



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

November 29, 2011

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0107

TITLE: FINAL RULE: REQUIREMENTS FOR FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS FOR INDIVIDUALS SEEKING UNESCORTED ACCESS TO NONPOWER REACTORS (RESEARCH OR TEST REACTORS) (RIN-3150-AI25)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 29, 2011.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, reading "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-11-0107

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACZKO	X					10/24/11
COMR. SVINICKI	X				X	11/3/11
COMR. APOSTOLAKIS	X					8/16/11
COMR. MAGWOOD	X					10/28/11
COMR. OSTENDORFF	X				X	9/21/11

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Gregory B. Jaczko

SUBJECT: SECY-11-0107 –FINAL RULE: REQUIREMENTS FOR
FINGERPRINT-BASED CRIMINAL HISTORY
RECORDS CHECKS FOR INDIVIDUALS SEEKING
UNESCORTED ACCESS TO NONPOWER REACTORS
(RESEARCH OR TEST REACTORS) (RIN 3150-A125)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X



SIGNATURE

 12/24/11

DATE

Entered on "STARS" Yes X No

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-11-0107 –FINAL RULE: REQUIREMENTS FOR
FINGERPRINT-BASED CRIMINAL HISTORY
RECORDS CHECKS FOR INDIVIDUALS SEEKING
UNESCORTED ACCESS TO NONPOWER REACTORS
(RESEARCH OR TEST REACTORS) (RIN 3150-A125)

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached XX None _____

I approve publication of the draft final rule in the *Federal Register*, subject to the edits of Commissioner Ostendorff and the attached, additional edits. The staff did not submit with the draft final rule package its plan to sunset the existing research and test reactor fingerprinting orders, as directed by the Commission in SRM SECY-10-0045; however, the *Federal Register* notice states that Section 73.57 as amended replaces, in whole, the interim requirements imposed by Order EA-07-074 and Order EA-07-098. Consequently, the edits to page 31 clarify that these orders will be relaxed upon the licensee's documented compliance with the requirements of the final rule, but only upon written notification from the NRC.



SIGNATURE

DATE

11/3/11

Entered on "STARS" Yes ☒ No _____

- III. Discussion
 - A. General
 - B. Relaxing of Orders
 - C. Implementation Plans
- IV. Section-by-Section Analysis
- V. Availability of Documents
- VI. Criminal Penalties
- VII. Agreement State Compatibility
- VIII. Plain Language
- IX. Voluntary Consensus Standards
- X. Finding of No Significant Environmental Impact: Availability
- XI. Paperwork Reduction Act Statement
- XII. Public Protection Notification
- XIII. Regulatory Analysis: Availability
- XIV. Regulatory Flexibility Certification
- XV. Backfit Analysis
- XVI. Congressional Review Act

I. Background

Before the terrorist actions of September 11, 2001, the NRC regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.60, and 10 CFR 73.67 imposed physical protection requirements on NPRs that included measures for storing and using special nuclear material (SNM) in controlled access areas, monitoring the controlled access areas for unauthorized activities, and ensuring a response to all unauthorized activities to protect special nuclear material (SNM) from theft or diversion. Subsequent to September 11, 2001, the NRC evaluated

Section 73.57, the NRC will ^{after compliance with the requirements of the final rule} ~~consider~~ ^{it has been} relaxing Order EA-07-074 and Order EA-07-098. ^{All documented.}

orders will remain in effect until the NRC ~~takes specific action to relax them.~~

However, all

^{notifies the current NPR licensee, in writing,}
that the orders are relaxed with respect to
its facility.

C. Implementation Plans

The effective date of this rule is **[INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** which will allow 180 days for implementation.

This is 60 days more than the 120 originally proposed time period in response to public comments. The extended effective date of this final rule will provide time for licensees to develop or revise procedures and programs associated with the granting of unescorted access at their facilities to comply with the final 10 CFR 73.57(g) provisions. The NRC believes that the majority of procedure and plan changes are currently in place as a result of the previously issued unescorted access order. Additionally, the NRC believes this provides sufficient time for additional individuals to be fingerprinted and approved by the reviewing official.

The NRC held a Category 3 public meeting on June 23, 2011 (ADAMS Accession No. ML111460100 and ML111821113). The principal objective of this Category 3 public meeting was to continue outreach in support of openness and transparency and to facilitate communication that would enhance better understanding, interpretation, and implementation of this regulation. The NRC staff intends to offer an informed series of site-specific implementation meetings for each licensee. The intent of these meetings is to facilitate communication and provide the licensees an opportunity to discuss how they will ensure compliance with this rule.

IV. Section-by-Section Analysis

A. Section 73.57(a) General

Paragraphs (a)(1) and (a)(2) are simplified because the first portion of the current regulation which includes current power reactors licensed under 10 CFR Part 50 and applicants for power reactor licenses, is encompassed by the second portion of the provision that requires licensees that engage, or intend to engage in any regulated activity, be subject to the provisions of Section 73.57.

Paragraph (a)(3) is revised to add NPRs into the scope of licensees subject to Section 73.57 fingerprint provisions. Nonpower reactor licensees would be added to Section 73.57 to make use of the current fingerprint requirement provisions that are being successfully used for other licensees subject to FBI fingerprint-based criminal history records checks. This would ensure that NPR licensee fingerprints are handled in a manner that is both consistent with the process used for other licensees, and that ensures the NRC meets its obligations under the AEA for the handling and processing of fingerprints with the FBI.

B. Section 73.57(b) General performance objective and requirements

Paragraph (b)(1) is revised to include nonpower reactor licensees in the scope of the general performance and objective requirements of Section 73.57. The paragraph points to new Paragraph (g) where the specific unescorted access provisions for NPR licensees are described.

