



Organization of Agreement States

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December 21, 2006

Alice Rogers, Manager  
Inspection Unit  
Environmental and Consumer Safety Section  
1100 West 49<sup>th</sup> St.  
Austin, TX 78756-3189

**SUBJECT: 'Fingerprinting and criminal history checks' rulemaking group**

Dear Ms. Rogers:

On behalf of the Organization of Agreement States (OAS) Executive Board, I am pleased to advise you that you have been appointed to serve as an OAS representative on a NRC working group to develop a proposed rulemaking to implement Section 652 of the Energy Policy Act, "Fingerprinting and Criminal History Checks". I appreciate you taking on this responsibility.

The NRC has been notified of this appointment. Please keep me advised of the working group activities and issues. Contact Frank Cardile, NRC at [fpc@nrc.gov](mailto:fpc@nrc.gov) or 301 415-6185 with any questions. Thank you for your willingness to participate and assist OAS in this project.

Sincerely,

*Paul Schmidt*

Paul S. Schmidt, Chair  
Organization of Agreement States

608-267-4792  
[schmips@dhfs.state.wi.us](mailto:schmips@dhfs.state.wi.us)

cc: Janet Schlueter, Director  
NRC, Division of Materials Safety and State Agreements

Alice Rogers, OAS Secretary

Enclosures

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*SUNSI Review Complete*

*STP-006 Jemplit  
RIDS: SP02*



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

December 7, 2006

Mr. Paul S. Schmidt, Chair  
Organization of Agreement States  
Radiation Protection Section  
Division of Public Health  
Wisconsin Department of Health and  
Family Services  
1 W. Wilson St., Rm. B157  
Madison, Wisconsin 53702

Dear Mr. Schmidt:

We request your assistance in identifying an individual to serve on a working group to develop a proposed rulemaking to implement Section 652 of the Energy Policy Act, "Fingerprinting and Criminal History Checks." It is anticipated that overall requirements and/or licensees potentially affected under such a rulemaking would be similar to those in NRC's increased control orders, issued November 14, 2005, and fingerprinting orders issued October 17, 2006. Therefore, a person in your organization familiar with those actions would seem likely to be able to bring particular expertise and knowledge to the working group.

Enclosed is additional information regarding this request. The enclosed information was developed per Management Directive 5.3 "NRC/Agreement State Working Groups" (MD 5.3) guidance.

We request that you identify a working group member from your organization within 30 days of the date of this letter. Please notify Frank Cardile of my staff of your selection at (301) 415-6185 or [fpc@nrc.gov](mailto:fpc@nrc.gov).

Thank you in advance for your assistance.

Sincerely,

Dennis Rathbun, Director  
Division of Intergovernmental Liaison  
and Rulemaking  
Office of Federal and State Materials and  
Environmental Management Programs

Enclosure: Additional Information Regarding  
Request for Working Group  
Participation

RECEIVED  
DEC 13 2006  
RADIATION PROTECTION SECTION  
INITIALS: *PS*

*ML 01340257*

## **REQUEST FOR WORKING GROUP PARTICIPATION**

### **RULEMAKING TO IMPLEMENT SECTION 652 OF THE ENERGY POLICY ACT "FINGERPRINTING AND CRIMINAL HISTORY CHECKS"**

#### **Purpose**

Rulemaking Branch A, of NRC's Office of Federal and State Materials and Environmental Management Programs (FSME)/Division of Intergovernmental Liaison and Rulemaking (DILR), is seeking members for a working group to develop a proposed rule to implement Section 652 of the Energy Policy Act (EPAcT) on fingerprinting and criminal history record checks for unescorted access to risk-significant radioactive materials.

#### **Background**

Section 652(B) of the EPAcT mandates that the NRC shall require to be fingerprinted any individual who is permitted unescorted access to "radioactive material or other property subject to regulation by the Commission that the Commission believes to be of such significance to the public health and safety or to the common defense and security as to warrant fingerprinting and background checks." The Commission, in SRM-COMSECY-05-0058 (February 8, 2006), directed the staff to codify fingerprinting requirements under the following schedule: proposed rule to EDO 9/28/07; final rule to EDO 9/29/08. NRC's Office of Nuclear Security and Incident Response (NSIR) is currently preparing technical basis as input to this Section 652 rulemaking; a draft has been prepared and the final version is anticipated for completion in December 2006. FSME staff is initiating work on the proposed rule at this time with the intent of developing a draft rule approach and text; consideration of estimate of numbers of licensees and individuals involved; and issues for consideration. A particular State issue is the role of State organizations in monitoring submittal of fingerprints to the Federal Bureau of Investigation, rather than NRC involvement in the process. A rulemaking plan is not being prepared for this rule.

#### **Planned Membership**

The working group consists of representatives from NRC's:

- FSME/DILR/Rulemaking Branch A,
- FSME/Materials Safety and State Agreements (MSSA),
- NSIR,
- Office of Nuclear Material Safety and Safeguards (NMSS),
- Office of the General Counsel (OGC), and
- Regional Divisions of Nuclear Material Safety.

The working group also consists of representatives from:

- Organization of Agreement States (OAS)
- Conference of Radiation Control Program Directors (CRCPD).

A representative of NRC's Office of International Programs may participate as a full member, if desired, during consideration of any issue involving import or export of materials. A representative of the Office of Enforcement may participate as a full member, if desired, during consideration of any issue involving enforcement.

The representative of FSME/DILR/Rulemaking Branch A serves as chair of the group.

## **Role of Working Group and Level of Effort Expected of Participants**

The primary role of the working group is to assist in developing the draft proposed rule package, including rule text, statements of consideration, and supporting information for regulatory analyses (e.g., number of licensees affected, numbers of individuals per licensee requiring unescorted access to risk-significant materials, etc). It is anticipated that, based on working group discussion, draft document text will be prepared by Rulemaking Branch A staff for review by the working group.

We anticipate that the working group will meet on a bi-weekly basis with additional consultations by phone and email as needed to provide input to and comment on the draft document text. Working group members from the Regions and States may participate in meetings via telephone. Most of the effort for working group members would occur during development of the proposed rule and regulatory analyses starting in January 2006 and involving about 4- 5 weeks of effort spread out over about 5-6 months. Once these documents are in office review (in mid 2007), the workload should diminish to about 2-3 weeks over the next 4-5 months. These are initial estimates and may vary as the working group begins its examination of the task in more detail. A detailed schedule will be developed and provided to the working group members. Additional background material, regarding scope, preliminary rule text, and preliminary estimates of persons affected, has been developed and will be provided to working group members in advance of a January 2007 working group kick-off meeting.

## **Expected Products**

The working group is expected to provide inputs in producing the following: 1) a draft Federal Register notice to issue a proposed rule implementing Section 652 of the Energy Policy Act; 2) a regulatory analysis of costs and benefits resulting from the proposed rule and a Paperwork Reduction Act statement of the recordkeeping burden of the proposed rule 3) A description of compatibility considerations for the proposed rule implementing Section 652 of the Energy Policy Act.

## **Steering Committee**

No steering committee is proposed for this working group.

## **Coordination with other Working Groups**

The group should coordinate with other Working Groups who are also addressing materials licensing and security matters; for example, the Materials Security Working Group.