

**PR 30,32,33,34,35,36,37,39, 51, 71 and 73
(75FR33901)**

P: (225) 673-6600 • Toll Free: (866) 683-3325 • F: (225) 673-8064
16079 Airline Highway • Prairieville, LA-70769

DOCKETED
USNRC

www.mistrasgroup.com

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

August 26, 2010 (9:30am)

July 27, 2010

8

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Reference: Physical Protection of Byproduct Material; Proposed Rule Comments and Concerns

To Whom It May Concern:

We are writing in accordance with the NRC request for comments on the above referenced rule that would replace the existing IC Orders.

We are requesting that the NRC and the applicable Agreement States take serious consideration of the concerns addressed in this letter. We feel the degree of change proposed, and some of the more demanding requirements may seriously affect our ability to operate and function in the industrial radiography industry.

We are not commenting on all the requirements as many of them have been previously implemented under the IC Orders, or they may otherwise not be controversial.

Item B5 – Questions 1-5 (Fingerprinting for T&R Official)

Our main objection is the requirement for the NRC or Agreement State to review these materials and then approve the reviewing official. We feel the approval should remain inside the company, not with the government. We also strongly disagree with having to submit or remove the background check results outside of our offices and send them to the state agency.

The proposed rule has no mention of safeguards of the privacy of this information, or of the method of review. Whether it will be in person or by submittal, or any idea of by what criteria the results would be analyzed. What type of arrest would be considered to disqualify someone? What type of credit history would be deemed unacceptable? This is a major concern if the government is assuming the authority to make this decision rather than the licensee. In our industry many companies may have only one person in a position that may be eligible to be the reviewing official, in many cases this would be the owner or manager of the company. What if the company feels the individual is trustworthy but the government reviewer decides they are not how is this resolved? If the state rejected T&R Official is the owner, manager, or RSO, how might that affect the operation of the company?

Item B8 – Questions 1-6 (Background investigation)

1) Is a local criminal history review necessary in light of the requirement for a FBI criminal history records check?

We feel that a local criminal history review in addition to the FBI criminal history check is completely unnecessary and will place a HUGE burden on the licensees. How will we reasonably perform these reviews and document all the locations an individual has lived? This is not a small change in procedures, it would be a huge change and cause a large increase in the amount of paperwork and add another layer of difficulty to audits without seriously improving public safety. In the current system it is fairly easy for us to comply with the FBI fingerprinting system and inspectors can easily verify that this has been completed. This is not the case with random local checks and will cause much confusion, and a high degree of uncertainty.

There is no unified or simple way to request this data and is unreasonable for us to have to do so. If this requirement is not dropped, at a minimum, a TWIC card should be an eligible exemption from both this requirement and the FBI fingerprint requirement.

2) Does a credit history check provide valuable information for the determination of trustworthiness and reliability?

We feel that a credit check does not add any significantly valuable information to the individual's trustworthy and reliable status. Many radiographers have a fairly poor credit rating but have proven to be very reliable and trustworthy employees. Some people have poor credit due to medical conditions, divorce, or due to the fact that we are going through one of the worse economic periods in recent history. Why should an individual be discriminated against due to a condition that may be beyond their control? We also concerned that there are no clear guidelines on what in a credit score would be of a concern.

Will the inspectors have the authority to look at the employee credit records? Is that legal in the various Agreement States? We strongly oppose any unnecessary intrusion into our employees' privacy by the government.

3) Do the Agreement States have the authority to require a credit history check as part of the background investigation?

We do not have the answer to this question. We do think this issue should be seriously considered and highlights the danger of one-size fits all mandate from the federal government. It also raises the question of if the NRC has the authority to mandate this or can determine the correct credit score to be eligible for application.

4) What are the appropriate elements of a background investigation and why are any of the suggested elements appropriate?

We feel the background check requirements under the IC orders are sufficient and are currently a mandatory requirement throughout our company currently.

5) Are the elements of background investigation too subjective to be effective?

