



**ANPR 73
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June 12, 2009 (1:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

June 12, 2009

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

Rulemakings and Adjudications Staff,

I wish to respectfully submit comments on the advance notice of proposed rulemaking published in the Federal Register on April 14, 2009, entitled, *Requirements for Fingerprinting for Criminal History Record Checks of Individuals Granted Unescorted Access to Research and Test Reactors*.

In general, I understand that regulation needs to be promulgated for this topic. However, I believe that the promulgated regulation should, in almost all respects, be identical to NRC Order EA-07-074. If there are facilities not meeting the intent of the Order then those facilities should be consulted with on an individual basis. However, expanding the fingerprint requirements beyond the existing Orders, at least from this licensee's perspective, is neither justifiable nor effective. Specific comments on each of the eleven questions are as follows:

1. Identifying "areas of significance" should not be adopted. The reason that access to certain SNM was identified early on as the implementing criteria, and included in the Order identified above, was that it was much easier and appropriate to identify who can get to the SNM. Because of the unique nature of these facilities where in some cases the facility is buried inside an existing academic building, it is very difficult to identify unescorted access by area. This is exclusively true only for working hours. After normal working hours, I believe it is appropriate to identify that area which falls under the security system. However, this still falls back upon the concept of who has access. In this case, a facility should fingerprint everyone who has the ability to deactivate the security system.
2. For OSU, no additional personnel would be fingerprinted for access to an identified "area of significance" if, and this is a big if, it is limited to the Vital Area as defined in our Physical Security Plan. If the "area of significance" is expanded outside the Vital Area, it would require fingerprinting 200 students and faculty initially with an additional 25-50 each academic term. This would be completely unacceptable, ineffective, and inappropriate.

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3. The cost of fingerprinting individuals outside the Vital Area would be a significant burden. In addition to the \$37 for the cost of the actual fingerprinting processing, there is the time and effort necessary to obtain the fingerprinting. I would essentially have to hire an employee that would do nothing but process fingerprinting and background check information.
4. The very definition of unescorted accesses should allow an individual to access areas and equipment without supervision. That is the entire point.
5. While there was a learning curve associated with fingerprinting, we have learned the process and understand when and where an individual would be required to do this. It is very effective the way it is. Our only significant concern early on was the time it take for the fingerprints to be processed. We have never had a fingerprint process take longer than two weeks. This short processing time is commendable.
6. At OSU, we have found that the process for fingerprinting has not been too burdensome. However, that is only because number of individuals whom we have determined to fall within this requirement is a manageable and appropriate number. Increasing the requirement past, in our case, the Vital Area is ineffective because none of those people can access the SNM. If they can't access the SNM, they should not be fingerprinted. Additionally, if the "area of significance" proposed rule is implemented past the Vital Area, at least 200 people who have literally no working relationship with the reactor would be effective and millions of dollars of research would be impacted. In these circumstances, it would not be unreasonable to expect a university to decide to shut down the facility.
7. In our case, the existing Order is appropriate and effective. I suppose this is the most important point. Why change was is working well? If there are facilities who clearly are not meeting the intent of the Order, then those facilities should be asked to reevaluate their procedures.
8. The existing Order covers the intent of the EAct of 2005. It was intended to cover who has access to the SNM. In a letter dated December 15, 2006, to Mr. Ho Nieh of the NRC by the National Organization of Test, Research, and Training Reactors (TRTR), the concept of applying the Order to a Vital Area was proposed. However, there was concern on the part of the NRC and TRTR regarding the applicability of identifying an area in this diverse community. Therefore, in a subsequent letter dated March 15, 2007, from TRTR to Mr. Neih, the emphasis was placed upon indentifying individuals rather than areas. That emphasis was adopted by the Order and it has, at least in our case, proven very effective.
9. At OSU, we have fully implemented the Order and feel it is not necessary to change the intent.
10. With respect to part (a), minors are fundamentally different from foreign nationals. With respect to minors, we process a number of fingerprint cards that show no record. There is nothing wrong with obtaining a blank criminal record for a minor. There is no difference between an individual who has worked for 20 years and an individual who is fresh out of high school if they both have clean

records. It is inappropriate to assume that a criminal record of a minor is blank only because they haven't had enough time to commit a crime. Access to criminal records of minors is another issue entirely and is unlikely to be solved by this rulemaking, regardless of whether it is appropriate or not. With respect to part (b), for foreign nationals, I would agree that an arrangement for vetting with the FBI, Department of State, or Department of Homeland Security be created to handle these situations. Fingerprint checks clearly will not be as effective or effective at all for foreign nationals. If it is found that it is not possible to effectively vet foreign nationals, then accommodations will have to be made at each facility for escorting.

11. No further information needs to be provided.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'SRR', with a long horizontal flourish extending to the right.

Steven R. Reese
Director

Comments, Rulemaking

From: Reese, Steve [Steve.Reese@oregonstate.edu]
Sent: Friday, June 12, 2009 12:08 PM
To: Rulemaking Comments
Cc: jere@purdue.edu; butlerra@missouri.edu
Subject: Comments on Advance Notice of Rulemaking
Attachments: NRC OSU Proposed Fingerprint Rulemaking Comment Letter.pdf

USNRC,

Attached you will find my comments on the advanced notice of rulemaking on the Requirements for Fingerprinting for Criminal History Record Checks of Individuals Granted Unescorted Access to Research and Test Reactors published in the Federal Register on April 14, 2009.

Best regards,

Steve Reese

Steve Reese
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Received: from mail2.nrc.gov (148.184.176.43) by TWMS01.nrc.gov
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Thread-Index: Acnrd+eEC6mtvtaxQ522odi6O9nGwA==
From: "Reese, Steve" <Steve.Reese@oregonstate.edu>
To: <rulemaking.comments@nrc.gov>
CC: <jere@purdue.edu>,
<butlerra@missouri.edu>
Return-Path: Steve.Reese@oregonstate.edu