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NUCLEAR REGULATORY COMMISSION

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Guidance for 10 CFR Part 37, Physical
Protection of Byproduct Material

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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PUBLIC MEETING ON DRAFT
IMPLEMENTATION GUIDANCE FOR
10 CFR PART 37, PHYSICAL
PROTECTION OF BYPRODUCT MATERIAL

+ + + + +
Wednesday, September 1, 2010

+ + + + +
Phoenix Central Ballroom
Doubletree Hotel
6505 North IH-35
Austin, Texas
8:30 a.m.

BEFORE: BILL MAIER, Facilitator

NRC STAFF:

- KATHRYN (KATIE) DERR
- PAUL GOLDBERG
- SARENEE HAWKINS
- MERRI HORN
- CHARLES MILLER
- JOSEPHINE (JOSIE) PICCONE
- GARY PURDY

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P R O C E E D I N G S

1
2 MR. MAIER: Good morning. Good morning.
3 Welcome to the Nuclear Regulatory Commission's public
4 meeting that is soliciting your comments on the
5 proposed implementation guidance, 200-plus page
6 document here, for the proposed new 10 CFR Part 37
7 rule for physical protection of byproduct material.

8 The intended information flow today is to
9 come this way.

10 Can everybody see me okay? I can't see
11 everybody too much. It's a big room, so I say don't
12 do it now, just like in church we have all these empty
13 pews up in the front, so maybe after the first break
14 if folks who are in the back could come forward, you
15 know, that would make it a lot more intimate setting
16 for getting these comments passed on.

17 The information flow is supposed to come
18 this way. The NRC is in listening mode. They want to
19 hear what you have to say about this implementation
20 guidance as it's been published, although there will
21 be some presentations by the NRC participants on the
22 stage.

23 My name is Bill Maier. I work at the
24 NRC's Region 4 office in Arlington, Texas. It's my
25 pleasure to be the facilitator for this meeting. If

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1 you picked up an agenda, you know that the meeting is
2 scheduled to go a full work day, until five o'clock.
3 It'll be punctuated by an hour and 15 minute or so
4 lunch, and it's currently scheduled to have only a
5 single 15 minute break in the morning and one in the
6 afternoon. That must say something about how many
7 comments the folks are expecting to get from you
8 folks.

9 Let me go over a few logistic and safety
10 issues, and then I'll introduce the first NRC
11 official. Since the number of scheduled breaks is
12 limited, restrooms are an important consideration.
13 Hopefully you saw the restrooms on the way in here;
14 they're over to my right on the hallway coming down
15 towards here.

16 If there is a need to evacuate the
17 building, the folks with the hotel ask that everybody
18 go back towards the front desk, make a right, go out
19 the front door, and congregate on the lawn out in the
20 front. This door here only goes into a courtyard, and
21 I don't know if it will get you out of those gates. I
22 don't know what the status is of those gates. But
23 they ask that we go out the front door and meet out on
24 the front lawn.

25 We do have two members of the Austin

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1 Police Department who are outside the room in the
2 event that we need them for any sort of emergencies.
3 And I'll ask for a show of hands, how many people here
4 are certified in CPR? Okay. Everybody who thinks you
5 may need CPR, look around and see who it is that you
6 want to do chest compressions on you if you need it.

7 Today's meeting will be transcribed.
8 It'll be actually recorded, and Ms. Leslie Berridge is
9 going to tape and get the comments -- or get the
10 proceedings from this meeting put, you know, into
11 writing and available for review. That requires that
12 folks speak clearly; only one person speak at a time.

13 Another thing I'd like to bring your
14 attention to is the NRC's public feedback form, and
15 that is a form that you should have picked up on the
16 way in. It is a form with spaces for filling out your
17 comments about the way this meeting was conducted.

18 We strongly urge -- we beg you to pick up
19 one of these forms and provide us with your comments
20 on the meeting, what you thought went well, what you
21 thought did not go so well, and your suggestions as to
22 how the NRC can improve our presentation and format
23 for the future.

24 This is particularly true today since we
25 are scheduling a second meeting just like this one on

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1 September 20 back at NRC headquarters in Rockville,
2 Maryland. Please take a few minutes at the end of the
3 meeting to fill out your comments, and hand the form
4 to me or to any of the NRC representatives who will be
5 presenting shortly.

6 You may also, if you notice, take the form
7 home if you don't have time to fill out comments
8 today. It is pre-addressed and pre-stamped so that
9 you can just put it in the mail and it will get to who
10 needs to see your comments.

11 On your way in you should have been asked
12 whether you wanted to pre-register to provide comments
13 in any of the sessions that are scheduled for this.
14 We urge you to, if you do have a desire to speak, put
15 your name down so that we can adequately coordinate
16 the scheduling of how people are going to present
17 those comments at each of those sessions.

18 If you think you might have some comments
19 later on, but you didn't develop them before the
20 meeting and didn't pre-register, there will be
21 additional opportunities to provide those to the NRC
22 today. But if you do have some prepared remarks,
23 please get your name on the appropriate list that is
24 being kept outside at the earliest opportunity so we
25 may know how many speakers are expecting to speak

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1 during each session.

2 I'll be back a little later to go over
3 some ground rules for the submission of comments, oral
4 comments, but now I'd like to introduce the first
5 speaker on the agenda and provide the real welcome and
6 introduction of the process.

7 Dr. Josephine Piccone is the Director of
8 the Division of Inter-Governmental Liaison and Rule
9 Making in the NRC's Office of Federal and State
10 Materials and Environmental Management Programs. Here
11 NRC career has spanned 27 years, and she has served
12 the NRC in several senior management positions,
13 including recently as the Chief of Staff and Executive
14 Assistant to former Commissioner Peter Lyons.

15 Josie?

16 DR. PICCONE: Thanks, Bill.

17 Well, let me add my welcome to you as
18 well, and good morning, on behalf of the Nuclear
19 Regulatory Commission. We really appreciate your
20 being here today. As Bill mentioned, this is the
21 first of two public meetings that we will have on the
22 guidance document. The second is later this month in
23 Rockville, Maryland on September 20.

24 I want to begin with just a few comments
25 on rule making. Writing of regulations is one of the

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1 most important things that NRC does. The regulations
2 are important because they are the vehicle for
3 implementing national policy, and for achieving NRC's
4 goals of maintaining public health and safety and
5 common defense and security.

6 The guidance documents are also important
7 tools in this effort, and from the licensee
8 standpoint, sometimes they are the more important of
9 the two documents, and that's because the guidance
10 document typically details an acceptable way of
11 implementing the rule. What is acceptable to the NRC
12 in implementing the rule.

13 And one of the most important parts of
14 guidance development is what we are doing here today,
15 and that is the opportunity for public stakeholder
16 involvement in the process. Public participation is
17 the cornerstone of NRC's efforts to make the business
18 of the Agency open and transparent.

19 As I already mentioned, the guidance
20 document provides information on what the NRC will
21 accept or deem acceptable as methods for implementing
22 the proposed Part 37 rule. The Part 37 rule making
23 would place the security requirements for the use of
24 Category 1 and Category 2 quantities of byproduct
25 material in the regulations.

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1 In developing the proposed rule, the staff
2 considered the various security orders, lessons
3 learned from implementing those orders,
4 recommendations from the independent external review
5 panel, and the materials program working group, as
6 well as comments that we received from stakeholders on
7 the preliminary rule language.

8 The independent review, external review
9 panel was chartered to look into three major areas.
10 The first, they were to identify vulnerabilities in
11 NRC's materials licensing program with respect to
12 import, export, specific and general licenses. They
13 also were to validate the ongoing byproduct materials
14 security efforts and to evaluate the apparent good
15 faith presumption that pervades NRC's licensing
16 process.

17 This effort was followed by the materials
18 program working group that conducted a comprehensive
19 evaluation of the materials program to identify both
20 short term and long term strategies to mitigate
21 security vulnerabilities.

22 In addition, a petition for rule making
23 was filed by the state of Washington that requested
24 the use of GPS tracking on vehicles that transport
25 portable radioactive devices. This petition was also

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1 considered in the development of the proposed rule.
2 The key aspects of the proposed rule are the access
3 authorization program, security during use, and
4 transportation security.

5 As Bill mentioned, the proposed rule was
6 published on June 15, and it is open for public
7 comments until October 13, and I encourage you to
8 provide comments to that *Federal Register* notice as
9 well, comments on the proposed rule.

10 I hope that you will actively participate
11 in our process today by providing comments on the
12 draft guidance. We want your perspectives and input.

13 Your comments will enhance the guidance and make the
14 document more useful and informative for your use.
15 The rule, together with the guidance document,
16 provides an important tool for maintaining the
17 security of our nation.

18 So, once again, I welcome you here. We
19 value your input. I encourage you to speak candidly
20 throughout the day, and can ensure you that your
21 comments will be heard.

22 I now would like to turn the program over
23 to Ms. Merri Horn, who is the project manager for both
24 the rule and the guidance document. Ms. Horn will
25 start with a brief overview of the Part 37 rule.

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1 And I hope we have a very productive day.
2 All of us will be available throughout the day, so
3 don't hesitate to touch base with us during the breaks
4 and in the hall as well. So thanks again for your
5 participation, and I'm hoping for a very good
6 interactive dialogue this morning.

7 MS. HORN: Well, good morning everyone. I
8 too want to thank everyone for taking time out of what
9 I know is very busy schedules, particularly this time
10 of year, to attend our meeting today.

11 The purpose of today's meeting, as we've
12 said before, is to obtain your input on the Part 37
13 implementation guidance document. Before we get to
14 the guidance though, I actually would like to take
15 about 15 minutes and quickly go over some of the key
16 aspects of the proposed rule. We weren't originally
17 going to do that, so I apologize. We don't have the
18 overhead, but we do have the slides, that was one of
19 the handouts, so you can follow me that way.

20 The primary objective of the rule making
21 is to provide reasonable assurance of preventing a
22 theft or diversion of Category 1 or Category 2
23 quantities of radioactive material. Very basic
24 concept. The proposed rule would create a new Part
25 37. We thought that this was better than to

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1 intersperse the requirements along with the safety
2 requirements in Parts 30, 31, 32, 33, et cetera. So
3 we thought this would be a lot easier for everyone to
4 use, both the licensee and the regulator, to be
5 honest.

6 The rule also contains security
7 requirements for transportation of small quantities of
8 irradiated fuel; that probably doesn't impact the
9 majority of you, but it also includes that.

10 The rule also includes a number of
11 conforming changes in other places. We call those
12 tie-downs, so in Part 31, 32, et cetera, you would see
13 a reference that says you also have to meet the
14 requirements in Part 37. And agreement states, I
15 suspect most of -- a large number of you are probably
16 from Texas, which is an agreement state and regulates
17 your program, certain compatible categories for
18 various aspects of the rule, but they will be adopting
19 this rule after the rule becomes effective.

20 As Josie mentioned, the major provisions
21 of the rule are contained in three subparts. Subpart
22 B contains requirements for the access authorization
23 program, Subpart C contains requirements for security
24 during use, and Subpart D contains the transportation
25 security provisions. The other subparts are just kind

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1 of the general things that you have, enforcement, just
2 definitions, a lot of general things that you have to
3 have.

4 And I plan to briefly just go over the key
5 provisions in each subpart. Starting with the access
6 authorization program, it requires that anyone with
7 unescorted access to Category 1 or Category 2
8 quantities of radioactive material undergo a
9 background investigation. That background
10 investigation includes fingerprinting and a criminal
11 history records check, along with a number of other
12 elements. The background investigation must be
13 complete before an individual may have unescorted
14 access to the material.

15 We have actually provided relief for
16 several categories of individuals so they don't have
17 to go through the fingerprinting requirement. If you
18 look at 37, I believe it's 29, there's a long list of
19 different categories of individuals. So if you have a
20 security clearance from something else, you wouldn't
21 have to go in again. If you have a TWIC card, you
22 wouldn't have to undergo another investigation. You
23 would have to provide the documentation that, yes, you
24 actually do have that and have been approved, but you
25 wouldn't necessarily have to go through it again.

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1 The rule also includes a grandfathering
2 provision for individuals that have undergone a
3 background investigation that included the
4 fingerprinting. So if under the increased control
5 orders, or states legally binding requirements that
6 issue -- I think a lot of states did it as license
7 conditions, if you've undergone that, we're
8 grandfathering you, you don't have to undergo it
9 again.

10 We are requiring a re-investigation every
11 10 years. That is something that's new that was not
12 in the original orders. There's also provisions, as
13 was allowed in the orders, to transfer information
14 between licensees. So a service provider, if you have
15 conducted background investigations for your employees
16 and it goes to a customer and you -- that customer
17 would not have to do another background investigation.

18 They can -- the service provider could provide
19 certification that those individuals have undergone
20 it, and that would be acceptable. You just need to
21 document.

22 Something that is a little different from
23 what was in the orders is the requirement for a
24 reviewing official. It was in some of the orders, but
25 not in increased control orders. And that reviewing

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1 official must -- is the one that must make the
2 determinations on whether an individual is granted
3 access to the material or not.

4 This determination, while it has to be
5 made by the reviewing official, your HR department can
6 still do the background investigation elements. So
7 they can still do the reference checks, they can still
8 gather all that information, but the RO has to make
9 that final decision.

10 And one difference is that the RO does
11 have to be -- undergo the same background
12 investigation, they need to be fingerprinted, they
13 need to have the background checks, so that if it's an
14 NRC licensee, the NRC would approve the reviewing
15 official, if it was an agreement state, the agreement
16 state regulatory authority would approve them.

17 So that is something that is different.
18 And that information is based on all the information
19 obtained as part of the background investigation.
20 There isn't -- a bad credit history doesn't
21 necessarily disqualify you. You take the whole. You
22 look at all the information that you gathered and make
23 an informed decision based on that.

24 An I'll note there's a couple of areas
25 related to this where we are specifically inviting

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1 public comment. One of them is the requirement to
2 fingerprint the reviewing official. We really do want
3 your input on that. Comments that explain why you
4 think something won't work, or why it would be hard to
5 implement is much better than just saying, we're
6 opposed, we don't like it.

7 Licensees also would be required to
8 provide an employee the right to clarify, to correct
9 the information obtained during the background
10 investigation before a final determination, if you
11 were going to deny them access.

12 You're required to have procedures to
13 implement the access program, to protect the
14 information that you obtain so you'd just -- because a
15 lot of this would be privacy information, you don't
16 want to give it to just anyone. And you'd also have
17 to keep those records and conduct an annual program
18 review.

19 Another area that we're wanting specific
20 input on is the elements of the background
21 investigation. I've mentioned credit history; that's
22 something that's new. That was not included in the
23 increased control orders. So if you have concerns,
24 and I understand -- we've already some comments that
25 people do have concerns on that. Submit those

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1 comments, explain why you have concerns with that.
2 Your comments actually can make a difference in where
3 we come out on some of these issues.

4 There will -- I can almost guarantee there
5 will be a requirement to do a background
6 investigation. I don't see us doing away with that.
7 But what those elements of the background
8 investigation are going to be, you could influence
9 that with your comments. So if certain elements
10 really do concern you, send in your comments to us,
11 explain why.

12 And as I noted, just don't say, We don't
13 like it, we're opposed. Really explain why it would
14 be a problem, because that's going to carry a lot more
15 weight. It helps us understand what some of your
16 issues are.

17 Moving on security requirements during
18 use. A key provision is the development of a security
19 plan. That's sort of new. You already were required
20 to have a written program, we now call it saying you
21 actually have a security plan. So it's probably not a
22 big difference.

23 The security plan would contain the
24 licensee's security strategy and a description of the
25 measures used to implement the requirements. So

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1 basically it would say what those measures are that
2 you're using at your facility to protect the
3 information, or the material. You have to have
4 procedures. That's actually a new requirement. You
5 have to have the procedures for implementing these
6 different things. And you also have to conduct
7 training for the individuals that have unescorted
8 access to the material.

9 Licensees would be required to coordinate
10 with local law enforcement agencies that respond to
11 the threats. That's not new, that was in the orders.

12 We've actually relaxed that slightly because we're
13 not requiring you to have a prearranged plan. We
14 encourage it and we hope that most of the LLEA
15 agencies will be willing to enter into that type of
16 arrangement, but if they're not documented, and that's
17 okay, we didn't feel that we could impose that sort of
18 requirement because we don't regulate the LLEAs.

19 A provision that probably has a lot of
20 interest to those attending today is a new provision
21 for licensees that conduct work at temporary job
22 sites. There's a new requirement to notify the LLEA
23 near the job site for any activity for a job site
24 where you'd be longer than seven days.

25 We've already gotten a lot of comment on

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1 that. We understand some of your concerns. We'll
2 take a look at it. But, again, it's a notification
3 requirement, it's not a full coordination. It's for a
4 site that you actually are going to be at for at least
5 a week or longer. Maybe a week isn't the right time
6 frame, maybe it should be 30 days, maybe it should be
7 45 days, but at some point, if you're there long
8 enough, it becomes a concern and you need to maybe do
9 a little extra coordination.

10 We are really interested in your views on
11 this aspect, so we have -- like I said, we're
12 specifically inviting your input. A site where
13 you're -- maybe you're doing some work along a
14 pipeline or something, and if the pipeline goes on for
15 hundreds of miles, that would not be considered one
16 temporary job site, it would be several. So maybe it
17 wouldn't apply in that case. But, again, we're
18 specifically requesting comment, provide detailed
19 comments that explain why you're concerned.

20 Licensees would be requested to establish
21 security zones around the material to monitor and
22 detect unauthorized entry or removal of the material.

23 Alarms and surveillance are examples of methods that
24 can be used. Licensees would be required to respond
25 to actual or attempted theft, sabotage, or diversion

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1 of the material, assess the situation, take
2 appropriate action. That might include notifying the
3 LLEA, it might include notifying your regulatory
4 agency.

5 We also have a requirement to maintain the
6 security of the related -- the security related
7 equipment. So basically you have to conduct
8 maintenance, you have to test the equipment to make
9 sure that it's still operational.

10 Another provision that may be of interest
11 here is for mobile devices in a vehicle or trailer,
12 you have to have two independent controls, which is
13 not new, and you also need to use a method to
14 secure -- a method to disable the vehicle or trailer,
15 also not new. But we do understand there's a
16 concern, particularly maybe in the oil industry where
17 disabling your vehicle is not a good idea because you
18 may need to evacuate quickly.

19 So we're considering an exception to
20 include in the rule. We don't know if it's something
21 that should be in the rule, should be on a case-by-
22 case basis via the licensing aspect. Is it something
23 that goes in the rules, something that goes in the
24 guidance, should it just be oil industry, should it be
25 a little broader.

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1 So, again, we're inviting you to provide
2 input on that. I think that your field experience is
3 particularly important in this area, because we really
4 don't know the conditions out in the field
5 necessarily. It's been a while since most of us have
6 worked out in the industry, so, you know, your
7 experience is actually good information for us, so
8 tell us what you think in those aspects. And then
9 finally, again, we require an annual program review in
10 this area.

11 The transportation security program would
12 include verification of license authorization when
13 transferring Cat 1 or Cat 2 quantities of radioactive
14 material, and this would now apply to all licensees
15 transferring material and not just the manufacturer
16 and distributor licensees. So it's not a new
17 provision, but it's a new provision to some of you.

18 Licensees would be required to conduct
19 preplanning, coordination activities with the
20 receiving licensee, and for Category 1 shipments, with
21 state officials. A new provision, I believe, is to
22 actually establish a no later than arrival time for
23 the shipment, so that if your shipment hasn't arrived
24 by this date, you would initiate an investigation.

25 And it's up between the two of you to

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1 decide what that appropriate time is. If you get your
2 shipment by Fed Ex, they usually come at 10:00, maybe
3 at two o'clock is the no later than arrival time, or
4 maybe four o'clock is, but you set that between the
5 two of you.

6 For Category 1 shipments advance
7 notifications to the states and NRC would be required.

8 That's not new. Licensees would be required to
9 notify the LLEA and NRC if a Category 1 shipment is
10 missing. For Category 2 shipments you would only need
11 to notify the NRC. If you are an agreement state
12 licensee, you would notify your state agency and not
13 the NRC.

14 For the basic security measures for the
15 actual shipment, for Category 1 shipments you need a
16 movement control center with the capability to
17 actively monitor shipments, as well as telemetric
18 position monitoring. That could be GPS, it could be
19 something else.

20 The licensee would be required to provide
21 both primary and backup communications capability from
22 the transport vehicle to request emergency assistance.

23 Procedures would be needed, then you'd need training
24 on those procedures.

25 For shipments of Category 2 quantities,

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1 licensees would be required to maintain constant
2 control and surveillance during transit, have
3 communication capabilities to some assistance for
4 shipments. For using a carrier it must utilize a
5 package tracking system that requires signature before
6 release of the package. So really no difference
7 there.

8 We're specifically requesting comment in
9 eight areas. You're free to comment on any aspect of
10 the rule, and we hope that you do, but we're
11 specifically inviting input in these eight areas.
12 Several of them I mentioned during the presentation,
13 some of them I haven't. But stakeholder input in
14 these areas will assist the NRC in making that final
15 decision.

16 These areas -- it's a pretty clear
17 indication that we have not -- maybe we're not in
18 agreement, we haven't decided exactly what that should
19 look like, so your input is actually very, very
20 important, and I do encourage you to provide that
21 input.

22 As Josie mentioned, the proposed rule was
23 published in the *Federal Register* on June 15. The
24 comment period ends on October 13. I encourage you to
25 submit comments on the rule. It is important. Again,

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1 one more time I'll note that a comment that explains
2 why a provision would be difficult to implement, or is
3 unnecessary, is more useful and it's more -- it's
4 likely to have more impact than a comment that merely
5 states the commenter is opposed to the provision. So
6 keep that in mind, please.

7 There is a section in the first part of
8 the statement of considerations that gives you tips
9 for when you're submitting your comments. Take a look
10 at those, because if you look at some of that, it
11 encourages you to provide that type of information,
12 and that is helpful to us.

13 Now obviously the purpose of today's
14 meeting is to obtain your input on the draft
15 implementation guidance. This meeting is being
16 transcribed to make sure that we capture your
17 comments. There will be a second public meeting, as
18 Bill mentioned, on September 20 in Rockville.

19 This meeting is being set up as what is
20 called a go to or virtual meeting. That means that
21 you can participate without actually being there. You
22 can call in so you could hear, and then you can also
23 participate online and you can actually submit
24 comments that way. There's information on our website
25 that gives a little more information how to sign up

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1 for that.

2 On the back of the agenda, if you'll note,
3 I think Bill mentioned, there are instructions for
4 submitting -- how to submit a public comment. There
5 are two things there. There's a section for the
6 guidance, there's a section for the actual rule. So
7 it's a little different, they have different docket
8 numbers, so that's important to us. It gets into the
9 appropriate docket.

10 If you have written comments that you
11 would like to submit to us today, you can provide them
12 to any NRC staffer. We will certainly accept them.
13 We'll take them back and make sure that they get
14 docketed and placed into the record. Then obviously
15 the meeting's being transcribed. This transcript will
16 be put into the docket for the guidance. Not for the
17 rule, but for the guidance.

18 Moving on to purpose of today's meeting.
19 Everyone always says the devil is in the details. The
20 guidance document, and it is large, it's over 200
21 pages long, it's intended to provide those types of
22 details.

23 For this document we use a slightly
24 different format than what we've used in the past.
25 We've used a Q&A, we had a lot of Qs&As that were out

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1 there for the order implementation, and so we thought
2 that you already kind of familiar with that format, so
3 that was what we used. If you think a better format
4 would be -- would work, let us know. I mean we're
5 flexible here, we could actually do it in a slightly
6 different format.

7 But the guidance is provided on provisions
8 of the rule, except for the definitions. There may be
9 questions about the definition within the provision of
10 the rule, but not in the definition section. If you
11 actually look at the last page of the handout --
12 actually I don't have it up here, I'm sorry -- there's
13 actually one page from the guidance document that kind
14 of shows how it's set up.

15 And at the top of the page, we have a box
16 that contains the title of a particular rule section.

17 The second box on the page contains the actual rule
18 provision, and then the section directly under the
19 rule text box contains a brief explanation of the rule
20 provision, and then under that is all the Qs&As that
21 apply specifically to that rule provision.

22 Now I personally am interested, like I
23 said, in feedback on whether you like this format, or
24 whether you would like a different format to be used.

25 The goal is to make this guidance document useable,

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1 helpful, easy to find the information, and something
2 that will actually be used by the licensees to assist
3 with the implementation of the rule.

4 You don't have to make that a comment when
5 you give your comments here, if you don't want to, but
6 catch me at a break and let me know, because I am very
7 curious of whether this is something -- that you like
8 this format, or you would like to see something else.

