

FINAL OMB SUPPORTING STATEMENT
FOR
10 CFR PART 73
FINGERPRINT-BASED CRIMINAL HISTORY RECORDS CHECKS
FOR UNESCORTED ACCESS TO NONPOWER REACTORS (RESEARCH AND TEST
REACTORS), FINAL RULE

3150-0002

REVISION

Description of the Information Collection

This supporting statement addresses changes in information collections contained in the final rule, "Requirements for Fingerprint Based Criminal History Record Checks for Individuals Granted Unescorted Access to Nonpower Reactors (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 nonpower reactors nonpower reactor (NPR)¹.

NRC regulations currently do not address fingerprinting and criminal history record checks for nonpower 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 record checks for nonpower reactors, the NRC imposed three orders on nonpower 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

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 licensee that are not RTRs. Therefore, the use of the term NPRs includes RTRs in this and all related rulemaking documents.

- 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 nonpower reactors to conduct almost the same set of activities as § 73.57 currently requires of power reactor licensees.

The final rule will affect 31 operating nonpower reactor licensees. It will revise § 73.57 to incorporate, on a generic basis, fingerprinting and criminal history check requirements for unescorted access to nonpower 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. The rule modifies some terminology from that used in the unescorted access order. The staff designed the provisions to use two different criteria: one focused on material (special nuclear material (SNM)) and one focused on an area (the vital area), whereas the orders did not use the vital area criterion. The NRC expects that the vital area criterion will result in the same group of people requiring fingerprinting when compared to the previous orders; however, there may be a small number of individuals required to be fingerprinted under the final rule who were not required to be fingerprinted under the orders. This supporting statement captures licensee burden for fingerprinting these individuals.

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 record checks of nonpower reactor employees and former employees. This information is necessary to determine whether individuals should be granted unescorted access to the nonpower 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 nonpower 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 nonpower 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 nonpower reactor.

Section 73.57(b)(3) requires that nonpower 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 nonpower reactor licensees must submit fingerprints to the Attorney General of the United States through the NRC.

Section 73.57(d)(1) requires that nonpower 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 nonpower 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 nonpower 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 nonpower 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 nonpower 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 nonpower 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 nonpower reactor facility.

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

Section 73.57(g)(2)(i) and section 73.57(g)(2)(ii) require nonpower 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 nonpower 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 NPR 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 nonpower 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 could share information concerning employment dates, approvals of access authorization, withdrawals of access authorization, and other subjects. All other records maintained by licensees will not be duplicated by other Federal information collection requirements and will 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.

73.57(b)(2)(i) details persons that will not require additional fingerprinting under this rule to be granted unescorted access to a nonpower reactor facility. The persons outlined will have undergone equivalent or greater background checks, including fingerprinting, due to their duties and responsibilities. These persons include, but are not limited to, NRC employees and contractors on official agency business; Federal, state, or local government employees who have had equivalent reviews of FBI criminal history data; and individuals employed at a facility who possess "Q" or "L" clearances or possess another active government granted security clearance.

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) will retain their access authorization and will 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 requirements is directly related to the number of individuals that a licensee seeks to grant unescorted access. The NRC has determined that only one nonpower reactor licensee, Aerotest Operations, Inc., 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. Although the licensee qualifies as a small entity, the licensee's reactor falls close to the middle of the range for nonpower reactors with respect to power rating. Therefore, 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.

Section 104c of the Atomic Energy Act of 1954, as amended, requires the NRC to impose the minimum amount of regulation for nonpower reactor facilities that is necessary to protect the public health and safety and to promote the common defense and security while permitting the conduct of widespread and diverse research and development. The NRC believes the final rule represents the minimal burden necessary to implement the requirements of the Energy Policy Act of 2005.

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. 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. This final rule does not modify these variations from OMB guidelines nor require additional provisions for record retention. The final rule reduces the record retention burden of 3 years imposed by the set of orders issued in 2007 to 1 year in alignment with 73.57(f)(5) which requires retention of records for one year beyond the duration of an individual's unescorted access.

