

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, DC 20555-0001

July 9, 2015

**NRC REGULATORY ISSUE SUMMARY 2015-09
IMPLEMENTATION OF FINGERPRINTING REQUIREMENTS FOR NON-POWER
REACTORS**

ADDRESSEES

All holders of an operating license for a non-power reactor (research reactor, test reactor, or critical assembly) under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," except those who have permanently ceased operations.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify requirements for non-power reactors (NPRs) associated with fingerprinting of individuals holding or seeking unescorted access to vital areas of the NPR facility or to special nuclear material (SNM) in the facility. This RIS requires no action or written response on the part of addressees.

BACKGROUND INFORMATION

The Energy Policy Act of 2005¹ (EPAAct) amended the Atomic Energy Act² (AEA), in part, to require fingerprinting and Federal Bureau of Investigation (FBI) identification and criminal history records checks for individuals permitted unescorted access to a utilization facility; the definition of utilization facility includes NPRs. Therefore, any person granted unescorted access to an NPR must be fingerprinted. The fingerprint cards must be submitted to the NRC. The NRC will then transmit the cards to the FBI for identification and a criminal history records check.

In a staff requirements memorandum³ (SRM), the Commission directed NRC staff to define unescorted access regarding NPR licensees and to issue orders to NPR licensees requiring fingerprinting for individuals who fall within this definition. To ensure compliance with Section 104, "Medical Therapy and Research and Development," of the AEA, as amended, NRC staff was directed to impose only the minimum amount of regulation needed for NPR licensees. The Commission also directed NRC staff to proceed with rulemaking to determine if additional personnel should be fingerprinted. In response to the SRM, NRC staff imposed

¹ Energy Policy Act of 2005, Section 652, Pub. L. No. 109-58 (2005). Publicly available at <https://www.congress.gov/109/plaws/publ58/PLAW-109publ58.pdf>.

² Atomic Energy Act, as amended, 42 U.S.C. § 2160 (1954). Publicly available at <http://www.epw.senate.gov/atomic54.pdf>.

³ U.S. Nuclear Regulatory Commission, "SRM-SECY-07-0011, Interim Implementation of Fingerprinting Requirements in Section 652 of the Energy Policy Act of 2005," March 12, 2007 (Agencywide Documents Access and Management System Accession No. ML070720140).

fingerprinting requirements for unescorted access to SNM on certain⁴ NPR licensees by Order EA-07-074, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors."⁵ The orders required fingerprinting for individuals only with unescorted access to SNM (e.g., fuel) within the NPRs. In addition, licensees were required to submit fingerprints of individuals who were seeking or had such 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. The order required an NRC-approved reviewing official to consider the information received from the FBI, in conjunction with the other requirements for unescorted access, to determine whether an individual may be granted unescorted access or allowed continued unescorted access. The NRC-approved reviewing official was allowed to be the same official previously approved by the NRC by Order EA-06-203, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information,"⁶ which stated that an NRC-approved reviewing official was the only individual who could make the determination for granting an individual access to SGI.

The NRC published an advance notice of proposed rulemaking (ANPR), dated April 14, 2009,⁷ to obtain stakeholder views on the issues associated with the proposal to require fingerprinting for criminal history records checks of individuals permitted unescorted access to NPRs. The ANPR was intended to inform stakeholders of the options the NRC was considering for implementing the fingerprinting requirements for NPR licensees as a proposed rule. The ANPR provided interested stakeholders an opportunity to comment on the options under consideration by the NRC. The NRC developed a proposed rule based on the feedback received on the ANPR and published the proposed rule⁸ on July 20, 2010.

The final rule⁹ was published in the *Federal Register* (FR) on May 11, 2012, with an implementation date of November 9, 2012. The final rule amended 10 CFR 73.57, "Requirements for criminal history records checks of individuals granted unescorted access to a nuclear power facility, a non-power reactor, or access to safeguards information," to require, in part, that NPR licensees must obtain fingerprint-based criminal history records checks before granting any individual unescorted access to their facilities, specifically to the vital areas or to SNM. In addition to establishing the fingerprint-based criminal history records checks for unescorted access and the NRC-approved reviewing official, 10 CFR 73.57(f), "Protection of information," also established requirements for protection of information obtained through the criminal history records check process.

