July 8, 2011

MEMORANDUM TO: Patricia Silva, Chief
Research and Test Reactors Projects Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

FROM: Steven Lynch, General Engineer **/RA/**
Research and Test Reactors Projects Branch
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

SUBJECT: SUMMARY OF CATEGORY 3 MEETING TO DISCUSS IMPLEMENTATION OF FINAL RULE NRC-2008-0619 "REQUIREMENTS FOR FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS FOR INDIVIDUALS SEEKING UNESCORTED ACCESS TO NON-POWER REACTORS (RESEARCH OR TEST REACTORS)"

On June 23, 2011, the U. S. Nuclear Regulatory Commission (NRC) staff met with non-power reactor licensees and other stakeholders at NRC headquarters to discuss the implementation of proposed Rule NRC-2008-0619, address licensee concerns regarding the impact of implementation, and seek participants for individual implementation meetings. Enclosure 1 lists meeting attendees.

Overview of Rule and Planned Implementation

NRC staff opened the meeting with a discussion of the rulemaking history for NRC-2008-0619 "Requirements for fingerprint-based criminal history records checks for individuals seeking unescorted access to non-power reactors (research or test reactors)." This overview consisted of a presentation discussing the roots of the rulemaking in the Atomic Energy Act of 1954; the Energy Policy Act of 2005; the Fingerprinting Order EA-07-074 issued to Research and Test Reactor Licensees in 2007; the assumed requirements of licensees to conduct FBI fingerprint-based criminal history records checks on individuals seeking unescorted access to vital areas or special nuclear material and to make determinations of trustworthiness and reliability based, at a minimum, on these records checks; and the definitions of vital area, vital equipment, and special nuclear material.

During this presentation NRC staff informed meeting attendees that while the language of the final rule could not be discussed, all dialogue in the meeting should assume a bounding scenario of the final rule language matching that of the proposed rule. The slides from this presentation are available in ADAMS, Accession No. ML111821444.

Discussion

Following the presentation on the status of the final rule, NRC staff and meeting attendees engaged in a discussion to address the concerns of licensees regarding the burden of implementing the final rule and to gauge interest in individual implementation meetings with licensees following the issuance of the final rule.

Meeting attendees expressed concern that the language of the proposed rule expanded upon the scope of Fingerprinting Order EA-07-074, requiring additional individuals to undergo FBI fingerprint-based criminal history records checks or conduct work under the supervision of an escort to continue current activities at licensee facilities. Attendees identified changes in language made between the fingerprinting order and proposed rule regarding the interpretation of vital areas and the thresholds of special nuclear material requiring unescorted access. Specifically, Pennsylvania State University believed that operators would be diverted from their normal duties in order to ensure that the escorting requirements of the rule were met, resulting in significant cost and effectively degraded safety at the facility. Similarly, the National Institute of Standards and Technology (NIST) believed that based upon their understanding of the use of 'vital area' in the proposed rule, they would no longer have the resources to operate as a national user facility should the final rule require the escort of thousands of additional facility users annually to conduct current unescorted activities.

NRC staff responded to these concerns assuring meeting attendees that the intent and functional implementation of the final rule would remain the same as that of the fingerprinting order. Changes in language between the proposed rule and order were made in order to maintain consistency with existing rules and definitions in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73; however, these changes did not expand the scope of the proposed rule from that of the order. Regarding the use of the terms 'vital area', 'vital equipment', and 'special nuclear material', staff referred licensees and stakeholders to the definitions of these terms appearing in 10 CFR Part 73 and the Atomic Energy Act. Based upon the scenarios provided by Pennsylvania State and NIST, staff did not believe that implementation of the final rule using these definitions would result in significant changes in current fingerprinting and escorting procedures at these licensee facilities.

Licensees in attendance also expressed concern over their ability to provide accurate estimates on the time and resources necessary to implement the final rule without seeing the language of the rule. Attendees also wanted to know how comments provided on the proposed rule had been addressed in final rule. Additionally, the Nuclear Energy Institute (NEI) asked if comments provided on the proposed 10 CFR Part 37 fingerprint rule had been considered in the development of the final 10 CFR Part 73 fingerprint rule.