9 We are here today primarily in a listening
10 mode to get your input and to gain understanding of
11 any concerns that you may have with the guidance. We
12 will try to answer some of your questions, but
13 basically we are here to listen.

14 We recognize that the guidance and the
15 rule are intertwined, but today's meeting is on the
16 guidance. Comments on the guidance can influence the
17 rule. It probably would not result in the removal of
18 a provision, but it can result in a provision being
19 modified so that it's maybe a little more
20 implementable, maybe a little clearer.

21 In addition to those whom you've already
22 met today, we have several other people from the NRC
23 and from the agreement states that I would like to
24 introduce. As I introduce them, if you would raise
25 your hand or stand so that you can see who they are,

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1 and like Josie said, catch us at a break, you know,
2 little side bar conversations can be very useful.

3 From the NRC we have Gary Purdy. He's
4 from our Office of Nuclear Security and Incident
5 Response. We have Paul Goldberg. He is from the
6 FSNE, as I am. And we have Sarenee Hawkins somewhere
7 in the very back of the room.

8 From the state of Arkansas, we have Jared
9 Thompson. He was on one of our working groups. We
10 have Steve James from the State of Ohio, so we do have
11 state people that work on our working groups. They
12 were both on the working group for the rule and for
13 the guidance, as were the rest of us. So we will hear
14 your message.

15 Also from the NRC we have Andrew Mauer.
16 We have Katie Derr, who I think a lot of you met when
17 you signed in; she was at the registration desk.

18 Today's meeting is actually being divided
19 into four sessions: a session each on the main
20 topics, the Subpart B, Subpart C, Subpart D, and then
21 at the end of the day we'll have a session that's open
22 for anything else, or for any topics -- or any
23 questions that maybe you didn't get to in the earlier
24 sessions.

25 Things to consider as you make your

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1 comments, and remember this is on the guidance. We're
2 collecting information on the guidance. Are there
3 areas in the guidance that are too specific?
4 Sometimes that can happen so that you don't feel like
5 you have enough flexibility. Are there areas where
6 clarification is needed? Well, maybe it's not -- it
7 still isn't real clear exactly what we mean.

8 Is there -- does the guidance adequately
9 address a topic? Do you feel that some areas we need
10 more information? And I'll be honest, I took a fresh
11 look at the guidance just recently, and I've
12 identified some areas where I think it would be
13 helpful if we had a little more information that would
14 be more helpful to you all. Are there areas where you
15 think guidance is wrong, or just simply not
16 implementable as written? That type of feedback is
17 very helpful to us.

18 The first session is going to be on the
19 access authorization program, and I'll turn the
20 meeting back to Bill so he can go over the basic
21 ground rules and move on to the purpose of our meeting
22 today, and thank you very much.

23 MR. MAIER: Thank you, Merri.

24 I was -- there were a couple of things
25 that I forgot to mention in my opening remarks, and I

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1 was reminded of them when the first cell phone went
2 off. So I'll ask you, as I should have asked before,
3 please silence any cell phones or pagers because it
4 would have an impact on the ability for Leslie to be
5 able to hear comments.

6 And another thing, at each of the tables
7 there are a bunch of these green three by five cards.

8 Since we've only gotten one registered speaker for
9 these sessions, we also wanted to make the option
10 available to you, if you didn't want to get up and get
11 on to the microphone and wanted to basically provide
12 comments, or maybe a question for clarification of the
13 guidance, you can fill out of one of these cards.

14 Try to make it as legible as possible
15 because we'll have to read them and try to respond
16 appropriately. And Ms. Sarenee Hawkins and I will
17 come around and we'll get those if you just like hold
18 them up.

19 Okay. For the ground rules, I'd like to
20 go back to the purpose of the meeting, and that is to
21 get as many substantive comments as we can from as
22 many of you in the audience who wish to make them.
23 I'm assuming that you wouldn't be here if you didn't
24 want to tell the NRC something about the
25 implementation guidance for this rule.

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1 For that reason I'll ask you to keep the
2 following points in mind as you develop your comments
3 and deliver them. The intended information flow, as I
4 mentioned earlier, is this way, so it would be best
5 that any questions for the NRC participants or
6 representatives be asked for clarification of certain
7 elements of the rule and the guidance, but not to
8 serve as a basic lecture on the details of these.
9 Merri has basically completed all the intended summary
10 that we want to give. We want to get as much
11 information from you as we can.

12 Also, today's meeting is not intended to
13 be a debate. If there are two speakers that have
14 differences that they want to air between them, they
15 should discuss those differences off line after
16 they've gotten their basic information to the NRC.
17 The speaker at the moment has the sole control of the
18 floor.

19 Today we're focusing on the guidance
20 document, as Merri mentioned. However, the guidance
21 document and the basic rule are so obviously
22 intertwined, such that comments on one will beg for
23 comments on the other. If you provide oral comments
24 today on the basic rule, we'll listen to those
25 comments, but they won't be captured on the docket, as

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1 Merri told me earlier, so that if you want to make
2 sure that other folks know what your comment was on
3 the rule, it would be best to use those methods that
4 are on the back of the sheet that has the agenda.

5 And once again, I'd like to remind
6 everyone that Leslie Berridge is taping the session,
7 and she is trying to achieve that difficult task so
8 that she can accurately and completely capture all
9 your comments. And there are ways that you can help
10 her. The first one is only one person should speak at
11 any one time.

12 Second, please stand up if you're making a
13 comment from the floor. We only have one registered
14 speaker, but I'll come around with the hand mike to
15 listen to any comments that people want to make after
16 raising their hand.

17 Please use the floor mike if you can, if
18 you're registered, and speak into it so that your
19 voice is properly amplified. Don't hold it out here,
20 don't hold it like in here, and make sure that
21 everybody can hear you clearly.

22 And I urge folks to use the sign-up
23 sheets. I'll still continue to urge use of the sign-
24 up sheets for the other three sessions -- well,
25 actually the other two sessions because the third

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1 session really is kind of a catch-all. But if you do
2 have comments that you want to get in before the end
3 of the day, use that fourth session. And I'll
4 retrieve those sign-in sheets before each session and
5 use them.

6 I was originally expecting a lot more
7 folks, so I reserved a table there for speakers. But
8 since we only have one registered speaker, I don't
9 think we'll need to worry about that.

10 And as far as time limits go, with only
11 one registered speaker for a 90-minute session, that
12 gives that person an awful long time to speak. I was
13 originally hoping that folks would limit their
14 comments to five minutes in order to get other people
15 to speak.

16 But if we do have a lot of folks that do
17 want to make comments without pre-registering, I would
18 like to try to limit comments to what is substantive
19 rather than a long discussion of several different
20 things. And try to keep the comments focused on the
21 session that you're making the comments in.

22 We'll be here until five o'clock, no
23 matter how many or how few speakers use the
24 microphone. And I mentioned the three by five cards,
25 and Sarenee and I will be checking on those.

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1 Okay. That's all I really wanted to talk
2 about as far as ground rules. If there are no
3 questions --

4 MS. HORN: Actually, Bill, I have one
5 thing first.

6 We actually -- we didn't bring a lot of
7 copies of the guidance document, but we do have a few
8 copies here if you want to take a look at it and use
9 it during the meeting. So I just wanted to point out.

10 We can scatter them around through the tables,
11 however you would like to do it. You can come up and
12 you can grab one at this front table.

13 MR. MAIER: And, John, you had a question?

14 MR. WHITE: I don't need the microphone.

15 (General laughter.)

16 MR. WHITE: Where do we register to speak?

17 I didn't see that on the way in?

18 MR. MAIER: I hope that they mentioned it
19 to you on the way when you registered, but there are
20 sheets out in the back. John will -- I've already got
21 the sheet for the first session, so I've got you on my
22 list.

23 The first person who did register to
24 speak, Ms. Kate Roughan.

25 And, Kate, if you'll come up to the floor

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1 mike and make your comments. Did I pronounce that
2 correctly?

3 MS. ROUGHAN: No, it's Kate Roughan.

4 MR. MAIER: Roughan. Okay. Sorry.

5 MS. ROUGHAN: From QSA Global. I didn't
6 realize I'd be the only registered speaker. I know a
7 lot of people have a lot to say, so I'm not going to
8 take up 90 minutes here, I'm just going to go through
9 some general comments.

10 I would like to take a couple of minutes
11 just to go through some general comments on the
12 proposed Part 37, the implementation guidance. We
13 appreciate the opportunity to comment, especially
14 since when the orders came out there was no
15 opportunity for people to comment on what the impact
16 was and whether or not they could implement.

17 Now that it's gone to proposed rule
18 making, we can get our comments in and hopefully they
19 will considered, because there is -- again, when the
20 orders came out we had to implement and didn't have a
21 chance to rebut the effectiveness of those orders, or
22 if we could even implement them.

23 One of the key things we've noticed in the
24 proposed Part 37 kind of across the industry is that
25 the -- it goes over and above what's in the orders.

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1 The orders themselves seem to work fairly effectively
2 at this point. People argue whether or not we had to
3 go there, but at this point people have systems in
4 place, have implemented, and it's working. We
5 don't -- I guess I have not seen what's not working
6 under the current system. That's just a general
7 comment to consider.

8 Another comment to consider before I get
9 into the specific access authorization, is in the
10 regulatory analysis there's a cost estimate in terms
11 of implementing the proposed Part 37 as is, and the
12 cost estimates go from 400 million to just under a
13 billion dollars over 20 years, and yet the NRC has no
14 quantitative benefits it can point to for that cost.

15 So right now it seems to be more
16 qualitative, good feeling type of thing, if we
17 implement everything in the proposed Part 37. So I
18 did have people take a look at that. I mean that's
19 some significant implications to all the licensees in
20 this room.

21 The other consideration is that many
22 licensees tend to be fairly small, or they don't have
23 detailed infrastructure to do all these different
24 activities under the proposed rule, such as the
25 detailed background checks, the detailed credit

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1 checks, assessment of all of that. I think that
2 should be considered when you hear people's comments.

3 Licensees are doing what they can do to implement the
4 rule, but again, they don't have a lot of detailed
5 infrastructure behind them in a lot of cases.

6 My specific comments on access
7 authorization, the credit check does not seem to add
8 anything to the assessment. It's, in our opinion,
9 invasion of privacy, in some cases it may be illegal.

10 It also still leaves it to the licensee to make the
11 final judgment of whether or not that person is
12 trustworthy and reliable.

13 So even though you go through this credit
14 check, it's still down to whoever the reviewing
15 official is, who has not been trained in any of this
16 information, to make an assessment of what that credit
17 history means. So in a sense that credit history
18 check is basically meaningless.

19 There's also, in the implementation
20 guidance a recommendation to do a character and
21 reputation check on the person. Your prospective
22 employee has given you specific references, but then
23 you have to seek out people that the person has not
24 told you to go check on, and I don't see how that's
25 going to be -- how that can work for any licensee.

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1 They're going to have to track down people
2 that know this individual and try and provide a
3 character reference, and I just think that's
4 impossible and, you know, time -- a lot of time to be
5 consumed on that. And again, not effective.

6 In the end it's the licensee reviewing
7 official that makes the final assessment of the T&R.
8 It doesn't matter what the results of all those
9 different elements that we're checking against, and
10 there's no pass/fail criteria given. So again, it's
11 the judgment of the licensee in the end of whether or
12 not that person is trustworthy and reliable.

13 That's all I had. Hopefully there's other
14 people that are going to comment. As I said, I'm not
15 going to take up 90 minutes.

16 MR. MAIER: John, you wanted to speak?
17 Please state your name.

18 MR. WHITE: John White. I'm in a major
19 large research institution and medical institution
20 here in Texas. And I think the best thing for me to
21 say to start off with is what she said.

22 (General laughter.)

23 MR. WHITE: We have a saying down here in
24 Texas, if it ain't broke, don't fix it. We have had a
25 great deal of success implementing the orders as they

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1 have been written.

2 I want to address just one topic, and that
3 is the requirement to perform a credit check on an
4 individual. The guidance given is far too vague to be
5 implementable. Also, it requires an extremely
6 subjective decision which could incur significant
7 legal liability on the reviewing official as you have
8 written the record.

9 I think that if you want us -- if you
10 continue the request that we perform a credit check on
11 an individual, that we need to be given guidance as to
12 what you're looking for. Are you looking for someone
13 who doesn't have a great deal of debt? Well, good
14 luck with that. If you're looking for someone who
15 pays their bills on time; that's interesting.

16 The credit industry has this thing called,
17 as you know, a credit score, which there have been
18 significant lawsuits and litigation regarding whether
19 or not a credit score can be used for, for example,
20 issuing insurance to an individual. I mean a lot of
21 suits about that, and my guess is you'll need your own
22 private legal staff enhanced significantly to deal
23 with lawsuits from individuals who might be denied,
24 especially based in the current economy, based on a
25 credit check. Like I said, it'd be subjective.

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1 So that's the one area I want to focus on.

2 I had started to make comments regarding the person
3 who makes the review because you require in the rule
4 that the reviewing official access a great deal of
5 records. One of the problems in many institutions, as
6 you noted in one of your response to comments, is that
7 there sometimes can be a conflict about who has access
8 to personal information.

9 It's extremely difficult to do some of the
10 searches that you're requiring. For instance an
11 educational history. A significant number of
12 individuals at my institution are foreign nationals.
13 We have a number of fixed sources, fixed level 1
14 sources, and, yes, the decision whether or not to
15 grant access is subjective, but as you know, the
16 National Nuclear Security Administration is
17 implementing a well-funded program, it looks like
18 funding is going to increase, regarding security of
19 quantity -- level 1 sources.

20 So I think that it's important to
21 understand that some support needs to be given by the
22 NRC to the reviewing official in terms of legal
23 authority to access personal records. Since I'm in a
24 medical institution, we have this thing called HIPAA
25 that significantly restricts who has access to

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1 anything. It's primarily focused on patients, but
2 that has spread out sort of like a cancer to where it
3 means access to anyone's information whether they're
4 an employee, or somebody walking in off the street, or
5 a patient, or whatever.

6 So as a result. the reviewing official has
7 to struggle with limits on access to information at
8 the same time the NRC is requiring that reviewing
9 official to have access to information. There needs
10 to be a review of the conflicts between the
11 restrictions on access to information and the
12 requirements on access to information as specified in
13 your rule. Thank you very much.

14 MR. MAIER: Thank you, John.

15 If there's anybody that has any three by
16 five cards that they want to pass up, please hold them
17 up and we'll take some comments from the floor as
18 well.

19 Please state your name, and go ahead and
20 make your comment.

21 MR. DICKES: Ray Dickes with Schlumberger.

22 I'd like to make comment on the credit
23 history check. In order to be effective on the credit
24 history check, I think there's three elements that
25 have got to be a given before you even get into this.

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1 Number one is whatever data is going to be
2 used in making a determination is going to have to be
3 accurate. The second one is, it's got to be easily
4 used by whoever is reviewing it. So it's got to be
5 relatable in some way the person's trustworthiness.
6 And then there's got to be some cost benefit for this,
7 so it will not be free in order to do a credit history
8 check, and there's got to be some benefit to it.

9 So let me take them one at a time. Data
10 accuracy. If you would review -- I would suggest if
11 we would review this, there is a publication called
12 the *Fair Credit Reporting* that was published by the
13 National Consumer Law Center in 2006. In this they
14 cite that over 70 percent of the information in credit
15 histories is inaccurate, and go on to add that 25
16 percent of all reports within credit histories, and I
17 quote, "Contain an error serious enough to cause a
18 denial of credit."

19 I don't know about you, but I think that
20 kind of accuracy rate is shockingly bad. Twenty-five
21 percent -- this means that 25 percent of everybody you
22 would review is going to have something that is so
23 serious that they could not get credit if you can --
24 if you could even related it to their trustworthiness
25 means that you're going to have a very high failure

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1 rate.

2 Now they cite in this that they base this
3 on studies that date from 1998 coming forward. There
4 has been no movement whatsoever in accuracy improving
5 during that time period. So even if we assume that it
6 has improved some in the last few years, it's still
7 going to be too high.

8 Now, how do you relate it to
9 trustworthiness? I've heard, and maybe somebody can
10 add, two rationales on why a credit history check
11 should be a part of a trustworthiness determination.
12 Number one is that somehow a person with a bad credit
13 history may be a security risk since they are more
14 susceptible to either bribery or influence, such that
15 they would steal sources for someone, or do it
16 themselves for the capital gain that they would get
17 from doing this.

18 So Schlumberger, in advance of this, what
19 we did is we went through and we did a trial run
20 looking at credit histories. And finally, what we
21 found in this study is that you really cannot relate
22 this in any way to a person's trustworthiness. The
23 kinds of things that you're going to see -- and I
24 heard mention of the credit score -- actually, the
25 credit score is out of bounds. You cannot get that as

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1 a private company when you do a credit history check.

2 All you will get is a series of
3 information, and if you've looked at the FBI reports
4 on individuals under the fingerprinting order, it's
5 similar to that, except it's financial information.
6 So you'll see things like they had a foreclosure on a
7 home mortgage, that a credit card account was closed
8 at the request of the grantor, that they have an open
9 credit account that's delinquent in some way.

10 If you review the population that's going
11 to be checked here, which will be mostly new hires,
12 you're going to be talking about young people. Young
13 people notoriously have some of the most interesting
14 credit histories that you're going to find. This is
15 for many reasons. They have the lowest income and
16 they also have the largest outlay in comparison to
17 their income of anybody in the population.

18 They'll be recent college graduates. They
19 may have school loans, they may have school loans that
20 they have not started payment on. Why? Because they
21 haven't gotten a job yet. They may be a recently
22 discharged member of the Armed Forces of the US. That
23 is another group that historically has high outlays of
24 expenses and lower income.

25 They may be a high school graduate who is

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1 just seeking to try to improve their lot through
2 getting a job with a good stable company. As I've
3 already said, these have the least -- this group has
4 the lowest income of the Americans in general, and
5 potentially have the largest debts.

6 The other thing is recent college
7 graduates may have zero credit history. They may have
8 been on scholarships, they may have been on grants,
9 their parents may have been able to fund them through
10 school. So the absence of a credit history, I've
11 heard, as stated in meetings, is an indicator of a
12 problem as well. How do you sort that out? The fact
13 that somebody has no credit history just means that
14 they may be young and haven't had an opportunity to
15 develop one yet.

16 So if you go to the cost versus the
17 benefit for this, the data is inaccurate, it's going
18 to cause many, many, many in denials of clearances for
19 people who should not be denied. The data that you're
20 going to get from the credit history report is
21 unrelatable to their trustworthiness. If you were to
22 impose the rule, the only thing we would get out of
23 this is we would spend money to do credit histories
24 and we would ignore them because they are just
25 completely unrelatable to their trustworthiness.

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1 And if that is the dynamic that we are
2 left with, we are left with a cost benefit -- a cost,
3 a credit history costs anywhere from 15 to \$25 per
4 person, and if they have any international time during
5 the credit history check, that price escalates into
6 several hundreds of dollars. So you'd be left with a
7 very large cost for, in our estimation, at best, an
8 extremely minimal benefit and likely no benefit
9 whatsoever.

10 MR. MAIER: Thank you, Mr. Dickes. I
11 notice that you have that all in writing. Did you
12 intend to submit those as written comments as well?
13 Okay.

14 Is there anyone else who would like to
15 speak on the issue of access authorization?

16 MR. MILLER: My name is John Miller, and
17 I'm part of a large blood center here in Texas. And
18 basically we're a non--profit organization, all in
19 all. And the staff that are working and using our
20 blood irradiator basically are making about \$10 an
21 hour. They're college students, and for them to go
22 through a credit check would, I think, like John said,
23 almost pointless.

24 I really don't see how that's going to
25 benefit us because in the end, if you have your

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1 trustworthy and reliable officer making a
2 determination as to what's acceptable and what's not,
3 and there's no guidelines saying that this is what
4 you're looking for, this is what you're not, adding
5 another layer to that is pointless, really, truly.

6 I think the NRC should consider setting
7 guidelines like John said to protect the actual
8 individual making the decision from a lawsuit from
9 denying someone a job on this basis, which we're not
10 allowed to speak of to them at all. And I also might
11 mention that I think it's a good idea that the RSO
12 review ever individual that's going to be using
13 whatever. I think that's a good option and I think
14 you all should push forward with that. That's all I
15 have.

16 MR. MAIER: Thank you, Mr. Miller.

17 Anyone else? Okay.

18 MR. CARGILL: My name is Scott Cargill,
19 Valley Industrial X-Ray in Bakersfield, California.

20 I actually have a couple of quick
21 questions for you, more so than a comment. As the NRC
22 will be the approving body for our reviewing official
23 or our state will be that reviewing -- or approving
24 body, will you be taking liability for that person's
25 decisions?

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1 I ask this simply because, as John started
2 to allude to, you're now going to tell me that this
3 person is of a caliber who can make these decisions,
4 and this person's going to hold really the hand of God
5 in whether this person has access, and in our world
6 that means a job. And a credit history report review,
7 as already been mentioned, I can't see a whole lot of
8 useful information that I'm going to get out of it.

9 Especially in this economy right now, a
10 lot of people have poor credit history. My dispatcher
11 alone just went through a divorce, child custody. I
12 can imagine his credit history right now would be
13 slightly less than 800.

14 (General laughter.)

15 MR. CARGILL: So really I see no benefit
16 to it. I really question the need for the NRC or the
17 state to approve my T&R official. I see no benefit in
18 taking it to the next step and needing a reviewing
19 official. We already have got the T&R official. At
20 the end of the day, it comes down to the owner of the
21 company, the RSO of the company approving whether or
22 not we trust that person.

23 We're the responsible party at the
24 beginning, the middle and the end of that material's
25 life in our possession. And that'll do it for me.

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1 MR. MAIER: Did anyone want to address his
2 question for clarification purposes, of the liability
3 issue?

4 (No response.)

5 MR. MAIER: Nobody? Okay. Apparently we
6 forgot to bring our lawyers with us.

7 (General laughter.)

8 MR. MAIER: Is there anyone else who had a
9 comment on access authorization?

10 The other John Miller.

11 MR. MILLER: When I read through the
12 implementation guide, I noticed that there -- it's
13 either an all or nothing as far as access control
14 goes. And there's not a grading type of approach
15 here. And why I looked into it was because when I
16 read in the *Federal Register* and I read this right out
17 of the *Register* it says, For the purpose of this
18 proposed requirement, licensees cannot fingerprint
19 individuals or subject them to an FBI background
20 investigation to permit them access to security plans
21 for procedures unless those individuals are also
22 permitted unescorted access to Category 1 or 2
23 radioactive materials.

24 And, you know, that makes absolutely
25 really no sense. When you have security plans and

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1 procedures in place, your business manager may be the
2 person that opens up your facility that morning, they
3 have access to disable the security system, which is
4 going to be covered by a security plan, but the way
5 it's written, that person can't be -- you know, have a
6 fingerprint or background investigation unless they're
7 also authorized unescorted access to Category 1 and 2
8 materials.

9 And, you know, it just goes beyond, you
10 know, what is really necessary, and it doesn't look at
11 the need to know concept, or even the ALARA philosophy
12 when, you know, these people really don't necessarily
13 need access to the material, but they do need access
14 to the security plan.

15 MS. HORN: Actually, I can address that a
16 little bit. It is a little bit of a need to know,
17 unfortunately, we can't -- we don't have the legal
18 authority to require fingerprinting for someone to
19 have access just to the security information.
20 Congress when they passed the Energy Policy Act of
21 2005, the wording is very clear, it was for unescorted
22 access to certain materials or to safeguards
23 information.

24 So unless it's one of those two things, we
25 don't have the authority even to require more. So we

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1 do have lesser requirements, if you will, for access
2 to the actual information.

3 I agree with you that that's a little bit
4 of a concern. We might like to see a little bit more,
5 but we simply don't have the legal authority to do
6 that.

7 MR. MAIER: Thank you.

8 Any additional comments on -- oh, there's
9 one over there. And if anybody has any comments
10 they'd like me to read from the cards, just waive your
11 cards up and Sarenee will get them.

12 MS. FAIROBENT: Lynne Fairobent, American
13 Association of Physicists in Medicine.

14 Last week at the Organization of Agreement
15 States meeting, there was a number of comments put
16 forward by the states, and I think that a key one in
17 this area is that there are a number of states that do
18 not have the legal authority in order to serve as the
19 entity to first clear the new reviewing official.

20 I think that before NRC moves forward with
21 this, that there needs to be a clear delineation from
22 each of the agreement states that has or has not the
23 authority to do that before the licensees know what
24 they're getting into.

25 MR. MAIER: Thank you, Lynne.

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1 MS. HORN: We are aware that several
2 states had indicated that, and we've have asked the
3 states to actually provide us specific information,
4 because until we actually see something, we don't know
5 what that prohibition is. It may be something that's
6 easily worked around, or it may be something that
7 actually is an issue and we would -- they won't be
8 able to do that. So we are encouraging states to get
9 us that information, and when we get it we will take a
10 good look at it.

