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DEPARTMENT OF THE NAVY  
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WASHINGTON, DC 20350-2000

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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19 June 2009

Secretary, U. S. Nuclear Regulatory Commission (NRC)  
Washington, D.C. 20555-0001  
(Attn: Rulemakings and Adjudications Staff)

SUBJECT: COMMENTS ON DRAFT RULEMAKING FOR 10 CFR 37, SUBPARTS B  
AND C

Ladies and Gentlemen:

The Naval Radiation Safety Committee has reviewed draft rule, 10 CFR Part 37, Subparts B and C. Enclosures (1) and (2) provide comments on Subparts B and C respectively.

Sincerely,

L. L. FRAGOSO

By direction

- Encl: (1) Comments on proposed rule 10 CFR 37, Subpart B -  
Background Investigations and Access Control Program  
(2) Comments on proposed rule 10 CFR 37, Subpart C -  
Security and Incident Response

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Comments on Proposed Rule 10 CFR 37, Subpart B - Background Investigations and Access Control Program.

1. General Comments. The draft rule indicates that the Master Material Licensee (MML) would be required to maintain and administer all of the program specifics. The MMLs are responsible for a large number of separate programs that in some instances spread world wide. The MMLs issue permits to organizations under their cognizance that allow the use and storage of licensed radioactive material. Under the current RAM QC Order, MMLs have allowed each permitted organization with category 1 or category 2 quantities of radioactive materials to administer their own RAM QC programs much as a NRC licensee would. The MMLs then uses procedures, consistent with the NRC's to administer and evaluate these programs. We recommend the regulation be changed to adopt this posture.

a. Change the rule to state that MML's will oversee all aspects of the program with exception of the reporting requirements for any attempted or actual theft, sabotage or diversion of category 1 or category 2 quantities of radioactive materials.

b. Replace "licensee shall," with the following or equivalent wording after "licensee or a permittee under a master materials licensee shall" throughout the Part.

2. 10 CFR 37.21. Clearly state the name of the program or if two separate programs are required clearly define each. The Subpart B title uses the term "Access Control Program," the text of the Subpart uses the term "access authorization program."

3. 10 CFR 37.21(c)(2). This paragraph appears to exempt the individuals listed in 10 CFR 37.41(a) through (l) from the all the requirements of the access authorization program.

a. Explain the requirements and responsibilities of the reviewing official for allowing individuals listed in 10 CFR 37.41(a) through (l) access to category 1 or category 2 quantities of radioactive materials.

b. Recommend changing this paragraph to state that background investigations are not required for individuals listed in 10 CFR 37.41(a) through (l).

4. 10 CFR 37.23. Change the title of this section to "Access Control Program" to prevent confusion with 10 CFR 37, Subpart C, 10 CFR 37.1201, Security Program.

5. 10 CFR 37.23(a). State when the "60 calendar days" begin.

6. 10 CFR 37.23(b)(1). State if an individual nominated to be a reviewing official, who is exempt under 10 CFR 37.41, would be required to undergo the background investigation described in 10 CFR 37.25(a)(2) - (a)(9).

7. 10 CFR 37.23(b)(1)(i). Change to read:

"Reviewing officials must be permitted unescorted access to category 1 or category 2 quantities of radioactive materials and/or access to Safeguards Information, if the licensee possesses Safeguards Information, as part of their job duties."

8. 10 CFR 37.23(b)(1)(ii). If the Reviewing Officer is exempt from the Access Authorization Program per 37.21(c)(2), what information must be provided to the NRC to gain initial approval or the 10 year re-approval as required by paragraphs 10 CFR 37.23(b)(2) and 10 CFR 37.23(b)(3)?

9. 10 CFR 37.23(e)(2). Are reviewing officials allowed to deny unescorted access to category 1 or category 2 quantities of radioactive materials for reasons other than disqualifying information from a background investigation?

a. For example, could access be denied because the individual has been cited by the NRC for a Severity Level III violation?

b. Would the reviewing official have to put an individual who has had a satisfactory background investigation but has no reason for being allowed unescorted access on the list?

