

Oklahoma agencies are required by statute to implement program requirements via rulemaking in accordance with the state Administrative Procedures Act. Specifically, 75 O.S. § 302 D instructs state agencies that they may not amend, interpret or *implement* (italics added) a statute or rule by internal policy or memorandum. To the extent that the fingerprinting and records check requirements of AEA Section 149 are clear and complete, the ODEQ may be able to direct licensees to collect fingerprints and have the licensees send the fingerprints to NRC. We may be able to inspect that licensees have evaluated the results of this check for trustworthiness and reliability determination. We do not believe we can collect fees, receive, process, or forward fingerprint data. Section 149 does not provide procedures for implementing the taking of fingerprints, does not establish the conditions or limitations on use of information received by licensees, and does not identify means to protect individuals subject to fingerprinting from misuse of the criminal history records. The ODEQ notes that AEA Section 149 instructs the Commission to prescribe requirements for administration with respect to each of these program elements. Without NRC issuance of these requirements for us to review, it is difficult for DEQ to respond accurately to this survey (and may be difficult for NRC, DEQ, or licensees to carry out the program).

It is also unclear to the ODEQ the extent to which the State is being asked to participate in collection and transmission to the Commission of costs for the fingerprinting and records check, and the means by which the State will be able to collect these fees. 27A. O.S. § 2-3-402 instructs the ODEQ to establish schedules of fees to be charged for services via rulemaking. We would not be able to collect fees for these checks without going through our rulemaking process. In going through the rulemaking process, we would have to justify what value it would add for DEQ to collect fees on behalf of NRC, and collect fees to cover the costs of our administrative costs for handling the fingerprint records. We do not believe that there is value added by DEQ collecting these records simply to pass them through to NRC. Without adding value, it will be difficult for such a fee rulemaking to survive the rulemaking review process scrutiny from elected officials. We encourage NRC to design the process for collecting fingerprints in a way that causes licensees to submit fingerprints and payments directly to NRC. Otherwise, Oklahoma's ability to implement the program is in doubt.

DEQ is committed to the systematic review and gathering of relevant information from stakeholders through the rulemaking process. We believe this avoids implementation issues that can disrupt stakeholder operations or make the regulatory process less credible. Failure to have rulemaking and published final rules makes it more difficult for DEQ to adopt and be compatible with the NRC program. Many of the facilities that will be regulated under this proposal are different in size, resources, personnel, and sophistication from facilities now affected by fingerprint requirements due to IC controls or SGI access issues. We are doubtful it is possible to write guidance for these issues that will be comprehensive and effective for these facilities without a detailed airing and discussion of the issues involved. Without airing these issues through the rulemaking process, we are concerned that barriers involving practicality or state law may arise that we cannot foresee at this time. To avoid this problem, DEQ believes that the fingerprinting and background check requirement should be implemented through rulemaking rather than the hasty approach that is being taken.

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Mime.822	41930	

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