Paragraph (b)(2)(i) is revised to add nonpower reactor facilities. Paragraph (b)(2)(i) is further revised to list "offsite response organizations responding to a nonpower reactor facility" as one of the categories that does not require fingerprinting under the revised Section 73.57 provisions. Based on comments received in response to the proposed rule, Paragraph (b)(2)(i) is further revised to add "Federal" (non-NRC) employees who have had equivalent reviews of

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

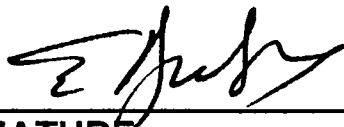
FROM: Commissioner Apostolakis

SUBJECT: SECY-11-0107 –FINAL RULE: REQUIREMENTS FOR
FINGERPRINT-BASED CRIMINAL HISTORY
RECORDS CHECKS FOR INDIVIDUALS SEEKING
UNESCORTED ACCESS TO NONPOWER REACTORS
(RESEARCH OR TEST REACTORS) (RIN 3150-A125)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X



SIGNATURE

 8/24/11
DATE

Entered on "STARS" Yes X No

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

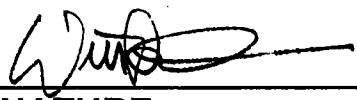
FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-11-0107 –FINAL RULE: REQUIREMENTS FOR
FINGERPRINT-BASED CRIMINAL HISTORY
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UNESCORTED ACCESS TO NONPOWER REACTORS
(RESEARCH OR TEST REACTORS) (RIN 3150-A125)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below Attached None X



SIGNATURE

 10-28-11
DATE

Entered on "STARS" Yes X No

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER OSTENDORFF

SUBJECT: SECY-11-0107 – FINAL RULE: REQUIREMENTS FOR
FINGERPRINT-BASED CRIMINAL HISTORY
RECORDS CHECKS FOR INDIVIDUALS SEEKING
UNESCORTED ACCESS TO NONPOWER REACTORS
(RESEARCH OR TEST REACTORS) (RIN 3150-A125)

Approved X Disapproved Abstain

Not Participating

COMMENTS: Below X Attached X None

I approve the Final Rule subject to the attached edits.



SIGNATURE

9/21/11

DATE

Entered on "STARS" Yes No

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150-AI25

[NRC-2008-0619]

Requirements for Fingerprint-Based Criminal History Records Checks
for Individuals Seeking Unescorted Access to Nonpower Reactors (Research or Test Reactors)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to require nonpower reactor (NPR)¹ licensees to obtain fingerprint-based criminal history records checks before granting any individual unescorted access to their facilities. This action complies with the requirements of Section 652 of the Energy Policy Act of 2005 (EPAAct) which amended Section 149 of the Atomic Energy Act of 1954, as amended (AEA), to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records checks of individuals permitted unescorted access to a utilization facility.

DATES: This rule is effective [INSERT DATE 180 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You can access publicly available documents related to this rulemaking using

¹ Note: All currently licensed research and test reactors (RTR) are nonpower reactors. NRC regulations consider all RTRs a subset of nonpower reactors (NPRs). NPRs are defined in 10 CFR Part 50.2 and include utilization facilities licensed under Atomic Energy Act (AEA) Section 103 and 104. The use of the term NPR in place of RTR properly incorporates all Class 103 and Class 104 licensees defined in §§ 50.21, and 50.22 as utilization facilities, although there are currently no NPR licensees that are not RTRs. Therefore, the use of the term NPRs includes RTRs in this and all related rulemaking documents.

the adequacy of security at NPRs and considered whether additional actions should be taken to help ensure the trustworthiness and reliability of individuals with unescorted access to licensees' facilities. The NPRs were advised to consider taking immediate additional precautions, including observation of activities within their facility. Several NPRs have implemented additional security measures. The NRC evaluated these additional measures at each facility during the remainder of 2001.

X From 2002 through 2004, the NPRs voluntarily implemented compensatory measures that included site-specific background investigations for individuals granted unescorted access to their facility. Depending on local restrictions, such as university rules, some of these background investigations included provisions for FBI fingerprint-based criminal history records checks, while checks at other NPRs include provisions for local or State law enforcement fingerprint-based criminal history records checks. Investigations at some NPRs did not include any fingerprinting. The NRC has also conducted security assessments at certain NPRs, which helped to identify risk-significant areas and materials.

Section 652 of the EAct, enacted on August 8, 2005, amended Section 149 of the AEA to require fingerprinting and FBI identification and criminal history records checks for individuals "permitted unescorted access to a utilization facility." NPRs are included within the definition of what constitutes a utilization facility. Therefore, consistent with the requirement set forth in Section 149 of the AEA, any person granted unescorted access to an NPR must be fingerprinted and have those fingerprints submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.

In SECY-05-0201, "Implementation of the Energy Policy Act of 2005," dated October 31, 2005, the NRC staff informed the Commission of its plan for implementing the NRC's responsibilities under the EAct. The Commission approved the staff's

recommendations in a Staff Requirements Memorandum (SRM) dated January 5, 2006, and directed the staff to recommend appropriate interim regulatory actions that the NRC should implement while it developed the generic requirements for granting unescorted access, including the provisions in Section 652 of the EAct pertaining to fingerprinting.

In SECY-07-0011, "Interim Implementation of Fingerprinting Requirements in Section 652 of the Energy Policy Act of 2005," dated January 12, 2007, the NRC staff provided information and recommendations to the Commission on its EAct interim implementation plan. In an SRM dated March 12, 2007, the Commission directed the NRC staff to expeditiously develop a definition of "unescorted access" that would apply to NPR licensees and issue orders to NPR licensees requiring fingerprinting for individuals that fall within this definition. In order to ensure compliance with Section 104c of the AEA, the NRC staff was directed to impose only the minimum amount of regulation needed for NPR licensees. The Commission also directed the NRC staff to proceed with a rulemaking to determine if additional personnel should be fingerprinted.

X In response to the Commission's ^{march}~~January~~ 12, 2007, directive, the NRC imposed fingerprinting requirements for unescorted access to special nuclear material on the applicable NPR licensees by order (Order EA-07-074, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors" (72 FR 25337; May 4, 2007), and Order EA-07-098, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to the General Atomics' Research and Test Reactors" (72 FR 44590; August 8, 2007)). The ADAMS Accession Numbers for these documents are ML070750140 and ML072050494, respectively. Specifically, the orders state that:

An individual who is granted "unescorted access" could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal.

