that when this
12 [fingerprinting] happens, it's as if it had never
13 happened before. What they do with the data is beyond
14 me, and it sounds as if what we learned after 9/11 is
15 that there's not good coordination at certain levels.
16 But that isn't our issue. If I may, I would restrict
17 our discussion to how this will impact on the practice
18 of physicians and other professionals handling
19 radioactive material. Does anyone feel that this
20 interferes with our ability to provide patient care?
21 And if so, in what way does it interfere?

22 MEMBER NAG: This is Dr. Nag.

23 I feel that if the cost issue can be
24 addressed, that it does not really hamper patient
25 care. I mean, it requires the time, it requires some

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1 delay. Just like when you come up, you're on the
2 staff, you cannot handle your patient until all your
3 credentials are verified. So the only hampering I can
4 see is that there may be a little delay in the start
5 of the time when the individual can participate in
6 patient care, to that one. And certainly the costs
7 associated with it.

8 CHAIRMAN MALMUD: Thank you.

9 This is Malmud. Thank you, Dr. Nag.

10 Any other comments regarding this as a
11 negative factor on delivering patient care or in
12 pursuing science? I take the silence to mean that
13 there is none.

14 Therefore, I would --

15 MEMBER LIETO: Dr. Malmud, this is Ralph
16 Lieto.

17 CHAIRMAN MALMUD: Yes, Ralph.

18 MEMBER LIETO: One thing, and maybe the
19 Committee may wish to generate a position on this, is
20 it is not clear or been decided when the results come
21 back I guess the bar, if you will, of determining
22 whether an individual has problems or not, whether
23 that will be allowed to be set by the licensee or
24 whether the NRC will establish a set of criteria or
25 thresholds, if you will, that have to be met in order

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1 for that person to have unescorted access.

2 CHAIRMAN MALMUD: This is Malmud.

3 I agree that that has not yet been set.
4 I would also observe that when it is set, it will not
5 be under our control and we will have to respond to it
6 by indicating that it is either not an obstruction to
7 the provision of medical care, or that it is, and deal
8 with it at that point.

9 For example, in doing fingerprint searches
10 for clearance or for other issues, it's not uncommon
11 to discover that someone has some kind of a police
12 record; therefore, that has to be dealt with on an
13 individual basis. And that would have to do with the
14 hospital's standards, the employer's standards as well
15 as Government standards. I don't think that we can
16 deal with that issue.

17 We all recognize that this is a bit more
18 intrusive than we had ever anticipated, but terrorism
19 is more intrusive than we had ever anticipated.

20 Once again, I'll come back to my initial
21 concern, if I may, on behalf of the Committee, and
22 ask, "Does this interfere in any practical way with
23 the provision of quality health care or the pursuit of
24 science for anyone who is wishing to make a comment
25 today?"

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1 MEMBER NAG: Yes. Dr. Nag.

2 Similar to the airlines when they
3 instituted the separate policy of screening people and
4 so on, and we ended with a few individuals who because
5 of either similarity in name or similarity in passport
6 and so on being restricted to traveling because there
7 was some similarity with known terrorists, I hope we
8 won't have similar problems here.

9 CHAIRMAN MALMUD: This is Malmud.

10 I agree with your concern, Dr. Nag.
11 However, this is a concern with regard to terrorist
12 activity or potential terrorist activity, and there's
13 no way that that kind of information can be collected
14 without some degree of intrusiveness. In the same way
15 clearing one for dealing with pediatrics in a
16 children's hospital may be intrusive, and one may
17 discover in someone's record an arrest for marijuana
18 possession at age 17. I mean, these things can
19 happen. They're embarrassing, and they can be
20 addressed. We all find them intrusive; however, this
21 is the world we live in right now.

22 MEMBER NAG: Again, Dr. Nag.

23 Even if the fingerprinting goes on, I
24 would highly recommend that everyone who has been
25 approved be grandfathered for more than one reason.

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1 One of the first reason being that if you had to
2 refingerprint everybody, the entire system will be
3 swamped and nothing would go through. So at the very
4 least, the ones who are now entrusted should be
5 grandfathered.