NRC staff explained to attendees that the language of the final rule would be made publicly available following the concurrence of the Office of the Executive Director for Operations (EDO). Staff, however, believed that discussions concerning the language of the proposed rule would address all concerns with the final rule, reminding attendees that the proposed and final rules had been written with 'minimum regulation' in mind. Staff further stated that only in rare instances would the final rule necessitate the fingerprinting and/or escorting of an expanded set of individuals. When comments on the proposed rule suggested confusion over the intent of the rule language, staff provided clarification in the section-by-section analysis of the final rule, even when a change to the language of the rule itself was not warranted. Staff informed licensees in

attendance that this analysis will be part of the final rule package and will be used in the development of new inspection procedures to ensure consistent and well-defined expectations of licensee implementation of the final rule. While comments made on the 10 CFR Part 37 fingerprint rulemaking were not considered, the Office of Nuclear Reactor Regulation communicated with the Office of Federal and State Materials and Environmental Programs throughout the development of the proposed and final rules.

To conclude the meeting, NRC staff asked the licensees present if individual implementation meetings would be useful to ensure compliance with the final rule and if 120 days would be enough time to fully implement the rule. Licensees agreed that if the final rule did not impose additional fingerprinting and escorting requirements as NRC staff suggested, then 120 days would be enough time to implement the final rule and individual implementation meetings may only require a telephone call with a research and test reactor inspector. However, attendees asked NRC staff if an extension of the effective date of the rule was possible should the 120 days no longer seem sufficient once the final rule is issued. NRC staff replied that an extension of the effective date was possible should it be necessary and required by all licensees affected by the final rule. Finally, attendees asked if NRC staff would consider holding another public meeting to further discuss an implementation schedule following EDO concurrence on the rule. NRC staff responded, saying that due to the likely need to discuss safeguards information, it would be best to have individual meetings with each affected licensee regarding the specifics of final rule implementation.

Please direct any inquires regarding this meeting to Scott Sloan at 301-415-1619 or Scott.Sloan@nrc.gov.

Enclosure: Meeting Attendees

cc: See next page

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OFFICE	PRPB/PM	PRPB/LA	PRIB/BC	PRPB/BC
NAME	SLynch	GLappert	SHelton	PSilva
DATE	7/5/2011	7/7/2011	7/8/2011	7/8/2011

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LIST OF ATTENDEES

CATEGORY 3 MEETING TO DISCUSS IMPLEMENTATION OF FINAL RULE NRC-2008-0619

"REQUIREMENTS FOR FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS

FOR INDIVIDUALS SEEKING UNESCORTED ACCESS TO NON-POWER REACTORS

(RESEARCH OR TEST REACTORS)"

THURSDAY, JUNE 23, 2011

9:00 AM EDT

NAME	ORGANIZATION
Les Foyto	MURR
Andrew Mauer	Nuclear Energy Institute
Dan Hughes	NIST
Tom Myers	NIST
Mark Trump	Penn State University
Jere Jenkins	TRTR/Purdue University
Matt Berglund*	University of Florida
Brian Shea*	University of Florida
Leo Bobek	University of Massachusetts Lowell
Merri Horn	NRC/FSME/DILR
Scott Sloan	NRC/NRR/DPR
Tim Reed	NRC/NRR/DPR
Steve Lynch	NRC/NRR/DPR
Beth Reed	NRC/NRR/DPR
Jo Ann Simpson	NRC/NRR/DPR
Al Adams	NRC/NRR/DPR
Patricia Silva	NRC/NRR/DPR
John Adams	NRC/NRR/DPR
Cindy Montgomery	NRC/NRR/DPR
Duane Hardesty	NRC/NRR/DPR
A. Jason Lising	NRC/NRR/DPR
Ossy Font	NRC/NRR/DPR
Norman St. Amour	NRC/OGC/GCLR

* Indicates phone participant

Enclosure

Non-power Reactor Licensees and Stakeholders

Sandra Warren, General Manager
Aerotest Operations Inc.
3455 Fostoria Way
San Ramon, CA 94583

Stephen Miller, Reactor Facility Director
Armed Forces Radiobiology
Research Institute
Naval Medical Center
8901 Wisconsin Ave.
Bethesda, MD 20889-5603

Paul J. O'Connor, Reactor Supervisor
Dow Chemical Company
1602 Building
Midland, MI 48674

David Turner, Manager
Vallecitos Nuclear Center
General Electric Company
6705 Vallecitos Road
Sunol, CA 94586

Dr. Jay F. Kunze, Reactor Supervisor
Idaho State University,
P.O. Box 8060
Pocatello, ID 83209

Jeffrey A. Geuther, Manager
KSU Nuclear Reactor Facility
112 Ward Hall
Kansas State University
Manhattan, KS 66506-5204

John Bernard, Director of
Reactor Operations
Massachusetts Institute of Technology
138 Albany Street
Mail Stop MITNRL-NW12
Cambridge, MA 02139