In implementing the requirement of the EPAct on an interim basis, the orders were issued requiring fingerprinting only for individuals with unescorted access to risk-significant materials (e.g., fuel), within the research and test reactor facilities. Licensees were required to submit fingerprints of individuals who were seeking or currently had unescorted access. Individuals who had previously been subjected to fingerprinting that would satisfy the requirements for unescorted access (e.g., access to safeguards information (SGI)) did not need to be fingerprinted again. These orders required that a reviewing official consider the information received from the FBI in conjunction with the other requirements for unescorted access to determine whether an individual may be granted or allowed continued unescorted access. The reviewing official was allowed to be the same official previously approved by the NRC for the SGI order (Order EA-06-203, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," dated September 29, 2006; ADAMS Accession No. ML061510049) that implemented the EPAct fingerprinting and criminal history records check requirements for individuals who seek access to SGI.² ^{unescorted access} The order provided that an NRC-approved reviewing official was the only individual who could make the unescorted access determination.

Advance Notice of Proposed Rulemaking (ANPR) and Proposed Rule

^{October}
⁹
② The Safeguards Information orders were incorporated into 10 CFR Part 73 on Oct 24, 2008 (73 FR 63546).
^{superscript}

Comment: Several commenters expressed the view that existing NRC security orders as implemented and inspected at their facilities are workable and acceptable to codify. They stated that the wording of the proposed rule meets the principle of codifying the existing orders. However, these commenters further stated that the proposed wording goes beyond the scope of the existing orders without adequate justification. According to the commenters, "The proposed rule does not adequately justify the expansion of requirements based on risk (risk informed) or performance issues (performance based) and, therefore, does not meet the staff's publicly stated basis for expanding regulatory requirements."

X The commenter⁵ further stated the expansion of the requirements in the proposed rule is counter to previously issued NRC documents assessing the risk and security of NPRs operated under the existing security orders and the cited Section 104c of the AEA provision on minimum regulation. "By stated policy and statute the NRC seeks, wherever possible, to establish 'risk-informed regulation' and to 'impose only such minimum amount of regulation.' This new regulation does not seem in keeping with those goals."

Of particular concern to the commenters is the removal of "public health and safety" and "common defense and security" significance from the requirements for protection of SNM. They stated that the original orders implemented security enhancements (fingerprinting and background checks) to protect SNM of "significance to the common defense and security" or
X that would "adversely affect the health and safety of the public." The commenter⁵ reiterated a previous comment made in response to NRC's Advance Notice of Proposed Rulemaking (74 FR 17115, April 14, 2009), that the existing security orders as implemented and inspected at NPR facilities were adequate and acceptable. Any codification should reflect the existing orders and should not impose new requirements or definitions.

proposed rule removes this detection and response concept and requires fingerprinting and background checks for individuals who are granted access to an "area," regardless of whether such access would allow unauthorized use or removal without detection, assessment, or response. The removal of the "detection, assessment, or response" language is not consistent with the background discussion of the issue in the proposed rule (75 FR 42003) which states the rule would make use of this clause and flexibility.

NRC Response: The NRC agrees that the "detection, assessment, or response" language is not in the final rule. The purpose of this rulemaking is to establish requirements for fingerprinting those individuals seeking unescorted access to NPRs. The NRC believes that any individuals with unescorted access to SNM of such quantity and/or enrichment to be significant to the public health and safety and to the common defense and security or with unescorted access to vital areas at an NPR should be fingerprinted. The NRC believes this requirement to fingerprint for unescorted access to NPRs should be independent from the licensees' ability to "detect, assess, or respond" to an unauthorized removal of SNM. Furthermore, the NRC notes that there are existing detection, assessment, and response requirements set forth in 10 CFR 73.60 and 73.67. Elimination of the "detection, assess, and respond" language in the final rule does not mean that licensees are no longer required to comply with existing detection, assessment, or response requirement. No changes to the rule language were made as a result of this comment.

Comment: Another commenter observed that the statements of consideration for the proposed rule states, "...the provisions in this proposed rule are constructed to provide flexibility, providing both an 'area' criterion (unescorted access to vital areas) and a 'material' criterion (unescorted access to SNM)." However, the proposed rule could be interpreted such

X *Comment:* Several commenters were concerned with the addition of the term *vital area*. (italicize)
They stated that Section 73.57(g)(2)(i) of the proposed rule, "adds a new requirement to establish, define and control unescorted access to *vital areas* defined per Section 73.2. The need for this additional regulation was not adequately justified in the proposed rule basis when it stated the new rule uses definitions that already apply to all provisions within 10 CFR Part 73 and accordingly apply to RTR [NPR] licensees whose security requirements are governed by 10 CFR Part 73..."

X The commenter^s asserts^s that just because Section 149 of the AEA provides the Commission
X authority to establish regulation^s (for fingerprinting and criminal history checks), that does not in itself justify the need for specific regulatory expansion. The recommendation is to remove the requirement for NPRs to evaluate for *vital areas* as currently defined in Section 73.2 for power reactors. The commenters stated that current definitions for unescorted access placed by the NRC security order and defended by the staff as acceptable should be maintained or adequate justification through analysis should be provided supporting the need for additional regulation of *vital areas*.

NRC Response: The NRC agrees that the term "vital area" did not appear in the 2007 NRC-issued orders. However, the NRC disagrees that the inclusion of the vital area in the final rule language is a new requirement in itself. The term "vital area" is defined in Section 73.2 as "any area which contains vital equipment." "Vital equipment," in turn, is defined in Section 73.2 as "any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation. Equipment or systems which would be required to protect public health and safety following such failure, destruction, or releases are also considered to be vital."

X The vital area concept is applicable to all utilization facilities, including NPRs. NPRs that have a vital area are required to protect them in accordance with the requirements set forth in Part 73. The only new requirement that the final rule imposes on NPR licensees that have a vital area is to fingerprint those individuals seeking unescorted access to these areas. This is consistent with the statutory requirement set forth in Section 149 of the AEA to fingerprint those individual granted unescorted access to a utilization facility.

