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Environmental Health & Safety

Radiation Safety Office

July 15, 2010

Submitted via Internet electronic mail

Records and FOIA/  
Privacy Services Branch (T-5F52)  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

DOCKETED  
USNRC  
August 12, 2010 (11:20am)  
OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**RE:** Docket # NRC-2008-0120, RIN 3150-A112 (June 15, 2010)

**SUBJECT:** Comments Specific to the Information Collection Aspects of the Physical Protection of Byproduct Material Proposed Rule (75 FR 33902)

Washington University in St. Louis (WU) appreciates the opportunity to provide written comments on the potential impact of the information collection contained in this proposed rule. One of NRC's missions is to ensure adequate protection of public health and safety, common defense and security, and the environment while enabling the use of radioactive materials for beneficial civilian purposes. As noted in the recently published NRC draft policy on the protection of Cs-137 CsCl sources (75 FR 37483), this mission is best accomplished by implementing the following principles:

- The safety and security of risk-significant sources is an essential part of the NRC's mission; and
- Licensees have the primary responsibility to securely manage and to protect sources in their possession from misuse, theft, and radiological sabotage.

WU endorses these long-established principles and accepts our security responsibilities with regard to these kinds of sources. And so, we offer the following comments in support of establishing effective and reasonable security measures which also enable the continued use of risk-significant sources that provide essential benefits to society.

Template = SECY-067

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First, we must note that our ability to comment on the information collection issues identified in the proposed rule is limited because NRC has not yet issued guidance documents for implementing the proposed rule. In the discussion section of the proposed rule, NRC states:

“...the NRC plans to issue guidance on the security requirements for category 1 and category 2 quantities of radioactive materials. The guidance will be made available for public comment sometime during the comment period for this proposed rule.”

To date, NRC has not issued these guidance documents. Since guidance documents were essential for licensees to understand how to implement the NRC Increased Controls License Orders (EA-05-090 and EA-07-305), we anticipate the guidance documents will be as important for licensees to understand NRC’s expectations in implementing the proposed 10 CFR Part 37.

Also, we note that we have strived to strike a delicate balance between providing detailed comments and maintaining appropriate confidentiality of sensitive information. NRC cautions licensees on what kinds of information to include in comment letters since these documents will be posted unedited on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. In contrast, in the tips for preparing comments on this proposed rule, NRC encourages licensees to give specific details and specific examples to support comments. To the extent these instructions conflict, we have erred on the side of securing sensitive information.

#### Comments on Specific Information Collection Issues

1. *Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?*

**Informed Consents** – We agree with the need for signed consent from an individual seeking access which requires a trustworthiness and reliability (T&R) review [§ 37.23(c)], and have required signed consent from all individuals who initiated a T&R review under the Increased Controls License Orders.

**Personal history disclosure** – WU believes to protect employees’ and the organization’s best interests that gathering and reviewing of this kind of personal information must be done by the organization’s human resource department. The personal history disclosure described in § 37.23(d) states the individual seeking access “shall disclose the personal history information that is required by the licensee’s access authorization program for the reviewing official to make a determination of the individual’s trustworthiness and reliability.” In discussion of what is a personal history disclosure, NRC states:

“The information would include items such as employment history, education, credit history (including bankruptcies), and any arrest record.”

WU agrees that a licensee needs to have an individual's employment and education history, but we question the need to require the individual to provide this information multiple times if the licensee already has the information in the individual's employment record. WU also questions the usefulness of obtaining credit history, and asks what level of detail an individual would be expected to provide for personal credit history beyond bankruptcies. See our additional comments at full credit history evaluation. In compliance with accepted business practice, WU's employment application has been carefully worded to request only the history of convictions and avoid any reference to disclosing arrest record. Requiring employees to provide a full history of arrests undermines good employment practices and exposes the employer to charges of employment discrimination. Such information may not be requested or used for any other employment purpose and having to obtain it from the employee potentially sets the stage for conflict and litigation.