8. Consultations Outside the NRC

During the development of the rule language, the NRC advertised numerous opportunities for public comment on the information collections described in this rule:

- 1) The NRC published an Advance Notice of Proposed Rulemaking in the *Federal Register* on April 14, 2009 (74 FR 17115) that included a public comment period.
- 2) The NRC published the proposed rulemaking in the *Federal Register* on July 20, 2010 (75 FR 42000) that included a public comment period.
- 3) The NRC hosted a public meeting on August 25, 2010, to explain the proposed rulemaking and its regulatory basis and to provide an opportunity of participating interested parties to ask questions and discuss the proposed rulemaking requirements.
- 4) The NRC delivered a presentation on the rulemaking in September 2010 at the annual conference of the National Organization of Test, Research, and Training Reactors.
- 5) In response to a request, the NRC reopened the public comment period for the proposed rule on December 20, 2010 (75 FR 79312). The comment period remained open until January 31, 2011.
- 6) The NRC hosted a public meeting on June 23, 2011, to discuss the impact and implementation of the proposed rule.

The NRC received six comment letters in response to its solicitation during the first period and eleven comment letters during the reopened comment period. Many of the comments in these letters raised similar issues. A total of seventeen issues were identified. The vast majority of the comments received concerned the perceived differences between NRC-issued fingerprinting orders and the proposed rule language. The NRC has responded that the language in the final rule has the same functional effect of that in the NRC-issued fingerprinting orders.

Several commenters were concerned with the addition of the term *vital area*. 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 NRC believes that few NPRs will be affected by the vital area criterion because few NPR facilities have vital equipment besides special nuclear material (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 those licensee personnel requiring unescorted access to vital areas will also likely require unescorted access to SNM or access to SGI (both of which already require fingerprinting).

For complete public comments and NRC responses, please see Supplement 1, "Nonpower Reactor Fingerprinting Rule Public Comments and NRC Responses").

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of Information

Section 73.57(f)(2) addresses confidentiality and protection of information obtained in accordance with this rule regarding individual criminal history records:

“The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to the nuclear power facility, the nonpower reactor or access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.”

By incorporating NPR licensees into 73.57, this final rulemaking permits them to avail themselves of the information sharing specified in 73.57(b)(5). Power reactor licensees are already permitted to share this information. This rulemaking extends this feature to NPR licensees provided that they comply with the limitations provided for in paragraph 73.57(f)(3):

“The personal information obtained on an individual from a criminal history records check may be transferred to another licensee: (i) Upon the individual’s written request to the licensee holding the data to re-disseminate the information contained in his/her file; and (ii) The gaining licensee verifies information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.”

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 nonpower 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 final rule will revise § 73.57 to incorporate, on a generic basis, fingerprinting and criminal history check requirements for unescorted access to nonpower reactors similar to those previously imposed by the Commission orders. The annual burden estimate for the Commission orders was submitted to OMB and approved with the last renewal of the information collections in 10 CFR Part 73. There are currently

581 hours on record for ongoing NPR fingerprinting activities conducted under orders. Because these same activities will continue under the final rule, no additional burden has been included for ongoing fingerprinting activities at NPRs.

The final rule is expected to pose an additional implementation burden of 52.6 annual hours to the licensees beyond those approved for the orders, due to the modification of the terminology from that used in the unescorted access order. The NRC generally expects that the vital area criterion will result in the same group of people requiring fingerprinting when compared to the previous orders; however, there may be a small number of individuals required to be fingerprinted under the final rule who were not required to be fingerprinted under the orders. During the three years following the effective date of the rule, the NRC estimates that 21 additional individuals could be subject to fingerprinting (7 per year), resulting in additional burden to fingerprint the individuals, provide the proper notifications regarding the use of their fingerprints, and maintain files.

The annual burden for all affected licensees, under the final rule, is approximately \$14,360 (52.6 hours x \$273/hr). The annual recordkeeping cost is \$4,559 (16.7 hours x \$273/hr), third party notification cost is \$1,201 (4.4 hours x \$273/hr), and the annual reporting cost is \$8,600 (31.5 hours x \$273/hr). See Tables 1-3.

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 \$2 (16.7 recordkeeping hours x .0004 x \$273). Recordkeeping costs have been increased in ROCIS by \$2.

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 \$182 (\$26 per FD Form-258 x 7 individuals). Reporting costs for the collection have been increased in ROCIS by \$182.