The NRC disagrees with the comment that the amended Section 149 of the AEA does not in itself justify the need for specific regulatory expansion. However, the NRC believes that the impact of the vital area criterion will be minimal because few NPR facilities have vital equipment besides SNM (unescorted access to which already requires fingerprinting due to the material criterion of this rule). Additionally, the NRC believes the impact of the vital area criterion will be minimal because few licensee personnel will require unescorted access to vital areas that do not require unescorted access to SNM or to SGI. In the development of this rulemaking, the NRC re-evaluated whether an area criterion, as applied to the requirements of fingerprinting individuals seeking unescorted access to the facility, is required to ensure that the fingerprinting requirements in Section 149 of the AEA are properly and completely implemented for NPRs.

X The rule bifurcates the fingerprint requirement for "access to a utilization facility" into two criteria, which the rule terms "SNM" and "vital area" – both of which licensees must comply with by the implementation date of this rule. The NRC made an affirmative determination that both a material criterion and an area criterion are required to implement the statutory requirements of Section 149 of the AEA for NPR facilities.

X *Comment:* One commenter stated, "...the [statements of consideration] for the section [Section 73.57(g)(2)(i)] indicates a significant burden for licensees when it states,

‘...implementation of this proposed revision may involve a significant amount of interpretation on the part of [NPR] licensees, the NRC expects that [NPR] licensees would have clear documentation to support their decisions. (75 FR 42008)’”

NRC Response: The NRC disagrees with the comment that a significant burden will be placed on licensees. The NRC believes that the final rule language is clear and will not require significant interpretation beyond that provided in the statements of consideration. The purpose of including well-defined area and material criteria is to lessen the need for licensees to interpret when fingerprinting is required. Furthermore, the NRC does not believe that requiring licensees to document their access authorization determinations poses an undue burden.

X *Comment:* Another commenter referenced the NRC’s assertion in the proposed rule, which stated, “The equipment, systems, devices, and material that fall within Section 73.2 vital equipment definition meet the utilization facility definition in Section 11.cc of the AEA. Hence, fingerprinting individuals who wish to have unescorted access to vital areas is ensuring that individuals permitted access to the ‘utilization facility,’ as defined in the AEA, is properly implemented in the NRC’s regulations.” The commenter expressed the view that this statement implies every piece of equipment and all materials within a “utilization facility” (i.e. a 10 CFR 50 licensed nuclear reactor facility) are considered vital rather than specific areas or equipment.

X The commenter stated that this statement is “grossly incorrect” and, therefore, any subsequent conclusions that this statement intended to support should be considered questionable. The Section 73.2 definition of vital equipment applied at the National Institute of Standards and Technology Center of Neutron Research bounds the limiting Maximum Hypothetical Accident (MHA) to protect the health and safety of the general public and the protection of SNM in quantities significant to the common defense and security. Vital equipment or areas have been

defined and explained in the NRC-approved Physical Security Plan and reviewed for adequacy and correctness within NRC-sponsored Physical Security Assessments for the National Bureau of Standards Reactor. The definition of vital area and vital equipment as applied has been reviewed under the current threat environment by the NRC so there should be no requirement or expectation for NPR licensees to provide additional "clear documentation to support their decisions" under the proposed rule.

X *NRC Response:* The NRC agrees that not every piece of equipment within ^{an} a NPR meets the definition of vital equipment contained within a vital area. As noted above, the terms "vital equipment" and "vital area" have specific definitions within Part 73. The NRC established the vital area and SNM criteria for this rule as a means to define the specific areas for which individuals must be fingerprinted when seeking unescorted access to ^{an} a NPR. Many NPR facilities are located within classroom or laboratory buildings with no clear demarcation between the reactor facility and unrelated areas. Therefore, many persons pass through the buildings housing NPR facilities who are not affiliated with the reactor itself. Instead of requiring fingerprinting for every person entering the building that houses the reactor facility, the NRC believes that the use of the vital area and SNM criteria to determine which personnel must get fingerprinted fulfills the statutory requirement of Section 149 of the AEA. No changes to the rule language were made as a result of this comment.

Comment: Another commenter expressed the view that phrasing of the proposed language in Section 73.57(g)(1) that states: "No person shall be permitted unescorted access to a nonpower reactor facility unless that person has been determined by an NRC-approved reviewing official to be trustworthy and reliable based on..." could result in the misinterpretation that fingerprinting requirements must be met for access to any part of a nonpower reactor

facility, which is not the stated intention of the proposed rule. Such a misinterpretation might be avoided by stating that: "No person shall be permitted unescorted access *at* a nonpower reactor facility unless that person has been determined by an NRC-approved reviewing official to be trustworthy and reliable based on..."

X *NRC Response:* The NRC disagrees with this comment. Paragraph g(2) of the rule identifies specific areas within the NPR facility, unescorted access to which requires ^{an} FBI fingerprint-based criminal history records check. The NRC believes that the inclusion of area and material criteria makes it clear when licensees must fingerprint individuals seeking unescorted access to the NPR. No changes to the rule language were made as a result of this comment.

Comment: One commenter recommended that in addition to specifying the requirements in accordance with NRC order EA-07-074, the rule could state: "...licensees *may* specify vital areas for which fingerprinting requirements must be met to ensure that those without unescorted access could not exercise physical control over materials."

NRC Response: The NRC disagrees with this comment. The NRC believes requiring fingerprint-based criminal history records checks for those seeking unescorted access to vital areas, as defined in 10 CFR 73.2, is critical in fulfilling the statutory requirements of Section 149 of the AEA. Use of the phrase recommended by the commenter does not convey the appropriate obligation of licensees to implement the requirements of the final rule. No changes to the rule language were made as a result of this comment.

Comment: Several commenters expressed the view that Section 73.57(b)(2)(i) appears subordinate and redundant to 10 CFR 73.61. They believe that 10 CFR 73.61 should be updated and referenced as opposed to adding new exceptions in Section 73.57.

NRC Response: The NRC disagrees with the comment. The Commission previously addressed this topic on February 2, 2007 (72 FR 4948), in the 10 CFR 73.61 rulemaking, "Relief From Fingerprinting and Criminal History Records Checks." Although similar, Section 73.61 provides relief from fingerprinting requirements for certain categories of individuals considered trustworthy and reliable to permit unescorted access to radioactive material or other property. Paragraph(b)(2)(i) of Section 73.57 offers similar relief for unescorted access to utilization facilities or SGI. This rule is specific to nonpower reactors and is best contained in a single section of Part 73 (i.e., Section 73.57). No changes to the rule language were made as a result of this comment.