6 MEMBER VETTER: Dr. Malmud, could I--

7 MEMBER NAG: And I would like to make that
8 as a motion.

9 CHAIRMAN MALMUD: Dr. Nag has made that as
10 a motion. And I heard Dr. Vetter wishing to make a
11 comment.

12 Since you've presented a motion, Dr. Nag,
13 I think we have to look for a second for your motion
14 first and then we can hear from Dr. Vetter.

15 MEMBER VETTER: This is Dick Vetter.

16 I would second the motion and then speak
17 to it.

18 CHAIRMAN MALMUD: Dr. Vetter, please go
19 ahead.

20 MEMBER VETTER: Okay. So the motion was
21 to grandfather, thereby exempting from fingerprinting
22 all those who had already passed the T&R
23 determination.

24 I wanted to just point out one thing with
25 regard to Dr. Nag's last comment about flooding the

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1 system. Mr. Lieto and I did ask about that. And the
2 implementation group assured us that they were capable
3 of handling tens of thousands of these in a short
4 period of time. So that's the only thing we can say
5 in that regard.

6 Obviously, there would be a lot of work to
7 be done, but they feel that they are capable, that the
8 system is capable of handling that.

9 MEMBER NAG: Yes. The same as what went
10 on with the passports for this summer that they would
11 be very capable and everyone would need a passport to
12 go to Canada, and now that has been postponed.

13 MEMBER VETTER: This is Dick Vetter again.

14 We can only relay what we were told.

15 And then one other comment I'd like to
16 make relative to your question, Dr. Malmud, about
17 whether or not this would affect clinical care or
18 research. I mean, who knows whether it would or not.
19 It would really depend on each individual licensee
20 situation. And we could use a couple of hypotheticals.

21 If for instance a clinic had a Gamma Knife
22 and they had several authorized users, and one of
23 those authorized users had a DUI or whatever the case
24 might be, and the hospital decided that that
25 individual did not pass the T&R determination, then

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1 that person could still practice medicine but someone
2 else would have to actually operate the Gamma Knife or
3 he would have to be escorted by someone who had
4 already passed the T&R.

5 The case where it would impact clinical
6 care would be a small hospital that had only one
7 authorized user, and in that case, if there was no one
8 to escort that authorized user, then they simply could
9 not practice medicine. They would have to find
10 someone who passed the T&R determination to escort the
11 clinician to operate the Gamma Knife. But those are
12 simply hypothetical. I mean, who really knows?

13 CHAIRMAN MALMUD: Right.

14 MEMBER FISHER: This is Darrell Fisher
15 with two comments on the current discussion.

16 CHAIRMAN MALMUD: Please, Dr. Fisher.

17 MEMBER FISHER: First of all, it appears
18 that the Energy Policy Act of 2005 has no provision
19 for grandfathering, and Congress has basically enacted
20 a law that requires to be fingerprinted any individual
21 who is permitted unescorted access to either a
22 utilization facility or radioactive material.

23 My second comment is that there is a
24 caveat in the Energy Policy Act under Radioactive
25 Material that I think is important for this Committee

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1 to consider. And that's that the Commission determines
2 which radioactive materials and which levels of
3 radioactive material or which properties of such
4 material poses a significant risk to the public health
5 and safety or to security as to warrant fingerprinting
6 and background checks. So it appears that we have an
7 opportunity to make recommendations to the Commission
8 in making that determination as to what is of such
9 significance. It does not require, at least in my
10 reading, fingerprinting of all persons with access.
11 Only persons with access to materials or property of
12 such significance to the public health as to warrant
13 fingerprinting and background checks.

14 MEMBER VETTER: This is Dick Vetter.

15 I agree with Dr. Fisher's interpretation
16 on the second point. In fact, Mr. Lieto and I did
17 actually discuss that with the implementation group.
18 The implementation group said they were not in a
19 position to recommend to the Commission. In fact, the
20 way it works is the other way around. However, we
21 could as a Committee recommend that they back off on
22 Category 2 sources.

23 Initially fingerprinting was required for
24 Category 1 sources but not category 2. Category 2
25 includes the blood bank irradiators and so forth.

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1 I was not aware that grandfathering was
2 not addressed in the Act.