The currently approved additional costs for Part 73 is \$51,860. The requested additional costs are \$52,044 (\$51,860 + \$182 + \$2).

14. Estimated Annualized Cost to the Federal Government

The estimated annual cost to the NRC for administration of the reporting and recordkeeping requirements is \$4,368 (16 hours x \$273/hour).

The previously approved burden to the Federal government for Part 73 is \$1,165,500. The requested burden to the Federal government is \$1,169,868 (\$1,165,500 + \$4,368).

15. Reasons for Change in Burden or Cost

The estimated recordkeeping and reporting burden of the final rule is 52.6 hours. The final rule will affect 31 operating nonpower reactor licensees. It will revise § 73.57 to incorporate, on a generic basis, fingerprinting and criminal history check requirements for unescorted access to nonpower 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 and associated ongoing fingerprinting requirements has been submitted and approved by OMB, incorporated into the Part 73 renewal package. These same ongoing requirements have been codified in the current final rule, and therefore, no additional burden has been included for these requirements.

The rule modifies some terminology from that used in the unescorted access order. The staff designed the provisions to use two different criteria: one focused on material (special nuclear material (SNM)) and one focused on an area (the vital area), whereas the orders did not use the vital area criterion. The NRC expects that the vital area criterion will result in the same group of people requiring fingerprinting when compared to the previous orders; however, there may be a small number of individuals required to be fingerprinted under the final rule who were not required to be fingerprinted under the orders. This supporting statement captures licensee burden for fingerprinting these additional individuals.

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.

TABLE 1
ANNUALIZED ONE-TIME IMPLEMENTATION REPORTING BURDEN

Section	No. of Respondents	Responses per Respondent	Number of Responses	Burden Hours per Response	Total Burden Hours	Cost at \$259/hr
73.57(b)(1)	Included in 73.57(g)(2)(i)&(ii)					
73.57(b)(6)	Included in 73.57(g)(2)(i)&(ii)					
73.57(d)(1)	Included in 73.57(g)(2)(i)&(ii)					
73.57(d)(2)	Included in 73.57(g)(2)(i)&(ii)					
73.57(g)(1)	Included in Clearance Package for 10 CFR 73 (3150-0002) under Commission Order (Fingerprinting – Research and Test Reactors)					
73.57(g)(2)(i)	5	1.4	7	4.5	31.5	\$8,599.50
73.57(g)(2)(ii)	Included in Clearance Package for 10 CFR 73 (3150-0002) under Commission Order (Fingerprinting – Research and Test Reactors)					
TOTAL	5	--	7	--	31.5	\$8,599.50

TABLE 2
ANNUALIZED ONE-TIME IMPLEMENTATION THIRD-PARTY DISCLOSURE BURDEN

Section	No. of Respondents	Responses per Respondent	Number of Responses	Burden Hours per Response	Total Burden Hours	Cost at \$273/hr
73.57(b)(3)	5	1.4	7	0.5	3.5	\$955.50
73.57(e)(1)	5	0.33	1.7	0.5	0.9	\$245.70
TOTAL	5	--	8.7	--	4.4	\$1,201.20

TABLE 3
ANNUALIZED ONE-TIME IMPLEMENTATION RECORDKEEPING BURDEN
(Includes Record Retention Period)²

Section	No. of Recordkeepers	No. of Records per Recordkeeper	Number of Records	Hours per Record	Total Burden Hours	Cost at \$273/hr
73.57(e)(1) – N+1	5	.33	1.7	0.25	0.4	\$109.20
73.57(f) – A+1	5	1.4	7	2.33	16.3	\$4,449.90
TOTAL	5	--	7	--	16.7	\$4,559.10

² Notes on maintenance period for records:

A = Duration of Access Auth.
N = Notification of adverse determination

Reporting:	31.5 hours
Recordkeeping:	16.7 hours
Third Party Disclosure:	4.4 hours
TOTAL BURDEN:	52.6 hours
Responses:	20.7 (7 reporting responses + 8.7 third party responses + 5 recordkeepers)
Respondents ³ :	5

³All respondents to this information collection are already included in the 579 respondents for the Part 73 information collection. No new respondents are added as a result of this final rule.