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June 16, 2009

Merri L. Horn
Senior Project Manager
Rulemaking Branch
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKETED
USNRC

June 30, 2009 (8:50am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Document Nos. NRC-2008-0120-0015 and 0017

Dear Ms. Horn:

The Executive Board of the Organization of Agreement States supports the comments made by the Conference of Radiation Control Program Directors regarding the proposed Part 37 (Subpart B) - Fingerprinting.

With respect to both Subparts B and C, any changes to the physical protection of byproduct material requirements should be strictly limited to areas of vulnerability that have not been addressed in the current Increased Controls. Licensees have spent considerable money and effort to comply with the ICs. Agreement States have spent a significant amount of time helping licensees understand the current requirements and making sure they are in compliance. Altering those requirements without a demonstrated need unnecessarily burdens both the licensees and the Agreement States. Again, the only requirements that should be modified from the ICs are those where operational experience has shown a remaining vulnerability.

Thank you for the opportunity to comment.

Sincerely,

for, Shawn M. Seeley, chair-elect
Julia A. Schmitt, Chair
Organization of Agreement States

Cc: OAS Board
Rob Lewis

Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky,
Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New
Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South
Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin

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Conference of Radiation Control Program Directors, Inc.

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May 28, 2009

DOCKETED
USNRC

May 28, 2009 (11:50am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Merri L. Horn
Senior Project Manager
Rulemaking Branch
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Document No. NRC-2008-0120-0015—Fingerprinting Rule

Dear Ms. Horn:

The Conference of Radiation Control Program Directors (CRCPD) appreciates the opportunity to comment on the proposed rules concerning fingerprinting. One of our goals is to promote consistent, high-quality standards in radiation protection. We are fortunate to have Jared Thompson from the state of Arkansas as our representative on this NRC working group. Mr. Thompson has done a commendable job of relaying the states' perspective to the working group and conveying the working group's progress to the CRCPD Board of Directors.

We would like to reiterate specific issues on the proposed rule:

- ◆ **37.23.b** The Reviewing Official is responsible for determining trustworthiness and reliability of individuals for unescorted access to Category 1 and Category 2 quantities of radioactive materials (RAM). The licensee will be required to nominate a Reviewing Official and submit the name to the regulatory body (NRC/Agreement State) for approval.

State Issues:

1. This regulatory approval is based only on the results of the fingerprints for a criminal history records check. The remaining 9 other items of the background investigation performed by the licensee is not part of the regulatory body's approval process. The burden of approval will be placed on the regulatory agency without full knowledge of the individual's total work history and complete background check.
2. Some states may not have the authority to adjudicate fingerprints for approval. This was an issue when the Orders were being developed.
3. States do not have the training or law enforcement experience to make qualified analysis of the fingerprint results, resulting in the rule possibly being applied inconsistently across the nation.

4. In the CRCPD survey of Agreement States in January 2009, a majority of the states responding opposed the Reviewing Official concept. Of the 17 states responding, 13 preferred no change in the trustworthiness and reliability review as outlined in the Orders, which allows the licensee to designate and determine their Trustworthy and Reliable Official.
 5. It is unknown what the impact on Agreement States' resources will be to approve Reviewing Officials.
- ♦ 37.23.b.i. The Reviewing Official will have unescorted access to Category 1 and Category 2 quantities of RAM. Essentially this means that a licensee's Human Resources department representative who does routine employment background checks cannot serve as a Reviewing Official because these individuals do not unescorted access to Category 1 and Category 2 quantities of RAM.

State Issues:

1. Licensees with multiple use locations may have to have more than one Reviewing Official.
 2. The rule states that the Reviewing Official must be permitted access "as part of their job duties." It is unclear who will verify this and how it will be completed or enforced. It appears to be in rule solely to acquire the fingerprints of individuals who determine other individuals as trustworthy and reliable, and does not enhance or improve security of RAM.
- ♦ Background investigations were part of the IC and Fingerprint Orders. Under these Orders, there are 4 components for a background investigation (work history, education, personal references and fingerprinting). The rule expands the components to 10 items that the licensee may be required to perform to complete the background investigation.