We believe the elements of the background check requirements are far too subjective to be effective. We see this a lot in Agreement States during audits and inspections where there are no clear guidelines and much of what is acceptable seems to change on the whims of the inspector and from year to year. We hear phrases such as "it's not mandated, but we would prefer you do this" far too often during inspections. There are frequently a never-ending series of "what if" questions that are totally subjective and sometimes approach what would constitute a perfect storm of conditions and failures. We feel this high level of subjectivity perhaps rises to the level of "Unconstitutionally Vague". While working on this letter the FCC Indecency Rules were struck down on exactly this concern.

6) How much time does a licensee typically spend on conducting the background investigation for an individual?

It can take us a number of days performing background checks and are a difficult a burden on office personnel, as each potential employee's references, schools, employment history, etc. must be verified by tracking-down the sources given.

Item C15 – Questions 1-5 (LLEA Notifications)

1) Is there any benefit in requiring that the LLEA be notified of work at a temporary jobsite?

We do not believe there is a significant benefit to LLEA notifications at temporary jobsites. Temporary jobsites are unpredictable in nature and are therefore unlikely to be a primary target. The manner in which the notifications are proposed is chaotic and unorganized and perhaps would not increase security at all. We worry it may in fact have the opposite effect by causing confusion and resistance in law enforcement. The NRC hasn't technically mandated the LLEA to comply but they have come very close to doing so. They have instead put the very difficult responsibility of requesting compliance on the licensees. This level of notifications, requests for meetings, documentation, and commitments would make the licensee feel very intrusive and possibly not very popular with the LLEA.

By having many random people calling and contacting many police agencies in such an unorganized fashion, and requesting such a large amount of cooperation and commitment from these random officers, may breed resentment and resistance in law enforcement. This would probably not be a major concern if this were handled in an organized fashion on the state level. The authority, by which the NRC claims jurisdiction to implement these requirements, is that these sources are part of homeland security and are a major terrorist threat. If this is the case, then shouldn't this coordination be done in an organized fashion through the NRC or Agreement States in cooperation with the State Police or other security departments in the states? We would think that there must be an infrastructure in place in each state for a response to a terrorist threat. We believe that the response to a theft or attempted theft should be treated in a similar manner to be effective.

We would like to propose what we feel would be a much more workable plan that would have equal or greater security. We believe that at the state level that there should be a contact person for notifications and response to these radiation emergencies. The state organizer could identify a contact person in each county/parish of that state, which has been familiarized with the areas of concern, and the proper procedures to take in the event of an emergency.

We believe that rather than pick an arbitrary number of days that require notification that triggers independent communication with random LLEA, that a list of frequent and common places of radiography could be registered with the state liaison, and that information be made available to the contact in each county/parish. At the very least, a list of contact persons for notifications could be supplied and the meetings, request for support, etc., be performed at the state level or organized between all licensees. This would reduce the confusion and workload on both the licensees and the LLEA and help to maintain a healthy working relationship and effectiveness.

2) Should notifications be made by licensees for work at every temporary jobsite or only those where the licensee will be working for longer periods, such as the 7 day timeframe proposed in the rule?

WE strongly believe it is nearly impossible to notify for every jobsite. The proposed rule of jobsites of a 7-day timeframe is also very restrictive. The 3-day advance notification is completely impossible, since we frequently receive request for work to begin immediately. In the industrial radiography industry, especially in areas like southern Louisiana, the quantity of notifications without some kind of statewide organized system like that mentioned above would be unworkable and chaotic. We feel it could have an opposite effect by alienating local law enforcement with the amount of calls and requests made to them in area with such a high volume of radiography. We do seriously believe this could cripple our industry if not organized better and with clear and easily understandable guidelines that everyone can understand, and easy to document for inspections. Additionally, all utilization logs are available for review by LLEA for all activities requiring all radioactive source, so location, duration, date etc. are available for audit at any time.

3) If notifications are required, is 7 days the appropriate threshold for notification of the LLEA, or should there be a different threshold?

We feel the 7-day period is not the correct way to go. We also fear that it is not clear if this would include cumulative time, where the 7-days are not consecutive. This must be defined to prevent a mismatch of enforcement based on the differences of opinions of the inspectors. We feel that if the NRC decides that there must be LLEA notifications of temporary jobsites of some duration, that there should be a statewide system of whom to notify and the means of doing so. We feel it should also be considered in areas with a large amount of radiography, if a system of registering locations with random and frequent radiography should be developed and coordinated on state level with all contractors, rather than a random and confusing mismatch of individuals trying to do this individually, which is sure to be ineffective and counterproductive. The LLEA still has the option to conduct random site inspections, if warranted, and on their timeline by simply viewing utilization logs for radioactive material locations.