10. 10 CFR 37.23(e)(3). Is the reviewing official required to list individuals exempted from the access authorization per 10 CFR 37.23(e)(2) on the unescorted access list?

11. 10 CFR 37.23(f)(1). Explain what, if any, procedures a licensee must have for demonstrating that individuals are exempted under 10 CFR 37.41.

12. 10 CFR 37.43(b) through (d) and paragraphs (f) and (h). Delete these paragraphs; there is no reason why any of these individuals to need unescorted access to category 1 or category 2 quantities of radioactive materials.

Comments on proposed rule 10 CFR 37, Subpart C -  
Security and Incident Response.

1. General Comments. The draft rule indicates that the Master Material Licensee (MML) would be required to maintain and administer all of the program specifics. The MMLs are responsible for a large number of separate programs that in some instances spread world wide. The MMLs issue permits to organizations under their cognizance that allow the use and storage of licensed radioactive material. Under the current RAM QC Order, MMLs have allowed each permitted organization with category 1 or category 2 quantities of radioactive materials to administer their own RAM QC programs much as a NRC licensee would. The MMLs then uses procedures, consistent with the NRC's to administer and evaluate these programs. We recommend the regulation be changed to adopt this posture.

a. Change the rule to state that MML's will oversee all aspects of the program with exception of the reporting requirements for any attempted or actual theft, sabotage or diversion of category 1 or category 2 quantities of radioactive materials.

b. Replace "licensee shall," with the following or equivalent wording after "licensee or a permittee under a master materials licensee shall" throughout the Part.

2. 10 CFR 30.32(1). Change to read:

"An application for a specific license to use, store, or transport Category 1 or Category 2 quantities of radioactive material shall include a statement that the Licensee has achieved full compliance with the requirements described in Part 37."

3. 10 CFR 37.3

a. Define the term "associated facility" as it is used in the definition of Sabotage.

b. To be consistent with the definition of a temporary jobsite in 10 CFR 34.3 change the definition to read:

"Temporary jobsite means a location where licensed material subject to this Part may be used or stored other than those location(s) of use authorized on the license."

4. 10 CFR 37.1201(d)(1). Explain what information is to be submitted by the license.

5. 10 CFR 37.1203(a)(2)(iii)

a. Explain why the license is required to notify the NRC after a revision to the security plan is made. Is there specific information that will be required to be submitted with the notification?

b. Are there specific types of information that would require notification and others that would not? For example, would minor editorial changes such as correcting grammar be require reporting?

c. State when the "six month" requirement begins. The term "within 6 months after the revision is made" does not give a clear indication as to when the notification must be made; i.e. Would a report need to be made within six months of the completion of writing the procedure? Would a report need to be made within six months of completing personnel training on the procedure?

6. 10 CFR 37.1203(c)(3). Change to read:

"Before an individual is permitted to have unescorted access to category 1 or Category 2 quantities of radioactive material, the individual must complete the training requirements of paragraph (c)(2).

7. 10 CFR 37.1203(c)(4)(i). Change to read:

"Review of the training requirements of paragraph (c)(2) of this section, and any changes made since the last training;"

8. 10 CFR 37.1203(c)(5). Change to read:

"The license shall maintain records of the initial and supplemental training as required by paragraph "10 CFR 37.1223(b) of this part."

9. 10 CFR 37.1207(c). This paragraph should be rewritten to indicate that all persons who do not have Unescorted Access Authorization or are not on the Access Authorization list per Subpart B - 37.23(e)(2) and 37.23(e)(3) are required to be escorted.

10. 10 CFR 37.1213(b)(2). Delete this paragraph. The NRC should be responsible for communicating with state and local LLEAs.

11. 10 CFR 37.1215(b). Delete the second sentence of this paragraph. This requirement is too prescriptive.