Comment: Several commenters stated that in public meetings, stakeholders have requested relief from the requirement that the only basis for unescorted access is fingerprints submitted through the NRC to the Attorney General; instead of allowing for other mechanisms to achieve the same end of providing criminal history ^{records} check from the FBI. The NRC has previously stated that this is required by Section 149 of the AEA. While Section 149a does mandate this mechanism, Section 149b states: "The Commission, by rule, may relieve persons from the obligations imposed by this section, under specified terms, conditions, and periods, if the Commission finds that such action is consistent with its obligations to promote the common defense and security and to protect the health and safety of the public." The NRC has made use of this exception in the proposed Section 73.57(b)(2)(i) and in existing Section 73.61. Therefore, the mechanism for relief is within the statute, with the basis that the action

X (fingerprint and criminal history checks by other mechanisms) is equivalent to Section 149a and therefore "consistent with its (the NRC's) obligations to promote the common defense and security and to protect the health and safety of the public."

NRC Response: The NRC disagrees with the comment suggestion to the extent that it is asking for alternative methods to those that are set forth in Section 149 of the AEA. The NRC notes that Section 149 requires the Commission to fingerprint any person granted unescorted access to a utilization facility. Section 149.a.(2) of the AEA requires that these fingerprints be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check. The Commission does not have discretion to deviate from this statutory requirement.

(Be consistent in the FRN regarding use of period after "section 149" and before the subsection letter)

X The commenter correctly notes that Section 149.b of the AEA allows the Commission to
X relieve by rule persons from the obligations imposed by Section 149.a of the AEA. The exemptions listed in Section 73.57(b)(2)(i) and in existing Section 73.61 include persons who are considered trustworthy and reliable by virtue of their occupational status and have either already undergone a background or criminal history records checks as a condition of their employment, or are subject to direct oversight by government authorities in their day-to-day job functions. No changes to the rule language were made as a result of this comment.

Comment: Several commenters expressed the view that the NRC has the authority to waive the fees it charges to process fingerprints and criminal history records checks. They disagreed with a previous NRC response that Section 149 of the AEA "explicitly requires" fees be collected and "the NRC does not have authority to waive the fee" (75 FR 42003). The commenters assert that Section 149e of the AEA states, "The Commission *may* establish and collect fees to process fingerprints and criminal history records under this section," but it does not require it.

The commenters conclude by stating, "The AEA Chapter 4 also directs the Commission 'to exercise its powers in a manner to ... insure the continued conduct of ... activities at support research facilities...' Therefore, waiver of any additional NRC administrative cost in 10 CFR 57(d)(3)(ii) for NPR institutions will promote both the implementation of the proposed rule and the intent of AEA Chapter 4."

NRC Response: The NRC is sensitive to the costs involved in regulation. The fees charged to NPR facilities for fingerprinting are the direct costs incurred from the Department of Justice for fingerprint processing. No changes to the rule language were made as a result of this comment.

Comment: Several commenters stated that the readability of 10 CFR Part 73 is problematic and gave various suggestions. They stated that 10 CFR Part 73 is a complicated part with many facets that dictate stringent requirements on nuclear power plants. Portions of the regulation are applicable to NPRs. It is a difficult part to navigate and determine applicability. Adding more sections to this rule, using the definitions section of the part and using legalistic language does not meet the intent of Presidential Direction on "Plain Language in Government Writing" or assist the Commission in meeting the AEA direction on minimal regulation of NPRs. Some improvements that could easily be incorporated include: (1) a clear applicability statement (Section 73.57(a)(1)) (this section currently says (in essence) that Section 73.57 is applicable to all licensees engaged in any activity subject to Commission regulation; this does not seem correct and does not promote ease of use of the regulation), (2) clear applicability for each paragraph section, (3) shorter sentences and/or bulleted lists to simplify paragraphs, and (4) less use of references to other sections and/or short description of the section (example Section 73.2 (Definitions) or Section 73.61 (Relief from Fingerprinting)).

There is likely an extra space here

determines that such information is necessary to make an adequate trustworthiness and reliability determination. No changes to the rule language were made as a result of this comment.

Comment: One commenter stated that the NPR facilities did not have a clear understanding of the consequences of the rule and requested that the NRC extend the comment period to coincide with the expiration of the proposed rule for 10 CFR 37 on January 31, 2011.

NRC Response: The NRC understands the comment and reopened the public comment period on December 20, 2010 (75 FR 79312). The extended comment period remained open until January 31, 2011.

Comment: Several commenters expressed the view that employees who are not NRC employees but are employed by State or Federal Governments are subject to fingerprint/background checks as a condition of employment and for obtaining security clearances. Equivalence needs to be established to reduce the burden and expense associated with clearing the same individual multiple times.

NRC Response: The NRC agrees with this comment. The final rule language is modified to include State and Federal non-NRC employees to those exempt from additional fingerprinting in Section 73(b)(2)(i).

Comment: One commenter stated that the use of fingerprints to perform domestic criminal ^{records} history checks does not provide sufficient background information on foreign individuals seeking unescorted access and gives the illusion of a thorough check, when only a fraction of the individual's criminal history may be covered by U.S. records. The commenter recommended the

- X criminal history^{records} check include a foreign individuals' home country or international police
- X cooperation to perform a criminal record^{history} check in their previous nation of residence, and to include a check against the terrorist watch list.

NRC Response: The NRC agrees that FBI fingerprint checks are likely only to give information about domestic criminal history. Fingerprinting has long been a trusted method of verifying an applicant's identity, and it serves as an accepted method of searching existing U.S. records for domestic criminal history. The scope of this proposed rulemaking is to develop regulations implementing the fingerprint requirements set forth in Section 149 of the AEA. Section 149.a.(2) of the AEA requires that, "All fingerprints obtained by an individual or entity...be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check," for those seeking or permitted unescorted access to utilization facilities. The NRC recognizes that an FBI criminal history records check may be only one aspect of a licensee's determination to grant an individual unescorted access to an NPR. Many licensees undertake more extensive background investigations as they deem necessary. No changes to the rule language were made as a result of this comment.

