

SUPPORTING STATEMENT
FOR 10 CFR PART 73
FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS
FOR UNESCORTED ACCESS TO RESEARCH AND TEST REACTORS

3150-0002

REVISION

Description of the Information Collection

This supporting statement addresses changes in information collections contained in the proposed rule, "Requirements for Fingerprint Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Research or Test Reactors."

Section 652 of the Energy Policy Act of 2005 (EPAAct), enacted on August 8, 2005, amended the fingerprinting requirements of the Atomic Energy Act of 1954, as amended (AEA). Specifically, the EPAAct amended Section 149 of the AEA to require fingerprinting and Federal Bureau of Investigation (FBI) identification and criminal history records checks before granting unescorted access to any utilization facility including non-power reactors (also known as research or test reactors, or RTRs), or radioactive material or property subject to regulation by the U.S. Nuclear Regulatory Commission (NRC).

NRC regulations currently do not address fingerprinting and criminal history records checks for non-power reactors, although they do address fingerprinting and criminal history records checks of individuals granted unescorted access to nuclear power facilities and Safeguards Information (SGI). These regulations are located in § 73.57 of 10 CFR Part 73.

To address the EPAAct amendments regarding fingerprinting and criminal history records checks for non-power reactors, the NRC imposed three orders on non-power reactor licensees:

- EA-06-203, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Access to Safeguards Information," dated September 29, 2006;
- EA-07-074, "Issuance of Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Research and Test Reactors," dated April 30, 2007; and
- EA-07-098, "Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to the General Atomics' Research and Test Reactors," dated August 1, 2007.

The effect of these orders was to require non-power reactors to conduct almost the same set of activities as § 73.57 currently requires of power reactor licensees.

The proposed rule would affect 32 operating non-power reactor licensees. It would revise § 73.57 to incorporate, on a generic basis, fingerprinting and criminal history check requirements for unescorted access to non-power reactors similar to those previously imposed by the Commission orders and to those requirements already

applicable to power reactor licensees. The annual burden estimate for the Commission orders was submitted to OMB and approved on June 24, 2008. Although the rule expands fingerprinting and criminal history check requirements to include individuals with unescorted access to vital areas, the NRC expects that the vital area criterion would result in the same group of people requiring fingerprinting when compared to the previous orders. Therefore, the rule is not expected to pose any additional burden on licensees.

A. JUSTIFICATION

1. Need for and Practical Utility of the Information

In general, the reports and records are necessary for one or more of the following reasons:

- a) Fingerprint and criminal history records checks of non-power reactor employees and former employees. This information is necessary to determine whether individuals should be granted unescorted access to the non-power reactor facility. This information also is needed to support final adverse determinations and must be provided to the individual upon such determination. The resulting criminal history records also must be made available for review during NRC inspections, and for sharing with other licensees where an individual is seeking unescorted access.
- b) Information regarding an individual's confirmation of a final adverse determination. This information is necessary as evidence of the individual's recognition of a final adverse determination in the event that the individual applies for unescorted access to a non-power reactor facility within the following year.

Specific requirements for reports and records in the amendments to Part 73 are identified below.

Section 73.57(a)(3) allows applicants for non-power reactor licenses to submit fingerprints for individuals who will require unescorted access to the reactor facility.

Section 73.57(b)(1) requires that licensees must fingerprint each individual who is permitted or seeking unescorted access to vital areas or special nuclear material in the non-power reactor.

Section 73.57(b)(3) requires that non-power reactor licensees notify each affected individual that their fingerprints will be used to secure a review of his/her criminal history record, and inform the individual of proper procedures for revising or including an explanation in the record.

Section 73.57(b)(6) requires that non-power reactor licensees must submit fingerprints to the Attorney General of the United States through the NRC.

Section 73.57(d)(1) requires that non-power reactor licensees must obtain, complete, and send to the NRC one fingerprint record (FD Form-258) for each individual

requiring unescorted access. The section also requires that licensees establish procedures to minimize the rejection rate of fingerprint cards.

Section 73.57(d)(2) requires the NRC to review applications for completeness and return incomplete applications or applications containing evident errors to licensees. If rejected, licensees must resubmit the application (one free resubmission is included in the initial fee). If the free submission is rejected, licensees must submit a new application, which requires a second payment.

Section 73.57(e)(1) requires non-power reactor licensees to make an individual's records available to the individual prior to any final adverse determination. The licensee must retain confirmation of receipt by the individual for 1 year from the date of notification.