4) Will licensees be able to easily identify the LLEA with jurisdiction for the temporary jobsites or does this impose an undue burden?

We strongly believe that licensees will not be able to adequately identify the LLEA with jurisdiction and we believe this poses an undue burden on the licensees. We believe if this is deemed necessary it should be coordinated on the state level, which should increase the effectiveness of the program in the event of an emergency. In speaking with LLEA

representatives, both funding and availability of officers plays a major role to effectively monitor any and all activities by licensees, however, utilization logs can help in immediate location of radioactive materials by ALL Licensees.

5) Are LLEAs interested in receiving these notifications?

We do not believe that LLEA are interested in receiving these notifications. This is a major concern with the proposed unorganized plan of random notifications and meetings with multiple licensees. We feel this problem could be minimized with statewide organization with an identified method of notifications.

If you have any questions or need any additional information please feel free to contact me directly at 225-673-6600.

Sincerely,

MISTRAS Service, Inc.

Edgar J. Casanova
QA&S Manager / Radiation Safety Officer

We strongly believe that licensees will not be able to adequately identify the LLEA with jurisdiction and we believe this poses an undue burden on the licensees. We believe if this is deemed necessary it should be coordinated on the state level, which should increase the effectiveness of the program in the event of an emergency. In speaking with LLEA representatives, both funding and availability of officers plays a major role to effectively monitor any and all activities by licensees, however, utilization logs can help in immediate location of radioactive materials by ALL Licensees.

5) Are LLEAs interested in receiving these notifications?

We do not believe that LLEA are interested in receiving these notifications. This is a major concern with the proposed unorganized plan of random notifications and meetings with multiple licensees. We feel this problem could be minimized with statewide organization with an identified method of notifications.

If you have any questions or need any additional information please feel free to contact me directly at 225-673-6600.

Sincerely,

MISTRAS Service, Inc.

Edgar J. Casanova
QA&S Manager / Radiation Safety Officer

Concurrence:

Print Name	Signature	Title
Lloyd Kay	<i>Lloyd Kay</i>	GENERAL MANAGER
KEVIN L. CHAVEZ	<i>Kevin Chavez</i>	TECHNICAL RADIOGRAPHER
John Johnson	<i>John Johnson</i>	ASST. RADIOGRAPHER
MAYNARD C. HARRISON	<i>Maynard C. Harrison</i>	TECH. RADIOGRAPHER
HERMAN MAHISON	<i>Herman Mahison</i>	TECH. RADIATION
Harvey Williams	<i>Harvey Williams</i>	Asst. Radiographer
Daniel Reed	<i>Daniel Reed</i>	Asst. Radiographer
MARTINE BOY	<i>Martine Boy</i>	TECH. RADIOGRAPHER
Cherish Badger	<i>Cherish Badger</i>	Asst. Radiographer
Robert Stout	<i>Robert Stout</i>	RADIOGRAPHER
Roger Johnson	<i>Roger Johnson</i>	Asst. Radiographer
Tom Broward	<i>Tom Broward</i>	ASST.

We strongly believe that licensees will not be able to adequately identify the LLEA with jurisdiction and we believe this poses an undue burden on the licensees. We believe if this is deemed necessary it should be coordinated on the state level, which should increase the effectiveness of the program in the event of an emergency. In speaking with LLEA representatives, both funding and availability of officers plays a major role to effectively monitor any and all activities by licensees, however, utilization logs can help in immediate location of radioactive materials by ALL Licensees.

5) Are LLEAs interested in receiving these notifications?

We do not believe that LLEA are interested in receiving these notifications. This is a major concern with the proposed unorganized plan of random notifications and meetings with multiple licensees. We feel this problem could be minimized with statewide organization with an identified method of notifications.

If you have any questions or need any additional information please feel free to contact me directly at 225-673-6600.

Sincerely,

MISTRAS Service, Inc.