3 CHAIRMAN MALMUD: Malmud.

4 Thank you, Dr. Vetter.

5 Is someone wishing to make a motion?

6 MEMBER NAG: We have a motion on the table
7 that has been discussion, but has not been voted upon.

8 CHAIRMAN MALMUD: Right. All in favor of
9 the motion?

10 ALL: Aye.

11 CHAIRMAN MALMUD: Any opposed.

12 MEMBER SULEIMAN: Nay. This is Orhan.

13 CHAIRMAN MALMUD: All right. One
14 opposition. Any others?

15 MEMBER SULEIMAN: Could I qualify what the
16 motion was? Was that --

17 CHAIRMAN MALMUD: The motion was for
18 grandfathering those who have already been
19 fingerprinted, was it not?

20 MEMBER VETTER: No. The motion was to
21 grandfather all of those for whom licensees had
22 determined that they were trustworthy and reliable and
23 had already been granted unescorted access.

24 CHAIRMAN MALMUD: Without fingerprinting
25 at all?

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1 MEMBER VETTER: Correct.

2 MEMBER SULEIMAN: That's correct. That's
3 why I voted no.

4 CHAIRMAN MALMUD: May I cast a vote as
5 well?

6 MEMBER SULEIMAN: I'm sure you really
7 aren't supposed to, but --

8 CHAIRMAN MALMUD: Then I won't.

9 MEMBER SULEIMAN: If you want to offer an
10 opinion, you're always welcome.

11 CHAIRMAN MALMUD: I would suggest that it
12 would be very difficult to separate out the two
13 issues. And we're better off with uniform
14 fingerprinting.

15 MEMBER NAG: We separate the issues.

16 MEMBER FISHER: This is Fisher.

17 And I would agree with Dr. Malmud that I
18 don't find any provision in the Act to allow
19 grandfathering of such individuals.

20 MEMBER NAG: This is Dr. Nag.

21 May I be allowed to withdraw my motion
22 then?

23 PARTICIPANT: No. You voted on it.

24 MEMBER NAG: Okay.

25 CHAIRMAN MALMUD: Having voted on it, if

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1 you wish to withdraw it, what's the procedure? Does
2 it require another vote to void it?

3 MEMBER NAG: No, that's fine. We can
4 leave it as it is that, you know, so many voted for
5 and so many voted against. That's fine.

6 CHAIRMAN MALMUD: All right.

7 Any other discussion of that topic, which
8 is the fingerprinting orders for increased controls?
9 If not, then I believe the business of this meeting is
10 completed. Am I correct.

11 MEMBER LIETO: This is Ralph Lieto.

12 I was kind of getting the impression that
13 there was going to be a motion made on what Dr. Fisher
14 had stated, or am I getting the wrong impression?

15 CHAIRMAN MALMUD: Malmud.

16 We would ask Dr. Fisher if he wishes to
17 make a motion?

18 MEMBER FISHER: Well, I hadn't really
19 thought in terms of a motion, but I could suggest one
20 on the fly.

21 I believe that the Committee should
22 consider recommendations to the Commission to help
23 them determine which radioactive materials and
24 properties are of such significance to public health
25 and safety that they should require fingerprinting and

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1 background checks. That this is probably the most
2 difficult area for the Commission to consider. They're
3 going to have to consider: Which levels; which
4 materials; which types of property if stolen, diverted
5 or otherwise intended to public terrorism would
6 require security and fingerprinting and background
7 checks.

8 I'm not sure that the Commission intends
9 to do this for all radioactive materials, properties
10 or radioactive sources.

11 CHAIRMAN MALMUD: Malmud.

12 So would your motion be that the ACMUI
13 would like to offer its services in participating in
14 establishing the levels at which fingerprinting would
15 be necessary?

16 MEMBER FISHER: I think we should offer
17 our contributions in terms of helping the Commission
18 make these determinations.

19 CHAIRMAN MALMUD: Is there a second to
20 that motion?

21 MEMBER NAG: I second the motion and offer
22 an additional comment that I feel that it is the
23 ACMUI's responsibility to make that determination.
24 And I would suggest having a small either subcommittee
25 or task force of people who are knowledgeable about

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1 this to make an initial recommendation to the ACMUI
2 group, and that be voted upon and then transmitted to
3 the Commission.