11 I actually want to -- you raised an
12 interesting point on the grading. What's your
13 thoughts on grading requirements for the access
14 authorization? Do you maybe have a more intense
15 background investigation for people that have access
16 to the Category 1 material versus the Category 2
17 material, should we grade that in some way? What are
18 your thoughts on that?

19 MR. MAIER: Do you have a follow up?

20 MS. FAIROBENT: Yes.

21 Merri, I had a follow up. I think it's
22 fine that you've asked the states, but it would have
23 been more beneficial if you had asked that question
24 before proposing that as a requirement.

25 MR. I. MILLER: Okay. I'm sorry, I didn't

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1 know the full meaning of the committee, and I have a
2 stupid question, and I'd really like to -- what do you
3 mean by access? No, I mean, you know -- and then when
4 I look up the definition of access, it's defined as
5 the security area. Yes, I have a security area, and
6 if I need to rename it something else, I'll rename it
7 something else.

8 But the unit -- my source is enclosed in a
9 sealed unit, you can't touch the source, you can't get
10 access to the source, you can't remove the material
11 from the source. Do my people have access to that
12 material?

13 MR. MAIER: Would you give your name also?

14 MR. I. MILLER: Oh, I'm sorry. Ira
15 Miller.

16 I mean, you know, the way the access is
17 defined is if they walk into the room that has the
18 source in it, then they have access. So how much of a
19 check do I need, and I would really like to see some
20 sort of grading and threat analysis of whether the
21 sources can be removed or touched.

22 MR. PURDY: Well, it is true, the original
23 ICs were access to the material, or the device, and as
24 licensees were implementing the ICs, what they tended
25 to do was they tended to make a security zone of the

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1 room or whatever, a building, whatever they decided it
2 should be. Now we've decided, well, let's just make
3 that part of the rule, we'll call it -- we'll make it
4 a security zone as with some of the other rules.

5 And it is access to the zone itself, and
6 it's, you know, basically we're protecting the source
7 and the device because you can take both. And we have
8 studies that have shown you can take both.
9 Fortunately we can't show those -- that material, but,
10 yes, you can take both and that's why we're doing what
11 we're doing.

12 Just to get back to the one real quick
13 clarification on the fingerprinting of the reviewing
14 official, the reason why we wanted to do that was, as
15 Merri was talking about, the Atomic Energy Act gave
16 NRC the authority to fingerprint individuals for
17 access to radioactive material. The Commission drew
18 the line at Category 2 quantities.

19 It seemed illogical that an individual who
20 was approving someone for access to this material
21 would have a lower background criteria than someone
22 who has access to the material. It's been described
23 as -- what we have now as the fox guarding the hen
24 house, as if I don't have the complete background
25 check on the reviewing official, then I can approve

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1 all my friends who may not be the best individuals to
2 have access, and that was the thought behind that.

3 MR. MAIER: Thank you.

4 Another comment? Please give your name.

5 MR. HEDGER: Troy Hedger from Alpha Omega
6 Services.

7 Just to follow up with your question, so
8 you say that the devices are either able to be taken
9 from the security area and such like that, I mean are
10 you -- did you look at all the different types of
11 devices? For example, we do a lot of a gamma knife
12 floatings. The gamma knife is sort of heavy, it's
13 difficult to get into, and there's a lot of hospitals
14 that have them.

15 You know, the security zone is basically
16 the room. And I'm not sure that that necessarily
17 needs to be the security zone because it's a very
18 difficult unit to get -- you know, one to take, and
19 also to get access to the sources.

20 MR. PURDY: Yes, we did do vulnerability
21 assessments on a variety of devices -- I'm sorry?

22 MALE VOICE: Get closer to the mike.

23 MR. PURDY: Oh, get closer. I'm sorry.

24 Yes, we did do vulnerability assessments
25 on different kinds of devices, and some devices are

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1 more difficult to take the material from than others.

2 The security zone, the -- it'll be up to the licensee
3 to decide how large that security zone is. Whatever
4 works for your particular set up at your facility.

5 How you want -- you know, if you take into
6 account LLEA response, you may want to increase the
7 size of that security zone to detect an intruder a
8 little sooner than someone who may have campus police
9 that are armed, that are actual law enforcement
10 officials that may be able to arrive very quickly.

11 We've had some inspections where the, you
12 know, the alarm was accidentally tripped and the LLEA
13 showed up within minutes. You know, that's -- your
14 security posture would be different if you had that
15 response as compared to someone who it may take the
16 LLEA longer to arrive.

17 MR. HEDGER: Right. Well, I think that
18 one of the other questions, when I was talking to some
19 of the administrators at some of these hospitals that
20 do have like -- my experience is with gamma knife, so
21 excuse me if I can't talk about all the different
22 devices -- but they also talked about, okay, how far
23 do they go with locking the doors when there's a
24 patient inside. You know, they have patient issues,
25 security issues, and safety issues for the patients as

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1 well.

2 So, you know, if they're in a security
3 zone, you know, it's -- at what point do they --

4 MR. PURDY: Right. But also you have do
5 have to meet the safety requirements also, and for the
6 gamma knife facilities that I've seen, the
7 brachytherapies, either you have -- well, gamma knife
8 you'll have some facilities will have cameras. So you
9 could watch somebody that's in the zone. You need
10 that just for patient safety, and that would meet the
11 requirements of the security requirements that you,
12 you know --

13 MR. HEDGER: Are we starting --

14 MR. PURDY: -- we're not saying stand in
15 there with the patient and receive unnecessary dose.
16 There's other ways to make -- meet the requirements,
17 in cameras that are in glass --

18 MR. MAIER: Are we starting to migrate
19 over into the following session, I guess.

20 MR. PURDY: Well, just a little bit, but
21 just to try to clarify here.

22 MR. MAIER: Any other comments on access
23 authorization?

24 MS. HADDEN: I've got a question for --

25 MR. MAIER: State your name.

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1 MS. HADDEN: I'm sorry. I'm Karen Hadden.
2 I'm with the Sustainable Energy and Economic
3 Development Coalition.

4 I am a little unclear on exactly who this
5 rule applies to. And when we're talking byproduct, it
6 strikes me that maybe this is an incredibly wide range
7 of industries and possible scenarios that are being
8 considered. Please clarify for me would this include,
9 for example, the byproduct waste that was shipped to
10 Texas from Fernald and is -- you know, huge quantities
11 of radioactive waste that went to the radioactive
12 waste dump out in West Texas, you know, are we talking
13 about that, is that included?

14 Because that makes a difference in these
15 regulations involving access. I mean granted we've
16 got a really broad spectrum here, but the access
17 issue, the qualifications of those who handle it do
18 depend on what scenarios we're talking about. Can you
19 tell me first of all if it would include such, you
20 know, such shipments?

21 MR. MAIER: I think, Karen, you're
22 question is more appropriately to be covered in the
23 session on protection in transit. Right?

24 MS. HADDEN: No, my question is really
25 just a clarification of a broad, general opening

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1 question about who this applies to.

2 MS. HORN: Well, the rule would apply to
3 any NRC licensee, and agreement state licensee that
4 possess Category 1 or Category 2 quantities. You
5 mention Fernald shipments, I'm not familiar if that
6 was something that was underdone by DOE, or Department
7 of Defense. It probably -- these rules would not
8 apply.

9 MR. MAIER: Follow up?

10 MS. HADDEN: So --

11 MS. HORN: It is a very broad group of
12 licensees. It could apply to some reactors if they
13 happen to have a radiography source at their facility,
14 though we do write -- there is an exemption written
15 in, if they protect it under their Part 73 security
16 plan they would be exempt. It can apply to hospitals,
17 universities, radiographers, well loggers, it is a
18 very large, broad scope of licensees that could have
19 this material.

20 MS. HADDEN: And it could include their
21 handling in any part of the whole system, I mean, you
22 know, from shipping, transport, arrival handling,
23 handling in any capacity?

24 MS. HORN: It could, yes, if they were an
25 NRC or an agreement state licensee. It could apply to

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1 a waste facility, not necessarily. It would not apply
2 to any waste that was actually buried or in the
3 permanent storage. It does not apply to spent fuel
4 for instance. So there's a lot of things that it
5 doesn't apply to, but it is very broad.

6 If a disposal facility perhaps had a
7 handling facility of some sort where they stored
8 material prior to getting it into the ground, if they
9 had enough material there, it could apply. Probably
10 not going to have that quantities above ground though.

11 They might occasionally, but for the most part they
12 probably would not.

13 MS. HADDEN: Just a brief comment. You
14 know, hearing this, I think, you know, that people's
15 concerns are a little different. I can understand,
16 you know, a hospital scenario, they might feel
17 differently about this. But since this does apply
18 broadly, there is also a concern about access and
19 clearance, and I think the credit check becomes
20 incredibly important. While it might not matter in
21 some cases, it definitely could matter in others,
22 depending on quantity and volume.

23 Now if you're talking about a large
24 volume, these are sources that the NRC has identified
25 as being potential problems in terms of terrorist

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1 threat. So at that point in time, it does matter, the
2 credit of the individual. If you've got somebody
3 there who's hurting financially, the risk could be --
4 and the pull to do some kind of a deal and to lose
5 track of the waste, sell it, allow it to be stolen,
6 any of those kind of scenarios becomes more possible.

7 We're not saying that it would happen, but
8 it becomes more possible, and the safeguards need to
9 be in place. So I understand, you know, that there's
10 different scenarios here, but certainly under some
11 scenarios it would be a very important provision to
12 have in place.

13 MR. MAIER: Thank you, Ms. Hadden.

14 Other comments on access authorization
15 from the floor?

16 Please state your name.

17 MR. SMITH: My name is Tom Smith. I'm
18 better known as Smitty. I'm Director of Public
19 Citizens, Texas office. We're another consumer and
20 environmental group, and I will not be able to be with
21 you for the balance of the day, so I just wanted to
22 mention a couple of things.

23 We too are very concerned about the cost
24 to society of what might happen should these materials
25 be misused. And there's a significant cost that's

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1 incurred when we're asking the folks who handle this
2 material, or would have access to this, to go through
3 credit checks, or fingerprinting or background checks.

4 Without a doubt I was somewhat stunned as I read some
5 of the materials and the comments of 600 to \$1000 to
6 do one of these.

7 But if we look at the other cost, the cost
8 of what happens if this is misused, that's a pittance
9 by comparison. And we are very much in favor of full
10 background checks, and as Karen's mentioned, the
11 person whose credit is rocky, the person who's in
12 desperate financial shape is the person we most have
13 to worry about in the system being tempted to misuse
14 the materials.

15 Secondly, the question about whether the
16 reviewing official should also have to undergo those
17 kinds of analyses is, I think, critical. The person
18 who is in a position to allow a whole group of people
19 to have access and perhaps misuse that access is the
20 reviewing official who may decide to slight the
21 standards and allow a group of miscreants to have
22 access. So it's essential that those people also
23 undergo that kind of background check.

24 Last couple of points I will make and I
25 know this is out of order, so forgive me. There are

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1 questions about notifying local law enforcement
2 agencies. Absolutely. That's another area where we
3 understand there are costs both to law enforcement
4 agencies, but to the folks who are handling this
5 material, but there's an obligation to make sure
6 they're fully aware and prepared, and we think with
7 today's technology that can be handled fairly quickly,
8 fairly uniformly, and with various kinds of technology
9 having the ability for that law enforcement officials
10 to be able to track where these materials are at
11 various times during the sites.

12 There is one area where I do agree with a
13 number of the commenters, which is I don't think it's
14 appropriate for the local law enforcement agencies to
15 notify the folks who are handling this material at the
16 time they're capacities are reduced. One, frankly, if
17 there's a hurricane, or earthquake, or a fire, or
18 tornado, or whatever, I don't want them to have to
19 call all 200 of the licensees here in Texas and spend
20 their time notifying them that we're going to have to
21 go out and deal with an emergency and we don't have
22 the capacity to worry about you. That's not the best
23 use of their resources in an emergency.

24 Secondly, if there are sequential attacks,
25 like there were in 9/11 or other times, the worst time

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1 to signal vulnerability to various people who might be
2 miscreants and have a desire to misuse those materials
3 is at a time when our nation's defense is at -- are at
4 their ebb. So we would agree with a lot of the
5 applicants, that's just stupid, and hope that that
6 provision doesn't get in here.

7 Thank you very much for holding this
8 hearing. We'll be submitting written comments. Thank
9 you.

10 MR. MAIER: Thank you, Mr. Smith.

11 Additional comments, access authorization?

12 MS. J. STATON: I'm Jean Staton with
13 Metco.

14 A couple of things. What is the
15 difference between the current T&R official that we
16 have now, and now what they are calling the reviewing
17 official?

18 MS. HORN: As far as function, there
19 really isn't any difference. You're looking at the
20 background investigation, and you're the one that's
21 making the determination that that person or
22 individuals should have access to the material or not.

23 So really the difference is just in a name. The big
24 difference is we are requiring now that that
25 individual also be fingerprinted. So that's really

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1 the key difference, but that's not a difference in
2 function. The function pretty much stays the same.

3 MS. J. STATON: Well, my technicians are
4 like most of the techs there. We're not one of the
5 higher paid industries. We do a lot of important work
6 and very dangerous work, but my guys, they've filed
7 bankruptcy, they've been divorced, their credit record
8 is not all that great.

9 I would think that the reviewing official
10 should have a better credit check, background records.

11 Of course our technicians need to be -- we've all
12 been T&R'd and we've been fingerprinted and we have a
13 TWIC card usually. But I think the reviewing official
14 needs to have knowledge of what they're doing, not
15 just somebody that just bought a business and is
16 leaving it to the other individuals to handle the
17 work. I think they need to have the knowledge of the
18 material and they need to have the exceptional
19 background check, not just our technicians, because
20 our technicians are not very well paid.

21 MR. MAIER: Thank you. Ms. Staton is it?

22 Any other comments on access
23 authorization, credit histories, background checks?

24 MR. HAYGOOD: My name is John Haygood. I
25 used to be with DSHS; I consult in radiation safety

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1 now.

2 And I'd see inspections before
3 returning -- or before leaving DSHS, and I have a
4 question about the situation here. We're looking
5 for -- I guess the system really looks for foreign
6 nationals, primarily foreign nationals that might
7 cause us problems here.

8 Now the question is, as Arizona
9 recently -- the local colleges there, I believe, were
10 zapped because they were asking for green cards of the
11 foreign nationals and certain persons that were there,
12 and they were told that that violated the immigration
13 laws. So my question is, is the NRC going to be
14 prohibited from asking of those individuals we're most
15 concerned about that information that we need to make
16 these decisions because of other laws that are in
17 place? Has that been checked out? And I would
18 suggest you look into that.

19 MR. MAIER: Thank you, Mr. Haygood.

20 MR. PURDY: To date we haven't seen that
21 as an issue, and it hasn't come up as an issue. And
22 let's not forget that we're not just looking for al
23 qaida here, we're looking, you know, Tim McVey was not
24 an al qaida member, he was a decorated Army soldier,
25 and so, you know, it's a broad spectrum of individuals

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1 we're looking for here.

2 MR. MAIER: Follow up?

3 Please stand.

4 MS. NEIL: Andrew Neil, Schlumberger.

5 I had a question on the T&R official and
6 the reviewing officer now, the reviewing official. If
7 you have an existing T&R official who was already
8 fingerprinted, do they automatically get grandfathered
9 as the reviewing official, or do they have to go
10 through the process of being authorized by the NRC?

11 MS. HORN: No, if that individual has
12 actually -- if that individual has already been
13 fingerprinted and undergone that type of background
14 investigation, you can grandfather them under the
15 grandfathering provisions. You would not need to do
16 another submittal of your fingerprints to the NRC or
17 to your state agency.

18 MR. MAIER: Anyone else?

19 (No response.)

20 MR. MAIER: I see nothing. We're a little
21 bit ahead of schedule. It's not ten o'clock, and the
22 schedule was scheduled to go till 10:30. I'm in favor
23 of a --

24 MS. HORN: Let me throw out another idea
25 out there. The guidance that's in there on the

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1 individual -- the categories of individuals that are
2 being relieved from the fingerprinting and the
3 background investigations, do we need more detail in
4 there, do we need some more examples of what we mean
5 by some of those categories? So is the information in
6 there adequate?

7 MR. MAIER: Anybody interested in
8 answering that?

9 MR. MILLER: Okay. Well, I'll use this
10 one.

11 John Miller again. Not necessarily the
12 list of individuals, but you could add something to
13 alleviate the 10-year renewal. If you had somebody in
14 continuous employment for a period of 10 years, and
15 they're performance and their behavior doesn't
16 indicate that there has been any changes in the
17 person's trustworthiness and reliability, I don't see
18 what the point is of redoing another full background
19 investigation.

20 I think those clues that a person's life
21 has changes is going to be more apparent to an
22 employer just working with the person on a day-to-day
23 basis than redoing a background investigation.

24 MR. MAIER: Thank you, John.

25 Merri, your previous question was about

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1 waiting, was that something you wanted to throw out to
2 the --

3 MS. HORN: Oh, yes.

4 MR. MAIER: You want to restate that and
5 see if anybody's interested in commenting on it?

6 MS. HORN: Right now we have the same
7 requirements for the background investigation whether
8 you have access to Category 1 or Category 2
9 quantities. Would it be beneficial to have some
10 grading there, that if you have access to Category 1,
11 you undergo the credit check, and maybe for Category 2
12 maybe you don't. I mean is there some grading that
13 could be of benefit? Just throwing that out.

14 MR. MAIER: Any comments?

15 MR. ALLEN: My name is Garry Allen. I'm
16 an RSO for a local independent lab, and our
17 radiographic is probably 10 percent of our income, so
18 we have several other things that we do. But so we
19 have a large -- in fact, we're Category 2, we don't
20 have Category 1 materials.

21 And I would -- one of the things that I
22 was going to object to is that the prices that are on
23 the last page of the proposal, the \$27,000 for a small
24 laboratory to be able to do that, and to implement all
25 of the requirements is going to really put a burden on

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1 our abilities. And anything, any relief that we can
2 get as far as background checks and so on.

3 We only have six radiographers, so we're
4 not a large scale group, we only have three sources.
5 So why would we be subjected to all the requirements
6 of someone in a larger facility, and that was one of
7 the things that I wanted to bring up a little later
8 was, is there some relief that we could get because we
9 are a smaller company. And it could be graded, as far
10 as that goes.

11 MR. MAIER: It sounds like you're in favor
12 of a grading system.

13 MR. ALLEN: Or even an exemption.

14 (General laughter.)

15 MR. MAIER: Anyone else on the concept of
16 grading or weighting of access authorization
17 requirements?

18 (No response.)

19 MR. MAIER: Any other C question -- oh.

20 MR. DIXON: I really didn't want to do
21 this. I'm Chris Dixon with Acuren Inspection.

22 It seems like proposed Rule 37, going
23 through the implementation guide is very evasive. I
24 mean you're not given defined definitions what needs
25 to be done. And sitting here listening, I'm kind of

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1 getting -- my understanding is you propose to
2 implement these rules over a broad industry. And
3 these rules may be applicable to a specific type of
4 industry. We're industrial radiography. I hear
5 people in the medical field, waste disposal.

6 And the reason I guess you guys have
7 written this, this way, is so you can cover a broad
8 spectrum. As a licensee, everything's left up to
9 interpretation here. My company is going to typically
10 take it to a level to where we feel satisfied. Now,
11 the company down the street may take it a step
12 further, and the company down the other way may take
13 it a step less. Are we all within the same
14 guidelines?

15 Because it's left up to interpretation,
16 but now we're not all playing on the same level
17 playing field. And I think we need to be more defined
18 in what we're asking the individuals to do, and
19 possibly -- or the licensees to do, and possibly break
20 this out into subsections as far as industry goes.
21 Thank you.

22 MR. MAIER: So you're hoping for a little
23 bit more complete guidance, maybe industry specific.

24 MS. BRYAN: I'm Doris Bryan with Radiation
25 Technology.

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1 And I just have a question. Included in
2 both new Part 37 and the implementation guide, this is
3 titled Physical Protection of Byproduct Material.
4 However, it includes the isotopes of plutonium, you
5 specifically have PU239 beryllium, you have PU238, but
6 you do not have PU238 beryllium, which there are a
7 number of those sources out there in online analysis
8 systems. So I'm confused as to why special nuclear
9 material is included into a physical protection of
10 byproduct material.

11 MR. MAIER: Good question.

12 MS. HORN: Actually, a fair amount of
13 the -- particularly in plutonium, it also mentions the
14 uranium, is licensed under the Part 30 series.
15 There's a lot of pace makers, and there's a lot of
16 other activities that are actually licensed under the
17 Part 30, they're licensed by the agreement states. So
18 they're not -- in those instances they're not
19 necessarily treated as special nuclear material, so
20 they don't fall under the Part 70.

21 What we did was we adopted the Code of
22 Conduct materials. We thought that those were the
23 most risk significant; that was the determination by
24 the Commission, and by an inter-agency group that
25 looked at that. And the IEA had included those types

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1 of plutonium in there, so that's why they're included.

2 I know pace makers is a use, I'm sure -- you
3 mentioned another, there's probably a few other uses.

4 It's not real, real common, I don't believe, but
5 there are some uses that fall under the Part 30 types.

6 MS. BRYAN: Since you just have PU238
7 listed, and I know that there are a number of devices,
8 particularly in some industries that have PU238
9 beryllium in very large activities, are those exempt,
10 or are they included?

11 MS. HORN: I would consider them included,
12 but we will take a closer look at that and we'll make
13 that clarification in the guidance.

14 MS. BYRAN: Okay.

15 MS. DUFFY: Good morning. I'm Sandra
16 Duffy with Schlumberger.

17 If we can rewind just a bit to talk about
18 the reviewing official, specifically reviewing
19 officials may not make any trustworthiness and
20 reliability determinations until they have been
21 approved as a reviewing official by the NRC. Firstly,
22 will the NRC be providing a paper, a document that
23 says that that person is approved?

24 And similarly, will there be reciprocal
25 documentation for, for example, if you're a company

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1 that has many licenses with not only the NRC, but
2 agreement states, or do we need to individually by
3 state have that document that says we're approved?

4 MS. HORN: It's a little bit more of an
5 implementation. I think right now we would expect
6 that we probably will be sending out letters saying
7 that, Yes, this individual has been approved, or that
8 we have no objections. I'm not sure what exactly that
9 language would be yet.

10 As far as for licensees that have multiple
11 licenses in various agreement states and NRC, I'm not
12 sure. We're probably flexible there. Perhaps you
13 could submit all the names under the NRC and get
14 approval that way and then they would be approved, or
15 submit them to your state. I don't think that there's
16 any one way or the other that that has to be, so
17 we're -- I think we're open to suggestions there.

18 MR. MAIER: Thank you.

19 Do we see a cottage industry of T&R
20 officials springing up?

21 (General laughter.)

22 MR. MAIER: Steve?

23 MR. JAMES: I'm Steve James with the State
24 of Ohio, and I didn't work on the subpart A part, so
25 that's why I have a question, because it would apply

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1 to our being able to oversee it in the agreement
2 states.

3 They talk about that if a licensee is
4 authorized to possess material, but doesn't
5 necessarily possess but if they're authorized under
6 license to possess, they have to develop a security
7 plan. And I don't see a definition of develop, or
8 what -- or guidance on what the elements of the
9 development of the plan would be, as opposed to what a
10 full security plan would be. So I'm just wondering if
11 there's -- if we can get some clarification on --

12 FEMALE VOICE: [away from microphone]

13 MALE VOICE: If there is an access to
14 authorization program --

15 MALE VOICE: Bob?

16 FEMALE VOICE: Is that what you meant?
17 I'm not talking --

18 MALE VOICE: [away from microphone]

19 MR. MAIER: We'll have to get you guys on
20 the mike.

21 MS. HORN: Could you clarify your
22 question, because there's no security plan required
23 for the access authorization. Are you talking about
24 the access authorization program?

25 MR. JAMES: Under the very beginning of

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1 the rule in -- under the purpose, 37.1. If you're
2 authorized to possess, but you don't possess, you
3 still have to develop a security plan and I didn't see
4 guidance in there as far as what the definition of
5 develop or the components in just the development as
6 opposed to implementation, what are you -- what are we
7 going to be looking for as far as having, you know,
8 the outline or the -- what are we looking for as far
9 as a licensee that authorized but doesn't possess?

