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USNRC

Merri Horn
Office of Federal and State Materials and Environmental Management Programs
US Nuclear Regulatory Commission
Washington, DC 20555-0001

June 2, 2009 (2:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Docket # NRC-2000-0120, RIN 3150-AI12 (April 17, 2009)

Dear Ms. Horn:

Eli Lilly and Company appreciates the opportunity to provide written comments on docket number NRC-2008-0120 concerning the "Preliminary Draft Rule Language Re: Part 37 Physical Protection of Byproduct Material (Subpart B)."

Regulation Specific Comments

37.3 Background Investigation means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

The current definition could imply that the investigation must be conducted solely by the licensee or applicant. It is common practice to use a third party service to acquire the information required of a background investigation. Adding language such as "or designee" is needed for clarification.

37.21 (c)(4) Licensees or applicants shall not grant access to individuals who have been rejected for unescorted access to category 1 or category 2 quantities of radioactive material, Safeguards Information, or as a reviewing official.

Information on whether or not an individual was previously approved or denied such access may not be readily obtained, especially from other licensees. The current wording suggests that a licensee would ultimately be in violation if they approved an individual that was previously not authorized, even if that information was not given or given falsely. Adding language indicating that access must not be given to an individual known to have been previously denied approval is needed for clarification.

37.23 (a) Granting unescorted access authorization. The licensees and applicants shall implement the requirements of this subpart for granting initial or reinstated unescorted access authorization. The investigatory information collected to satisfy the requirements of this subpart for individuals who are being considered for unescorted access authorization shall be valid for a trustworthiness and reliability determination by a licensee or applicant for 60 calendar days.

Obtaining the required information within 60 days may be an unrealistic expectation, especially if that includes the time it takes to acquire, submit, and receive the results of the FBI identification and criminal history record check. Based on previous experience, receiving those results alone has taken as long as 60 days and that is not including those individuals whose fingerprints were required to be

Answers That Matter.

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resubmitted. Aside from the fingerprinting record checks, the 60 day requirement may be sufficient to acquire the other information in this section, however the idea of having to start over if part of the background check has not been completed within the timeframe seems inefficient. Adding language suggesting that an attempt should be made to collect the investigatory information within 60 days, or striking the timeframe altogether, should be made.

37.23 (b)(iii)(2) Reviewing officials shall not make any trustworthiness and reliability determinations or grant unescorted access to any individual until the reviewing officials have been approved by the NRC.

An established process on how the reviewing official be notified upon approval by the NRC and the timeframe for being granted such approval is necessary in this section. Failure of the NRC to provide this information could delay further the extensive process of determining trustworthiness and reliability and granting unescorted access for individuals seeking approval.

37.23 (h) Records. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years after the individual's employment ends.

In many cases, an individual may no longer require approval for unescorted access but remain employed by a licensee. For security and confidentiality of such documentation, the requirement for record retention should be from the approved individual's end date and not the employment end date.

23.25 (a)(6) Credit history evaluation. Licensees and applicants shall evaluate the entire credit history of any individual who is applying for unescorted access authorization.

Financial crimes such as fraud, theft, or embezzlement would be revealed in the FBI background check and therefore the need for a credit history evaluation should not be necessary. If the NRC requires this evaluation, detailed guidance on the criteria for not granting access based on the credit history report would be necessary.

23.25 (a)(10) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee shall: (i) Document the refusal of unwillingness in the record of investigation; and (ii) Obtain a confirmation of employment, education enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

Obtaining information, especially outside of the United States, can be very time consuming. Inferring that there is an unwillingness to release this information if it is not responded to within the three days seems presumptuous and ineffective, especially if the next step is to obtain the information from an unused alternate source. In addition, many education institutions will only accept requests from the student themselves, in which case the 3 business day turnaround would be difficult to document and track.

General Comments

Subpart B includes additional requirements for background investigations that were not included in the original NRC orders for increased control. While these steps may be implemented without much of an increased burden for individuals seeking approval in the future, requiring such for the current pool of approved individuals appears to be an unjustifiable and time consuming task. Since these currently approved individuals have met the requirements of the previous NRC orders, they should be grandfathered from the new requirements. The new Part 37 requirements for these grandfathered individuals would in turn be implemented at the time of their reinvestigation.

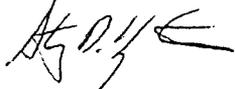
The original NRC orders included trustworthy and reliability requirements for individuals who were knowledgeable of the trustworthy and reliable determination criteria and/or for the security measures

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implemented at a facility. Many of these individuals do not require unescorted access for their job duties and therefore are not subject to the Preliminary Draft Part 37 requirements published thus far. If it is not the intent of the rule to eliminate such individuals from trustworthy and reliability determination, then additional clarification is necessary.

Thank you for the opportunity to comment on the Preliminary Draft Rule Language Re: Part 37 Physical Protection of Byproduct Material (Subpart B).

Sincerely,

A handwritten signature in black ink, appearing to read 'S.D.H.', with a stylized flourish extending to the right.

Stanley D. Hampton
Radiation Safety Officer
Eli Lilly and Company

PUBLIC SUBMISSION

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Physical Protection of Byproduct Material

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Part 37 Physical Protection of Byproduct Material; Preliminary Draft Language (Subpart B)

Document: NRC-2008-0120-DRAFT-0018
Comment on FR Doc # N/A

Submitter Information

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General Comment

Please withdraw tracking number 809c1728

Attachments

NRC-2008-0120-DRAFT-0018.1: Comment on FR Doc # N/A

Rulemaking Comments

From: Carol Gallagher
Sent: Tuesday, June 02, 2009 10:28 AM
To: Rulemaking Comments
Subject: Comment letter on Draft Rule Language "Physical Protection of Byproduct Material"
Attachments: mahin.pdf

Attached for docketing is a comment letter on the above noted draft rule language (Subpart B) that I received via the Regulations.gov website on 6/1/09.

Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Tue, 2 Jun 2009 10:28:09 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: Carol Gallagher <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Tue, 2 Jun 2009 10:28:08 -0400
Subject: Comment letter on Draft Rule Language "Physical Protection of
Byproduct Material"
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Byproduct Material"
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