4 CHAIRMAN MALMUD: That's in addition to
5 the memo?

6 MEMBER NAG: Yes.

7 CHAIRMAN MALMUD: An addendum to the
8 recommendation?

9 MEMBER NAG: Right.

10 CHAIRMAN MALMUD: Is that acceptable to
11 the individual who made the motion?

12 MEMBER FISHER: This is Fisher. That is,
13 certainly.

14 CHAIRMAN MALMUD: All right. So there is
15 a motion with Dr. Nag's amendment.

16 MEMBER SULEIMAN: This is Orhan.

17 Can you please read or clarify what the
18 exact motion with the amendment is?

19 MEMBER NAG: Dr. Fisher, you made the
20 original motion. Would you do repeat it, or do you
21 want me to do that?

22 MEMBER FISHER: Let me take a stab at it.

23 This is Fisher.

24 I move that the Committee agree to assist
25 the Nuclear Regulatory Commission determine those

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1 levels and types of material under Part 35 that could
2 be of such significance to public health and safety to
3 warrant fingerprinting and background checks.

4 CHAIRMAN MALMUD: That is the motion. And
5 it has been seconded. All in favor?

6 MEMBER SULEIMAN: Could we have
7 discussion?

8 MEMBER NAG: Yes.

9 CHAIRMAN MALMUD: Please. Was that Dr.
10 Suleiman?

11 MEMBER SULEIMAN: Yes, it was.

12 CHAIRMAN MALMUD: Please, Dr. Suleiman.

13 MEMBER SULEIMAN: I really think that NRC
14 has enough staff to deliberate and consider the facts
15 here. I think -- I'm trying to check now, but it
16 doesn't really matter. I think this is a trend that
17 we just may not be able to alter in any significant
18 way. And I think the NRC knows what materials are
19 considered security risk and they're getting orders
20 from above in terms of the Energy Policy Act and the
21 other Homeland Security statutes. And I think they
22 know perfectly well what they can or can't do.

23 I think they need to hear our concerns,
24 but I don't think we can -- I mean, you can go on the
25 record, but I think it's just going to be additional

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1 effort that's not going to result in any significant
2 change.

3 MEMBER NAG: This is Dr. Nag.

4 Can I ask the NRC Staff whether they feel
5 that input of the ACMUI will be helpful or not?

6 MS. WASTLER: Dr. Nag, this is Sandra
7 Wastler.

8 I can't speak for the Commission,
9 obviously, so I can't tell you whether any
10 recommendation that ACMUI might put together, how it
11 will influence the Commission. But if you don't
12 express your opinion, there won't be any influence.

13 So, I mean, as an advisor to us if you
14 believe that you have, as a Committee, recommendations
15 or concerns that you want to put forward, I think as
16 we've said on other occasions, you have the ability to
17 put that in a letter to the Commission or, for
18 example, Dr. Malmud and maybe some of the other
19 members, one or two, could come to Headquarters and
20 deliver the message in person. I mean, you always have
21 those options.

22 But, you know, I can't tell you that what
23 you say or what comments that you have, whether it
24 will influence or not.

25 MEMBER NAG: This is Dr. Nag.

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1 That was not what I was saying. What I
2 was saying was there are two different issues. One is
3 to express the concerns of the ACMUI, which is what we
4 are doing in this meeting. But the second one was the
5 suggestion of Dr. Fisher that we, meaning the ACMUI,
6 look into which of these radioactive materials
7 required the degree or extra degree of concern that is
8 required. And my question was that do you think the
9 NRC officials -- I'm not talking about the
10 Commissioners, but the NRC officials would be able to
11 do that on their own or would they prefer some
12 assistance from us.

13 CHAIRMAN MALMUD: This is Malmud.

14 We are the Advisory Committee. And the
15 NRC recognizes that we are available for our advice if
16 it is desired. So we can simply make a statement that
17 we are available should the NRC wish our advice. It
18 stands on it's own. That's the purpose of this
19 Committee. And if they wish to use our advice, they
20 will.

21 MEMBER NAG: Okay.

22 CHAIRMAN MALMUD: So all we can say is
23 that we are here and that we're available. Would that
24 be acceptable to everyone? I mean, that's our role.
25 We advise. We don't make the regulations.

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1 MEMBER SULEIMAN: This is Orhan.

2 Again, I think basically, you know if the
3 Committee is really upset with it, then the Committee
4 should say so. What I'm telling you is that voicing
5 your concern is fine, but I don't think it's going to
6 make any practical difference on the eventual outcome.
7 Because it's a trend that you're seeing. And I would
8 have qualms about -- well, we already passed on the
9 earlier motion, but if you've got somebody who is of
10 questionable character that's slipped through the
11 system exempting them from fingerprinting, you know
12 would run counter to the whole intent of this thing.