10 MS. HORN: Okay. I --

11 MR. JAMES: As regulators what are we
12 going to be looking for for development --

13 MS. HORN: That actually is a question for
14 the next panel, so we will defer that, I think.

15 MR. JAMES: Okay.

16 MR. MAIER: Thank you, Steve.

17 Any other questions on access
18 authorization?

19 I'm getting a good amount of exercise
20 today. It's good for me.

21 MS. FENNESY: Hi, I'm Danette Fennesy.
22 I'm with Harris County Hospital District.

23 I just want to kind of hit on a few
24 things. One, I really want to second what the
25 gentleman said over here about having it more industry

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1 specific. We work in the medical industry, and I see
2 so many differences that I really think things need to
3 be more specified, and I'll kind of go to the next
4 thing, which is guidelines.

5 Several people have said before that you
6 have not set forth exact guidelines on how we follow
7 these, and I agree with that completely. And kind of
8 to just emphasize that, for example, here in our
9 hospital, when we've gotten FBI reports, we have, you
10 know, of course, given people clearance based on
11 those, as well as the other aspects that are looked
12 at.

13 And when we get our FBI reports, they look
14 a certain way. To kind of give you a true example,
15 when we were inspected, we had a reviewer looking at
16 our records. We were one of the first people that
17 were inspected for the increased controls and
18 fingerprints, and our inspector looked and said, Well,
19 these are not correct. I want to see your reports
20 through the NRC. And I said, Well, these are the
21 reports. And she said, But there's nothing on them.
22 And I said, Well, yeah, that's how they're supposed to
23 look, isn't it?

24 But she had come directly from inspecting
25 some -- I want to say people who work in the

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1 industry -- thank you -- radiographers, and she said,
2 When I went to theirs, they had like two pages for
3 each person.

4 (General laughter.)

5 MS. FENNESY: And I was shocked, and I
6 said, And they passed? And she said, Well, yeah. And
7 I said, Well, isn't that odd that they have one set of
8 guidelines that they're looking at and we have
9 another? Because if we had gotten one thing back, I'm
10 not quite sure what our TRO would have done.

11 And I'm just saying that there really
12 needs to be something a little bit more specific to go
13 on. And yet when we talk to -- of course I'm here in
14 Texas, and we -- everything falls on the TRO/RO, and
15 I'm going to reiterate what other people have said,
16 what kind of pressure are you putting on these people,
17 and how vulnerable are they going to be for all kinds
18 of lawsuits?

19 And the whole idea of the credit check
20 is -- I mean in my mind it's kind of ridiculous
21 because I can see what some people are saying, how the
22 people that are looking for money are a little bit
23 more vulnerable, but in my books, there's a greed
24 thing there, and it doesn't matter if you need money
25 or not, if you want it, you're just as liable for

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1 accepting bribes.

2 And I think that if you look at some of
3 the spies that have been accepting money and doing
4 things against our country, I don't think any of them
5 were hurting for money when they turned against their
6 own country.

7 Okay. The last thing I wanted to mention
8 was the fact that -- and it kind of goes back to the
9 RO again, one of our licenses, we have it to where
10 when we want to add an authorized user, like a
11 physician, to our license, we collect the information
12 and we submit it to the state, then they make the
13 decision whether or not that person should be added to
14 our license. Personally, if we're going to go to all
15 this credit check and all the different variances in
16 the FBI reports, the criminal history reports, who's
17 got a good reputation and should be having it, then
18 how about we collect the information and we turn it
19 over and let you guys be the ones that catch the heat
20 for it. So, anyhow, thank you.

21 MR. MAIER: Thank you, Ms. Fennesy.

22 Mr. White.

23 MR. WHITE: That's right, I have my own.

24 This is John White again. I'd like to add
25 a comment to what she just said for my colleagues, as

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1 well as for the NRC. You're placing a great deal of
2 pressure upon your reviewing official.

3 One of the things I do when I receive an
4 address report on an individual, is I convene a 15
5 minute meeting of my law enforcement representative
6 and my human resources representative because if it
7 turns out that I deny access, which could potentially
8 deny employment to an individual, then I personally,
9 as a reviewing official, become liable for any legal
10 activity that individual has regarding employment.

11 So I want someone from human resources at
12 my elbow, and I want someone from law enforcement at
13 my elbow to interpret the information we've gotten on
14 that individual. Because you are placing such a
15 burden upon the reviewing official, I believe that the
16 NRC should step forward with some indemnification of
17 that reviewing official.

18 So the letter that you would issue
19 attesting and approving that reviewing official
20 becomes critical in saying that the federal government
21 is behind this person's credential to review an
22 individual and possibly deny them employment.

23 MR. MAIER: Okay. It sounds like we've
24 got a lot of questions on things like credit history,
25 the liability is still an open question for a lot of

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1 people, and a lot of folks are speaking in favor of
2 weighting of the -- either of the category of
3 possession or the particular use of it.

4 Any other questions on access
5 authorization, the weighting? I'm getting my
6 exercise.

7 MR. HEDGER: You know, it's actually to
8 what you said. It's sort of -- oh, Troy Hedger from
9 Alpha Omega Services again -- it's actually a two-
10 way -- it's a two-edged sword, or however the saying
11 goes, because if they say that they're not going to
12 hold us liable, then it's like, All right, I don't
13 want to employ this person for a particular reason. I
14 don't care that they have a credit score of 825, I'm
15 not going to give them a job.

16 So, you know, I think that there needs to
17 be something that needs to be -- it needs to be
18 changed, but I'm not -- I don't know that I have the
19 answer. One of the things that I would propose is
20 that we give you the names, social security numbers,
21 all that data; you check it, you tell us if the person
22 is acceptable to you or not.

23 I think that was sort of what you were
24 saying over here. I would agree to something like
25 that.

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1 FEMALE VOICE: For a particular or for
2 everybody?

3 MR. HEDGER: No, I would say for
4 everybody, because I mean, here, I'm going to approve
5 somebody that has a credit score of 500, somebody else
6 said 800. It's not the -- you're not getting -- it's
7 worthless, in my book at least.

8 MR. MAIER: Thank you. So much for that
9 cottage industry I spoke about earlier.

10 (General laughter.)

11 MS. WATSON: My name's Jennifer Watson.
12 I'm from San Antonio.

13 I guess along these same lines where we're
14 talking about liability and the NRC taking the
15 responsibility, in terms of the select agents in the
16 CDC program, the CDC takes responsibilities for
17 reviewing all of the employees that have access to
18 select agents and issue authorization to each one of
19 those employees within the institutions.

20 And so this would be the similar type of
21 process for the NRC if the NRC took on that
22 responsibility, because they would be authorizing the
23 individuals at each one of the institutions.

24 MR. MAIER: Thank you.

25 Anyone else? Yes, there always is.

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1 MR. ARSENAULT: Richard Arsenault with
2 ThruBit.

3 I used to involved with Odessa Explosives
4 and I guess my question for you is, have you looked at
5 the ATF program where they have a clearance denial
6 program, which works real well, because I used to be
7 involved with that.

8 MR. MAIER: Is that more of a comment
9 than --

10 MR. ARSENAULT: That's a comment. It's a
11 good program and it works.

12 MR. MAIER: Okay. That'll be captured.

13 Other comments on access authorization
14 from anybody from the floor?

15 MS. HORN: I just want to say thank you.
16 I mean this has actually been very good. This is
17 helpful, this is what we're looking for is this type
18 of input from you. Obviously a lot of it also kind of
19 borders on the rule itself, so we encourage you to
20 make these types of comments on the rule in addition.

21 The comments that we're hearing obviously today apply
22 to the guidance. They will be on the docket, so
23 obviously we will consider them.

24 But I do encourage you to also make
25 similar types of comments on the rule. We are -- I

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1 heard a lot of good information here today, and we
2 will consider that as we're going forward and then
3 making decisions on what provisions will end up in the
4 rule. So thank you.

5 MR. MAIER: Okay. I think what I'll
6 suggest is that we take a bit of an extended break and
7 get back onto the schedule. So if everyone would be
8 back here ready to go at 10:45 then we'll start on to
9 the second session, which will be discussion of
10 Subpart C, guidance for physical protection
11 requirements during use.

12 (Whereupon, a short recess was taken.)

13 MR. MAIER: Okay. Ladies and gentlemen,
14 if you'll please take your seats, we'll start with the
15 second session on Subpart C, physical protection of
16 byproduct material during use.

17 (Pause.)

18 MR. MAIER: If people will start to take
19 their seats, please, we'll start on the second
20 session.

21 (Pause.)

22 MR. MAIER: If people would please take
23 their seats, we'll get ready for the second session.

24 (Pause.)

25 MR. MAIER: Okay. We're ready for the

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1 second session, discussion, comments, questions about
2 the guidance for Subpart C of the rule, protection --
3 physical protection of byproduct material during use.

4 And I just wanted to make a couple of announcements.

5 The first one was I'll try to be a lot
6 more rigid about enforcing it, but if anybody wants to
7 make a comment or ask a question, since Leslie is
8 trying to tape and trying to get a good transcript, it
9 would be appropriate for people to clearly state their
10 name and clearly state their affiliation when they --
11 before they begin speaking. So I'll try to be more
12 scrupulous about making sure that you do that.

13 The second comment I want to make is a
14 couple of people asked about the presence of the video
15 taping, and Karen up here is with the Sustainable
16 Energy and Economic Development Coalition, and she is
17 taping the meeting, and she indicates to me that it is
18 for internal use by her organization.

19 The NRC has no objection to the use of
20 videotape during any of our meetings, but if anybody
21 has any concerns or any questions about, you know, the
22 use of videotape, their statements or their image or
23 anything like that, you may want to discuss it with
24 Karen here.

25 Any questions on that?

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1 (No response.)

2 MR. MAIER: Good. Okay. The second
3 session is going to be on the Subpart C, the guidance
4 for Subpart C, physical protection of byproduct
5 material during use. We have had no registered
6 speakers, so I'm expecting I'll get a little bit of
7 exercise during this session as well.

8 Merri, you want to kick off with anything
9 or --

10 MS. HORN: No.

11 MR. MAIER: Okay. Let's go straight to
12 the floor then.

13 If anybody has a question that is specific
14 to the physical protection requirements during use of
15 byproduct material, please raise your hand.

16 And likewise, if you have questions that
17 you don't want to necessarily go to the mike for, or
18 discuss in front of the group, hold up one of those
19 three by five cards. We've gotten a couple for this
20 session, and I'll pass them on to Merri or other
21 panelist and they can read the question, or read the
22 comment, and respond to it.

23 Okay. Questions on physical protection of
24 byproduct material during use.

25 MR. JAMES: Could I ask, or rephrase my

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1 question that I asked in the last session?

2 MR. MAIER: I think -- yes, I'll let
3 you -- I'll even let you use the lectern.

4 MR. JAMES: The reason I asked the
5 question was if you look at the -- go back to the
6 beginning of the order for the purpose and the scope,
7 under 37.1, purpose, it says, This part has been
8 established to provide the requirements for the
9 physical protection program of any licensee that is
10 authorized to possess.

11 Now the authorization to possess is how
12 the orders were issued. As far as implementation, if
13 you did not have materials that were co-located or
14 aggregated, you could state to your regulator, We do
15 not have that, we would verify by inspection. You
16 were not required to implement any part of the
17 increased control orders.

18 However, with this change being on
19 authorized to possess, if you go over to Subpart C,
20 which is what we're talking about here, under
21 37.41(a), security program, Each licensee that
22 possesses an aggregated quantity shall establish,
23 implement and maintain a security program. So the
24 overall applicability is to if you're authorized to
25 possess -- you have to establish, implement and

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1 maintain if you are actually possessing.

2 But then if you go over to 41(a)(2) it
3 says, A licensee that is authorized to possess but not
4 possess shall develop a security program. And my
5 question was, for that category of licensee that is
6 authorized to possess but does not possess, just how
7 in depth does the develop a program have to be,
8 because the only real language about developing the
9 security program and what the security program should
10 include is under 37.43(a), security plan, which is,
11 Each licensee subject to the requirements of the
12 subpart shall develop a written security plan.

13 So I want to make sure that the
14 development part did include that written security
15 plan. And the reason I thought it tied back to
16 authorization access was because, if you have a
17 security plan and somebody needs to be responsible for
18 that security plan, that person, I would expect, has
19 been deemed to be trustworthy and reliable, so if that
20 person's been deemed trustworthy and reliable, then
21 you have to have an RO -- you have to have a reviewing
22 official that's been determined to be appropriate, so
23 you do have to have an access authorization program if
24 you're developing a security plan.

25 That's my understanding of it. That's not

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1 correct?

2 MS. HORN: The access authorization --

3 MR. MAIER: Let make sure we use the
4 microphone, please.

5 MS. HORN: The access authorization
6 program, let me clarify, only applies if you are
7 granting individuals unescorted access to the Category
8 1 or Category 2 material. So if you are authorized to
9 possess, but do not possess any Category 2 material,
10 you do not need to have an access authorization
11 program. I want to be very clear on that.

12 The security portions of it, there are
13 some things -- you do need to develop a security
14 program. So that's a little different in Subpart C if
15 you're authorized to possess. But for the access
16 authorization program, if you do not actually possess
17 the material, you do not have to have an access
18 authorization program because you're not granting
19 anyone unescorted access.

20 Now, if you did have SGI material, SGIM,
21 but then you wouldn't have it if you didn't actually
22 possess Category 2, so that's irrelevant, so.

23 MR. PURDY: Are you asking about the
24 security -- the information for the security program
25 requires a bit of T&R. Is that what you're talking

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1 about, that you have to go through everything except
2 for the fingerprinting to have access to the
3 information?

4 MR. JAMES: Yes, if you have a T&R
5 program.

6 MR. PURDY: No, I mean for the security
7 plan itself. To have access to that information then
8 I have to go through the employment history, education
9 history, all that --

10 MR. JAMES: That was my understanding,
11 yes.

12 MR. PURDY: Right. That one piece they
13 would --

14 MS. HORN: But that's not a formal access
15 program.

16 MR. PURDY: Okay.

17 FEMALE VOICE: Can you guys use the mikes,
18 please?

19 MS. HORN: What he was asking is, there
20 are protection of information requirements in Subpart
21 C so that you have to have the need to know the
22 information before it can be shared, and to have
23 access to that information you have to undergo some of
24 the aspects of a background investigation. You do not
25 have to have a formal access authorization program for

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1 that. It's a little more informal, so you wouldn't
2 need to have as much.

3 MR. PURDY: Or you wouldn't have to have
4 developed an entire program, but you would have at
5 least the criteria for that one individual, or two
6 individuals that develop the plan.

7 MR. MAIER: Okay. From the floor? Hey,
8 there we go.

9 Mr. Neil, is it? Go ahead and state the
10 name and the organization.

11 MR. NEIL: Andrew Neil, Schlumberger.

12 I just wanted to get this out and be as
13 clear as possible. With the increased controls, what
14 we had was, you know, an NRC audit come in and we had
15 possession quantities, but they were secured in such a
16 way as to it did not come under the aggregation, co-
17 location, et cetera, therefore we did not have to
18 implement the increase controls. That's what we just
19 discussed a second ago.

20 Does that still apply with this new rule
21 where it's now stating authorized to possess, because
22 we are authorized to possess quantities above Quantity
23 2?

24 MS. HORN: If you're authorized to
25 possess, you would still need to do just a very basic

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1 security plan. And that plan could very simply
2 explain how you're going to prevent those materials
3 from being aggregated, being co-located. You actually
4 only have to implement your security program if you
5 are aggregating the material, if they are co-located.

6 So that concept has not changed.

7 But what the rule, as it's written right
8 now, it does require if you're authorized, to develop
9 a security plan. It does not have to be the full-
10 fledged security plan with all the requirements for
11 implementing the various security measures that are in
12 Subpart C because you don't need to implement those.
13 But you would need to do something. How do I keep
14 them from being co-located, from being aggregated,
15 just that basic information.

16 MR. MAIER: I also wanted to say, in
17 addition to stating your name and your affiliation
18 before you speak, if you have a business card and you
19 would like to give it to Leslie, that'll help her to
20 get the spelling correct and if there's any
21 information that she may need to get off the card. If
22 you want to give her your card, you're welcome to do
23 so during a break or after the day.

24 MR. RATLIFF: Yes, Richard Ratliff with
25 the Texas Department of State Health Services.

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1 On the last question though, when we
2 had -- I was on the increased control working group.
3 If you're transporting sources to the field, even
4 though you may have them at your facility, and they're
5 separated, when you put them on the truck we determine
6 then they are co-located and you do have to meet all
7 the requirements.

8 So it's not like you're totally outside of
9 having to have every requirement. If you put them on
10 the truck and go forward, well, then they are -- we
11 consider they're together and you do meet that
12 requirement.

13 MR. MAIER: Thank you, Richard.

14 Comments on physical protection during
15 use? We expected that we were going to get a little
16 bit more comments for this session.

17 MS. HORN: I can't believe that no one has
18 comments on a temporary job site, LLEA notification?
19 Can I remind you of that one?

20 MR. MAIER: I have one.

21 MR. GALLAGHER: Okay. Charlie Gallagher,
22 Gammatron.

23 In part 37.49 on monitoring and detection,
24 you have thing for Category 2 quantities of
25 radioactive material, a weekly verification. Does

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1 that -- is that going to require a weekly inventory of
2 every source that you have within your security zone?

3 MR. PURDY: Again, it will depend on your
4 situation. Yes, you'll have to verify that the
5 Category 2 quantities of material are there, and that
6 can be with -- simply with a meter. You don't have to
7 go through a full blown check the serial number type
8 of inventory. You just have to verify that the
9 material is there. That can be through use per
10 facility, if they have a blood irradiator or whatever,
11 if they're using the device, that's fine, that
12 satisfies that requirement.

13 You could block up with a meter, you can
14 use tamper indicating devices, anything that will let
15 you know that that device -- or the material is still
16 in your possession.

17 MR. GALLAGHER: So if you had your
18 security zone, you only had a limited amount of people
19 that had access to it that were authorized unescorted
20 access and stuff, and everything was locked up, that
21 would satisfy that requirement.

22 MR. PURDY: If you could -- if you -- I
23 would depend on the tamper -- if you're just saying
24 that a lock is the tamper indicating device, I
25 wouldn't consider a lock because somebody could just

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1 lock it -- take the source and put the lock back. But
2 you'd have to have some way -- and basically it's
3 insider mitigation is all you're doing with inventory
4 checks.

5 MR. GALLAGHER: Well, that -- okay. I'm
6 not alone, I think there's a lot of facilities that
7 have multiple sources that would -- and then you're
8 going to have to go in -- you're going to have do a
9 weekly inventory.

10 MR. PURDY: Well, again, it depends on the
11 sources. If you've got multiple sources that are
12 under the -- less than Category 2 and you've got them
13 with two physical barriers so that they're separated,
14 then they're no longer aggregated and Part 37 doesn't
15 apply. So you've got to consider whether it applies
16 to you or not at that point.

17 MR. GALLAGHER: If you have a security
18 zone, basically anything you have in there then is
19 radioactive material and has to be accounted for.

20 MR. PURDY: Absolutely. Yes, up to the --

21 MR. GALLAGHER: Okay.

22 MR. PURDY: -- Category 2 -- yes.

23 MR. GALLAGHER: So you're going to have to
24 do some -- have some way of verifying that no one has
25 taken a source. If you have 100 sources in there,

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1 you're going to have to go through, verify that every
2 source is in there. That's a lot of exposure.

3 MR. PURDY: That's what I'm saying. If
4 you have 100 Category 2 sources or higher, yes.

5 MR. GALLAGHER: Well, but if it's an
6 aggregate of sources. If they're not -- say they're
7 not Category 2 sources individually.

8 MR. PURDY: Okay.

9 MR. GALLAGHER: Okay. Then do you have to
10 do this weekly verification?

11 MR. PURDY: Again, it gets back to the
12 physical barriers that we have built in, like the
13 increased controls. If you have multiple sources, but
14 it takes -- it requires -- you have to go through
15 multiple physical barriers to get to those sources,
16 then those aren't considered aggregated and you don't
17 have to implement the increased controls.

18 That's why I was asking the question, if
19 you've got multiple sources that are locked up in
20 different safes, or behind different physical
21 barriers, then you wouldn't have to implement Part 37.

22 But if you had multiple Category 2 sources, yes, you
23 would have to go through and implement it. And I'm
24 confusing you completely, aren't I?

25 MR. GALLAGHER: No, no, just --

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1 MR. PURDY: Okay.

2 MR. GALLAGHER: -- just thinking that
3 this is going to require for a lot of people that have
4 logging companies, anyone that has multiple sources,
5 they're going to have to do -- somehow come up and
6 say -- weekly they're going to have to verify that
7 nothing's been tampered with.

8 MR. PURDY: If you use that source weekly,
9 then you've verified. If you don't, then you can put
10 on the tamper indicating device, some sort of tag that
11 has to be broken. You could do it that way. It could
12 be some other system, but, yes, it has to be -- every
13 Category 2 source would have to be verified.

14 MR. MAIER: Thank you, Mr. Gallagher.

15 MR. PURDY: But again, if -- you know,
16 send in a comment if that's going to be overly
17 burdensome and let us consider your comment with
18 details when you comment on the rule.

19 MR. ABBATE: Robert Abbate, Rinehart and
20 Associates here in Austin.

21 A couple of actually questions and
22 comments about the temporary job site. It would be
23 helpful to have an accurate definition of what is a
24 temporary job site, as far as size and/or location.
25 He brought up the instance of a pipeline job, and say

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1 it is 100 miles of pipeline, or 50 miles of pipeline,
2 and you move. What constitutes -- how much movement
3 constitutes a change in job site?

4 Once again, trying to -- this would be
5 necessary in the beginning to try and do the logistics
6 of notifying the local law enforcement, who, by the
7 way, with my contacts with local law enforcement,
8 would prefer that we didn't. They see no reason that
9 9-1-1 works now, if that 9-1-1 system is in place,
10 then it works quite well.

11 I understand that there are circumstances,
12 you could create scenarios that would be different for
13 virtually any section of this ruling. If you were in
14 the middle of nowhere and there was not a 9-1-1 system
15 in place, then certainly it would make sense to
16 contact the local law enforcement to let them know
17 that you were there. But because of jurisdictional
18 conflicts or overlaps, there can be all kinds of
19 problems that can simply be avoided by a 9-1-1 system
20 and using that.

21 I'm also wondering, have there been any
22 incidences that require these changes? To my
23 knowledge there has been no successful attempt to
24 subvert or take control of a source in the field. If
25 that is true, what are you basing your need for the

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1 heightened security on?

2 On the issue of security zones, I quite
3 possibly missed it, but I'm not sure, what is the
4 required size to a security zone when you're at a
5 temporary job site? Is it allowed -- now I understand
6 that you must have a qualified person to monitor the
7 security zone, is it possible to use a "non-qualified"
8 person outside the security zone to notify a qualified
9 person inside the security zone that that border is
10 about to be breached, is that allowed?

11 As far as the time span of a temporary job
12 site, I would also like to see a clarification when
13 you say -- throw out the number seven days. Is that
14 seven consecutive days, is that seven days within a
15 30-day period, how is that defined? In other words,
16 if you're going to be on a job for a month, can you go
17 for six days, go home for a couple and come back for
18 six more? That may meet the letter of the law, but I
19 doubt it meets your intent.

20 So those are some issues I would love to
21 have some clarification on. Thank you.

22 MR. MAIER: Do you want to take some of
23 these questions in turn? The first one on examples of
24 incidents?

25 MR. ABBATE: Or in general what has --

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1 what do you perceive as the need for the heightened
2 job site security?

3 MR. PURDY: When we were developing the
4 Part 37 rule, before we started this development we
5 went back -- NRC and some of the agreement states
6 also, went back and looked at what works in the IC,
7 where is potential gaps and then the working group
8 thought that this temporary job site, not notifying
9 the LLEA when you're at a temporary job site was a
10 potential security gap.

11 The purpose of notifying the LLEA and
12 having a memorandum of understanding if you can, or a
13 plan of some sort with the LLEA, is basically is --
14 when an LLEA receives multiple calls, they have to
15 decide where they're going to send their resources.
16 So the point of notification and the coordination is
17 to get your name a little higher on that pecking order
18 so that when you call 9-1-1 or make that notification,
19 they say, Oh, it's important we get there quickly and
20 divert resources to that one rather than some other
21 incident. That's the whole point.

22 And it was -- and again, we recognize at
23 the beginning, the working group recognized it, the
24 steering committee, everybody recognized that this may
25 be difficult to implement. And that's why we have a

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1 question and we're asking for specific information on
2 how difficult it would be to implement. But, no,
3 there -- to my knowledge there hasn't been -- someone
4 made an attempt to divert a material from a site
5 intentionally. People have obviously either left it
6 on the tailgate, drove off and it fell off the back,
7 that sort of thing.