Edgar J. Casanova
QA&S Manager / Radiation Safety Officer

Concurrence:

Print Name	Signature	Title
Joshua Jennings	<i>[Signature]</i>	Radiographer
Curtis Doughty	<i>[Signature]</i>	Radiographer
Kim G. Slater	<i>[Signature]</i>	Radiographer
Theron T. Shoemaker	<i>[Signature]</i>	Senior Tech
Darcelie J. Espouge	<i>[Signature]</i>	Radiographer
Kenneth S. Walton	<i>[Signature]</i>	Aut Tech
RONALD C. BLOCK	<i>[Signature]</i>	RADIOGRAPHER
Josh Ford	<i>[Signature]</i>	Radiographer
Joan Hamelin	<i>[Signature]</i>	Radiographer
Lewis E. Kilgo	<i>[Signature]</i>	Radiographer
THOMAS R. BODDEN	<i>[Signature]</i>	RSO/RADIOGRAPHER
John S. McEchemy	<i>[Signature]</i>	Coordinator
Eraven Howell	<i>[Signature]</i>	Radiographer
Branchan Meadows	<i>[Signature]</i>	Radiographer
MARCUS BROOKS	<i>[Signature]</i>	RADIOGRAPHER
Gene Webb	<i>[Signature]</i>	QM Coordinator
Patrick Woolley	<i>[Signature]</i>	Site Supervisor
Russell T. LeDey Jr	<i>[Signature]</i>	NDT Tech.
Charles Dillard	<i>[Signature]</i>	Project Manager
Theroux Graham	<i>[Signature]</i>	Asst Radiographer
Adrian Hoskins	<i>[Signature]</i>	RADIOGRAPHER
DEWEY LLOYD	<i>[Signature]</i>	ASNT Level III
MICHAEL LEMASKO	<i>[Signature]</i>	LEVEL II Radiographer

[Signature] Brian Austin

A World of NDT Solutions

[Signature]

MARX Corp  MISTRAS GROUP INC.

Rulemaking Comments

From: Daryl Istre [Daryl.Istre@mistrasgroup.com]
Sent: Thursday, August 26, 2010 7:45 AM
To: Rulemaking Comments
Subject: Comments on Part 37 Rule Change
Attachments: Comments on Part 37 Rule Change.pdf

The attachment contains comments on the proposed Part 37 Rule Change.

Received: from mail2.nrc.gov (148.184.176.43) by OWMS01.nrc.gov
(148.184.100.43) with Microsoft SMTP Server id 8.1.393.1; Thu, 26 Aug 2010
07:46:47 -0400

X-Ironport-ID: mail2

X-SBRS: 5.3

X-MID: 23849773

X-fn: Comments on Part 37 Rule Change.pdf

X-IronPort-AV: E=Sophos;i="4.56,273,1280721600";

d="pdf?scan'208,217";a="23849773"

Received: from mail.mistrasgroup.com ([67.135.25.114]) by mail2.nrc.gov with
SMTP; 26 Aug 2010 07:46:33 -0400

Received: (qmail 5547 invoked from network); 26 Aug 2010 11:46:32 -0000

Received: from (HELO mistrasexchange.mistras.local) () by
mail.mistrasgroup.com with SMTP; 26 Aug 2010 11:46:32 -0000

From: Daryl Istre <Daryl.Istre@mistrasgroup.com>

To: "rulemaking.comments@nrc.gov" <rulemaking.comments@nrc.gov>

Date: Thu, 26 Aug 2010 07:44:39 -0400

Subject: Comments on Part 37 Rule Change

Thread-Topic: Comments on Part 37 Rule Change

Thread-Index: ActFFBCYm0EVVGYZSiamoms8eToieA==

Message-ID:

<8EDC94DC3DA18F4E84A8F78545FD12881D44F4BA65@mistrasexchange.mistras.local>

Accept-Language: en-US

Content-Language: en-US

X-MS-Has-Attach: yes

X-MS-TNEF-Correlator:

acceptlanguage: en-US

Content-Type: multipart/mixed;

boundary="_004_8EDC94DC3DA18F4E84A8F78545FD12881D44F4BA65mistrasexchan_"

MIME-Version: 1.0

Return-Path: Daryl.Istre@mistrasgroup.com