Section 73.57(f)(1) requires non-power reactor licensees to establish and maintain a system of files and procedures to protect criminal history records and personal information from unauthorized disclosure.

Section 73.57(f)(3) allows non-power reactor licensees to transfer records to another licensee upon the individual's written request and verification of personal information by the gaining licensee.

Section 73.57(f)(4) requires non-power reactor licensees to make records available to the NRC in order to determine compliance with the regulations and laws.

Section 73.57(f)(5) requires non-power reactor licensees to retain all fingerprint and criminal history records, or a copy of the records, on an individual for 1 year after termination or denial of unescorted access to the non-power reactor facility.

Section 73.57(g)(1) requires an NRC approved reviewing official to review an individual's criminal history records before granting unescorted access to a non-power reactor facility.

Section 73.57(g)(2)(i) and section 73.57(g)(2)(ii) require non-power reactor licensees to obtain fingerprints for criminal history records checks for each individual seeking or permitted unescorted access to vital areas or special nuclear material in the non-power reactor facility.

2. Agency Use of the Information

The information included in the applications, reports, and records will be used by the NRC staff to determine compliance with the regulations set forth in 10 CFR 73.57. Compliance with these regulations ensures the adequacy and trustworthiness of RTR employees, and ensures that the NRC promotes the common defense and security and protects public health and safety.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. The NRC encourages respondents to use information technology when it would be beneficial to them. The NRC issued a regulation on October 10, 2003 (68 FR 58791), consistent with the Government Paperwork Elimination Act, which allows its licensees, vendors, applicants, and members of the public the option to make submissions electronically via CD-ROM, e-mail, special Web-based interface, or other means. It is estimated that 10 percent of the potential responses are filed electronically. The percentage of electronic submissions is expected to increase as the use of LiveScan becomes more widespread.

4. Effort to Identify Duplication and Use Similar Information

Licensees for non-power reactors may be able to participate in an electronic system of records on individuals subject to access authorization requirements called the Personnel Access Database System (PADS). This system is maintained by power reactor licensees. Using PADS, licensees would send information concerning employment dates, approvals of access authorization, withdrawals of access authorization, and other subjects. All other records maintained by licensees would not be duplicated by other Federal information collection requirements and would not be available from any other source. The NRC has in place an on-going program to examine all information collections with the goal of eliminating all duplication and/or unnecessary information collections.

In addition, 73.57(b)(2)(v) eliminates duplication by specifying that 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) would retain their access authorization and would not be required to have a new fingerprint-based FBI criminal history records check.

5. Effort to Reduce Small Business Burden

The burden of the proposed requirements is directly related to the number of individuals that a licensee seeks to grant unescorted access. The NRC has determined that only one non-power reactor licensee falls within the scope of the definition of "small entities" set forth in the size standards established by the NRC (10 CFR 2.810), and that this licensee has substantially fewer employees than the other affected licensees. Consequently, even if the licensee sought unescorted access for every employee, the burden of the requirements would be substantially reduced relative to the other licensees. The NRC has determined that it would be inappropriate, from a risk perspective, to further reduce the requirements applicable to affected small entities.

6. Consequences to Federal Program of Policy Activities if the Collection is Not Conducted or is Conducted Less Frequently

If the information were not collected or were collected less frequently, licensees would not be capable of making accurate or timely determinations regarding unescorted access. This could lead to inadequate or inappropriate staffing that could endanger public health and the environment.

7. Circumstances Which Justify Variations from OMB Guidelines

Certain sections of Part 73.57 vary from the OMB Guidelines in 5 CFR 1320.5(d) by requiring that licensees retain records for more than 3 years. 73.57(f)(5) requires retention of records for one year beyond the duration of an individual's unescorted access. It is necessary for licensees to retain access authorization records for extended periods of time to assist the licensee's reinvestigation process and to share information with other licensees when appropriate. Records also may be needed for inspection or for reconstruction of events in the event of a safeguards incident.

8. Consultations Outside the NRC

During the development of the rule language, the NRC staff provided the public an opportunity to comment on an advance notice of proposed rulemaking (ANPR) published in the *Federal Register* on April 14, 2009 (74 FR 17115). The NRC staff also held a public workshop on June 4, 2009, to receive public comments from interested parties. In addition to the comments received during the public workshop, the NRC received 7 comment letters from interested parties. A number of the comments received addressed issues that relate to recordkeeping and reporting issues. These comments were considered during the development of the proposed rule.