8 MR. ABBATE: Yes, and you can't -- the
9 legislature has to --

10 MR. PURDY: But again, it was seen as a
11 potential security gap and it's just to get your name
12 higher on the list when the -- for the LLEA response
13 is what the point is of the whole thing.

14 MR. MAIER: And, Robert, you had a
15 question about security zone. Is that a question or
16 more of a comment that you would like to see more
17 guidance on what is a security zone?

18 MR. ABBATE: I guess maybe the best way
19 for me to approach that one is a request for guidance
20 on what is the size and how you perceive the
21 definition of a security zone. I guess I could you an
22 example of a situation where it greatly affects the
23 cost to the client and the man power involved for a
24 company doing industrial radiography.

25 I realize that this is not something that

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1 is commonly done anymore with some of the other
2 technologies available, but let's say we are doing --
3 taking a radiograph of some concrete in an office
4 building. Where in the past we have used qualified
5 radiographers to monitor the two-way monitor zone to
6 ensure that no one crosses.

7 But we have also used employees of our --
8 the people working -- have hired us to monitor access
9 to the floors that we are on, i.e. let's say we were
10 shooting on -- in the middle of this floor, and we
11 have five access points to it, five access points to
12 the floor below and above. To monitor all those
13 access points with qualified radiographers, it would
14 mean that you have to put 25 or 15 people on a job
15 that -- to shoot one piece of film. That is pretty
16 much going to negate that process ever happening.

17 So that was why my question was, can you
18 station someone -- let's say we made the security zone
19 the area of the two MR zones. So it is monitored by
20 radiographers. Can you station someone that is not a
21 "qualified person" outside that zone with
22 communication, in this case a radio, that could notify
23 the people inside the zone that someone was about to
24 breach it, would that be allowed?

25 MR. PURDY: You'll have -- for those

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1 specifics I think you'll have to go to your regulator,
2 but the basics of the security zone are whatever size
3 of that zone you want it to be. And we did that
4 specifically for -- to try to meet differences between
5 a hospital facility, and we could say it's a room, it
6 could be 20 feet from the source, that may not work
7 for a radiographer. A radiographer may want it more.

8 If you're doing a source here, you could
9 say the security zone is this room, or it's 20 feet
10 from your source, or the two MR from the source. I
11 wouldn't think, in my personal opinion, this isn't NRC
12 or your state regulatory, that the two MR line, you
13 know, up there or down below, I don't think that's a
14 security risk personally, unless you're thinking
15 somebody's going to come through the walls, the roof,
16 or, you know.

17 MR. MAIER: So that's more of a safety
18 issue rather than a security issue.

19 MR. PURDY: It would seem to me that'd
20 be --

21 MR. MAIER: Or was it above and below.

22 MR. PURDY: Right.

23 MR. ABBATE: So it is allowed for us to
24 designate and create a security plan for our temporary
25 job site on site --

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1 MR. PURDY: Yes.

2 MR. ABBATE: -- safety zones.

3 MR. PURDY: Yes.

4 MR. ABBATE: Okay.

5 MR. PURDY: Yes, it's what you decide
6 by -- right now the rule says licensee defined
7 security zone. That means how big you want to make
8 it.

9 MR. MAIER: Did you have any additional
10 clarification questions?

11 MR. ABBATE: No, that actually clarified
12 that situation pretty well. I guess the only one that
13 remains unanswered is the definition of a temporary
14 job site, as to how much movement requires a new
15 designation of a different job site while still
16 working under the same contract, the same place, same
17 actual -- what we would call the same job.

18 MR. PURDY: Right. And I think we'll have
19 to take that one back. I don't know if we had a
20 specific move 50 feet and now you're at a new site.
21 No, we haven't taken it down to that level of detail.

22 MR. ABBATE: Right. Well, I understand it
23 wouldn't -- I don't think anyone would think move 50
24 feet. But --

25 MR. PURDY: But, yes, some licensees may.

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1 MR. ABBATE: Well, and at some point, I
2 mean to me it seems like one of the things that you
3 would want to look at would be local law authority
4 jurisdictions, certainly if you're moving, if your
5 movement on the same job constitutes leaving one
6 jurisdiction and moving into another --

7 MR. PURDY: That may --

8 MR. ABBATE: -- that would qualify as a
9 new job site. That would be one way to qualify it.

10 MR. PURDY: Countywide or something to
11 that --

12 MR. ABBATE: Something. But by the same
13 token, moving -- so I don't know that the answer is to
14 say, Well, it's one mile, or two miles, or a quarter
15 mile, or whatever that is, because if the situation
16 really hasn't changed -- the scenario we were using
17 was a pipeline, and generally if you're moving this
18 much, you're out in the middle of nowhere. So a
19 quarter mile may not be relevant unless that quarter
20 mile crosses a jurisdictional line, and then it may.

21 So my thoughts initially are that a
22 jurisdictional boundary would be a good way to -- one
23 of the definitions of defining what is a job site
24 location and/or change thereof.

25 MR. PURDY: For purpose of notification.

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1 MR. ABBATE: Right.

2 MR. PURDY: Okay.

3 MR. ABBATE: But it should also be a way
4 to kind of define for the people in the field to know
5 when they need to call it a new job site.

6 MR. PURDY: Okay.

7 MR. ABBATE: Thank you.

8 MR. MAIER: Thank you, Mr. Abbate.

9 I saw both of you at the same time. Who
10 wants to -- toss a coin. You haven't gone yet, so
11 I'll give you first shot.

12 MR. BONVILLAIN: Daniel Bonvillain,
13 Capital Ultrasonic Company in Baton Rouge, Louisiana.

14 One of the questions that the gentleman
15 asked that I didn't hear any address to was about the
16 seven-day period. Is it seven consecutive days, or
17 seven days and what interval? And that would be
18 extremely difficult for us to implement because on a
19 lot of instances you don't know the duration of the
20 job until you get into the job and you're working it.

21 So if I ask my client in advance, do you
22 want this job to take seven days, he's going to say,
23 No, I'd like you take five or six. So we won't know
24 till we get into this job and the scope of the work,
25 the quality of the welding or whatever we're

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1 inspecting. So that would be very difficult for us to
2 know in advance in most instances the total duration
3 of the job until we see how the job progresses. So
4 that would be one thing, we'd need a lot of
5 clarification on the seven days.

6 And say for instance our biggest client,
7 we have probably 40 radiographers that work in a large
8 plant facility on almost a daily basis, so when you
9 move from one unit to another within the same
10 facility, is that considered a continuation of the
11 same job, or is that a totally different temporary job
12 site? I think that would need some clarification.

13 And especially in the aggregate of the
14 days, as I probably work 300 days in this facility in
15 a year. So the Baton Rouge city police are not going
16 to be very interested I knowing that I'm going back
17 there day after day after day and performing safe
18 operations, which the current security controls that
19 we feel like do a very reasonable job of assuring that
20 we are protecting and securing the material.

21 MR. MAIER: Thank you, Mr. Bonvillain.

22 I guess she's going to respond.

23 MS. HORN: Actually, I'm going to respond.

24 The way that the rule I written right now, it would
25 be considered seven consecutive days that you're going

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1 to be at a site that you would need to do the
2 notification. Maybe that's not the right time frame.

3 You've raised a couple of interesting scenarios that,
4 you know, we'll take a look at and think about. The
5 idea was, if you're going to be there for a long
6 period of time, you know, do that extra coordination.

7 The other gentleman was correct that if
8 you're there seven days, you leave for two, come back
9 for another five days, that's certainly not the spirit
10 of what the intent was. We do recognize that this --
11 maybe this is a bit of a burden, and that's why we're
12 hoping to get some good input on this one. But the
13 rule as written is if you're going to be there seven
14 consecutive days.

15 There are provisions that if you thought
16 it was going to take five days, and it ends up being
17 seven, there are provisions, you would document those
18 sorts of things and you wouldn't be in violation. So
19 we are trying to account for some of those last minute
20 type things where you really don't know what the
21 circumstances are.

22 MR. MAIER: Mr. Dixon?

23 MR. DIXON: Chris Dixon, Acuren
24 Inspection.

25 As far as the temporary job sites go,

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1 there probably should be some clarification. If a
2 job's ongoing and you have a crew that's dispatched
3 from a specific location and that source returns to
4 the home storage location every night, why do I need
5 to make notifications?

6 If I'm out in the middle of Wyoming, and
7 my source is returning to storage to meet the
8 increased controls at a hotel with my crew, that might
9 be an issue.

10 As far as the notification of
11 jurisdictions, right now a lot of regulators require
12 three-day notification of temporary job sites anyway.

13 What advantage are we getting there, and with the
14 three-day notification I have radiographic crews in
15 excess of 600 working on a daily basis. Now the
16 financial burden's going to be us to put somebody to
17 notify the jurisdictions that we're performing
18 radiography three days in advance. And we're going to
19 have add people on to make sure this is done.

20 One specific crew may be in six different
21 parishes in one day. I'm going to be required -- and
22 it's one temporary job site on a pipeline, so I'm
23 going to be required to make six different
24 notifications, six different security plans. We
25 aren't going to have time to do the every day-to-day

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1 business to make sure that our industry is staying
2 safe by having to do these notifications.

3 And with the three-day notification to the
4 jurisdictions, or to the regulators, there's some
5 exemptions for emergency type work. Are we going to
6 input some type of exemption into this that if three-
7 day notification -- because in my industry, I was
8 needed there yesterday, I'm not needed there next
9 week. And with the type of work we do, it's important
10 to the infrastructure of this country, pipelines,
11 chemical refineries, petrol refineries. As licensees,
12 it's going to be difficult for us to get this
13 implemented.

14 MR. MAIER: Thank you.

15 I was going to let you get on the other
16 side of the room, but --

17 MR. CARGILL: I appreciate that.

18 Scott Cargill with Valley X-Ray again.

19 The three-day notices, as Chris mentioned,
20 we get 9-1-1 calls all the time. A pipeline company
21 calls up, I've got an oil spring over the I-5/580
22 interchange, get here now. The issues with the
23 different jurisdictions, I've got to ask the question,
24 has anybody stolen a source in this country in the
25 last 50 years? Do we really need to go to this level

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1 with this?

2 We as licensees obviously have a strong
3 desire to keep our material in control. We're not out
4 there just letting them lay out beside the road
5 waiting for somebody to walk by and get one. We all
6 understand after 9/11 security is an issue. We are
7 definitely due for it. Increased controls do a good
8 job in our opinion.

9 I talked to my local sheriff. His comment
10 was, Huh?

11 (General laughter.)

12 MR. CARGILL: I'm not kidding here. Oh,
13 that's the guy -- yeah, he's over in environmental.
14 And do you honestly, do you honestly think that our 9-
15 1-1 systems are not going to be able to differentiate
16 between a jaywalking call and somebody just stole my
17 radioactive source? I can imagine that it may take us
18 a moment to calm down enough to get the word
19 radioactive out of our mouths because somebody with a
20 gun just stole our source. You can imagine what I as
21 the RSO is going to be saying. Somebody go out there
22 and deal with this.

23 Every one of our guys has got a cell
24 phone, I don't know of many parts of this country that
25 don't have a 9-1-1 system in place, so we obviously

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1 can call the local jurisdiction and get response out
2 there.

3 If we're going to take security to nth
4 degree, then arm my radiographers. Otherwise, let's
5 face it, 9-1-1 is going to do exactly what it's
6 designed to do. Before increased controls were ever
7 even thought of, we were required by regulation to
8 notify the local law enforcement upon a theft or loss.
9 What's -- there's nothing that's changed since then.

10 If somebody steals our sources, we're
11 going to certainly notify. I don't think anyone in
12 this room will disagree with me that if somebody walks
13 up with a gun in their hands and says, Give me your
14 source, Here you go, I'm going to give it to them.
15 Our personal safety is a lot more important at that
16 moment.

17 MR. MAIER: Would you crank it out for him
18 too?

19 MR. CARGILL: I'll hand him the key.

20 (General laughter.)

21 MR. CARGILL: Quite honestly, obviously we
22 have different sectors here. I think most of the
23 industrial radiographer companies here will agree that
24 our people are animals.

25 (General laughter.)

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1 MR. CARGILL: They may or may not give
2 them the source, they may not give them the truck.
3 But trust me, they will make the notification. I have
4 to honestly ask you, are these changes to the
5 increased controls -- and that's what we're here
6 discussing now -- I'm all for Part 37, that's a great
7 idea, take the emergency rules, put them into
8 regulation where they can be dealt with. We did not
9 have a chance to comment to IC, whereas we can with
10 Part 37. But these changes that you're suggesting
11 are, I believe, in our opinion, excessive and
12 extremely burdensome.

13 Chris mentioned the need for further
14 people, further resources just to meet your
15 regulations, or these proposed regulations. Obviously
16 in this time, this economy my time's pretty tied up,
17 I'm not just the RS, I'm also the quality assurance
18 manager, I'm also the level 3 for the company, and I'm
19 all for spending the needed time for being the RSO,
20 but you're starting to take my time, my ability to go
21 out into the field and watch my people, and I'm going
22 to have spend a lot more time on administrative
23 issues. Now we're really starting to impact safety.

24 When we're talking about this three-day
25 notification, we're talking about seven consecutive

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1 days, the idea is that our itinerant nature is a
2 security feature. You're worried about my guy that's
3 going to be there for a set period of time where
4 somebody may notice them.

5 I mean let's face it, the people we're
6 worried about probably have some money, \$10,000 and I
7 can go get myself an NRC license today and buy a
8 source today legally. It's not that hard to cobble
9 together a license, not that hard to cobble some
10 procedures together. I'm an American citizen, I can
11 certainly make this happen.

12 So if we're going to talk security, we
13 also need to be looking at the other side of the
14 equation, how hard is it going to be for me to legally
15 buy a source? It can certainly be done, it can be
16 done easily. Instead of putting a lot of these
17 extraneous burdens on our operations, I think we might
18 want to step back and consider the overall picture.
19 And that'll do it for me for the moment.

20 MR. MAIER: Okay. Troy, I'm going to let
21 you speak while I go up to the flip chart here.

22 MR. HEDGER: Okay. I'm going to go back a
23 couple of commenters --

24 MR. MAIER: Please give the name and --

25 MR. HEDGER: Oh, Troy Hedger from Alpha

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1 Omega Services.

2 And I'm going to back a couple of
3 commenters to, I believe it's Mr. Gallagher, and you
4 had pointed to him to say about the inventory and how
5 to check it and stuff like that.

6 If I take my meter and I go, All right.
7 There's something -- that only tells me two things.
8 It says, one, my meter's operational, and two, that
9 some radioactive material's there. I don't know if
10 everything's there. And so, you know, I think you
11 really need to think about, you know, what guidance
12 you're going to give people on -- because that really,
13 to me, doesn't do much.

14 And so I think you sometimes need to think
15 about really what steps you want us to take. If
16 you're going to tell us to do inventory, what
17 actual -- do you want us to do a physical inventory,
18 which in our case is sort of difficult because we have
19 a lot of sources that we -- when we get them back we
20 clip them, they go into waste, they're in the waste
21 cans, we know that they're there, we have tamper
22 resistant things. But if we have to actually go do a
23 physical count, you know, it'll be really difficult
24 for us.

25 But I just -- you know, my comment I guess

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1 is just some of the things that you're advising maybe
2 we should, you know, all think about before, you know,
3 we just say that, Oh, yeah, that would be an
4 acceptable method to check the inventory.

5 MR. MAIER: Okay. We'll go to Jean and
6 then to Kate.

7 MS. J. STATON: Jean Staton, Metco.

8 I've got a question about contacting the
9 LLEA. We have an office -- one of offices is in
10 Beaumont. We also have small counties that we go to;
11 Texas is made up of many small counties. Now who
12 would I contact on the LLEA, the people there in
13 Beaumont where my office is, or out there on the job
14 site? Would I contact the sheriff's department for
15 that county? Would I contact the sheriff's department
16 from my county that I'm in that has the license in?
17 Would I contact the police department also? Would I
18 contact the DPS? Who do I contact if I'm in Buna and
19 my office is in Jefferson County? Who do I go to?

20 MS. HORN: You would want to be contacting
21 the LLEA near the location where your material is
22 actually located. So at the location where your
23 material is actually located. So if you just have say
24 a headquarters office where you do your licensing and
25 those types of things, but you have no material there,

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1 there would be no reason to contact and coordinate
2 with the LLEA at that location. You'd want to
3 be doing those types of activities wherever you
4 actually have your materials stored and used.

5 MR. MAIER: Any follow up?

6 MS. J. STATON: The training, yes. The
7 officers, even Beaumont, with the bigger city, when I
8 went to them to start -- when we started the increased
9 controls, it was another one of those, Huh? And so
10 will you be speaking with the LLEAs to help coordinate
11 this so that we can go to them and say, Okay, this is
12 what need, this is what we're going to do, we're going
13 to call you when we're in this county.

14 That would work in Beaumont. It's not
15 going to work in these small counties. I mean they
16 may have one or two policemen, and when you mention
17 radiation or radioactivity, people panic and they go
18 to the extreme.

19 MR. MAIER: Those were the ones you wrote
20 on the card. Right?

21 MR. PURDY: Just real quick. For -- and I
22 don't know if the states are doing it this way, it was
23 a suggestion, but when NRC goes -- when they perform a
24 security inspection, we do go to the local law
25 enforcement and talk to them and sometimes we get a

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1 Huh? And we explain the importance of responding when
2 you're particular facility does -- if they had called
3 in and said something was missing.

4 We have also a provision in Part 37 that
5 says if your LLEA wants nothing to do with you, please
6 notify us and we'll give them a call and see if
7 they'll listen to us, and if not, we'll call DHS and
8 see if they listen to them. And, you know, we
9 can't -- again, we can't force them to do anything,
10 but we're just -- again, we're trying to get -- let
11 them understand the importance of a response to
12 your -- a call from your particular organization
13 facility.

14 MR. ROUGHAN: Kate Roughan, QSA Global.

15 A comment on the LLEA. I think it's kind
16 of presumptuous for the NRC to tell the local law
17 enforcement what the -- how to use their judgment in
18 terms of how to respond to an incident. If anyone in
19 this room calls 9-1-1, LLEA is going to respond, no
20 matter what -- obviously they're going to weigh
21 whatever else is in front of them, and I think it's
22 going to be very difficult for us to say, Hey, we're
23 more important than the mall with a break in. We
24 can't do that. That's up to the law enforcement
25 themselves.

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1 My other comment relates to the inventory
2 in terms of the Category 1 and the aggregate. We're a
3 manufacturer and distributor, we have a very large
4 security zone with smaller activity sources less than
5 Category 2. We have hundreds of those. I can't go in
6 those once a week and qualify each one of those,
7 either by a survey instrument, or by a serial number
8 check, or whatever. That is just impossible. It
9 doesn't agree with ALARA. It's just -- it's
10 unworkable in that respect.

11 MR. MAIER: Thank you, Kate.

12 MS. G. STATON: Gayle Staton, Acuren
13 Inspection.

14 I have a question about if we work at the
15 same refinery, petrochemical plant, every day, 360
16 days a year, do I have to notify LLEA every seven
17 days, because that's -- I've got like 17 refineries I
18 work at every day, do I need to call 17 different
19 LLEAs and let them know I'm going to be there for the
20 next seven days, you know, every week? They won't
21 like it. I'm just making that comment.

22 MR. MAIER: It is more of a comment than a
23 question or --

24 MS. G. STATON: Just a question about
25 temporary job sites.

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1 MS. HORN: Well, if you're actually at a
2 facility for 365 days out of the year, I don't know
3 that I would call that a temporary job site. It's
4 usually a little more limited than that. It could
5 depend on the circumstances.

6 And from what I'm hearing today, it's very
7 clear that we need to provide so some additional
8 guidance in this area: exactly what consists of a
9 temporary job site. And we'll take a look at that.

10 MR. MAIER: All right. Well, I'll try to
11 run through all of these hands, but this lady had hers
12 up first.

13 MS. MORRIS: I'm changing the --

14 MR. MAIER: Go ahead and give your name.

15 MS. MORRIS: Oh, I'm sorry. I'm Vicki
16 Morris from the University of Cincinnati.

17 And I'm kind of changing this to fixed
18 units versus -- all of this has been on the mobile
19 ones. I don't know how many people have gotten NNSA
20 who have like the blood banks and those types of
21 things, have brought those in, and NNSA is looking at
22 security of the ones that weigh two tons and can't be
23 easily picked up and taken, and putting security
24 measures on the device itself.

25 And currently if you have access to the

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1 device, in other words I open the door, put my blood
2 in, push the button, I have to be T&R'd. But under
3 NNSA, they're looking at so that they put, as they
4 called it, alarms on your cash machine to make sure
5 even if you tried to open the cash machine, the cash
6 box, you had to -- under these rules, can we make it
7 so that we only have to T&R those people who can open
8 that cash box, now basically the bottom unit. Have
9 you looked at that sort of thing, where basically
10 security versus the T&R does it.

11 And then my second question --

12 MR. MAIER: You want to take these turn?

13 FEMALE VOICE: Yes --

14 MR. MAIER: Do you -- is it more of a
15 comment, or is it a question you would like to get --

16 MS. MORRIS: My next question goes to the
17 LLEA.

18 MR. MAIER: Okay. For the first one, with
19 the cash box.

20 MS. MORRIS: Yes, that's how my police --

21 MR. PURDY: Right. Right.

22 MS. MORRIS: -- explained it to me, it's
23 a cash box at the --

24 MR. PURDY: What LLE -- what NNSA is
25 providing you is additional delay for basically

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1 insider mitigation. And that's where we were going
2 with the requirement if a Cat 1 source you have to be
3 able to tell if it's leaving your facility, or a
4 Category 2 source, doing the inventory. It's the same
5 concept as insider mitigation.

6 So but everybody is still -- currently as
7 written unless you came in for some sort of exemption
8 from your regulator, everybody would still be T&R'd
9 who has access, unescorted access to the security
10 zone.

11 MS. MORRIS: Okay. Because I want you --
12 I guess I'm asking that you guys consider that I can
13 make the cash box my security zone. If you want to
14 use it that way.

15 MR. PURDY: That's what you're doing with
16 the ICs. Right?

17 MS. MORRIS: Well, no, I mean IC I have to
18 the device. If I open the door of the device to put
19 the blood in, I have to do T&R. But if I can make it
20 so I T&R only people who can actually get into the
21 zone where the sources are, that can cut my T&R down
22 from hundreds down to a handful of individuals, and
23 that is a big plus for us.

24 The other question I have, as I look at
25 the guidance, and this is at -- I thought I totally

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1 understood it, but then when I read the guidance I get
2 a little confused. Our university, being a state
3 university, our police department has the same arrest
4 rates as any other policeman in the state of Ohio. So
5 that, to me, makes them LLEA.

6 But then as I read other parts, because
7 they're also the person in charge of the security plan
8 and all of that other side, it's not clear that I can
9 still use them as LLEA. Can I, or can I not, if they
10 basically serve both sides?

11 MR. PURDY: We would have to look at the
12 specifics of the situation, but as long as they're
13 armed and have arrest authority you can use them, yes.

14 MS. MORRIS: Okay.

15 MR. MAIER: I saw a bunch of hands over
16 here. Is there anybody who hasn't had a chance to
17 make a comment to ask a question that has one right
18 now?

19 MR. TOUPS: I've got some.

20 MR. MAIER: Then we'll get back to this
21 table.

22 MR. TOUPS: Kevin Toups for Global X-Ray
23 and Testing.

24 She said that 365 days is not a temporary
25 job site. By definition it is if it's not a permanent

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1 radiographic facility.

2 And my question is, we do a lot of
3 offshore work. Who is the LLEA offshore?

4 (General laughter.)

5 MR. MAIER: Isn't that Admiral Allen?

6 MR. TOUPS: Is it the Coast Guard, is
7 it -- and one more comment. One more comment with
8 Daniel's situation.

9 I know Daniel and them do a lot of work at
10 plants and facilities. Guys, they go so much security
11 there, and you got to security clearance to get in
12 there, it's going to be a lot more than what you all
13 are already asking for. So in those situations there,
14 it's way overboard what you all are asking for, for
15 seven-day notifications, because most of the time they
16 go in and out daily anyway.

17 Plants, I don't know if you have a -- had
18 a chance to go to them. Maybe you ought to make a
19 trip and try to get in there without clearance.
20 Pretty difficult. And that's it.

21 MR. MAIER: Thank you, Mr. Toups.

22 MR. TOUPS: So you all can't answer that
23 one then, can you all, about offshore.

24 MR. PURDY: Coast Guard.

25 MR. TOUPS: Coast Guard.

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1 MR. MAIER: There's your answer.

2 MR. TOUPS: What Coast Guard, which one?

3 MR. MAIER: Admiral Allen. Right?

4 (General conversation.)