General Comments Received During Reopened Public Comment Period

All eleven comments received during the second public comment period referred to the proposed rule and previously submitted public comments provided by other facilities and the National Organization of Test, Research, and Training Reactors (TRTR). All eleven comments supported TRTR's comments submitted on October 3, 2010 (NRC-2008-0619-0019), which are addressed previously in this document under, "General Comments Received During First Public Comment Period." The sentiments stated that the proposed rule adds additional requirements for security at NPR facilities that will further limit student, faculty, and research access and divert

Some of the eleven comments provided views that were in addition to those supporting TRTR's comments.

additional resources from educational and research missions. The following are additional

comments received during the reopened public comment period.

Comment: Several commenters expressed the view that there is no clear evidence these additional requirements will provide a commensurate improvement in the protection of public health and safety. They stated that after the events of September 11, 2001, the NRC required compensatory measures that were implemented by all NPR facilities via the Confirmatory Action Letter process. Several years later, the NRC issued order EA-07-074, requiring fingerprinting and criminal history records checks for individuals with unescorted access as defined by the order. In the decade since September 11, 2001, there have been no credible threats to security at NPRs. The measures and order implemented since then have provided more than adequate additional protections given the implications of that historic occurrence. With no indications of an increased probability of threat against NPRs, there can be no justification for further prescribed additional security requirements which heretofore have been adequate.

NRC Response: The NRC agrees that there is no current, specific, credible threat to the security of NPRs. Furthermore, the NRC agrees that NPR security requirements, including regulations, NRC-issued security orders, and compensatory measures have provided adequate protection at NPRs to date. However, the NRC is required under Section 149 of the AEA to implement the requirement to fingerprint all persons seeking unescorted access to utilization facilities, including NPRs. Since 2007, the NRC has relied on security orders to fulfill this statutory requirement, but the NRC prefers to regulate by rulemaking vice regulating by orders. The rulemaking process allows deliberate processes and extensive stakeholder involvement that orders do not. The 2007 NRC-issued security orders have provided adequate protection and allowed a shorter implementation time, but this final rule has been shaped by lessons

regulatory discretion is allowed for this rule; however, the NRC staff will work with NPR licensees to support proper interpretation and implementation of these criteria.

III. Discussion

A. General Discussion

These amendments establish generically applicable fingerprinting requirements for nonpower reactor licensees similar to those previously imposed by the Commission's orders pertaining to the granting of unescorted access. The amendments implement the requirement in Section 149.a.(1)(B)(i)(I) of the AEA that the Commission require to be fingerprinted any individual who is permitted unescorted access to a utilization facility.

As previously noted, Section 149 of the AEA requires that the Commission fingerprint and conduct a criminal history records check of individuals seeking unescorted access at a broader range of NRC licensees and regulated facilities. Utilization facilities, including NPRs² which were not previously subject to these requirements, are now subject to these fingerprint requirements. It is this specific expansion in regulatory authority that is the subject of this proposed rule (i.e., extension of these fingerprint-based FBI criminal history records checks² requirements to NPRs).

Section 149 of the AEA now requires fingerprinting for individuals seeking unescorted access to a "utilization facility." "Utilization facility" is a term that is defined in Section 11.cc. of the AEA as:

(1) any equipment or device, except an atomic weapon, determined by rule of the Commission to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (2) any

important component part especially designed for such equipment or device as determined by the Commission.

The Commission has defined "utilization facility" in 10 CFR 50.2 as any nuclear reactor other than one designed or used primarily for the formation of plutonium or uranium-233.

In developing these proposed provisions, the NRC recognized that when constructing requirements for NPR licensees, it should be cognizant of the direction in Section 104c of the AEA which states, in part that: ^(be consistent)

The Commission is directed to impose only such minimum amount of regulation of the licensee as the Commission finds will permit the Commission to fulfill its obligations under the Act to promote common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.

The proposed revisions discussed in this document are constructed in accordance with the requirements of Section 149 of the AEA and within the constraints of Section 104c of the AEA.

B. Relaxing of Orders

Section 73.57 as amended replaces, in whole, the interim requirements imposed by Order EA-07-074, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors," (72 FR 25337; May 4, 2007) and Order EA-07-098, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to the General Atomics' Research and Test Reactors" (72 FR 44590; August 8, 2007). The final rule amends Section 73.57 with similar requirements that ensure proper implementation of the requirements in Section 149 of the AEA. Accordingly, once current NPR licensees have implemented the requirements in

Section 73.57, the NRC will consider relaxing Order EA-07-074 and Order EA-07-098. All orders will remain in effect until the NRC takes specific action to relax them.

C. Implementation Plans

The effective date of this rule is [INSERT DATE THAT IS 180 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*] which will allow 180 days for implementation.

This is 60 days more than the 120 originally proposed time period in response to public comments. ^{But, some licensees stated that they would need additional time. There} The extended effective date of this final rule will provide time for licensees to develop or revise procedures and programs associated with the granting of unescorted access at their facilities to comply with the final 10 CFR 73.57(g) provisions. The NRC believes that the majority of procedure and plan changes are currently in place as a result of the previously issued unescorted access order. ^{There are no safety or security issues associated with this additional time because the security orders have already been in place for a number of years.} Additionally, the NRC believes this provides sufficient time for additional individuals to be fingerprinted and approved by the reviewing official.

The NRC held a Category 3 public meeting on June 23, 2011 (ADAMS Accession No. ML111460100 and ML111821113). The principal objective of this Category 3 public meeting was to continue outreach in support of openness and transparency and to facilitate communication that would enhance better understanding, interpretation, and implementation of this regulation. The NRC staff intends to offer an informed series of site-specific implementation meetings for each licensee. The intent of these meetings is to facilitate communication and provide the licensees an opportunity to discuss how they will ensure compliance with this rule.

IV. Section-by-Section Analysis

A. Section 73.57(a) General

X Paragraphs (a)(1) and (a)(2) are simplified because the first portion of the current regulation[^] which includes current power reactors licensed under 10 CFR Part 50 and applicants for power reactor licenses, is encompassed by the second portion of the provision that requires licensees that engage, or intend to engage in any regulated activity, be subject to the provisions of Section 73.57.

