



August 24, 2015

Mr. Tremaine Donnell
Office of Information Services
T-5 F53
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001

RE: Public Comments on Docket ID NRC-2015-0033

Dear Mr. Donnell,

In response to the Request for Comments by the Nuclear Regulatory Commission on the issue referenced above, the National Institutes of Health (NIH) wishes to provide the following comments:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

The NIH has a separate fingerprinting collection program that meets the requirements of the NRC regulation and thus does not submit the form FD-258 to the NRC. Nonetheless, the NIH would like to offer feedback on the fingerprinting requirement itself.

The intent of this requirement is to prevent the malicious use of RAMQC. In that sense, the collection of information is necessary. However, the fingerprinting requirement has limited practical utility. Although checking fingerprints against the FBI criminal database might stop a convicted terrorist from being granted unescorted access to RAMQC, it is not useful in stopping an insider threat. Also, there are potential scenarios in which miscreants can evade the criminal history records check by faulty or delayed reporting into the FBI database; by juvenile records being blocked from reporting; or by no finding due to lack of information from international databases. It is understood that the NRC never intended fingerprinting to be a perfect system, but the continued reliance on fingerprinting clearance as a major basis of trustworthy and reliable determination leads to a false sense of security.

2. Is the estimate of the burden of the information collection accurate?

The NIH cannot respond to this question for the collection of fingerprinting information (form FD-258). However, regarding the collection of other information, the burden is not great. Since the public comment notice only provided an estimated number of hours needed annually to comply with the information collection requirement in full, there is no way to know what portion relates to fingerprinting and what portion relates to notification of RAMQC shipments, or reporting of suspicious activities, or requests for license verification.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

One way would be to further expand NRC guidance on the expectations regarding the reporting of suspicious events. NUREG-2155 (for example, in Annex C) provides guidance and examples of

suspicious events. However, there is still confusion on compliance with the regulation in 10 CFR 37.57(b). This regulation states that the licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of RAMQC and notify the local law enforcement agency (LLEA) as well as the NRC Operations Center. On page 202, NUREG-2155 states “that 10 CFR 37.57(b) does not require the reporting of all activities that might at first appear suspicious; the regulation requires reporting “as appropriate,” which allows licensees to investigate before deciding if the activity warrants reporting.” Thus, in certain situations there is uncertainty on knowing whether to report to the NRC or not. This uncertainty is compounded by the seemingly permissive guidance for a licensee to internally investigate the activity first – presumably to make a judgment call on whether the activity is suspicious or not. The guidance implies that no report is necessary if the licensee determines after investigation that the activity is not suspicious. However, it leaves unclear the situation in which the LLEA is involved in the initial, internal investigation of the incident, i.e., in an information-seeking capacity rather than a responding capacity.

For example, if the LLEA were present during the move of a device containing RAMQC and noticed an individual loitering near the area taking pictures, the LLEA would likely interview the individual to assess whether or not the individual posed a credible threat. If the LLEA determined that the individual did not pose a threat, would the licensee still be required to report the incident to the NRC? Additional clarification on reporting requirements in such cases is needed. Should the licensee report events involving RAMQC to the NRC whenever the LLEA is involved, regardless of the extent or intent of LLEA’s involvement? If so, that should be clearly stated in NRC’s guidance to licensees.

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

The NRC is already very progressive in the acceptance of electronic submission of information. Furthermore, information can be collected in a variety of methodologies, including by phone, fax, email, U.S. mail, and website. The NIH has no further suggestions to minimize this burden.

Sincerely,

Nancy E. Newman
Radiation Safety Officer, NIH