5 MR. MAIER: In other words, your comment
6 is that that needs a little bit more development --

7 MR. TOUPS: Oh, yes, yes.

8 MR. MAIER: Or at least to be explicitly
9 addressed in the guidance.

10 MR. TOUPS: Oh, absolutely. There's a
11 long area with a lot of different jurisdictions and
12 areas and that that different Coast Guard elements
13 control, so it would -- that would be a difficult one

14 MR. JAMES: Just to address part of your
15 question about by definition of the temporary job
16 site, this part has its own specific definition for
17 temporary job site. So the definition for temporary
18 job site under radiography rules isn't necessarily the
19 same, so you need to look at how that impacts your
20 work as well. A temporary job site is specifically
21 defined in this.

22 MR. MAIER: Okay. Next person? Next
23 hand?

24 MR. J. MILLER: I've got one.

25 MR. MAIER: John Miller.

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1 MR. J. MILLER: John Miller, International
2 Isotopes.

3 The questions on security zones, temporary
4 security zones, and then the monitoring and detection
5 capabilities there. For temporary security zones, the
6 rule and the implementation guide provides some
7 examples, and I think it's not a good practice to put
8 examples in there because what happens, you might have
9 an inspector that is pigeon holed and reads the
10 regulations, these are the examples, you set up a
11 temporary security zone for something that wasn't in
12 this example, and so now you're out of compliance.

13 The detection capability for Category 1,
14 for the security zone, the way the rule is written, to
15 me, when I read it, it requires essentially 24/7
16 monitoring because it says you cannot rely on your
17 facility monitoring system, in addition to your -- you
18 know, what you're monitoring the facility, something
19 else needs to be monitoring that security zone, which
20 is in the facility, and that's counter with really
21 what we do right now.

22 You know, the way I look at a temporary
23 security zone, when you're ability to assess and
24 detect and monitor something that doesn't rely on a
25 permanent fixture, then you have to expand that

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1 security zone to have a temporary security zone.
2 During normal business hours, you know, a security
3 zone could be a locked cage and you've got people
4 working around that cage the entire day, you know, the
5 security zone is continuously monitored and you'd be
6 able to immediately detect if somebody was attempting
7 to access that unauthorized.

8 When people go home for the day, you know,
9 you rely on your building monitoring system to detect
10 whether or not somebody is trying to access a
11 security zone. Now you could divide your monitoring
12 system so that it knows what portion of the facility
13 is being -- you know, triggers the alarm, and so don't
14 know -- the way I read that it seems you wouldn't be
15 able to rely on that anymore.

16 I just want to get clarification on what
17 credit you can take for a monitoring system, a
18 building monitoring system to specifically monitor a
19 security zone. Thank you.

20 MR. MAIER: Thank you, John.

21 MR. PURDY: Just real quick, you have --
22 for a Cat 1 source you would have your regular -- your
23 security zone requirements monitored to detect access,
24 set up your security zone, your alarm for an intruder,
25 unauthorized access. The purpose, again, of being

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1 able to detect if someone is removing a Category 1
2 source, that alarm is for the insider. I may be able
3 to turn off all those alarms and my last line of
4 defense is then this alarm going off when someone
5 tries to take -- remove the source from the facility.

6 And some licensees already have that
7 requirement, so I wouldn't expect that to change,
8 those that are implementing that requirement already
9 under different orders than the IC. But that was the
10 idea behind that. And, again, if it's not working,
11 send us your comments, tell us why so that we have --
12 we can provide enough information for the Commission
13 to make a determination whether that should stay in.

14 MR. J. MILLER: You know, I think the way
15 the language in the rule is different than in the
16 additional security measures, and it can be
17 interpreted in a way that would require us to change
18 the way that we're --

19 MR. PURDY: Okay.

20 MR. J. MILLER: -- monitoring the
21 facilities.

22 MR. MAIER: Okay.

23 MS. MCGOWEN: Laurie McGowen with Lamco
24 and Associates.

25 I don't know how you're going to be able

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1 to prove or disprove that I notified the local law
2 enforcement. I can't get them to sign a paper now
3 that I'm even there, so how are you going to get --
4 how are you going to know whether I really called them
5 or not? I might call Joe and Joe might say, Might not
6 be there the day that you all ask him if called him;
7 he's gone. So how are we going to prove whether we
8 called them or not? Don't tell me they're going to
9 sign something, because they won't sign nothing.

10 MS. HORN: You're supposed to maintain
11 some documentation of the contact. It could be a copy
12 of a letter, of an e-mail, it could be a phone record,
13 it could be any number of things. But you are
14 supposed to document that -- those types of
15 coordination activities.

16 MS. MCGOWEN: So I can just e-mail them
17 but they don't have to e-mail me back?

18 MS. HORN: That's correct.

19 MS. MCGOWEN: Oh, that's good.

20 (General laughter.)

21 MR. MAIER: At least somebody's going away
22 happy maybe.

23 (General laughter.)

24 MR. MAIER: Jean.

25 MS. J. STATON: Okay. I guess I'm

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1 trying --

2 MR. MAIER: Jean Staton of --

3 MS. J. STATON: -- Metco.

4 MR. MAIER: -- Metco.

5 MS. J. STATON: The secure area. Okay.
6 We handle Category 2 sources. So why wouldn't that
7 also be -- why couldn't that be our radiation area,
8 our restricted area. Because we've always got a man
9 out there with that camera. We've always got a T&R
10 official there. So I'm to exactly sure why we're
11 having a secure area, a restricted area, a radiation
12 area, and a high radiation area.

13 MR. PURDY: You can make your security
14 zone whatever you want it to be. If you want it to be
15 your high radiation area, or your restricted area,
16 whatever -- you can make the boundaries the same.
17 It's whatever you want. Now those other labels, high
18 radiation and all that, that's health and safety
19 issues for, you know, first responders or anybody
20 else. But you can make it the same zone if you want.
21 It's licensee defined.

22 MS. J. STATON: Do I need to document it
23 in a program?

24 MR. PURDY: Yeah -- yes, excuse me.

25 MR. MAIER: Thank you, Jean.

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1 Anyone else? Mr. Chris Dixon of Acuren.
2 Am I correct?

3 MR. DIXON: Yes.

4 MALE VOICE: Steve wants to --

5 MR. MAIER: One second.

6 MR. JAMES: Sorry, Chris.

7 MR. DIXON: It's all yours.

8 MR. JAMES: I'm a little -- I find it
9 interesting that the security zone is creating so much
10 comment, because we had specific discussion in the
11 working group, we thought this was a great thing
12 because it was -- the whole idea of defining a
13 security zone was to let the licensee know what part
14 of their operations this Part 37 is applicable to, and
15 make it what you are able to do based on the
16 configuration of your facility or how you operate to
17 allow you to say, Okay, in order to be able to do
18 this, this and this, I can take my security zone and
19 make it smaller, maybe where I'm using materials on a
20 daily basis.

21 Or, if the way your building is laid out,
22 all your doorways are on the outside, okay, not maybe
23 you have to make your security zone larger, maybe it's
24 the whole size of your radiation area because that's
25 what you need to do to be able to come into compliance

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1 with the Part 37 or the increased control
2 requirements.

3 So the addition of the security zone
4 definition was intended to be helpful to allow you to
5 define for yourself what works for you for Part 37,
6 and it may be the same as what you're doing for
7 radiation area for your safety rules, it may be
8 different, but it's licensee specific and it's defined
9 by you as to what you can do -- what you require for
10 your own facility to be able to meet the requirements
11 of Part 37.

12 So I don't know if that helps at all, but
13 that was the intent.

14 MR. MAIER: Okay. Mr. Dixon.

15 MR. DIXON: I just wanted to make a
16 comment. So I send an e-mail to Joe -- I live in
17 Mayberry, USA, and that's it? That's it.

18 (General laughter.)

19 MR. DIXON: What benefit do I get out of
20 this, and if you're going to accept that, that is a
21 total waste of time.

22 MS. HORN: The requirement is that you
23 notify, that you coordinate with them depending on the
24 circumstances. We can't require the LLEA to engage in
25 these activities. We do want you to be letting them

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1 know about some of these things, and to make sure that
2 you're doing that, we want -- you have to document
3 those activities. So if you've sent an e-mail, you
4 can keep that e-mail and that shows documentation that
5 you've made that attempt to coordinate.

6 If they're not responding to you, you
7 still have to notify us and then we may be talking to
8 them and say, Hey -- for the coordination piece, not
9 for the temporary job site piece.

10 MR. DIXON: I understand that, but you're
11 putting a burden on the licensees to make sure that
12 the LLEA is responding. Where do we have the
13 authority to impose this onto the LLEA? I know you're
14 saying we need to notify you if they don't. What is
15 your intentions to make them comply?

16 MR. PURDY: Again, we can't make them do
17 anything. The idea here was, again, to make -- to get
18 you all up higher in the pecking order, do I go after
19 your source or do I go after the purse snatcher. That
20 was the point. If they don't understand what you are,
21 what you have, what are the -- what can be done with
22 that material, then they may not think it's as
23 important -- they may think another call is more
24 important than your facility.

25 That's the whole point of this thing was

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1 so that they understand the potential risks of what
2 you have so you get a faster response. And by having
3 that, that allows us to actually ease the security
4 requirements on you all. We don't have a fast
5 response is part of the whole regime here of the
6 graded -- of the layered approach here. If we
7 couldn't guarantee a fast response, we may have to ask
8 you to do more. So that was really a method to try to
9 ease the burden on you and get what we need done.

10 MR. DIXON: I don't need the microphone --

11 (General laughter.)

12 MR. DIXON: Okay. It comes down to
13 education of the members of the LLEA. They don't know
14 what we do, you're right. So therefore they could
15 care less what we do. To them, a BOE is more
16 important than somebody coming up and taking my
17 source. Or you get into some of these local
18 jurisdictions where mom and pop situations, they're
19 going to take care of Uncle Joe or Aunt Sally before
20 they worry about us.

21 So it comes down to an education thing
22 with the local law enforcement agency that we can't
23 do, you're saying you can't do, so why do we do it?

24 MR. PURDY: No, I'm saying that in the
25 cases where -- that we haven't had -- when we've had

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1 this issue come up before where the LLEA does not want
2 to cooperate, and our inspector has gone out there and
3 explained things and they said, Oh, okay. We
4 understand now. If that still doesn't happen, we'll
5 call -- you know, we can't -- again, you're right, we
6 can't make them do anything. We can just try to
7 educate them. And that's what we're trying to do.

8 MR. DIXON: I'll default to Stephen James
9 on that one.

10 (General laughter.)

11 MR. MAIER: We do need to use the
12 microphone for no other purpose than to make sure
13 Leslie gets it captured and that she can, you know,
14 get a good transcript here.

15 MS. BRYAN: Doris Bryan, Radiation
16 Technology.

17 We already do documented annual sit-downs
18 with local -- for our fixed facility, does that serve
19 for Part 37 also, or do we have to do that separately?

20 MS. HORN: I'd have to say that it depends
21 on what all your sit-down consisted of. If you're
22 covering the information that we expect you to be
23 providing them in B of Part 37, then, yes, that could
24 serve. You would just need to document that you're
25 having that and these are the types of things that we

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1 discussed.

2 MR. BONVILLAIN: Daniel Bonvillain again
3 from Capital Ultrasonic.

4 I just want to be -- put this on the
5 record from the industry side. The gentleman here
6 keeps alluding to the fact that you all don't have any
7 jurisdiction or any authority to impose the local law
8 enforcement interaction with us. So we have even less
9 jurisdiction or authority, and we're trying to comply
10 and communicate with them. But in the big scheme of
11 what they have to do, we feel in advance that we have
12 a good security plan that we don't need to further
13 communicate with them about, and they seem less than
14 interested in further or more burdensome communication
15 about a secure situation already.

16 So I just want to be on record as saying
17 that I understand you don't have the authority or
18 jurisdiction to impose upon them, and we would be on
19 record as saying we have less authority and
20 jurisdiction to impose upon the local law enforcement.

21 MR. MAIER: Thank you, Mr. Bonvillain.

22 I'm not ignoring you, I just want to see
23 if anybody else who hasn't had a chance yet is in the
24 queue, and I guess not.

25 MS. ROUGHAN: Kate Roughan, QSA Global.

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1 Just to follow up on the local law
2 enforcement agency. This is similar to when NRC
3 implemented rules for carriers. You put burdens on
4 the licensees to impose certain requirements on the
5 carriers that we couldn't enforce, the NRC couldn't
6 enforce.

7 By requiring us to do this with the local
8 law enforcement, you're putting a lot of
9 administrative burden on the licensees on something
10 they have no control over and you have no control
11 over. It just doesn't make sense. It makes a lot of
12 work for no benefit.

13 MR. MAIER: It sounds like there's not
14 necessarily a requirement to get the law enforcement
15 folks to comply, but there seems to be a lot of angst
16 on the part of the industry that they think that that
17 should -- that intrinsically needs to be done.

18 MR. NEIL: Andy Neil, Schlumberger again.

19 Just following up again on the local law
20 enforcement, offshore. If it's a single Coast Guard
21 point, at any given time offshore in the Gulf there
22 could be 50 to 100 jobs going on, radiography, well
23 logging, whatever is happening. Those things move on
24 a daily basis, all over the place.

25 It wouldn't take too long before the Coast

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1 Guard are a bit fed up with daily phone calls from
2 someone, a different company saying, I'm on this rig,
3 I'm on that rig, and who's going to coordinate that
4 for them, what are they going to do with that
5 information, that was the thing.

6 If there's been -- I thought if there was
7 no specific incident that's happened that caused this,
8 other than just someone seeing a security gap, I don't
9 see any use to that information whatsoever.

10 MR. MAIER: Thank you, Mr. Neil.

11 MS. G. STATON: Gayle Staton, Acuren
12 Inspection.

13 I'd just like to say that I think we might
14 be the little boy that cried wolf so many times nobody
15 came when he really saw the wolf. And that's what I
16 think is going to happen here, just based on our
17 experience with LLEA when we implemented IC order. I
18 think they're just going to get fed up with us.
19 That's just a comment.

20 MR. MAIER: You might want to get that on
21 the flip chart.

22 (General laughter.)

23 MR. MAIER: Who's next?

24 MR. CARGILL: Scott Cargill, Valley X-Ray
25 again.

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1 Just to expand upon this, I have a grave
2 concern here. Essentially you don't have the
3 jurisdiction, you don't have the authority to
4 influence them, we don't, their budgets are tight as
5 it is. My biggest fear here at this point with this
6 specific rule, three-day notice, seven-day consecutive
7 job site, is the NRC has created a rule that is just
8 about guaranteed to put us in violation at some point.

9 We're going to try our best, obviously
10 we'll do whatever we've got to do to do our jobs
11 legally and safely. But you're setting us up for
12 violations. Okay. If I'm going to notify my local
13 law enforcement, they agree or don't agree, I have to
14 contact you --

15 Who do I contact by the way, which one of
16 you do I call? Obviously you're going to set up a
17 number, maybe a website, e-mail?

18 Steve, you're up, dude.

19 MR. CARGILL: You know, you're setting up
20 a complex issue here that none of really have any real
21 control over. So my question will be, again, to what
22 level do we take our security? Maybe a better
23 approach to this, we already do our annual local law
24 enforcement interaction, maybe we should all just sit
25 down with our local law enforcement agency and say,

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1 How would you guys like to work this, instead of
2 making a rule that we're bound to stumble over at some
3 point?

4 MS. HORN: I actually would like to make
5 one clarification first. We're kind of mixing the
6 LLEA coordination and the LLEA notification for
7 temporary job sites. You only have to notify the LLEA
8 of a temporary job site. No response or anything is
9 necessary. You do not have to notify the agency if
10 they haven't responded. That's only for the
11 coordination piece for the permanent facilities.

12 So there seemed to be a little bit of
13 confusion in the last few comments there. So for the
14 temporary job site notification, you tell them, Hey,
15 we're going to be in the area, here's the basic
16 information. If they don't respond, there is no
17 requirement for you then to notify the NRC or what
18 other state agency that you may be regulated by.

19 MR. MAIER: Steve, were you going to say
20 something?

21 MR. JAMES: First I was going to refute
22 Gary's -- Steve James, State of Ohio.

23 You know, not only was I a representative
24 on the working group, but I'm also a representative
25 for the Organization of Agreement States. So I -- you

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1 know, as such, as an agreement state, you know, we
2 will also be commenting on the rules as they came out
3 for things that we disagree with.

4 Because of the purpose of this meeting,
5 you know, one of the things that we are going to
6 comment on is the education effort that would be
7 required. Yes, there's only a notification
8 requirement for temporary job sites. However, there
9 is a request in that notification that local law
10 enforcement respond that they're able to meet -- that
11 they've got the confirmation from you.

12 That's also going to generate a lot of
13 phone calls. It's going to generate a lot of
14 information requests. I know with the IC requirements
15 alone -- you know, I had one city -- the city of
16 Dayton wouldn't talk to any of the five licensees that
17 I had that were subject to increased controls in
18 Dayton, because when they heard radioactive materials,
19 they immediately thought Homeland Security.

20 So I had to develop a presentation and
21 spend a day in Dayton talking to the Dayton Police
22 Department about what the expectations were, what the
23 whole purpose of the increased controls were, and why
24 the licensees were asking for their cooperation, or
25 coordination. Then I believe there was very little

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1 problems, and I think Chris can attest to that because
2 one of his facilities was in Dayton, that then they
3 were able to get coordination with the LLEA.

4 From a regulatory standpoint, I don't have
5 the man power to go out and do these presentations to
6 all the major cities, much less all the local law
7 enforcement agencies that may contact me to find out
8 what's going on here. So that's going to be one of my
9 comments is the amount of time that I could expect to
10 maybe have to have to go out.

11 Now maybe that's a cottage industry.
12 Anybody want to do a web-based training that can do at
13 LLEA? I have the Ohio Buckeye Sheriff's Association
14 is -- for the 88 counties, there's an Ohio State
15 Police Officers Association, do I go to their annual
16 meetings and provide training? Do I -- you know, what
17 do I do from just in my state alone? So that's going
18 to be one of the comments I make is how do I get that
19 information out, because I know I'm going to get a lot
20 of requests.

21 MR. MAIER: Okay. I don't know what other
22 subjects regarding physical protection while in use
23 are yet untapped, but maybe can we get a concession
24 from the panel that this issue of LLEA does need some
25 further clarification, some further guidance, so that

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1 we can move on to whatever other things needs to be
2 done? I think they realize that there is a bit of
3 a -- I don't know if we want to call it a gap, but
4 there is a conundrum there and that needs to be at
5 least further analyzed by the NRC and maybe further
6 guidance given.

7 Any other topics regarding physical
8 protection while in use?

9 Mr. John Miller.

10 MR. J. MILLER: John Miller with
11 International Isotopes.

12 37.51 talks about maintenance, testing,
13 and calibration. The implementation guide has nine
14 questions and answers associated with that. And I
15 really cringe at the term calibration in this
16 regulation. I don't know what that means.

17 If we have motion detectors, do I need to
18 calibrate a motion detector somehow that, you know, it
19 detects this much motion, or if it's a temperature
20 sensor, if it's a door that has a magnetic, you know,
21 interface that, you know, if I open it so many inches
22 it alarms. And then there's nothing in the question
23 and answers that really addresses calibration. It
24 doesn't provide any type of frequency. Maintenance
25 and testing of a security system is more than

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1 adequate, and I don't know how I would begin
2 calibrating a system.

3 MR. MAIER: Thank you, Mr. Miller.

4 We've got about 10 minutes left. Any
5 other topics that maybe haven't been already discussed
6 or covered?

7 Mr. Abbate.

8 MR. ABBATE: Robert Abbate, Rinehart and
9 Associates again.

10 A couple of comments, not really so much
11 sections. A lot of what I'm hearing is that the
12 rules -- the regulation was written to oversea an
13 industry. This industry has a number of sectors with
14 quite different requirements. I think everyone is
15 kind of interested in their own world, and rightly so,
16 but a lot of the things -- the issues are because the
17 rule is so general that everyone sees issues within
18 their own private sector.

19 My other comment, I guess my mind starting
20 working when you talked about educating the law
21 enforcement people. Let us not forget for the mobile
22 radiography, what sort of risk a iridium source really
23 poses. If we educate the law enforcement community as
24 to what the real risk is with 60 curies of iridium,
25 then they're liable not to show up the same day.

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1 One of the reasons that we don't have
2 issues with these sources is they would make a lousy
3 weapon. There's a whole lot better and easy access
4 choices, so my comment is just let's not lose sight of
5 certain parts of the industry as not being the same
6 threat as other parts, and write a regulation that
7 adversely affects people using radioactive materials
8 that would make a lousy weapon and imposing the same
9 security regulations on them as to someone that say
10 transports 1,000 curies of cobalt on a railroad car.
11 Of course they don't have a military escort and other
12 issues.

13 But lumping all of us into the same
14 categories just really doesn't work in this industry.

15 Not that we all need a separate set of rules, but we
16 may need some segregation as to the way different
17 methods are used within the overall infrastructure of
18 industrial radiography.

19 MR. MAIER: Anyone else?

20 MS. HADDEN: I'm in the same boat as one
21 of the earlier speakers. I cannot stay for the whole
22 day, so I'd like to make a very, very brief comment
23 about transportation, and urge you to consider the
24 strongest protections, especially about notice of
25 shipment doesn't arrive.

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1 And there was an article in the *Fort Worth*
2 *Star Telegram* in 2001, there was a truck load of waste
3 from nuclear manufacturing, fuel manufacturing, and it
4 did not reach its destination in Andrews, Texas, and
5 it had sat for a month on a ranch. It was supposed to
6 take two days to get to the destination, and
7 apparently it took all that time to even find it, and
8 it had 19 pounds of uranium as part of that shipment.

9 So I would urge you to tighten up those
10 considerations to consider the nature of the source,
11 the nature of the industry, and the materials
12 involved. And, you know, it's easy to hear in this
13 room that there's different circumstances, but for
14 those that really need tight security, I would urge
15 you to go all the way on all fronts. Thank you.

16 MR. MAIER: Thank you, Ms. Hadden.

17 About seven minutes left. Anybody else
18 with physical protection in use comments?

19 (No response.)

20 MR. MAIER: Okay. I guess I wrote a few
21 things up here. I think LLEA notification got its due
22 in this session. Some of the other things -- I guess
23 I don't -- I'm not as familiar with the rule as
24 everybody else in th room -- seven-day detection or
25 that applies to inventories, or -- is that -- that's

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1 another issue that folks are interested --

2 FEMALE VOICE: Seven-day notification on
3 that.

4 MR. MAIER: Weekly inventory. All right.
5 So inventory instead of detection.

6 Protection -- let's see, temporary job
7 site, what's the size of a job site, how long is
8 somebody at a job site for the purposes of this rule,
9 isn't 9-1-1 good enough, and more definition of
10 security zone.

11 Merri, any other summaries that you'd like
12 to offer? Okay.

13 All right. It is now 12:09 by my watch.
14 And the next session, which will deal with physical
15 protection of byproduct material while in transit, is
16 scheduled to begin at 13:30.

17 I would urge -- anybody who does have some
18 comments on that that they know they want to provide,
19 please sign the sheet that's out on the registration
20 desk and that'll give us a better logistical
21 preparation for how to address everybody's comments in
22 time, and maybe save me a little bit of wear and tear.
23 Thank you very much. We'll see you at 1:30.

24 (Whereupon, at 12:10 p.m., the meeting was
25 recessed, to reconvene later this same day, Wednesday,

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A F T E R N O O N S E S S I O N

(Time Noted: 1:33 p.m.)

MR. MAIER: We're going to start the third comment session and/or questions for clarification for the guidance for the proposed Part 37 rule, Subpart D, protection of byproduct material in transit.

I'll go over a couple of things. Somebody asked during the lunch break when would the transcripts for this meeting be available for viewing and for reading, and Merri indicated that probably in about two weeks on that www.regulations.gov website under the docket number at the top of the page, NRC2010-0194. You should start looking for it on that website and under that docket number and you might be able to find them in a couple of weeks.

We only have one scheduled speaker for this session. And before we get to the comments, let me just reiterate that Leslie is doing the transcripts. She would appreciate if people would speak very clearly when they identify themselves and when they state their affiliation. Like I said before, if you would like to get her a business card that she can, you know, verify that she has the correct spelling of your name and your company, those are welcome as well.

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1 With very registered speakers, it'll be
2 the same format that we went through for the morning
3 sessions, going around and taking comments and
4 clarification questions for the staff up here at the
5 podium. The green cards are still here --

6 MS. HORN: Green and white cards.

7 MR. MAIER: -- green and white cards --

8 MS. HORN: They're sitting on the table.

9 MR. MAIER: -- for those who want to make
10 comments that they may not have time to present, or if
11 they want to make comments that they don't feel
12 comfortable in stating orally, you can wave those and
13 get them to either me or to Saranee Hawkins, and we'll
14 try to get them up to the panel and let them read the
15 question or read the comment and comment upon that.

