

March 27, 2009

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA KRHart for/**

SUBJECT: STAFF REQUIREMENTS – SECY-08-0196 – ADVANCE NOTICE OF PROPOSED RULEMAKING - REQUIREMENTS FOR FINGERPRINTING FOR CRIMINAL HISTORY RECORD CHECKS OF INDIVIDUALS GRANTED UNESCORTED ACCESS TO RESEARCH AND TEST REACTORS (NRC-2008-0619) (RIN-A125)

The Commission has approved the staff's recommendation to (1) publish the Advance Notice of Proposed Rulemaking (ANPR) to solicit input on proposed requirements for fingerprint-based criminal history records checks for individuals granted unescorted access to special nuclear material or areas of significance at research and test reactors (RTRs), (2) conduct a public workshop with diverse stakeholders to explain staff's proposals, answer questions, and receive comments, and (3) proceed with normal notice and comment rulemaking upon receipt and consideration of public comments on the ANPR.

In formulating the rule to exempt certain individuals from fingerprinting requirements, the staff should strive for a risk-informed, graded approach that considers, among other things, the type and significance of special nuclear material and other sensitive materials, as well as the research and test reactor's licensed power level.

The staff should ensure that it actively reaches out and encourages early participation from a wide variety of interested stakeholders (including the RTR community) which could be impacted but might not otherwise be knowledgeable about the anticipated rulemaking effort, including student government associations and student chapters of professional societies, such as the American Nuclear Society. Due to the wide-ranging interest and geography of potentially impacted licensees and stakeholders, the staff should also consider web-streaming the planned public workshop to provide easier and more diverse access and input into this rulemaking effort.

The staff should incorporate the following changes and comments into the ANPR prior to publication.

1. On page 2, 1st line from the top, delete the apostrophe in "commenter's".
2. On page 2, 1st full paragraph, revise line 1 to read 'Federal eRulemaking'
3. On page 2, 2nd full paragraph, revise lines 1 and 2 to read '... receive a reply e-mail confirming ... at (301) 415-1677.'

4. On page 3, 1st full paragraph, at the end of lines 2 and 4, enclose the area code in parenthesis.
5. On page 3, last paragraph, revise line 11 to read ‘ ... unescorted access to RTRs.’
6. On page 4, 1st full paragraph, revise line 5 to read ‘ ... RTRs included provisions’
7. On page 4, 2nd full paragraph, revise line 4 to read ‘ ... unescorted access to for a broader’ Revise line 5 to read ‘ ... of the EPAct, Section 149 limited the NRC’s authority was limited by Section 149 to’
8. On page 5, 1st full paragraph, revise line 7 to read ‘ ... for additional RTR’
9. On page 5, last paragraph, revise line 2 to read ‘ ... while developing a rule requirements because’
10. On page 6, 1st full paragraph, revise line 4 to read ‘ ... access to risk-significant areas and risk-significant’ Revise line 8 to read ‘ ... to ensure that transparency in the development of requirements designed to provide adequate protection of the’ Revise line 9 to read ‘ ... defense and security are adequately protected.’
11. On page 6, last paragraph, revise lines 5 and 6 to read ‘ ... significance as (defined by 10 CFR 73.2), 10 CFR’
12. On page 7, revise line 5 from the top to read ‘ ... these licensees’
13. On page 7, last paragraph, revise line 6 to read ‘ ... implemented site-specific’
14. On page 8, last paragraph, revise line 3 to read ‘ ... before to granting’
15. On page 9, revise line 2 from the top to read ‘ ... an interim basis bases, the’ Revise line 4 from the top by inserting a period after “facilities” and deleting the remainder of the paragraph.
16. On page 9, revise the 1st full paragraph to read: ~~Notwithstanding the decision to limit~~ **Although** the interim order requirements were limited to risk-significant materials of the licensee’s facility, the Commission solicits comment on whether ~~now believes that~~ the scope of the unescorted access fingerprinting requirement in the order proposed regulations should be broadened in the proposed rule to include unescorted access to appropriate areas of the facility. This would ensure that all of the risk-significant materials and equipment in the facility are is protected, rather than just the special nuclear material. Under the existing requirements, licensees must conduct consider the FBI fingerprint-based criminal history record checks for individuals who could exercise physical control over the special nuclear material; existing requirements do not, however, specifically address unescorted access to the physical areas surrounding the special nuclear material or the reactor itself.
17. On page 9, last paragraph, revise line 3 to read ‘ ... or portions of a larger facility constitutes the’ Revise line 5 to read ‘ ... information comment on whether defining this term too broadly might frustrate not achieve the’ Revise line 6 to read ‘ ...’

objectives, interfere with other statutory mandates of the AEA, or inefficiently or not effectively implement the'

18. On page 10, revise lines 2 and 3 from the top to read '... facility may not provide a significant level of protection and could' Revise line 5 to read '... checks at an RTR'
19. On page 11, last paragraph, revise line 2 to read '... require fingerprinting-based' Revise line 3 to read '... within the RTR facility.'
20. On page 12, paragraph 1. under "Areas of Significance Issues", revise the last line to read '... advantages and disadvantages?'
21. On page 13, prior to the last paragraph, insert a line that reads: "The NRC seeks stakeholders' views on the following questions:"
22. On page 13, last paragraph, revise line 1 to read '... individuals with'
23. On page 15, paragraph 1, revise line 2 to read '... stakeholder's views on the ... that continue to provide'
24. On page 15, last paragraph, revise lines 2 and 3 to read '... determination: (a) do foreign nationals and/or minors, do these individuals require unescorted access to "areas of significance"? (b) Are there alternative methods to obtaining information'
25. On page 16, change the year above the signature to 2009.

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
Commissioner Svinicki
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR