

PENNSSTATE



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June 15, 2009

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USNRC

June 16, 2009 (8:00am)

To: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Regarding: Proposed 10 CFR Part 73 Rulemaking (NRC-2008-0619)

The Penn State Brezeale Reactor (PSBR) would like to express the following points on the proposed 10 CFR Part 73 Rulemaking (NRC-2008-0619) as proposed in the Federal Register Vol. 74 No. 7- Tuesday, April 14 2009.

The existing security orders as implement and inspected at PSBR are workable and are acceptable to codify. We are in agreement with opinions expressed by multiple members of the TRTR group at the June 4th public meeting that any codification reflect the existing orders and not impose new requirements or definitions.

We appreciate the opportunity to provide comment on this important proposal. Our facility has implemented procedures to meet the rules as they exist at this time. Any change to those rules during codification should be based on solving specific problems to reduce burden on facilities, or solve implementation issues that allow a poor practice to exist as identified through inspection. Other changes should be avoided as the change itself creates added burden. The proposed rulemaking contains preliminary language and definition changes that will increase burden without relating to a stated security objective that is not being met. If changes to the orders are necessary as part of the rulemaking please explain the problem so that our input may address the specifics of the problem.

Attached are comments on the preliminary proposal and more detailed answers to the questions asked in the text of the announcement.

Please feel free to contact me with questions.

Mark A. Trump  
Associate Director of Operations  
Brezeale Nuclear Reactor  
Radiation Science and Engineering Center  
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Questions asked in the proposed rule text (paraphrased).

### Areas of Significance

**Question 1** *Definition of areas of significance - as above*

- PSBR believes that the best practical definition of "Areas of Significance" are specific to the facility and may flex as the facility is changed or materials are relocated for research purposes. Therefore if a change is necessary, only "potential option" (2) "areas determined in each licensee's security assessment" is reasonable and even that must have some flexibility.

**Question 2** – *Number of people to be fingerprinted for each option?* It is likely for any option selected PSU would not increase the number of personnel fingerprinted. Instead additional escorts would be used at the expense of facility operations

- Option 1 From 10 FR 73.2 – "Controlled access area means any temporarily or permanently established area which is clearly demarcated, access to which is controlled and which affords isolation of the material or persons within it." Were this definition codified, we would collapse the controlled access areas to what would be more akin to the term Vital Area as defined by 10 CFR 73.2. Likely no additional personnel would be subjected to background checks, but if continuous monitoring were required, then operators would be deferred from significant work to watch less meaningful activities.
- Option 2 Areas as defined in our security assessment -- No increase in fingerprinting. This concept is what is currently used in conjunction with the definition of unescorted access.
- Option 3 List of generic areas – same as above no increase in fingerprinting just more escorting.

**Question 2a** *exemptions from fingerprinting?* Any codification should allow for a facility method of exempting individuals based on procedural exceptions for unusual instances. Such instances might include known foreign national researchers or students, exceptional or gifted minors (accelerated learning). Such an exemption should include the concept of a temporary waiver to allow work while the background check process is in progress based on an evaluation by management.

**Question 3** *cost of implementing increased fingerprinting or escort?* Productivity loss of ~ .25 person or \$25,000/year

### Unescorted Access

**Question 4** *is the proposed definition workable why or why not? This answer is the same as outlined above.*

- The proposed rule redefines unescorted access as "any individual who has the ability to access licensee-designated "areas of significance" without continuous direct supervision or monitoring by an authorized individual" (undefined). We believe this is not a workable definition and the current definition should be codified. Some individuals (maintenance employees of the University) are given training and access during normal working hours when the facility is manned to conduct routine maintenance in areas of significance. They do not have the knowledge or capability to exercise control over SNM without detection. Background checks on many maintenance workers and supervisors or providing continuous supervision is an undue burden inconsistent with the risk to the public or the facility.

Specific comments on rule announcement:

- PSBR has a program and/or procedures to meet the **intent** of the six “*Specific Considerations*” listed in the proposed rulemaking section of the same name. Proposed wording in this section should be relaxed. Words such as “*specific procedures for the conduct of fingerprinting*” **codifies** the need for multiple procedures that provide specific guidance to law-enforcement or other agencies that perform the fingerprinting that is beyond our control. The codification should state something like “the licensee shall have a program, process or procedure that provides guidance on.....”
- PSBR believes that if a new definition is needed for secure areas, the practical definition of “*Areas of Significance*” are specific to the facility and may flex as the facility is changed or materials are relocated for research purposes. As such, only “*potential option*” (2) “*areas determined in each licensee’s security assessment*” is reasonable and even that must have some flexibility. Option 1 CAA From 10 CFR 73.2 – “Controlled access area means any temporarily or permanently established area which is clearly demarcated, access to which is controlled and which affords isolation of the material or persons within it.” ) is vague and could change on a daily basis by moving signs. This definition may be difficult in inspection space.
- PSBR believes there must be great care on the definition of SNM as used in any proposed rule. If small amounts of SNM under the reactor license or a source is relocated to laboratory for an experiment, and it does not present a hazard to the health or safety of the public, it must not redefine a new “area of significance” and must remain exempt from the requirements of any proposed rule for control or direct supervision.
- The proposed rule redefines unescorted access as “*any individual who has the ability to access licensee-designated “areas of significance” without continuous direct supervision or monitoring by an authorized individual*” (undefined). We believe this is not a workable definition and the current definition should be codified. Some individuals (maintenance employees of the University) are given training and access during normal working hours when the facility is manned to conduct routine maintenance in areas of significance. They may or may not be continuously supervised or directly monitored based on the location, scope of work or hazards present. They do not have the knowledge or capability to exercise control over SNM without detection. Background checks on many maintenance workers and supervisors or providing continuous supervision is an undue burden inconsistent with the risk to the public or the facility.
- PSBR believes the definition of Unescorted Access is a key component to the proposed rulemaking. The proposed rule makes repeated use of the redefined term (as noted above) as opposed to the current definition that is also referenced. Inherent in the current definition is the concept of an individual with capability and knowledge to exercise control over or remove SNM without detection and or response by the protection systems. PSBR limits this knowledge and capability to a very small group of individuals who have authority to access “areas of significance” during non-business hours when the facility’s protective systems are fully active. Even these individuals cannot access the area without the knowledge of the security forces. As noted above, during business hours with the facility open, students, researchers, and University personnel may be granted access to “areas of significance” without direct supervision or monitoring. They do not possess the knowledge or capability to remove SNM or other materials that are hazardous to the public without detection.