16 MS. HORN: And, Bill, I wanted to add one
17 more thing on the transcript. Not only will it be on
18 the regulations.gov site under that docket, but it
19 will also be placed in ADAMS, so 10 to 14 days is the
20 typical. It might take a day or two longer than that,
21 but that's roughly the time frame that we're talking
22 about, both ADAMS and for regulations.gov.

23 MR. MAIER: Okay. With that, we'll go to
24 our single registered speaker for this session, and
25 that is Kate Roughan of QSA.

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1 MALE VOICE: Ninety minutes.

2 MS. ROUGHAN: I've got a couple of
3 comments. I won't go through all of them and let
4 other people participate as I go through some of
5 these.

6 But for the transfer of material for
7 Category 1 and Category 2, the proposed rule is
8 requiring that you either call the regulatory
9 authority who owns that license for verification that
10 it's okay the shipper transfer that source to the
11 recipient. Or you use the NRC licensing verification
12 system, which is not up and running at this point. It
13 is in progress, and I know there's different ideas of
14 how they're going to actually implement it.

15 But I have some concerns there just in
16 terms of the amount of calls the regulatory
17 authorities may get. Typical M&Ds may be shipping out
18 anywhere from 50 to 60 sources a day going through
19 however many different jurisdictions. So you could be
20 making 50 or 60 calls a day following up on those
21 calls to get the okay if you haven't gotten immediate
22 response from the regulatory authority on the phone.

23 The same goes for the returns back to the
24 manufacturer and distributor. Every single individual
25 entity would have to call the state of Massachusetts

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1 for us, for example, to verify that we are authorized
2 to receive those sources. So that's always a very big
3 burden on both the regulatory authorities and on the
4 licensees themselves.

5 Again, they've talked about the license
6 verification system. It's kind of changing how they
7 were viewing that at first, but it sounds like now the
8 NRC's going to go to a web-based image, where before
9 you transfer you go to a central website, or protected
10 website and you can verify the license through that
11 mechanism.

12 Right now there's no way to tie that in to
13 the NSTS so you can verify current possession limits
14 at the various facilities. And if you start doing
15 that under the licensing verification system,
16 possession limits vary quite a bit on the different
17 licenses.

18 You may have sources in transit that have
19 not been -- that have been shipped off the receiver's
20 facility, but haven't made it to the manufacturer and
21 distributor, so they may be unlawful -- they
22 possession limit during NSTS may actually show more
23 than -- how much should I say -- may show less than
24 what we can legally ship them, because you may have a
25 lot of shipments in transit. So that's a concern.

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1 You're going to have potentially delays in shipments
2 that really do not need to be delayed.

3 For the preplanning and coordination,
4 again, significant concerns on this. Right now this
5 is something that we have, we actually contact our
6 customers via e-mail saying a shipment's going out.
7 They understand that typically the shipments go
8 Federal Express. So to verify that it got to its
9 intended destination the next morning, we go through
10 the Fed Ex tracking, we just tick off that everyone
11 got the shipments that they should have.

12 Under this new rule, it has a lot more
13 detail in terms of the preplanning where you've got to
14 actually almost monitor -- it's not quite real time,
15 but that the shipment did get to the recipient by a
16 certain time. If it doesn't get to the recipient, the
17 recipient has to call, the shipper has to call,
18 there's investigations.

19 You all know in shipments there can be
20 delays. It may not get in the plane it was intended
21 to. So I see that as a lot of communication back and
22 forth between the shipper and the receiver following
23 up to see whether or not the package had been received
24 or not received, potentially launching investigations,
25 or again, following up with phone calls throughout the

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1 day.

2 It's just a very large administrative
3 burden that we'd really have to probably have someone
4 be doing that full-time just to follow up on the
5 shipments, whereas the current system now, personally
6 I feel works, it was working under the orders that we
7 were working under, and it's just as effective.

8 So I'll leave it at that and let people
9 comment.

10 MR. MAIER: Thank you, Kate.

11 MS. HORN: Actually, I am going to comment
12 a little bit on the verification system. The way the
13 rule is written right now, you would have to either
14 contact the regulator or use what's going to be called
15 a license verification system, or whatever the name
16 will be. We're aware that that system is still under
17 development. We're watching that very closely.

18 If that system is not going to be
19 available in time when the rule is going to be
20 effective, this is one provision that perhaps we would
21 have a longer effective date for. So we are very
22 aware of those types of issues, so we are kind of
23 monitoring that.

24 MR. MAIER: I see a hand.

25 MR. CARGILL: You know, before this is all

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1 said and done, I'm going to call Merri up --

2 MS. HORN: Hi, Scott, how are you doing?

3 (General laughter.)

4 MR. CARGILL: Scott Cargill, Valley
5 Industrial X-Ray again.

6 Kind of expanding on what Kate said, the
7 website idea, that's a great idea and all. What did
8 you spend on NSTS to get that up and going? Great
9 job.

10 (General laughter.)

11 MR. CARGILL: Now, honestly, Andrew, it's
12 working great for me. Thanks. It does work. But how
13 many years has it taken to get it up on its feet?
14 And even today, and I've pretty much had success from
15 day one when I started using my card, even today the
16 website is temperamental, meaning I may or may not get
17 in that moment or not. So there's still problems
18 there. I don't trust your website well enough to say
19 that will alleviate this issue.

20 And as far as calling the state or calling
21 the NRC to verify a license, I've probably got a dozen
22 direct lines into the state of California. I'm lucky
23 to be able to get a hold of any one person when I need
24 them. Obviously with the budgets and all that aside,
25 these people are not obligated to answer their phone.

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1 You've just created an even greater burden on us, let
2 alone the
3 manufacturers.

4 So I have to question verifying in that
5 manner. Would not a current copy of their license in
6 our possession be enough? To me that would be a lot
7 easier on everybody and still meet the intent of what
8 you're after here. We're not going to be sending a
9 source to somebody who's not authorized to get it.

10 From the manufacturer's side, how are you
11 going to set it up so that QSA knows what my
12 possession limit is? How are they going to know what
13 I currently have? Because I just bought three sources
14 from INC that day, and there's no way they're -- at
15 all that they're going to be able to cross-verify
16 here. I could easily be over my possession limit,
17 they wouldn't know, and yet now they're in violation.

18 So I would question that as well.

19 The drop dead time line, deliver no later
20 than kind of thing, what's going to end up happening
21 is we're going to have to flat out default. INC, I
22 would like my source here Friday, to be here no later
23 than next Monday, 5:00 p.m. Just so that we're able
24 to keep ourselves out of trouble. Otherwise, the
25 alternative will be it needs to be here by three

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1 o'clock Friday, and at 3:01 I start calling NRC and
2 the state.

3 What are you guys going to do? You're
4 going to send out the National Guard every time
5 somebody makes this call, because it's going to happen
6 often. We have no control over Fed Ex. The guy
7 decides to take lunch an hour and half instead of 45
8 minutes, or whatever the case may be, traffic.

9 So again, you're starting to see -- going
10 to be seeing a lot of wolf crying that's going to
11 create a lot of problems for local law, state
12 government, and federal government. That does it for
13 me.

14 MR. MAIER: Thank you.

15 MS. HORN: Actually let me comment on a
16 couple of that. The no later than arrival time is not
17 intended to be the time that you actually expect your
18 delivery. It's a time that you've established, and
19 it's between -- you can choose what that time is going
20 to be such that if that source really hadn't arrived
21 by then, you're concerned. You need to start and
22 investigation, you need to start making phone calls,
23 what happened to it. It isn't intended to be the time
24 frame that you're actually getting the source.

25 I still understand some of your issues

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1 would remain with that, but I did want to clarify at
2 least that little piece of it.

3 MR. CARGILL: And to expand upon that, I'm
4 probably not the best guy to be talking in these
5 lines, but why regulate that? Why put that burden in
6 regulation? We do that now. If my source isn't there
7 Friday when I expect it, by Friday three o'clock I'm
8 going to be going, Hey, guys, where's my source? It's
9 coming today. Right? Because I really need it. I
10 didn't order it for the fun of it.

11 In our industry, we don't order the
12 sources for a job a month ahead. We're ordering it
13 because I want it out on that job Monday morning
14 earning money. I'm paying by the curie and those
15 things don't just sit around, they're obviously
16 decaying rather rapidly. So, again, why put it in
17 regulation? Why make that burden when, as an
18 industry, we're self-regulating in that regard.

19 MS. HORN: Well, I think in this instance
20 there actually have been instances of where material
21 did not arrive, got perhaps misdirected, and no one
22 was really looking for it, weren't maybe aware. So
23 there have been some actual issues that we're trying
24 to address here.

25 Maybe this isn't the right way to do that.

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1 Maybe there's something else that we could do.

2 MR. CARGILL: Okay.

3 MS. HORN: We're open to suggestions.

4 MR. CARGILL: I personally keep a very
5 close eye on the event log, and I've noticed some of
6 those events pop up. And maybe you may or may not
7 know the answer, in industrial radiography, has that
8 occurred? And we're talking 100 curies of material.
9 That's usually going to be a pretty important item for
10 us.

11 MR. MAIER: Okay. Thank you, Scott.

12 MR. HEDGER: Just to sort of add to that.
13 From a manufacturer's point of view --

14 MR. MAIER: Troy?

15 MR. HEDGER: Troy -- I'm sorry. I do that
16 every time. My name is Troy Hedger from Alpha Omega
17 Services.

18 From a manufacturer's point of view --
19 he's correct, he's going to order a source, he's going
20 to make sure it's -- he's going to make sure that it's
21 there. We're going to ship him that source.

22 From my perspective, what I'm concerned
23 about are those return sources. We send sources
24 around the world, and we have no idea when they're
25 coming in. We don't know a lot of times -- sorry, I

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1 didn't know -- if he sends us a source, we're not
2 notified. That is more -- to me, that is more
3 important than when the manufacturers send out the
4 sources.

5 Because I have been called from DHL,
6 Federal Express, to come down and identify packages
7 that, you know, were supposed to be returned. And
8 we've identified them for all sorts of different
9 manufacturers that they never received them. When you
10 talk to the manufacturer, they never knew that they
11 were sent back. So that's more the issue about
12 sources, you know, trying to track sources and other
13 things.

14 MR. MAIER: A question here from the back.

15 MR. HAGEMAN: Yes, John Hageman, and just
16 representing myself today due to my boss's request.

17 (General laughter.)

18 MR. HAGEMAN: One of the concerns that I
19 have is about notification of the states when a
20 shipment is being planned. The NRC, it says in the
21 guidance, it says, The official address of each of the
22 states that would be contacted. And it indicates in
23 the guidance document that they have the phone number
24 and the mailing address of each of these contacts, and
25 they keep that list up to date.

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1 To me it would be a lot more efficient and
2 a lot more secure to have a company that's going to
3 make a shipment contact only the NRC through an e-
4 mail, those can be secured, and have a password or
5 have a secure location to read that e-mail, and then
6 have the NRC that has the up to date information e-
7 mail the states.

8 It would be a whole lot easier than having
9 one person sit down and call five, ten, however many
10 states you're going to be driving -- or sending the
11 radioactive material through, and more efficient, you
12 would always have the updated information so that we
13 don't have to go back and try and recall again and
14 again who's the proper contact for this.

15 So efficiency and for security, it would
16 be best to have one e-mail, tell the NRC where the
17 package is going and have the NRC on a secure e-mail
18 type network contact the states as to where the
19 radioactive material will be going and where it's
20 going -- what states it's going through. Thank you.

21 MR. MAIER: Thank you, Mr. Hageman.

22 Okay. Jean, down here.

23 MS. J. STATON: When I --

24 MR. MAIER: Wait, wait, wait, wait, wait.

25 MS. J. STATON: Oh, Jean Staton, Metco.

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1 (General laughter.)

2 MS. J. STATON: When I --

3 MR. MAIER: And you are?

4 MS. J. STATON: Jean Staton, Metco.

5 When I send a source out, a camera or a
6 source to QSA or to whoever I'm sending it to to be
7 reloaded, I send an e-mail with my tracking number
8 telling them when Fed Ex told me they expect it to get
9 there. And as soon as they receive it, they send me
10 an e-mail back and say they have received it such and
11 such day, such and such time.

12 Okay. Then they call me -- or they send
13 me an e-mail telling me, Okay, we have just left it,
14 this is the tracking number. So I start doing -- I
15 track it to find out where it's going during that from
16 the time it left Massachusetts or California. So I
17 thought that was what we were supposed to do anyhow.
18 Wasn't it part of our regs to keep track of it? I
19 mean to let us know -- to let the people know that
20 it's coming and when we expect it?

21 MS. HORN: That's actually what the rule
22 is -- basically what the rule is requiring is you to
23 let them know so you avoid the situation where the
24 manufacturer has been sent a source back and they
25 don't know that it's coming. So it really is intended

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1 to address those sorts of -- it's to get that
2 communication going so that there's no surprises out
3 there.

4 MR. MAIER: So there may not be a
5 compliance issue for that. Right?

6 Anyone else for transit?

7 Mr. John Miller.

8 MR. J. MILLER: John Miller with
9 International Isotopes.

10 It's tough to figure out where to begin on
11 this topic for us. When the original additional
12 security measure orders were issued, transportation
13 and transit was by far the most challenging aspect of
14 those orders to comply with. So much so that we
15 started our own motor carrier company to ensure that
16 we were in compliance.

17 Going through the Part 37 requirements and
18 the implementation guide, they're so much more
19 prescriptive than what the orders have, you know. For
20 example, all the notification requirements, all these
21 transfer records that are generated are maintained for
22 a period of five years.

23 I don't understand the difference between
24 what we're currently doing -- there's an additional
25 two years built in. I mean transfers right now are

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1 maintained for a period of three years, and when we do
2 a transfer, or when we receive something, you know,
3 that information is consolidated into a single file
4 and we maintain that. Now we have certain items that
5 are held on for an additional five years, and I
6 just -- you know, that's administratively a bit of a
7 burden.

8 The notification requirements, as John
9 Hageman said, it was extremely challenging initially.

10 You know, especially if you're doing a cross-country
11 shipment, there are a lot of states to notify. You
12 make the notifications, and all of a sudden you get a
13 response back from one state saying that, Oh, we need
14 to reroute you a little bit. So then we revise the
15 notifications, that changes times, it just doesn't
16 affect the state where the, you know, where the change
17 occurred, it affects every state that goes down the
18 line, and before that it could affect other states
19 because in order to get to that new route you have to
20 change the route in other states.

21 I like John's idea of having a single
22 point of contact to make a route notification. That's
23 it for now. But I've got -- I'll be back. I'll be
24 back.

25 MS. HORN: Let me real quickly address the

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1 record retention issue. We changed it to a five-year
2 versus a three-year retention period because of the
3 inspection cycle frequency for some of these licensees
4 that are impacted by these regulations. For some of
5 them they may not be inspected within that three-year
6 time frame, so that was why we increased it.

7 MR. MAIER: Who else? Physical protection
8 in transit? Shipping?

9 MS. ROUGHAN: Kate Roughan, QSA Global.

10 Just explain more of the preplanning. The
11 rule requires that the receiver notify within four
12 hours that they received the shipment, and that
13 requires either e-mail or phone call with the shipper
14 verifying that they got that. So you have to have
15 someone constantly monitoring e-mails and phone calls
16 to make sure that that did happen.

17 That's going to be very difficult, again,
18 based on the amount of shipments as Gary -- no, not
19 Gary -- Scott, sorry, has said. Especially for
20 industrial radiography, if they don't get the source,
21 the manufacturer gets a phone call immediately. They
22 expect that source on the job site to be able to do
23 whatever that job is for the day. So we get phone
24 calls if it doesn't get there.

25 But, again, this mechanism we have now, we

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1 do track on a daily basis the Fed Ex tracking the next
2 morning that it arrived. And that's been very, very
3 effective. If we don't get a signature on that, we
4 will go start pursuing what's happening on that. But
5 to require each receiver to come back to us, to the
6 shipper, saying, We got it. We said it was going to
7 come at two o'clock, it came at one o'clock, they met
8 the four hours, that's going to be a very difficult
9 administrative burden to do.

10 Also, this documentation of all of that.
11 Obviously if we do e-mails prior to shipment, that's a
12 documentation. But if we do a phone call, that means
13 you now have to document that and keep that piece of
14 paper for that particular shipment. Maybe you made a
15 phone call 12 times a day, 30 times a day, you would
16 have to document that and keep that for five years.
17 That just -- that's -- I think that's an excess
18 documentation requirement and follow up. Thanks.

19 MR. MAIER: Thank you, Kate.

20 Response or -- okay.

21 All the way in the back.

22 MR. LANIER: Norm Lanier with Tracerco.

23 First of all, let me say having served a
24 20-year sentence as an RSO for industrial radiography
25 industry, I feel all your pain in here. I'm fortunate

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1 enough now to be with a licensee that I'm able to
2 control whether or not I go into either increased
3 controls or what we're talking about here, just simply
4 I can control my aggregated deal.

5 My main purpose from coming here today is
6 just to find out how soon I need to plan my
7 retirement.

8 (General laughter.)

9 MR. LANIER: When we finally get this
10 implemented and it drops on down to Category 3 or 3.5,
11 I'm out of here.

12 Having said that, one of the other things
13 that concerns me is everything we do here is that
14 somewhere it's going to trickle down to where -- I
15 know industrial radiography, it's -- and us too in a
16 service company, we're able to drive our sources back
17 and forth to many jobs, many jobs we have to ship our
18 sources -- I'm afraid it's going to come to the point
19 where we're going to get where the common carriers,
20 including people like Fed Ex, is just going to throw
21 their hands up in the air and say, We're out of here.

22 And when that happens, you're going to
23 stop a lot of the services in this country when it has
24 to do with radioactive sources, because many times
25 that's the only way we can get from place to place is

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1 to ship ourselves by common carrier.

2 MR. MAIER: Thank you, Norm.

3 Anybody else?

4 Are you just stretching, Chris?

5 MR. DIXON: Chris Dixon, Acuren
6 Inspection.

7 In the proposed Rule 37.75(a) dealing with
8 Category 1 and Category 2 quantities, it states that
9 we have to preplan and coordinate the shipments and
10 arrivals. As industrial radiographers, we're
11 transporting Category 1 material quite frequently --
12 and 2. Well, the limits are 80 curies.

13 FEMALE VOICE: Just Cat 2.

14 MR. DIXON: Okay. In some cases it is.

15 When we go to a temporary job site, who
16 are we notifying?

17 MS. HORN: It is not intended to be a --
18 that you would do a notification for those types if
19 you're moving the material yourself. It's for when
20 it's going from company A to company B, so you're
21 actually sending it to another entity is when these
22 provisions would apply.

23 If you're just transporting it to
24 yourself, then, no, it would not apply. The
25 security -- you might have still control from the

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1 security standpoint, but the notifications and the
2 preplanning things you would not need to do.

3 MR. MAIER: Are you stretching? No?

4 (General laughter.)

5 MR. DIXON: But it says if you go outside
6 the confines of the licensed facility or the storage.

7 MS. HORN: That's the intent and if we
8 need to clarify that rule language, then make that
9 comment and ask if we can clarify it in the guidance
10 and in the rule language itself. But that was the
11 intent.

12 MR. DIXON: Okay.

13 MR. CARGILL: All right. Scott Cargill,
14 Valley X-Ray again.

15 And I apologize, this does kind of blur
16 back into access control. When we relinquish a source
17 to a common carrier, it's my understanding that Fed Ex
18 does not have to go through the fingerprinting,
19 background and all that. We're certainly not T&Ring
20 their individual -- and I have seen this personally
21 where I've literally had to stop a Fed Ex driver
22 because he left the back door open, my source sitting
23 on the edge of his truck. And I'm pretty certain
24 they're not arming an alarm or keeping constant
25 surveillance on their truck when they deliver that

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1 package to the local 7-11.

2 Again, back to -- I'm all for the
3 increased controls, but if we're going to make
4 regulations to increase security here, are we covering
5 all those bases? Essentially I'm going to give it to
6 this guy, and our solution here is that I'm going to
7 keep better contact with my delivery point to make
8 sure that the end term handler has done his job, when
9 he could easily have a poor credit report and be
10 subject to losing my source. And that'll end that for
11 transportation for me.

12 MR. MAIER: It's a good one to go out on,
13 I think.

14 (General laughter.)

15 MS. HORN: All I can really say is we
16 don't regulate the general carriers. We really don't
17 have the authority to do that. That is something the
18 DOT, TSA, DHS regulates, and just a heads up to you,
19 TSA is beginning to look at regulations in some of
20 these areas. So there may be more coming. I don't
21 know.

22 MR. MAIER: Anyone else? Anybody who
23 hasn't had a chance to speak yet and would like to?
24 Anybody who's got a card that they want to wave in the
25 air, not that, you know, you wouldn't be able to do it

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1 anonymously after all, but.

2 (No response.)

3 MR. MAIER: Any other comments on physical
4 protection of byproduct material in transit? That
5 didn't do it, did it?

6 MR. JAMES: Steve James, State of Ohio.

7 And I'm just -- I didn't work on this part
8 and I don't have the answer. Okay.

9 If there is an event that needs to be
10 reported, the shipping licensee is supposed to notify
11 the NRC op center, or the guidance document says
12 agreement state if they're an agreement state
13 licensee. It's not clear whether that notification is
14 to be to both their own licensing agreement state, or
15 the agreement state in which the material was lost in.

16 And it also says that they're supposed to
17 notify the local law enforcement agency at the last
18 known location, and is that the responsibility of the
19 shipper to know whose jurisdiction they're in, or is
20 the -- M&D that's shipping the device is supposed to
21 know who all the LLEAs are along the shipping route?

22 MR. MAIER: You want to take these in
23 sequence? The first --

24 MR. JAMES: I'm not asking.

25 MR. MAIER: You're asking. Right? You're

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1 asking. Right?

2 (General laughter.)

3 MR. MAIER: What was the first one that
4 you wanted to get clarification on?

5 MR. JAMES: Just is the agreement -- if a
6 shipment is lost or stolen -- if the shipment is lost
7 or stolen, is the requirement to notify the agreement
8 state of the licensee that shipped it, or origin
9 licensee, and also should they be notifying the
10 agreement state where the device was lost in while
11 it's in transit?

12 MS. HORN: It's actually they would be
13 notifying the agreement state, or I'll say regulatory
14 agency because it could be NRC, of point of origin.
15 We're not asking them to notify -- it may or may not
16 be an agreement state where it is -- actually ends up
17 missing. Then the state or the NRC will initiate
18 further action and would notify others as necessary.
19 If the state notifies NRC, the NRC would notify
20 whoever would need to be.

21 MR. MAIER: Okay. What was the second
22 one?

23 MR. JAMES: The second part dealt with
24 local law enforcement along the shipping route once
25 you determined where it was lost. I believe it you

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1 give it to Fed Ex, you're not necessarily knowing what
2 route that truck's going to take. You may be able to
3 determine where it was lost, but it was responsible
4 for notifying local law enforcement?

5 MS. HORN: The shipping licensee would be
6 responsible for notifying local law enforcement.
7 Hopefully they're in communication with whoever is
8 shipping the material and they will actually have some
9 sort of indication to where it turned up missing.
10 Particularly for Cat 1 shipments you are supposed to
11 be -- have the ability -- the constant communication,
12 there are certain protocols that you're supposed to be
13 doing, so you should have a pretty good idea when it
14 goes off the radar screen.

15 MR. MAIER: Mr. Cargill, have you got
16 renewed vigor?

17 MR. CARGILL: I forgot.

18 (General laughter.)

19 MS. ROUGHAN: Kate Roughan, QSA Global.

20 MR. MAIER: This is like a hat trick for
21 you.

22 MS. ROUGHAN: In terms of notifications,
23 we obviously have to follow up on shipments that
24 didn't get to their destination. That happens
25 routinely, and there's no problem notifying. If we do

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1 know it's lost or stolen, that's obviously an
2 immediate notification, four hour notification.

3 However, what happens quite a few times is
4 that the shipment has left the facility, it's in the
5 transportation cycle, but can't be readily traced. So
6 what we've done in those cases is we contact -- it's
7 typically Federal Express, we give them 24 hours to do
8 a physical check, a full tracking check to see if they
9 can find that package or not, and 99.9 percent of the
10 time they find that package within 24 hours. The
11 tenth of a percent that they don't find it, they find
12 it 24 hours, 30 minutes.

13 So we've made the reports saying it's lost
14 or stolen, we can't find it, and, again, five minutes
15 later, even when we're on the phone a lot of times,
16 they find that package and it's not lost or stolen.
17 It just got kind of unaccounted for in the
18 transportation cycle. And that happens all the time.