13 So it's an issue that all of society is
14 going to have to deal with. And so if the Committee I
15 think is sufficiently distressed, they should so
16 convey it.

17 CHAIRMAN MALMUD: This is Malmud.

18 I didn't detect distress on the part of
19 the Committee. I detected a willingness to assist if
20 necessary in establishing guidelines for the NRC. And
21 that's what we're here for.

22 Did I misinterpret the degree of distress?

23 MEMBER FISHER: This is Fisher with a
24 quick comment.

25 I think the impacts on the health care

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1 system will be, perhaps, overreaction and the high
2 cost of compliance. What we're suggesting here is not
3 the exclusion of certain individuals for
4 fingerprinting, but rather helping the Commission
5 determine what materials are of such significance as
6 to require this level of security. And it would mean
7 that perhaps we came up with a two tiered system.
8 Number one, high risk materials; number two low risk
9 materials. And based on our experience and the
10 facilities that we have made recommendations as to
11 which materials and property both for the first and
12 second tier.

13 CHAIRMAN MALMUD: Thank you.

14 This is Malmud.

15 I would just observe that it's probably
16 more expensive to establish a two tiered system than
17 to simply go ahead with the recommendation that they
18 made. But I'm not privy to the expenses of either.
19 All I would say is from my administrative experience
20 in the past a two tiered system is more expensive.

21 MEMBER VETTER: This is Dick Vetter.

22 Actually, we already have a tiered system.
23 Category 1 where they do require fingerprints. Very
24 large sources, reactor, research reactors and so forth
25 they do require fingerprinting. The Commission has

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1 determined that they wish to lower the bar to catch
2 Category 2 sources, which includes blood bank
3 irradiators.

4 So the current requirement for medical
5 licensees who have blood irradiators is that they have
6 to go through the T&R process as currently defined, as
7 they currently have been ordered to do. So we have
8 been given a heads up that the bar is edging to be
9 lowered now to capture Category 2 sources.

10 MEMBER NAG: And this is Dr. Nag.

11 Yes, basically I would like to support Dr.
12 Fisher's statement. His statement that what we are
13 proposing is that we are offering our help to
14 determine which of the isotopes are the ones that are
15 of the higher risk. That's, you know, all that we are
16 suggesting on this current motion.

17 CHAIRMAN MALMUD: This is Malmud.

18 I understand what you are all discussing.
19 I also understand how much chaos can be created with
20 a short half life gamma emitting radionuclide if
21 discharged in a public arena.

22 MEMBER NAG: Yes.

23 CHAIRMAN MALMUD: I mean, when we've had
24 issues of urine contamination in the hospital, the
25 reaction has been of such a magnitude within the

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1 hospital itself that I would predict that should this
2 happen on the streets of Philadelphia, the response
3 would be disproportionate to anything that you or I as
4 physicians would be concerned about but, nevertheless,
5 would have achieved its purpose of disrupting the
6 public's ordinary behavior.

7 So I just think it's difficult. I
8 recognize all of our motives and respect them all. I'm
9 just trying to be practical. And if, as Dr. Vetter
10 points out correctly, there already is a two tiered
11 system, I wouldn't propose a three tiered system. I
12 would just propose that we offer our services if they
13 are needed in establishing the lower level, but
14 maintain a two tiered system rather than a three. But
15 that's one man's opinion.

16 We have passed a motion. Is there another
17 motion that anyone wishes to propose?

18 MEMBER FISHER: No, we haven't voted on
19 this one.

20 PARTICIPANT: You have a motion on the
21 table.

22 CHAIRMAN MALMUD: All right. And the
23 motion, can we repeat the motion briefly?

24 MEMBER FISHER: The motion is to offer our
25 assistance to the Commission.

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1 CHAIRMAN MALMUD: Is there a second to the
2 motion?