Paragraph (a)(3) is revised to add NPRs into the scope of licensees subject to Section 73.57 fingerprint provisions. Nonpower reactor licensees would be added to Section 73.57 to make use of the current fingerprint requirement provisions that are being successfully used for other licensees subject to FBI fingerprint-based criminal history records checks. This would ensure that NPR licensee fingerprints are handled in a manner that is both consistent with the process used for other licensees, and that ensures the NRC meets its obligations under the AEA for the handling and processing of fingerprints with the FBI.

B. Section 73.57(b) General performance objective and requirements

Paragraph (b)(1) is revised to include nonpower reactor licensees in the scope of the general performance and objective requirements of Section 73.57. The paragraph points to new Paragraph (g) where the specific unescorted access provisions for NPR licensees are described.

Paragraph (b)(2)(i) is revised to add nonpower reactor facilities. Paragraph (b)(2)(i) is further revised to list "offsite response organizations responding to a nonpower reactor facility" as one of the categories that does not require fingerprinting under the revised Section 73.57 provisions. Based on comments received in response to the proposed rule, Paragraph (b)(2)(i) is further revised to add "Federal" (non-NRC) employees who have had equivalent reviews of

FBI criminal history data to the list of individuals that licensees need not fingerprint in accordance with the requirements of this section.

Paragraph (b)(2)(v) is added to enable individuals who have a valid unescorted access authorization to a nonpower reactor facility on the effective date of the rule (granted in response to NRC Orders EA-07-074 and EA-07-098) to retain their access authorization and not be required to have a new fingerprint-based FBI criminal history records check under Section 73.57(g) until such time that the individual's existing authorization either expires, is terminated, or is otherwise required to be renewed.

Paragraph (b)(4) is revised to relieve NPR licensees from being required to fingerprint an individual if the licensee is reinstating the unescorted access to a granted individual when that individual returns to the same reactor facility, and the unescorted access has not been interrupted for a continuous period of more than 365 days.

X Paragraph (b)(5) is revised to provide nonpower reactor licensees the discretion ^(to not) fingerprint individuals for which fingerprint-based criminal history records checks have been conducted, and for which the criminal history records checks can be transferred to the gaining licensee in accordance with Section 73.57(f)(3). This revision allows for reciprocity of fingerprint-based criminal history records checks and grants NPR licensees the same discretion that is currently granted to power reactor licensees.

X Paragraph (b)(8) is revised to include NPR licensees to ensure that NPR licensees use the information obtained as part of the criminal history records checks ^{solely} for the purpose of determining an individual's suitability for unescorted access.

C. Section 73.57(c) Prohibitions

indented too far over [Paragraph (c)(1) is revised to include NPR licensees so that the associated prohibitions are provided to individuals seeking unescorted access at nonpower reactors.

D. Section 73.57(d) Procedures for processing of fingerprint checks

Paragraph (d)(1) is revised to include nonpower reactor facilities so that the established fingerprint provisions and forms that the NRC currently uses for other licensees can be used by NPR licensees.

Paragraph (d)(3)(ii) is revised to apply the application fee provisions to all licensees (including NPR licensees) subject to the Section 73.57 fingerprinting requirements.

E. Section 73.57(f) Protection information

Paragraph (f)(2) is revised to add nonpower reactor licensees to ensure that the personal information disclosure restrictions are applied to NPR licensees.

Paragraph (f)(5) is revised to add nonpower reactors and thereby provide records retention requirements for the fingerprints and criminal history records checks generated through compliance with ^{revised} ~~proposed~~ Section 73.57.

F. Section 73.57(g) Fingerprinting requirements for nonpower reactor licensees

This paragraph is added to provide the new fingerprint-based criminal history records checks requirements required by Section 149 of the AEA. The scope of the proposed requirements is consistent with orders on unescorted access issued by the NRC on April 30, 2007, and August 1, 2007 (EA-07-074 and EA-07-098 respectively). These orders require NPR licensees to conduct FBI identification and fingerprint-based criminal history records checks based on fingerprints for individuals granted unescorted access to SNM at these

facilities (i.e., an individual who is granted *unescorted access* could exercise physical control over the special nuclear material possessed by the licensee, which would be of significance to the common defense and security or would adversely affect the health and safety of the public, such that the special nuclear material could be used or removed in an unauthorized manner without detection, assessment, or response by systems or persons designated to detect, assess or respond to such unauthorized use or removal. At NPRs, such individuals include those with the capability and knowledge to use the special nuclear material in the utilization facility or remove the special nuclear material from the utilization facility in an unauthorized manner without detection, assessment, and response by the physical protection system or related provisions or persons). The orders were issued as interim measures until the NRC could formulate generically applicable requirements for incorporation into NRC regulations.

Section 73.57(g)(1) establishes requirements that prohibit any person from having unescorted access to a nonpower reactor facility unless that person has been determined by the licensee to be trustworthy and reliable. This determination is made by an NRC-approved reviewing official who may undertake more extensive background investigations as they deem necessary in order to determine trustworthiness and reliability. The reviewing official is required to have unescorted access in accordance with the requirements of Section 73.57, or access to SGI. The licensee's NRC-approved reviewing official evaluates the criminal history records checks^g information to determine whether the individual has a record of criminal activity that indicates that the individual should be denied unescorted access. For each determination of unescorted access, which includes a review of criminal history information, the NRC expects NPR licensees to document the basis for the decision. When negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information would be considered, and actions taken

based on these findings. The NRC expects these findings to be documented. A criminal history record containing a pattern of behaviors which could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have unescorted access in accordance with Section 73.57(g) should be carefully evaluated before unescorted access is granted to the individual.

Section 73.57(g)(2)(i) establishes requirements for NPR licensees to obtain fingerprints for criminal history records checks for each individual who is seeking or permitted unescorted access to "vital areas" of the nonpower reactor facility. "Vital area" is defined in Section 73.2 as "any area which contains vital equipment," and "vital equipment" is in turn defined in Section 73.2 as "any equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the public health and safety by exposure to radiation.