- PSBR believes the definition of Unescorted Access is a key component to the proposed rulemaking. The proposed rule makes repeated use of the redefined term (as noted above) as opposed to the current definition that is also referenced. Inherent in the current definition is the concept of an individual with capability and knowledge to exercise control over or remove SNM without detection and or response by the protection systems. PSBR limits this knowledge and capability to a very small group of individuals who have authority to access "areas of significance" during non-business hours when the facility's protective systems are fully active. Even these individuals cannot access the system without knowledge of the security forces. As noted above, during business hours with the facility open, students, researchers, and University personnel may be granted access to "areas of significance" without direct supervision or monitoring. They do not possess the knowledge or capability to remove SNM or other materials that are hazardous to the public without detection.

**Question 4a** *Should unescorted persons granted unescorted access be permitted access when no supervision or oversight is present?*

- We were not able to discern from the new definition of "unescorted access" what this question is asking. Unescorted access is currently defined as capability and knowledge to exercise control over or remove SNM without detection and or response by the protection systems. The new definition is simply access to an area. If PSBR were define a new class of individual "limited unescorted access" to encompass workers who are allowed in to do limited duties we would **not** allow after hours access to the "Areas of Significance" as those are areas where informed individuals can exercise control over SNM or *through lack of knowledge or supervision* violate license restrictions, internal procedures or damage equipment/materials.

**Question 4b** *Should the NRC require access controls such as maintaining records of the time and duration of the persons accessing and areas of significance without escort?*

- No, it should not be codified. What is the goal of this possible requirement? Facilities may have such records if it is part of their security layer design, others may not. Administrative controls (logging) will not stop or deter any insider with access and intent to remove or damage equipment. If a facility has an access control system, it will record such information, but will not defer a determined sabotage or theft.

**Question 5** – *What has worked well or not worked well?*

- Repeated and excessive fingerprinting of some individuals has been burdensome; a lack of a clear method to share clearance information between facilities and government agencies has been frustrating.

**Question 6** – *What is the most burdensome?*

- As above, paper fingerprints, RAMQC requirements.

**Question 7** *Requirements that don't contribute to security or better ways to use resources?*

- No specific input.

**Question 8** *Enhancements?*

- No specific input

**Question 9** *New Issues?*

- No specific input

**Question 10** *Alternatives or exceptions to fingerprinting of foreign nationals or minors?*

- Yes to foreign nationals same answer as given in 2a above repeated for ease of reading – Any proposed code should allow for a facility method of exempting individuals based on procedural exceptions for unusual instances. Such instances might include known foreign national researchers or students, exceptional or gifted minors (accelerated learning). Such an exemption should include the concept of a temporary waiver to allow work while the process is in progress based on an evaluation by management.

**Question 11** *Any other info to consider in rulemaking?*

- No specific input

## Rulemaking Comments

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**From:** Mark A. Trump [mtrump@engr.psu.edu]  
**Sent:** Monday, June 15, 2009 4:33 PM  
**To:** Rulemaking Comments  
**Cc:** Kennedy, William; jere@purdue.edu; Steve.Reese@oregonstate.edu; bernardj@MIT.EDU; sokelly@mail.utexas.edu; syweiss@verizon.net; sim@simelectronics.com; Kenan Unlu; Andrew Kauffman; Leo\_Bobek@uml.edu; Wall, Donald; Mike Whaley; jrs@nei.org; 'Brenden Heidrich'; Mac E. Bryan  
**Subject:** Comments on proposed 10 CFR Part 73 rule change 10 CFR Part 73  
**Attachments:** mat16@psu.edu.vcf; NRC 10CFR 73 Proposed rule change comments Penn State Mark Trump.pdf

Please register the attached document as comments on the proposed change below

10 CFR Part 73  
RIN 3150 A125  
[NRC-2008-0619]  
**Requirements for Fingerprinting for  
Criminal History Record Checks of  
Individuals Granted Unescorted  
Access to Research and Test Reactors**  
**Federal Register 17115**  
Vol. 74, No. 70  
Tuesday, April 14, 2009

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X-SBRS: 4.5

X-MID: 3496862

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X-IronPort-Anti-Spam-Result:

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with ESMTP; 15 Jun 2009 16:33:13 -0400

Received: from ENGRMAIL-1.engr.psu.edu ([169.254.1.177]) by  
engrmailf2.engr.psu.edu ([130.203.244.245]) with mapi; Mon, 15 Jun 2009  
16:33:11 -0400

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Date: Mon, 15 Jun 2009 16:33:07 -0400

Subject: Comments on proposed 10 CFR Part 73 rule change 10 CFR Part 73

Thread-Topic: Comments on proposed 10 CFR Part 73 rule change 10 CFR Part 73

Thread-Index: Acnt+H3zEgWB191FRJ6sPd0N0NzAlg==

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