3 MEMBER FISHER: No, that was already made
4 and seconded.

5 CHAIRMAN MALMUD: Thank you.

6 All in favor?

7 ALL: Aye.

8 CHAIRMAN MALMUD: Is there anyone opposed?
9 It carries unanimously.

10 MEMBER VETTER: Dr. Malmud, this is Dick
11 Vetter?

12 CHAIRMAN MALMUD: Yes.

13 MEMBER VETTER: I would propose that you
14 and if you want assistance from me or others of the
15 Committee, write a letter to the Commission indicating
16 what are the concerns that were expressed in these
17 motions, including offering our assistance?

18 CHAIRMAN MALMUD: Thank you, Dr. Vetter.

19 Would you draft such a letter?

20 MEMBER VETTER: I'd be happy to.

21 CHAIRMAN MALMUD: Thank you. Your skill
22 set is better than mine in this area with respect to
23 the technology, and I would be happy to co-sign with
24 you.

25 Any other business for this meeting?

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1 MS. WASTLER: Dr. Malmud, this is Sandra
2 Wastler.

3 CHAIRMAN MALMUD: Yes.

4 MS. WASTLER: It was pointed out to me
5 that while I introduced the Committee members and the
6 members of the public, in my introduction I had
7 neglected to introduce those of the NRC that were on
8 the line. And for the record we should do that before
9 you close the meeting.

10 CHAIRMAN MALMUD: Please do. We have I
11 think 150 seconds in which to do it.

12 MS. WASTLER: All right. If we could just
13 go around the table here. This is Sandra Wastler.

14 MS. FLANNERY: Cindy Flannery.

15 MS. McINTOSH: Angela McIntosh.

16 MR. ZALAC: Ronald Zelac.

17 MR. SABA: Mohammad Saba.

18 MR. WHITE: Duane White.

19 MS. SANDERS: Carleen Sanders.

20 MS. WASTLER: And our Oklahoma contingent?

21 MS. TULL: Ashley Tull.

22 MS. WASTLER: That was all for the NRC,
23 Dr. Malmud.

24 CHAIRMAN MALMUD: Thank you.

25 Does that conclude the business of the

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1 meeting?

2 MS. WASTLER: I believe it does.

3 CHAIRMAN MALMUD: I believe it does. If
4 so, I will adjourn the meeting.

5 MEMBER NAG: And I believe we have another
6 meeting tomorrow, right?

7 CHAIRMAN MALMUD: That is correct.

8 MEMBER LIETO: Can I ask a question
9 quickly?

10 CHAIRMAN MALMUD: Who is asking?

11 MEMBER LIETO: I'm sorry. This is Ralph
12 Lieto.

13 CHAIRMAN MALMUD: Yes, Ralph?

14 MEMBER LIETO: Regarding tomorrow, has NRC
15 staff received input from any other participants
16 outside the Committee that govern stakeholders.

17 MS. WASTLER: Ashley has a list, yes. I
18 believe we have. I don't have a list personally, but
19 I know Ashley has been called, and several people are
20 going to be involved. Yes.

21 MS. TULL: Mr. Lieto, did you just want a
22 list of the people that wanted to be involved or their
23 specific concerns?

24 MEMBER LIETO: Well, initially my question
25 was who would be participating in terms of stakeholder

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1 involvement?

2 MS. TULL: Okay. I have a list that I can
3 send to you. We have about 40 participants right now.

4 MEMBER LIETO: Okay.

5 MS. TULL: And I can send that list out to
6 the entire Committee, which is my plan. I'll also send
7 a list of everyone that participated today.

8 As far as specific concerns, I haven't
9 received anything else, and we were just going to go
10 on what we discussed at the last meeting as an
11 outline.

12 CHAIRMAN MALMUD: Thank you.

13 MEMBER NAG: And again this is Dr. Nag.

14 About tomorrow's meeting, I know we did
15 get an agenda about tomorrow's meeting. Was there any
16 other notes or anything further to the agenda, or that
17 one page is the only thing?

18 MS. TULL: The one page pretty much
19 outlines it. The only additional background
20 information will be the meeting summary that I had
21 sent. I'm not sure which date. But there's the
22 meeting summary from the June meeting.

23 This is Ashley Tull, I'm sorry.

24 That outlines any issues as well.

25 MEMBER NAG: Okay. It may be a good idea

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1 to resend that to the Committee members.

2 MS. TULL: Sure.

3 CHAIRMAN MALMUD: Thank you.

4 Thank you all.

5 (Whereupon, at 1:57 p.m. the
6 teleconference was concluded.)

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