Equipment or systems which would be required to protect public health and safety following such failure, destruction, or releases are also considered to be vital." The vital area criterion may increase the scope of personnel required to obtain fingerprinting beyond the SNM criterion proposed in Section 73.57(g)(2)(ii). The NRC notes that some NPR licensees have associated

"vital areas" with areas that store unirradiated highly enriched uranium. A "vital area" at a particular NPR will vary as a function of the facility design. Security assessments have been performed by NRC for a number of licensees that can provide the licensees insight into what constitutes a "vital area." In light of the NRC's preliminary reevaluation of the security assessments in regards to what constitutes a vital area as defined in Section 73.2, the NRC predicts that implementation of this rule will be seamless for those licensees not having vital areas and who are already in proper compliance with the security orders.

clarify the seamlessness discussed here & the interpretation/documentation discussion from 75 FR 42008 (proposed rule)

Paragraph (g)(2)(ii) establishes requirements for NPR licensees to obtain fingerprints for

a criminal history records checks for each individual who is seeking or granted unescorted

Section 73.57(g)(2)(i) and (ii). To determine which individuals should be fingerprinted for unescorted access, NPR licensees need to evaluate their current security plans and procedures considering the definition of vital area (in 10 CFR Part 73) and the requirements of Section 73.57(g)(2)(i) and (ii), as well as any other security assessment information that might be available. For example, an NPR licensee may decide for practical reasons to fingerprint individuals who wish to have unescorted access within the controlled access area.

X In most cases, the provisions of Section 73.57(g) use ^{an} NPR licensee's procedures similar to those used to implement the previous unescorted access and SGI access fingerprinting orders and rulemaking (73 FR 63546, dated October 24, 2008). More importantly, these provisions of Section 73.57 follow the regulatory processing and handling requirements already incorporated into Section 73.57.

When a licensee submits fingerprints to the NRC under these provisions, the licensee will receive a criminal history review, provided in Federal records, since the individual's eighteenth birthday. The licensee's reviewing official shall evaluate the criminal history record information pertaining to the individual as required by ^{revised} ~~proposed~~ Section 73.57(g). The criminal history records checks shall be used in the determination of whether the individual has a record of criminal activity that indicates that the individual should not have unescorted access at the nonpower reactor facility. Each determination of unescorted access includes a review of the ^{records} fingerprint-based criminal history information and shall include the licensee's documentation of the basis for the decision.

X 1. When negative information is discovered that was not provided by the individual, or ^{that} ~~which~~ is different in any material respect from the information provided by the individual, this information shall be considered, and actions taken based on these findings ^{shall} ~~should~~ be documented.

2. A record containing a pattern of behaviors ^{that} ~~which~~ indicates that the behaviors could be expected to recur or continue, or recent behaviors ^{that} ~~which~~ cast questions on whether an individual should have unescorted access in accordance with the proposed provisions, would be carefully evaluated prior to any authorization of unescorted access.

V. Availability of Documents

Document	PDR	ADAMS	Web
EA-07-074, Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors, issued April 30, 2007 (72 FR 25337; May 4, 2007)	X	ML070750140	X
EA-07-098, Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to the General Atomics Research and Test Reactors; issued August 1, 2007 (72 FR 44590; August 8, 2007)	X	ML072050494	X
Advance Notice of Proposed Rulemaking, published on April 14, 2009 (74 FR 17115)	X	ML090920147	X
Proposed Rulemaking, published on July 20, 2010 (75 FR 42000)	X	ML100610314	X
Proposed Rule, reopening of public comment period published on December 20, 2010 (75 FR 79312)	X	ML103410299	X
Regulatory Analysis	X	ML111310119	X

reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail to INFOCOLLECTS.RESOURCE@NRC.GOV; and to the Desk Officer, Christine Kymn, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0002), Office of Management and Budget, Washington, DC 20503. You may also e-mail comments to Christine_J._Kymn@omb.eop.gov or comment by telephone at (202) 395-4650.

XII. Public Protection Notification

X → The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Regulatory Analysis: Availability

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. An opportunity for public comment on the regulatory analysis was published in the *Federal Register* on July 20, 2010 (73 FR 42000). Availability of the regulatory analysis is indicated in the preamble of this final rule document within the Availability of Documents table in Section V of this document.

XIV. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this

rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nonpower reactors. Only one of the companies and universities that own and operate these facilities falls within the scope of the definition of *small entities* set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810), and the economic impact on this entity is judged to be small.

XV. Backfit Analysis

The NRC's backfit provisions are found in the regulations at 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR Part 52. Under Section 50.2, nonpower reactors are research or test reactors licensed in accordance with Sections 103 or (104c) of the AEA and 10 CFR 50.21(c) or 50.22 for research and development. The NRC has determined that the backfit provision^S in Section 50.109 ~~does~~ not apply to test, research, or training reactors. The NRC has further determined that the amendments to Section 73.57 contained in this final rule do not involve any provisions that would impose backfits on nuclear power plant licensees or on licensees for special nuclear material, independent spent fuel storage installations or gaseous diffusion plants as defined in 10 CFR Chapter I. Therefore, a backfit analysis was not prepared for this final rule.

XVI. Congressional Review Act

← In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, P. L. 109-58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, P. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, P. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, P. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.57, the title, paragraphs (a), (b)(1), (b)(2)(i), the introductory text of paragraph (b)(4), paragraphs (b)(4)(i), (b)(5), (b)(8), the introductory text of paragraph (c)(1), and paragraphs (d)(1), (d)(3)(ii), (f)(2), and (f)(5) are revised, and paragraphs (b)(2)(v) and (g) are added to read as follows:

(d) * * *

(1) For the purpose of complying with this section, licensees shall, using an appropriate method listed in § 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual requiring unescorted access to the nuclear power facility, the nonpower reactor facility, or access to Safeguards Information, to the Director of the NRC's Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 301-^{extra space}415-7232, or by e-mail to *FORMS.Resource@nrc.gov*. Guidance on what alternative formats might be practicable is referenced in § 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

* * * * *

(3) * * *

(ii) The application fee is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an administrative processing fee assessed by the NRC. The NRC processing fee covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission publishes the amount of the fingerprint records check application fee on the NRC public Web site. (To find the current fee amount, go to the Electronic Submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the link for the Criminal History Program.) The Commission will directly notify licensees who are subject to this regulation of