**Full credit history review** – WU questions the usefulness of obtaining credit history, and requests that the NRC explain how individual's credit history should be considered in determining whether an individual is not trustworthy and reliable. The U.S. Equal Employment Opportunity Commission has raised question concerning use of credit checks, and many States, including Missouri, are considering legislation to limit or ban employer's use of credit checks to judge employees' trustworthy and reliable. NRC provides relief for licensees when requested credit history information cannot be obtained:

§ 37.25(a)(6): "For individuals including foreign nationals and United States citizens who have resided outside the United States and do not have established credit history that covers at least the most recent 7 years in the United States, the licensee must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries"

The difficulty of obtaining credit history information from outside of the U.S. and this option for documenting inability to get the information also calls into question the practical utility of requiring a credit check.

**FBI criminal history records check** – WU requests that the NRC explain what information a licensee will receive from an FBI criminal history records check that is relevant to the trustworthy and reliability determination. To date, we have seen only information on arrests from FBI reports received. We ask whether the current FBI reporting provides the "comprehensive information regarding an individual's recorded criminal activities" when no conviction information is given.

2. *Is the estimate of burden accurate?*

WU does not agree the estimate of burden for a licensee is accurate. In "Draft Regulatory Analysis for Proposed Rule: Physical Protection of Byproduct Material (10

CFR Parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73)" (May 2009), NRC made the following estimate for a licensee's initial background check burden:

|  |              |
|--|--------------|
| Number of hours to conduct a background check                | 6            |
| Wage of manager per hour                                     | <u>\$100</u> |
|  | \$600        |
| Cost of credit history                                       | \$20         |
| Cost of taking fingerprints                                  | \$10         |
| Cost for fingerprint submission                              | \$36         |
| Cost of background check                                     | \$666        |
| Number of individuals needing background checks per licensee | 10           |
| Number of reviewing officials needing background checks      | 2            |
| Total cost of background investigation per licensee          | \$7,992      |

Licensees do not typically have the resources to conduct background checks with internal staff, and so contract that task out. Costs for this service increases with the number of local background checks requested, the addition of checks for military service and personal references, and the need to obtain these background checks outside of the U.S. We estimate a background check cost could range from \$60 to \$250 and higher. Based on our experience in processing fingerprint submissions and background checks under the current License Orders, we estimate the number of hours needed for licensee personnel to gather, submit and review background information for an individual will range from 10 hours for an average normal data collection and review, to more than 20 hours for data collection and review when multiple State residences or foreign residences are involved. The number of licensee hours needed to respond to a challenge made by an individual to errors in their credit or criminal histories would add significant licensee hours to the process. NRC's burden estimate does not include the amount of time needed for an individual to complete a personal history disclosure, which we estimate would take at least 2 hours.

NRC's estimate of the number of individuals is unrealistic for licensees who have multiple sources requiring these background checks and for licensees running 24 hour operations with these sources.

Requiring licensees to obtain personal credit history and arrest records from individuals requires the licensee to develop compliance programs required under the Fair Credit Reporting Act and personal privacy protection laws not otherwise required for the licensee. WU questions whether the information obtained is of proven benefit in determining an individual's trustworthiness and reliability that justifies the licensee's expenditure of resources to added effort.

3. *Is there a way to enhance the quality, utility, and clarity of the information to be collected?*
4. *How can the burden of the information collection be minimized, including the use of automated collection techniques?*

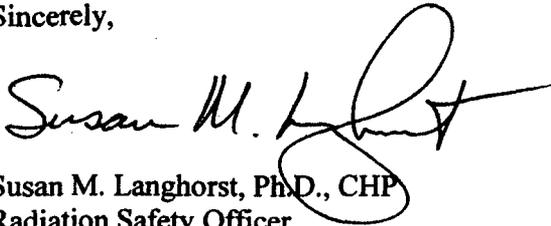
We find it difficult to comment specifically on these questions without benefit of reviewing NRC guidance on this proposed rule, but we do have two suggestions towards the points identified in these questions.

First, a more prudent and efficient method of checking background and overall status of an employee is to use the federal database "E-verify". Practically every other federally mandated check requires use of this tool to ensure the employee's suitability for hire, and, if it can be used for this purpose, it would seem the NRC could rely on the E-verify check as one of the background check tools for a licensee's access authorization program.

Review of FBI criminal background reports are new to many licensees. We request that guidance be given on FBI criminal background reports to assist a licensee's understanding of how information regarding an individual's recorded criminal activities within the U.S. and its territories, and the individual's known affiliations with violent gangs or terrorist organizations is presented and what it means.