State Issues:

3. This rule is overly prescriptive and an increased burden to the licensee.
4. There is currently no guidance available that would assist the licensee to know what might be an acceptable background check. This was discussed during the development of the fingerprint Orders. With added criteria, including credit history, for trustworthy and reliability it is more likely qualified individuals may not be permitted unescorted access.

Page three
Merri L. Horn
May 28, 2009

CRCPD believes the regulations should reflect the Orders, and any expansion should be based on evidence where the Orders were ineffective. The Organization of Agreement States, our sister organization, shares this position and presented it at the NRC Security Briefing on April 23, 2009. We believe the Orders are adequate and implementation issues have been addressed through the use of frequently asked questions posted on the NRC Increased Controls and Security Tool Box. The intent should not be to enhance regulations for no regulatory gain without justification that the current orders and compliance instruments issued by the regulator are inadequate.

Over 85% of the nation's radioactive materials licensees are located in agreement states. The impact of changes in regulation on state programs should be considered. A compelling technical position for enhancement from the original orders is needed to justify the added financial and regulatory burden to our licensees. Weighing the issues provided above, I encourage the NRC to reconsider the draft changes to the regulations. Thank you for your consideration in a matter that has great significance to state radiation control programs.

Sincerely,

Adela Salame-Alfie

Adela Salame-Alfie, Ph.D.
Chairperson

Rulemaking Comments

From: Merri Horn
Sent: Thursday, May 28, 2009 11:27 AM
To: Rulemaking Comments
Subject: FW: CRCPD: CRCPD Comments on
Attachments: Merri Horn-fingerprinting letter.pdf

I received the attached comments from the CRCPD on the Part 37 preliminary language on subpart B (74 FR 17794; April 17, 2009).

From: Sue Smith [mailto:SSmith@crcpd.org]
Sent: Thursday, May 28, 2009 10:57 AM
To: Merri Horn
Cc: Adela Salame-Alfie; Fordham, Earl W (DOH); Jennifer Elee; John Winston; Kim Steves; maryann.spohrer@illinois.gov; Norman_Gilley@doh.state.fl.us; rmcburney@crcpd.org; Sue Smith
Subject: CRCPD: CRCPD Comments on

Ms. Horn,

On behalf of the Conference on Radiation Control Program Directors, Inc. please see CRCPD's comments on the proposed rule concerning fingerprinting. If you are unable to download this letter please advise.

Regards,

Sue

Sue Smith
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CRCPD
1030 Burlington Lane, Suite 4B
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Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Thu, 28 May 2009 11:27:22 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
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From: Merri Horn <Merri.Horn@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Thu, 28 May 2009 11:27:20 -0400
Subject: FW: CRCPD: CRCPD Comments on
Thread-Topic: CRCPD: CRCPD Comments on
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<D841D501B2C4D244B75AB897F70C149499FCCA7E84@HQCLSTR01.nrc.gov>
MIME-Version: 1.0

Rulemaking Comments

From: Horn, Merri
Sent: Monday, June 29, 2009 4:16 PM
To: Rulemaking Comments
Subject: FW: comments from OAS on Part 37 rulemaking
Attachments: CRPCD comments on Part 37 (Subpart B).pdf; Shawn OAS.pdf

I'm not sure if the OAS comments have been processed. The CRPCD comments have been docketed.

From: Seeley, Shawn [mailto:Shawn.Seeley@maine.gov]
Sent: Monday, June 22, 2009 3:33 PM
To: Horn, Merri
Cc: Lewis, Robert; Schmitt, Julia; Cardwell, Cindy; Lee Cox; Isabelle Busenitz; Ann Troxler; michael.snee@odh.ohio.gov; Tom Conley
Subject: comments from OAS on Part 37 rulemaking

Merri, please find attached comments from the Organization of Agreement States Executive Board regarding the upcoming Part 37 rulemaking. Let us know if you have any questions. I have also included CRPCD's comment letter that is referenced in ours. Thank you as always for the opportunity to comment. Shawn Seeley, OAS Chair-elect

Shawn W. Seeley

Shawn W. Seeley, Health Physicist
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([148.184.100.43]) with mapi; Mon, 29 Jun 2009 16:15:38 -0400
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To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Mon, 29 Jun 2009 16:15:36 -0400
Subject: FW: comments from OAS on Part 37 rulemaking
Thread-Topic: comments from OAS on Part 37 rulemaking
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