SUMMARY OF ISSUE

Section 73.57 of 10 CFR, as amended, replaces the interim requirements imposed by Order EA-07-074. Specifically, 10 CFR 73.57(g)(2) states:

⁴ The order was issued to operating NPR licensees and decommissioning NPR licensees that still possessed reactor fuel.

⁵ 72 FR 25337 (May 4, 2007).

⁶ 71 FR 59140 (October 6, 2008).

⁷ 74 FR 17115 (April 14, 2009).

⁸ 75 FR 42000 (July 20, 2010).

⁹ 77 FR 27561 (May 11, 2012).

Each non-power reactor licensee subject to the requirements of this section shall obtain the fingerprints for a criminal history records check for each individual who is seeking or permitted:

- (i) Unescorted access to vital areas of the non-power reactor facility; or
- (ii) Unescorted access to special nuclear material in the non-power reactor facility provided the individual who is seeking or permitted unescorted access possesses the capability and knowledge to make unauthorized use of the special nuclear material in the non-power reactor facility or to remove the special nuclear material from the non-power reactor in an unauthorized manner.

Therefore, in addition to encompassing areas in NPRs that may contain SNM, 10 CFR 73.57 expanded the language in the order to include vital areas. A “vital area” is defined in 10 CFR 73.2, “Definitions,” as “any area which contains vital equipment.” Furthermore, 10 CFR 73.2 defines “vital equipment” 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 function to protect public health and safety following such failure, destruction, or release are also considered to be vital.

Only those NPR licensees (typically higher-power NPRs) who have vital areas are subject to 10 CFR 73.57(g)(2)(i). The vital areas should be clearly identified in the licensee's current physical security plan. If an area within the facility contains SNM but no vital equipment, then it would be captured under the requirements of 10 CFR 73.57(g)(2)(ii).

NRC-Identified Concerns of NPR 10 CFR 73.57 Implementation

Through recent discussions with NPR licensees, NRC staff became aware that there may be a misconception about the term “vital area” at NPRs. There may be circumstances where vital areas or vital equipment were defined in error or may no longer be necessary because of license changes. One example of such an error is where a licensee defined an area in the facility as a vital area, but it did not contain, or no longer contained, any vital equipment. In these cases, physical security plan changes can be submitted to the NRC under paragraph (p)(2) of 10 CFR 50.54, “Conditions of licenses,” or under 10 CFR 50.90, “Application for amendment of license, construction permit, or early site permit,” as appropriate.

The NRC staff also identified an issue involving the implementation of fingerprinting requirements at NPRs. Specifically, a few licensees were not in compliance with fingerprinting requirements as required by the final rule. Although the final rule did not directly require licensees to update their physical security plans to incorporate fingerprinting requirements, licensees must effectively and consistently implement fingerprinting requirements at their facilities under the provisions of 10 CFR 73.57.

Order EA-07-074 will remain in effect until the NRC documents compliance with the requirements of 10 CFR 73.57 and notifies the current NPR licensee in writing that the order is

relaxed with respect to its facility. The NRC staff is engaged in verifying the implementation of these requirements through the licensing and oversight processes (e.g., license renewal reviews, routine inspections).

BACKFITTING AND ISSUE FINALITY DISCUSSION

This RIS clarifies and reminds licensees of existing requirements associated with fingerprinting and criminal history record checks for individuals granted or seeking unescorted access to non-power reactors. This RIS requires no action or written response beyond that already required by the NRC regulations. In addition, neither 10 CFR 50.109, "Backfitting," nor the issue finality provisions of 10 CFR Part 52 are applicable to applicants for or holders of licenses for non-power reactors. This RIS is not addressed to applicants for and licensees of power reactors, the backfitting provisions of 10 CFR 50.109 and the issue finality provisions in 10 CFR Part 52 do not apply to this RIS. For these reasons, the NRC staff did not further address backfitting or the issue finality criteria for this RIS.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because this RIS is informational and does not represent a departure from current regulatory requirements.

CONGRESSIONAL REVIEW ACT

The NRC has determined that this RIS is not a rule as designated by the Congressional Review Act (5 U.S.C. §§ 801–808) and, therefore, is not subject to the Act.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget (OMB), approval numbers 3150-0011 and 3150-0002.

Public Protection Notification

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.

CONTACT

Please direct any questions about this matter to the technical contact listed below.

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