Melinda P. Krahenbuhl, PhD, Director
Reed Reactor Facility
Reed College
3203 SE Woodstock Blvd.
Portland, OR 97202-8199

Prof. Sastey Sreepada Director
Reactor Critical Facility
Rensselaer Polytechnic Institute
Nuclear Engineering and Science Building
Room 1-10 MANE Department
110 8th Street
Troy, NY 12180

Terence Tehan, Director
Rhode Island Nuclear Science Center
Rhode Island Atomic Energy Commission
16 Reactor Road
Narragansett, RI 02882-1165

Raymond J. Juzaitis
Department Head, Nuclear Engineering
Texas A&M University
Mail Stop 3133
College Station, Texas 77843-3133

Dr. Warren D. Reece, Director
Texas A&M University System
Nuclear Science Center
Texas Engineering Experiment Station
F. E. Box 89, M/S 3575
College Station, Texas 77843

Tim DeBey, Reactor Supervisor
U.S. Geological Survey
6th and Kipling
Denver Federal Center, Building 15
P.O. Box 25046, MS 974
Denver, CO 80225-0046

Ralph Butler, Director
Research Reactor Center
University of Missouri-Columbia
1513 Research Park
Columbia, MO 65211

William Bonzer, Reactor Manager
Nuclear Reactor Facility
University of Missouri-Rolla
1870 Miner Circle
Rolla, MO 65409-0630

Robert Busch, Chief Reactor Supervisor
Chemical and Nuclear Engineering Department
University of New Mexico
MSC 01-1120, FEC 209
Albuquerque, NM 87131-0001

Michael Whaley, Associate Director
Nuclear Engineering Teaching Lab
University of Texas at Austin
ETL-PRC Bldg 159
10100 Burnet Rd
Austin, TX 78758

Dr. Tatjana Jevremovic, Reactor Administrator and Reactor Supervisor
TRIGA Nuclear Research Reactor
University of Utah
122 S. Central Campus Drive
Room 104
Salt Lake City, UT 84112

Michael Curley, Reactor Director
Nuclear Reactor Facility
Worcester Polytechnic Institute
100 Institute Road
Worcester, MA 01609-2280

Andrew Mauer
Nuclear Energy Institute
1776 I Street NW, Suite 400
Washington, DC 20006-3708

Sean O'Kelly, Chief of Operations & Engineering Group
NIST Center for Neutron Research
National Institute of Standards and Technology
U.S. Department of Commerce
100 Bureau Drive, Mail Stop 6101
Gaithersburg, MD 20899-6101

Andrew Cook, Manager
Nuclear Reactor Program
Department of Nuclear Engineering
North Carolina State University
Campus Box 7909
2500 Stinson Drive
Raleigh, NC 27695-7909

Jere Jenkins, Director
Radiation Laboratories
Purdue University
Nuclear Engineering Bldg.
400 Central Dr.
West Lafayette, IN 47907-2017

Andrew Kauffman, Associate Director
The Ohio State University
Nuclear Reactor Laboratory
1298 Kinnear Road
Columbus, OH 43212-1154

Steven Reese, Director
Radiation Center, A100
Oregon State University
Corvallis, OR 97331-5903

Kenan Unlu, Director
Breazeale Nuclear Reactor
The Pennsylvania State University
University Park, PA 16802-2301

John Williams, Director
Nuclear Reactor Laboratory
University of Arizona
Engineering Building (20), Room 104
Tucson, AZ 85721-0020

George E. Miller, Director
Nuclear Reactor Facility
Department of Chemistry
University of California
1102 Natural Sciences 2
Irvine, CA 92697-2025

Barry Klein, Facility Director
UC Davis McClellan Nuclear Research Center
5335 Price Avenue
McClellan, CA 95652

Donald Wall, Director
Nuclear Radiation Center
Washington State University
Roundtop Drive
Pullman, WA 99164-1300

Robert Agasie, Reactor Director
Nuclear Reactor Laboratory
University of Wisconsin-Madison
1513 University Avenue, Room 1215
Madison, WI 53706-1687

David Hintenlang
Director of Nuclear Facilities
University of Florida
P.O. Box 118300
202 Nuclear Science Building
Gainesville, FL 32611-8300

Mohamad Al-Sheikhly, Reactor Director
University of Maryland Training Reactor
Department of Materials & Nuclear Engineering
College Park, MD 20742

Leo Bobek
Radiation Services
Radiation Laboratory
University of Massachusetts Lowell
One University Avenue
Lowell, MA 01854