Some commenters, for example, suggested the use of LiveScan to facilitate the fingerprinting process and wondered whether fingerprint fees could be waived for some facilities. In response to this, the NRC has indicated that it would allow the use of LiveScan, but that it does not have the authority to waive the fingerprinting fee. Also, some commenters stated that there was a lack of a clear method for sharing clearance information between facilities, and that the NRC should permit the licensee to work directly with the FBI instead of having to process the fingerprints through the NRC. The NRC does not have the authority to allow licensees to work directly with the FBI. However, the NRC has incorporated reciprocity into the proposed rule to facilitate information sharing.

Finally, the NRC has requested comments on this supporting statement in the published notice accompanying the proposed rule.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Proposed section 73.57(f) addresses confidentiality and protection of information obtained in accordance with this rule regarding individual criminal history records. In addition, confidential and proprietary information is protected in accordance with the NRC regulations at 10 CFR 9.17(a) and 10 CFR 2.390(b).

11. Justification for Sensitive Questions

This rulemaking requires licensees to obtain criminal history records about individuals who are applying for or currently possess unescorted access to non-power reactors. This sensitive information is necessary because the licensees need to determine whether the individual is qualified to gain and maintain unescorted access to the site. Reviewing officials use the sensitive information to evaluate an individual's trustworthiness and reliability. Licensees must inform any affected individual that the fingerprints will be used to secure a review of his/her criminal history record, and inform the individual of proper procedures for challenging or explaining the record. To protect this sensitive information, each licensee must establish and maintain a system of files and procedures to protect the personal information.

12. Estimated Burden and Burden Hour Cost

The overall estimated burden associated with information collection is 690 hours to the licensee. The annual burden estimate for the Commission orders was submitted to OMB and approved, and is currently on record under the clearance for 10 CFR 73, 3150-0002. The rule is not expected to pose any additional burden to the licensees beyond those approved for the order.

The approved annual burden hour cost for all affected licensees, based on the order, is approximately \$177,330 (690 hours x \$257/hour). The annual recordkeeping cost is \$61,680 (240 hours x \$257) and the annual reporting cost is \$115,650 (450 hours x \$257/hr).

It is assumed that fingerprint applications will be submitted for 100 individuals annually across all licensees. For each individual, there will be 2.4 hours of recordkeeping burden (including notices of final adverse determination, and retaining fingerprint and criminal history records), resulting in 240 recordkeeping hours annually (2.4 hours x 100 individuals). For each individual, there will also be 4.5 hours of reporting burden (0.5 hours attributed to taking fingerprints and 4 hours attributed to processing and submitting fingerprint applications and sharing criminal history records), resulting in 450 reporting hours annually (4.5 hours x 100 individuals).

13. Estimate of Other Additional Costs

The quantity of records to be maintained is roughly proportional to the recordkeeping burden and therefore can be used to calculate approximate records storage costs. Based on the number of pages maintained for a typical clearance, the records storage cost has been determined to be equal to .0004 times the recordkeeping burden cost. Therefore, the storage cost for this clearance is \$25 (240 recordkeeping hours x .0004 x \$257).

Each individual fingerprint application form (FD Form-258) requires a \$26 processing fee to be sent to NRC with the fingerprint application. This results in annual burden of approximately \$2,600 (\$26 per FD Form-258 x 100 individuals).

14. Estimated Annualized Cost to the Federal Government

The NRC anticipates receiving and processing 100 fingerprint applications per year, each of which is estimated to take 6 minutes to process (.1 hour x 100 applications = 10 hours). The estimated annual cost to the NRC for administration of the reporting and recordkeeping requirements is \$2,570 (10 hours x \$257/hour).

15. Reasons for Change in Burden or Cost

The estimated recordkeeping and reporting burden of the final rule is 690 hours (240 hours recordkeeping plus 450 hours reporting). The 240 annual hours recordkeeping and 450 annual hours reporting were approved by OMB on June 24, 2008, as a representation of the estimated annual cost to industry under the order. These annual requirements are not expected to increase with the final rule.

16. Publication for Statistical Use

None.

17. Reasons for Not Displaying the Expiration Date

The requirements are contained in a regulation. Amending the *Code of Federal Regulations* to display information that, in an annual publication, could become obsolete would be unduly burdensome and too difficult to keep current.

18. Exceptions to the Certification Statement

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.