Thank you for the opportunity to comment on information collection issues of this proposed rule. If you have any questions concerning these comments or would like additional explanation, please contact me at 314-362-2988 or [langhors@wustl.edu](mailto:langhors@wustl.edu).

Sincerely,



Susan M. Langhorst, Ph.D., CHP  
Radiation Safety Officer

## Rulemaking Comments

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**From:** Forder, Dawn  
**Sent:** Thursday, August 12, 2010 10:49 AM  
**To:** Rulemaking Comments  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Attachments:** WU Info Collection Comment Letter 07 15 2010.pdf

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**From:** Benney, Kristen  
**Sent:** Wednesday, August 11, 2010 3:08 PM  
**To:** Forder, Dawn  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Importance:** High

Dawn,

I got Carol's out-of-office reply. Please see my question below.

Kristen

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**From:** Benney, Kristen  
**Sent:** Wednesday, August 11, 2010 3:08 PM  
**To:** Gallagher, Carol  
**Cc:** Horn, Merri; Donnell, Tremaine  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Importance:** High

Carol,

We received a comment through the infocollects.resource mailbox for the Part 37 proposed rule. Typically, we just respond to these comments in the final rule; however, the commenter has requested that her comment be posted to the docket for the rule. Is this possible? See attached comment letter from 7/15/10.

Kristen

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**From:** Benney, Kristen **On Behalf Of** INFOCOLLECTS Resource  
**Sent:** Wednesday, August 11, 2010 2:16 PM  
**To:** Horn, Merri  
**Cc:** Trussell, Gregory; Donnell, Tremaine  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Importance:** High

Merri,

I received the following letter in the INFOcollects mailbox on July 15. The commenter has requested that it be posted to the docket for Part 37.

Do you have an estimate for how long this will take? The commenter has complained to our OMB desk officer that it is not posted.

Kristen

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**From:** Langhorst, Susan [mailto:langhors@wusm.wustl.edu]  
**Sent:** Tuesday, August 10, 2010 10:50 AM  
**To:** Gallagher, Carol  
**Cc:** ckymn@omb.eop.gov; INFOCOLLECTS Resource  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Importance:** High

Dear Ms. Gallagher,

I ask for your assistance to find out why the Washington University comment letter I submitted on July 15, 2010 has still not been posted on the [www.regulations.gov](http://www.regulations.gov) website under Docket ID NRC-2008-0120. I spoke with Ms. Kymm on July 28, 2010 to ask this same question and she asked that I forward the original email again to her and she would follow up. Please respond to this email to let me know you have received it, and whether you can help find out what is the problem. Thank you in advance for any help you can provide.

Sue Langhorst

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Susan M. Langhorst, Ph.D., CHP  
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314-362-2988 (office)  
314-362-6666 (fax)  
314-848-5696 (pager)

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**From:** Langhorst, Susan  
**Sent:** Wednesday, July 28, 2010 10:42 AM  
**To:** 'ckymn@omb.eop.gov'  
**Subject:** FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
**Importance:** High

Dear Ms. Kymm,

This is the email I sent you and NRC on July 15 with our comment letter. Please respond to my email to confirm that you received this email. Thank you for checking into why our comments have not been posted on regulations.gov.

Sue Langhorst

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Susan M. Langhorst, Ph.D., CHP  
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**From:** Langhorst, Susan  
**Sent:** Thursday, July 15, 2010 5:33 PM  
**To:** 'Infocollects.Resource@nrc.gov'; 'ckymn@omb.eop.gov'  
**Subject:** Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)

Dear Ms. Christine Kymm,

Please find attached Washington University in St. Louis' comment letter on the potential impact of the information collections contained in this proposed rule. We appreciate the opportunity to provide comments.

Susan M. Langhorst, Ph.D., CHP  
Radiation Safety Officer  
Washington University in St. Louis

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314-362-2988 (office)

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Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov  
([148.184.100.43]) with mapi; Thu, 12 Aug 2010 10:49:24 -0400  
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Content-Transfer-Encoding: binary  
From: "Forder, Dawn" <Dawn.Forder@nrc.gov>  
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>  
Date: Thu, 12 Aug 2010 10:49:23 -0400  
Subject: FW: Docket # NRC-2008-0120, RIN 3150-AI12 (June 15, 2010)  
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