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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

August 26, 2010

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attn: Rulemakings and Adjudications staff

The following comments and questions are in regard to the proposed NRC rule for the "Physical Protection of Byproduct Material", RIN 3150-A112, Docket ID NRC-2008-0120.

Section B. Background Investigations and Access Authorization Program

The Reviewing Official

- Fingerprinting of the Reviewing Official should be done, but why send the FBI criminal background investigation results to the NRC for approval? If I understand the proposed rule correctly, the NRC will only have the FBI criminal background report available to make the T&R determination. The licensee on the other hand will in some cases know the nominee personally, have information about the individual that is obtained as a result of conducting the other elements that make up a background investigation, as well as the results of the FBI criminal background investigation in order to make a determination. Compliance can be verified by NRC or Agreement State inspectors during subsequent inspections of each licensee. For this reason, I support fingerprinting the Reviewing Official nominee, but I oppose sending the FBI background results to the NRC for approval. I believe the final determination of trustworthiness and reliability for the Reviewing Official should be made by the licensee, and verified by NRC or Agreement State inspectors.
- The other aspects of the background investigation that are presently in place are adequate to determine the trustworthiness and reliability of the Reviewing Official.

- Use the same criteria to determine trustworthiness and reliability of the Reviewing Official that is used for other individuals to determine eligibility for unescorted access to cat 1 and cat 2 radioactive material.
- Fingerprinting of the Reviewing Official does not put too large a burden on the licensee.

#### Personal History Disclosure

- A local criminal history review should not be necessary in light of the requirement of the FBI criminal history check, unless there are questions about any of the information that appears on the FBI report.
- Credit history checks should not be used for the determination of a person's trustworthiness and reliability. Easy credit has caused a number of people to make purchases that they could not afford and therefore hurt their credit score. They are not criminals, just not good managers of their finances. We do not need to assume that a person will commit an act of terrorism because they have a money management problem. What would be an acceptable credit score? 800? 500? Who will make that determination? These are just a few examples of why I do not believe that a person's credit history is a reliable tool to use for determining trustworthiness and reliability.
- Appropriate elements of a background investigation should include verification of legal citizenship, personal references, former employers, education, fingerprinting and FBI criminal background investigation, and personal knowledge if applicable. These are sufficient elements to be used to determine trustworthiness and reliability.
- The elements are not too subjective. There is a good mixture of subjectivity and objectivity for the Reviewing Official to use in making a determination of a person's trustworthiness and reliability.
- I would estimate that approximately 2 hours of time is spent for each person to conduct a background investigation and determine trustworthiness and reliability.

#### Section C. Physical Protection During Use

##### LLEA notification requirements for work at a temporary job site

- There is no benefit in contacting LLEA of proposed work at temporary job sites.

Advanced notification is not practical. In most cases it is not possible to notify LLEA three days in advance of work to be conducted at a temporary job site because radiography companies are typically contacted by their customers on the same day that they are needed or possibly on the previous day. Also, in most instances it is not possible to determine if the duration of the job would exceed seven consecutive days or not. Too many variables are involved that make determining the duration of the job unpredictable. For example, the amount of time spent at a temporary job site during any day can vary greatly even if the crew is present at a particular job site for more than seven consecutive days. The same radiography crew may work at two or three different temporary job sites on the same day, and each site located in a different LLEA jurisdiction, or a crew that is working on a cross country pipeline may start work in one LLEA jurisdiction and during the course of the day cross into a different jurisdiction and not be aware of it. Confusion is also very likely to occur if LLEA is responding to an event and the actual location of the radioactive material is different from the location that was given during the initial notification. It is also unclear as to what location should be reported, the actual work site or the site where the radioactive material will be temporarily stored after work hours. Also, if the LLEA were required to be notified regarding work to be performed at a temporary job site, it is only reasonable to assume that LLEA would necessarily need to be notified when the work was finished at the temporary job site. Due to the reasons that I have given above, I do not believe that it is realistic or beneficial to expect LLEA to be contacted for any work that is conducted at temporary job sites.

- Licensees should not have to notify LLEA for work at temporary job sites. Since it is not possible to accurately determine if the work can be completed within seven consecutive days it would be necessary to contact the LLEA for every job to be conducted at temporary job sites in order to insure compliance.
- There is not an appropriate threshold for consecutive days worked at temporary job sites. The threshold for the number of consecutive days at the same temporary job site location could be set at two consecutive days or thirty consecutive days and it would not matter. For example, if seven consecutive days were chosen as the threshold for requiring LLEA notification, and a radiography crew was assigned to a project that is scheduled to work Monday through Saturday. The licensee would not be required to notify the LLEA of the temporary job site location because the threshold had not been exceeded even though radioactive material was present at the location six days a week and possibly for months. There again since it is not possible to determine the exact

duration of each job it would be necessary for the licensee to contact LLEA for all work that is to be conducted at temporary job sites.

- In most cases it would be possible to contact the appropriate LLEA for a given jurisdiction and give them an initial location of the radioactive material, but not necessarily in a timely manner, or where the material could be located later during the same day.
- For the reasons listed previously, I do not believe that it is reasonable or beneficial for LLEAs to be notified in advance regarding the location of RAM being used at temporary job sites.

#### Section D. Transportation Security

##### Verification of transferees' RAM License and address

- Regarding verification of transferees RAM license for cat 2 material. In most cases the transferor and the transferee have been in a business relationship for a number of years. I would suggest that each maintain a current copy of the others' RAM license. The licenses' should be obtained during the first transaction between licensees, and thereafter each time the license is amended or modified, and prior to the expiration date listed on the respective license. A current copy (latest amendment) of the license can be maintained on file for review and verification by NRC or Agreement State inspectors.
- Most industrial radiography companies only have two or three suppliers of whom they receive or ship RAM. To what extent should a licensee go in order to verify the address of the transferee? Can the address be confirmed by telephone or fax to the license issuing authority? How do they intend to verify the address? Once the address has been confirmed, is there any use in re-verification if the address does not change?

I hope that you find these comments and questions helpful and they will be taken into consideration as the proposed rule is being finalized.

Best Regards,

Lloyd Anderson / RSO - HI-Tech Testing Service, Inc.

## Rulemaking Comments

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**From:** Lloyd Anderson [lloyd@hitechtesting.com]  
**Sent:** Thursday, August 26, 2010 3:43 PM  
**To:** Rulemaking Comments  
**Subject:** Comments RIN 3150-A112, Docket ID NRC -2008-0120 Comments  
**Attachments:** Comments on Proposed NRC Rules Aug 2010.pdf

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