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June 8, 2009

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFRobert McDougall
Office of Federal and State Materials
And Environmental Management Programs

7

Dear Robert;

The Louisiana Radiation Section has reviewed the above document and would like to submit the following comments. Our comments address changes proposed for regulation of background investigations, access control, physical security during use and storage, and physical security during transportation of Radioactive Material (RAM) in Quantities of Control Categories 1 & 2. (Cat 1 & Cat 2) The proposed regulations are to be combined into new chapter 10 CFR 37.

In proposed Part 37.23. The reviewing official has to be approved by the NRC and re-approved by the NRC every 10 years. We disagree with these requirements. The NRC can only determine the fitness of the person submitted by the licensee to be the reviewing official on the basis of the fingerprint check submitted to the FBI. It is the licensee's decision who he will hire, fire, and put in which position. If the licensee determines that the fingerprint check did not return anything he objects to he can name whoever he wants. And if the licensee still trusts and relies on the reviewing official after 10 years, there is no reason for that person to have to submit to another fingerprint check.

37.25. Employment history and credit history should not be part of this regulation. The licensee decides what he will use as his decision criteria. Employment history can only tell you if the person would be re-hired by the past employer. Any other comments by a former employer are suspect at best. Use of credit history to determine if a person is trustworthy and reliable is also a subjective item. The one thing that most licensees already do use as a hiring qualification is a drug test. That is a measurable and quantifiable amount and is already in use.

37.25. Character and reputation determination. This entire paragraph is too subjective to be of any use. It might also be illegal and could be challenged as discriminatory. It is not based on facts, but on emotions.

37.25. Reinvestigations - After a licensee has employed an individual for 10 years their own 10 year evaluation of their trustworthy and reliability is more accurate than any one else's. If the employee has transferred from another licensee then a re-investigation might be warranted.

37.1203. General Program Requirements- Security Plan. This is a new label for an old program. Licensees already have an "Increased Control" program in place for Cat 1 and Cat 2 facilities. They do not need to re-name it. It has already been inspected and verified under their "increased control" plan.

37.1205 Security Zones - The licensees that already have the ICs in place are using areas to co-locate or not co-locate their sources. This new term "Security Zones" will introduce a new and confusing term. We don't need a new special term for the areas under IC security for RAM. By calling an area a "Security Zone" it also draws unnecessary attention to that area.

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37.1207. Personnel access controls require (b) service providers to be escorted to "security zones" unless the service provider licensee provides written verification that the person is trustworthy and reliable. This should be more clearly explained. It is not defined what would be acceptable written verification.

37.1213. LLEA coordination and notification requirements

For temporary job sites this is impractical and unworkable. The licensee cannot get a copy of all of the LLEA's in the United States? Counties, municipalities, and cities can have overlapping and or redundant authorities. Unless it is an area known to the licensee, because they have a permanent facility there, it is not practical to expect them to determine who the local law authority is there.

37.99. Additional requirements for transfer of Cat 1 quantities of radioactive material

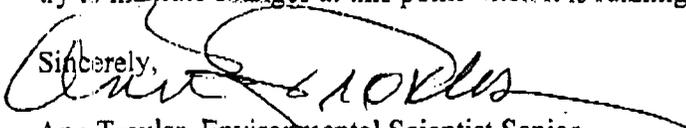
Requires the licensee transferring the material to verify the license of the transferee with the license issuing authority. The licensee cannot know who he is talking to at the license issuing authority. And the licensing authority cannot verify who is calling. There has to be a detailed way for shippers to secure a valid verification from the licensing authority, otherwise this part is useless.

37.107. Procedures. Shipments by Rail

This part requires the licensee to verify the training and understanding of the train crew, drivers, and accompanying personnel. This is a DOT regulatory area and not something that the licensee could verify anyway.

We would like to suggest that more thought needs to be given to these regulations. The original Orders that were implemented by NRC and the Agreement States did not contain all of these new changes. The licensees are now used to the Orders and we believe that it would be a mistake to try to institute changes at this point when it is running smoothly.

Sincerely,



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Emergency and Radiological Services Division**

**COVER SHEET
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