19 So there's -- I don't want to go out having to do
20 reports when that package is going to show up.

21 You just -- again, we keep saying crying
22 wolf, and that's what's going to happen if it goes
23 through as is. It's just wasting a lot of time for
24 regulatory authorities, the local law enforcement, and
25 the licensees.

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1 MR. MAIER: Thank you.

2 Anyone else?

3 MR. J. MILLER: I have one, a follow up
4 one.

5 John Miller with International Isotopes
6 again.

7 As a licensee, I really cringe when I have
8 to comply with something that I don't have any control
9 over, and one of the biggest challenges that we have
10 is when we're dealing with imports and exports via
11 highway primarily into and coming out of Mexico.
12 Going into Mexico, doing exports into Mexico using the
13 highway, we can at least control that. We could send
14 people down to the border, you know, we could be there
15 with the actual shipment.

16 The problem is, if you're not familiar
17 with trying to drive a commercial truck into Mexico or
18 come out of Mexico, US carriers typically don't do
19 that, and a US carrier that would do that is not going
20 to meet the requirements to ship Category 1 materials.

21 Usually these are small frontier carriers that just
22 drive in for a couple of miles and transfer it to a
23 different carrier. But we do have a handle on getting
24 something into Mexico. We're comfortable that we
25 could comply.

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1 The problem is when something comes out of
2 Mexico, because they really don't care what our
3 regulations say. They want this source out of their
4 facility and it's coming back to the manufacturer, and
5 they just want to out. So usually what happens, we
6 get a phone call that our source is in the country,
7 there's not notifications, there's no preplanning,
8 there's, you know, there's no nothing.

9 And so that is very, very difficult to
10 comply with, and there's no coordination between, you
11 know, the NRC and customs at the border that would,
12 you know, identify what -- you know, this is a special
13 shipment, there are some security requirements
14 associated with it, we just can't, you know, wave it
15 on through. So that's one that I hang my neck out
16 when we have to do an import/export from Mexico.

17 MR. MAIER: Thank you, John.

18 We've got plenty of time left on this
19 session.

20 Merri, did you have any kind of teasers
21 you wanted to throw out?

22 MS. ROUGHAN: I can't let it die.

23 (General laughter.)

24 MS. ROUGHAN: I don't know how many people
25 know how close Federal Express was to stopping the

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1 shipment of radioactive material come June or July
2 this year.

3 Because of some DOT rules -- it wasn't NRC
4 specifically, although they'd been subject to some NRC
5 pressure from its customers such as us licensees, but
6 because of a DOT rule that's effective October where
7 they have to have site specific security plans based
8 on wherever they handle radioactive material, Fed Ex
9 was very, very close to not carrying radioactive
10 material.

11 And that would be a huge impact on all the
12 different licensees here. That means that people
13 couldn't carry out medical procedures and DT and
14 pipelines, anything that's important to the safety
15 infrastructure.

16 I see a lot of what's happening -- what
17 the DOT decided to go ahead and comply, or said they
18 could comply. I've seen the same type of pressure
19 here where all this onerous requirements are going to
20 come down to licensees, and they have to make a
21 business decision, are they going to comply or are
22 they going to go out of business, because it's just
23 adding so much effort and resources to implement
24 what's in the proposed rule.

25 I think companies are really going to take

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1 a serious look at that, and if we start losing
2 licensees, that's bad for the United States.

3 MS. SALLEE: Hi, I'm Rusty with Industrial
4 Nuclear.

5 We also ship radioactive material,
6 everything, I'd say almost 99 percent of ours is
7 Federal Express, and they are -- I've had several of
8 them say, We're just looking for an excuse. If we
9 have to go into this, we won't be in business. And
10 that's all of our shipping is through Federal Express,
11 and that would be put a lot of the licensees out of
12 business, and we can't afford to do that. We already
13 have the government trying to put everybody out of
14 business. So that's what I have to say on that one.

15 MR. MAIER: Okay. Anybody else? Going
16 out of business? Anybody else for protection during
17 transit?

18 (No response.)

19 MR. MAIER: We would be way ahead of
20 schedule. I would suggest maybe, what, a 20 minute
21 break, 30 minute break?

22 MS. HORN: Before you do that, let me
23 throw something out there. It's not on this topic
24 specifically, but we actually do encourage public and
25 stakeholder involvement in our rule making process.

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1 We'd actually posted preliminary rule language out for
2 public comment in the early stages of working on this
3 rule making.

4 We did get a few comments and we actually
5 appreciate it and we actually made a number of changes
6 based on those comments. But I've talked to a couple
7 of people here today, and a lot of you didn't know
8 about that.

9 There's some kind of tool, there's some
10 organizations perhaps that if we contacted them, they
11 could get the word out that some of these
12 opportunities are available. Even public meetings
13 like this, we obviously do our typical, we'll put it
14 in the *Federal Register*, we'll post it on our website
15 in, you know, our meeting things.

16 In this case we took a few extra steps, we
17 sent out a number of letters about this rule. Those
18 aren't things that we always can do. But I'm curious,
19 you know, so think about that, if you have any
20 suggestions on how we might be able to get that word
21 out a little bit better so that we can get more
22 involvement. We're open to those suggestions.

23 MS. G. STATON: Gayle Staton, Acuren
24 Inspection.

25 You know, I'm a GIAC chairperson, and if

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1 you would share that with me, I'll get it out to all
2 of the members of NDTMA, and we'll share with them.
3 So that's one solution to your problem.

4 MR. MAIER: I'll go to Mr. Thompson, the
5 gentleman over here.

6 MR. THOMPSON: Jared Thompson, Arkansas
7 Department of Health, representing the Conference of
8 Radiation Control Program Directors.

9 While Merri touched briefly on rule
10 making, let me give you two more reasons why it's
11 very, very important that you as licensees respond.
12 Number one, if you look at the NRC time table, the
13 rule is anticipated to be final some time in late
14 2011. So let's say for just playing around that it
15 goes into effect in 2012. It goes into effect in NRC
16 jurisdictions, so if you have an NRC license, or you
17 work in NRC jurisdictions, you will have to comply
18 with the rule.

19 Now the second reason you need to respond,
20 and I've heard several states, I know Texas is here,
21 Louisiana is here, California, Arkansas, Ohio, I don't
22 know anybody else, we're all agreement states.
23 Agreement states have three years to adopt this rule.

24 So what you need to be aware of is when your state
25 goes through the Administrative Procedures Act to

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1 adopt these rules, you'll have a comment.

2 But because of the compatibility of this
3 rule, we may not have any flexibility as a state to
4 make any changes. The changes have to be made now, or
5 your comments have to be made now for any substantive
6 changes. So it's very, very important that you
7 understand, this rule does go -- it will possible go
8 into effect in 2012, it effects you if you have an NRC
9 license and you're working in NRC jurisdictions, you
10 have to comply.

11 But if your home state -- you still have
12 opportunity to comment, but odds are they're not going
13 to be able to make any substantive changes to the
14 rule.

15 MR. MAIER: Thank you, Jared.

16 MR. ARSENAULT: Richard Arsenault with
17 ThruBit.

18 From the oil field perspective, trade
19 associations is a great way to communicate with our
20 industry, Association of Energy Services Contractors
21 would be one way to get that information out to the
22 majority of the industry. You can send it to me, or I
23 can hook you up with the main contact within that
24 organization.

25 MR. MAIER: Anyone else?

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1 (No response.)

2 MR. MAIER: Okay. We're about 45 minutes
3 ahead of schedule. Would a one half hour break be too
4 long? Would people want to shorten that up and finish
5 up sooner?

6 Finish up sooner? Twenty minutes? Let's do a 20
7 minute break. Everyone, if you would be back here at
8 2:35, that'll work.

9 (Whereupon, a short recess was taken.)

10 MR. MAIER: Okay. We are now ready for
11 the last session, which is the open session. No
12 particular topic is excluded with regard to the
13 implementation guidance for the proposed rule.

14 We only have one registered speaker, and
15 I'll ask him to go to the microphone now. Mr. Scott
16 Cargill.

17 MR. CARGILL: All right. This time I
18 actually got something written down, make it a little
19 bit better.

20 Scott Cargill, Valley X-Ray again.

21 And I'll make this statement. It's
22 generally accepted that a good leader is someone who
23 will not order someone to do something he would not
24 do. So I ask this question of the NRC, is the NRC
25 willing to assume all T&R responsibilities?

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1 Is the NRC willing to visit every police
2 department, sheriff's department, sheriff's
3 substation, state police barracks, and train their
4 personnel so that they're able to respond to our calls
5 in an educated manner? Is the NRC going to subsidize
6 those departments?

7 I caught something on our local news,
8 they're proposing that a drunk driver gets pulled
9 over, they're also going to charge the drunk driver
10 for the police officer's time. That tells you how
11 badly their departments are when it comes to a budget.

12 Are we going to have to somehow teach the
13 departments, and who's going to pay for all that?

14 IC seemed to work. The changes to the ICs
15 as proposed in Part 37 are burdensome to the -- to
16 everyone for little to no gain in our professional
17 opinions. Obviously there are some things that we can
18 do better, some things that maybe we should have been
19 doing all this time.

20 Proposed transportation shipping issues
21 aside, as the gentleman from Global pointed out, the
22 return to the manufacturer may well need to be
23 addressed. I mean I can quite honestly say that I've
24 never really considered it. A new source ordered
25 implies that I will be returning a source to the

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1 manufacturer. I mean that's kind of an assumed thing
2 on our part. But maybe that's something we should be
3 looking at in-house as well. We could probably, and
4 should probably increase our efforts in this regard as
5 an industry.

6 Consider the three-year -- the five-year
7 requirement, five-year document retention. I know you
8 addressed it. From someone who teaches 40-hour rad
9 safety, I can assure you it's difficult enough to
10 getting new young radiographers up on all the
11 regulations as they are. One of the only easy parts
12 of it is we can sit there and make the statement, All
13 documentation, three years.

14 By throwing in a five-year requirement in
15 the middle of it, it's going to complicate that.
16 Again, we're talking that new and the younger
17 generation, and I'm pretty sure we all agree that next
18 generation will be the ruin of all of us, as penned by
19 Aristotle in like 4 BC.

20 I hope I've made myself clear, not just
21 giving the impression that I oppose the proposed
22 changes, but that I believe we are capable of self-
23 regulating ourselves to a degree. I'm all for
24 regulation. Regulation is written to eliminate a
25 problem. That's why regs are written.

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1 I would like to think that our industry
2 does a fairly good job of staying as above board as we
3 can. Some of these changes are going to place a huge
4 burden on us, not just monetarily, but on a personnel
5 issue. You're going to take my personal job and bury
6 me. It's not going to be out in the field as much as
7 I'd like, it's going to be behind the desk a lot more.

8 The world isn't fair. We can all agree to
9 that, and understand that. But because the NRC can't
10 enforce or regulate other entities, but by defaulting
11 to placing the burden on us, those that you do
12 control.

13 Again, you're proposing some good changes
14 in theory, but in practicality you're placing a large
15 monetary issue, large time issue on those that handle
16 this. I'm pretty sure I can almost make a global
17 statement that every RSO in this room will back me up
18 on, we've got a full-time job as it is. If I'm -- I'm
19 personally responsible for over 200 individuals. You
20 know, we can only control that which we can control
21 and trust in the rest.

22 I'm kind of concerned that these proposed
23 changes, though not intended to set up for failure,
24 will have that consequence. If a regulator comes into
25 my facility, I open the door wide open. You're more

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1 than welcome to come in my facility, you're more than
2 welcome to audit my program with the intent that if
3 you do see something, I will be more than happy to fix
4 it right then and right there.

5 But in this case, I'm afraid we will start
6 to stumble more than we should. In which case, I'm
7 going to feel pretty bad about my program taking a
8 ding for something that, in some instances, are beyond
9 my control.

10 Currently in our industry we face a
11 deficit of over 6,000 qualified individuals. Our
12 industry being industrial radiography. ASNT projects
13 well over 10,000 as a deficit by 2011. Obviously with
14 the economy crashing, that may change up a little bit.

15 But it's hard enough to get good people in
16 our field. The more we add to their shoulders, the
17 less attractive our job becomes to them. This will,
18 in effect, cause a large burden on us. It will affect
19 our nation's infrastructure. It's hard enough to get
20 a guy to get up at 3:00 in the morning and drive three
21 hours to do a job.

22 I thank you.

23 MR. MAIER: Thank you, Scott.

24 With regard to the questions you asked at
25 the beginning of your statement, is it reasonable to

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1 characterize those as rhetorical questions meant more
2 to make a statement than to ask questions, because
3 they're fairly high level policy things that I don't
4 think the NRC folks here -- okay.

5 MR. CARGILL: I wouldn't put you on the
6 spot --

7 MR. MAIER: Okay. That was a nice way to
8 kick that off, I think.

9 Is there anybody else who has a question
10 about anything else with regard to implementation?

11 Jean?

12 MS. J. STATON: Jean Staton, Metco.

13 Could you expand a little bit more on the
14 safe haven? I'm not sure if you're talking about when
15 they're transporting the sources to save for the
16 manufacturer, or you're talking about when we go from
17 job site to job site.

18 MS. HORN: It's intended to be when you're
19 transferring a Category 1 source from one licensed
20 entity to another licensed entity. It is not intended
21 to be from temporary job site to temporary job site.

22 MS. J. STATON: So it's not Category 2.

23 MS. HORN: It's not Category 2.

24 MR. MAIER: Who else?

25 MR. HAYDEN: I'm Ron Hayden with PetroChem

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1 Inspection Services.

2 Regarding Section 37.43, general safety
3 program requirements, it says at paragraph (c) it
4 would require licensees to conduct training and annual
5 refresher training on the security plan. Then you've
6 got to keep it for five years. But then a little
7 further down, paragraph (d) -- that was paragraph
8 (c) -- paragraph (d) says that licensees will be
9 required to develop, maintain and implement written
10 policies and procedures for controlling access, so on
11 and so on, so on.

12 Only individuals with a need to know and
13 that have been determined to be trustworthy and
14 reliable would have -- would be able to have access to
15 the protected information. So who do you give the
16 annual refresher training to?

17 In the first paragraph it says you got
18 to -- it would require licensees to conduct training
19 and annual refresher training on the security plan, it
20 doesn't to who. And then down -- further down it says
21 only need to know people. So who are we talking
22 about? Are we talking about everybody in the whole
23 company, or are we talking about a select handful?

24 MS. HORN: No, the training is not
25 intended to be everyone in the company. It's intended

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1 to be for those folks that are actually going to be
2 implementing those provisions. So if you're going to
3 be responding to a security incident, you're
4 responsible for maintaining that security, you need to
5 be training on that aspect. If you have no
6 involvement, then you wouldn't need to receive any
7 training at all.

8 MR. HAYDEN: So you're talking a very
9 select group. Okay.

10 MR. HEDGER: She just talked about safe
11 havens and --

12 MR. MAIER: Mr. Hedger?

13 MR. HEDGER: Yes. Troy Hedger for Alpha
14 Omega Services. I'll forget that.

15 Anyway, she talked about safe havens. We
16 came across a situation that -- I won't go into too --
17 but we needed a safe haven for a particular shipment.

18 The problem is, is there are no -- if it's sort of
19 last minute, there's no safe havens that were
20 available for the situation that we were in.

21 You know, one thing that I would probably
22 propose is that as the NRC, that there are designated
23 safe haven spots available for us to contact. I think
24 that there -- you know, it would make it a lot easier
25 for us if there was something available, because by

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1 the time that we were able to find a place, one, it
2 was, you know, \$50,000, NRC needed to permit it, and
3 it was not -- one, not feasible and we ended up
4 finding a different solution.

5 But it would be really nice if there's
6 just a map for us to be able to take these, you know,
7 when something comes up.

8 MR. MAIER: Thank you, Troy.

9 Other comments on the implementation
10 guidance?

11 MR. CARGILL: Got to go through the drill.

12 MR. MAIER: And you are?

13 MR. CARGILL: Scott --

14 (General laughter.)

15 MR. CARGILL: Scott Cargill, Valley X-Ray.

16 To answer a question you posed directly,
17 actually I do like the question and answer format, it
18 is helpful to me. Thanks.

19 MR. MAIER: Okay.

20 MR. WHITE: John White again.

21 I'd like to say we appreciate the
22 opportunity to address you with our concerns. I was
23 very surprised when I talked one of your personnel
24 here and asked them if they were going to hang around
25 for the meeting the next couple of days. Didn't

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1 know what it is. This conference that's going to
2 happen in the next two days happens about once every
3 three years, and many of you in the room may not know
4 about this.

5 This is the Texas Conference on the
6 Regulation of Radiation. We have quite a number of
7 presentations on a number of fields. It might be
8 able to answer some of your questions.

9 I think most of us in the room understand
10 the need for the security of the sources that we're
11 discussing. But I do think that some of the
12 provisions of the proposed rule, as you've heard
13 comments today, are in need of more consideration and
14 certainly in need of more study. I'm fairly confident
15 that these same comments have been made across the
16 country from what I've read and from what I've heard
17 in private phone conversations.

18 Please take some time to actually put a
19 little effort into this and get more input from
20 stakeholders if necessary and from their organizations
21 so that the final rule that comes out will be a little
22 bit better considered. Thank you very much.

23 MR. MAIER: Thank you, Mr. White.

24 FEMALE VOICE: Are those available --

25 MS. HORN: We did not have copies for

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1 everyone. It is available on the website, it's
2 available in ADAMS, it's on the regulations.gov site.

3 FEMALE VOICE: There was a lot of answers
4 to a lot of questions --

5 FEMALE VOICE: Yes --

6 FEMALE VOICE: -- in here.

7 MR. MAIER: The question was about the
8 implementation guidance itself, and it is available on
9 the regulations.gov website --

10 MS. HORN: Regulations.gov website, it's
11 also available in ADAMS, and I don't have the session
12 number on the top of my head, but if you need it, let
13 me know and we can certainly get it to you.

14 MR. MAIER: Is it on the back sheet of
15 that agenda?

16 (General conversation.)

17 MR. MAIER: Mr. James.

18 MR. JAMES: Steve James, State of Ohio.

19 Merri, you and I have been -- spent enough
20 time in this working group to know that sometimes I do
21 beat a dead horse.

22 Going back to the access authorization --
23 is that the proper term -- 37.41 says that if
24 you're -- that the licensee shall establish, maintain
25 a security program. You said that we do not have to

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1 have the authorization access if you don't possess.
2 But if you go back to the security plan, which
3 everybody that is authorized has to develop, it says
4 that before granting an individual access to the
5 security plan, they have to evaluate the need to know,
6 complete a background investigation that does not
7 include the fingerprinting to determine
8 trustworthiness and reliability.

9 The trustworthiness and reliability must
10 be done by the reviewing official, the reviewing
11 official requires a designation, fingerprinting, and
12 access authorization. So I'm still unclear as to
13 whether or not, if you just are authorized to possess,
14 it seems to me, if you're going to have a security
15 plan, someone needs to be determined trustworthy and
16 reliable, so you have to have a reviewing official, so
17 you have to have some measure of fingerprinting
18 involved in your -- even if you're just authorized to
19 possess you have to have a reviewing official.

20 MS. HORN: We'll have to make some
21 clarifications I think in the rule, because it wasn't
22 the intent that for the security plans that are
23 developed for folks that don't actually possess the
24 material, that you -- you're not going to be
25 addressing all the things that are in the rule. So

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1 the material is not going to be as sensitive, so I
2 think we're just going to have to provide obviously
3 some clarification in the rule language and in the
4 guidance, because it wasn't the intent.

5 It really is the intent for those are
6 truly implementing the security measures, that those
7 individuals undergo the access authorization program,
8 go through the background investigations. Not for
9 those that don't have the materials.

10 MR. MAIER: I see a question back here.

11 MS. FAIROBENT: Lynne Fairobent, AAPM.

12 To follow up on Steve's point, I think
13 this is a really critical point, and the reason I
14 think it's critical is for those licensees who are
15 currently living under the orders, they're familiar
16 with increased controls in what they've been living
17 with. For those licensees who in the future might
18 have to follow the new Part 37, or in the interim a
19 new order, this is not on their horizon.

20 And I think that although -- and I've
21 heard NRC state a few times that they feel that
22 they've given extended time for comments by granting
23 120-day comment period on the rule. The fact that the
24 rule and the guidance came out a month disjointed is
25 not helpful for the comment -- individuals making

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1 comments.

2 I think NRC should, and I believe that
3 you'll be receiving some formal requests for the
4 extension of the comment periods to at least come in
5 alignment. But when one has to comment on the rule,
6 and then the guidance is due 30 days later, I can tell
7 you, a lot of licensees are not going to look at the
8 guidance until after they meet the comment deadline on
9 the rule. There may be changes.

10 So I really urge NRC to look at putting
11 both comment dates in sync at a later date, not the
12 earlier date.

13 MR. MAIER: Thank you, Ms. Fairbent.

14 MS. HORN: Well, I encourage you, if you
15 feel you need more time, do get those letters in
16 asking for an extension on the comment period. And if
17 we do extend, we would end up extending both of them
18 and both of them would end up having the same due
19 date.

20 MR. HAYDEN: Ron Hayden with PetroChem
21 Inspection Services.

22 I'm just confused, and maybe the
23 question's been answered and I just wasn't listening.

24 I'm confused the difference between the review
25 officer and the current T&R official. Are they going

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1 to be one and the same individual, is it going to be
2 a -- and is there going to be a grandfather period?
3 Who's going to name the reviewing officer? I don't
4 have that in my mind. Who picks that person?

5 MS. HORN: The licensee determines who
6 they want to make as the reviewing official, or their
7 T&R official as it's currently called, the function is
8 basically the same. You're reviewing the background
9 investigation elements, you're making that
10 determination whether that individual would be granted
11 access to the material, or to safeguards information,
12 depending on the circumstances.

13 It's a name. I mean whether they're
14 called a T&R official or a reviewing official, the
15 function is basically the same. We like the term
16 reviewing official, it was a little clearer as to
17 what -- or at least what we thought -- what their
18 function was.

19 The big difference is that we are now
20 requiring the reviewing official, or the former T&R
21 official, to go through that same background
22 investigation, to be fingerprinted. That wasn't part
23 of the increased control orders. It was part of some
24 of the other orders, so for some licensees they've
25 already gone through this.

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1 We do have grandfathering provisions, so
2 if you have a T&R official now that has actually been
3 fingerprinted, they wouldn't have to undergo that
4 again, they could be grandfathered.

5 Does that answer you --

6 MR. HAYDEN: That answers that part. Now,
7 what about for the other states, if we have to tell --
8 notify other states? Now this is going to come from
9 the NRC saying that you are now the reviewing
10 official, or whatever you call it, what about if you
11 have to send to another state and say, Yes, I am
12 the -- I am presently the T&R official for my state,
13 or in this situation for your state too. Is it going
14 to be an all encompassing thing? If they get the
15 blessing from the NRC, we can say -- pass that around
16 and say, Okay, now this person is the reviewing
17 official for the whole company?

18 MS. HORN: I can't speak to what the
19 states would require, but in general I would say yes,
20 if that person has been approved to be the reviewing
21 official and you want them to use throughout your
22 corporate structure, from our standpoint, you could do
23 that.

24 MR. HAYDEN: Okay. Well, that's -- I
25 think we got, I think, an answer from one of the

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1 states. Thank you. I hope.

2 MR. MAIER: Is it an answer, Jared?

3 MR. THOMPSON: I don't know. It's going
4 to be ambiguous.

5 Jared Thompson, Arkansas Department of
6 Health.

7 With regards to the question, each state's
8 going to kind of be independent. I would hope, and
9 this is -- now I'm speaking for Arkansas, because I
10 can, I would accept something from NRC saying so-and-
11 so has been approved. I would accept something from
12 Texas, so-and-so's been approved.

13 But that's up to the state, and that's
14 what I mean by it's a little bit ambiguous, but I
15 would hope that most of them would follow that. Much
16 like in line with reciprocity, you know, we recognize
17 your reciprocity when you come in. Also, we recognize
18 physician training, states do, and it's based on NRC
19 qualifications. So I'm thinking that it probably
20 will, but it's going to be up to the individual state.

21 MR. MAIER: Let me let Steve say
22 something, and then we'll open up for more questions.

23 MR. JAMES: Steve James from Ohio.

24 In Ohio we would allow you to apply for a
25 reviewing official reciprocity. Submit the multi-page

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1 application with the appropriate fee.

2 (General laughter.)

3 MR. CONWAY: Wayne Conway, Capital X-Ray
4 Services, Tulsa, Oklahoma.

5 This kind of dovetails with some of your
6 comments, the lady's comments back here. And I did
7 discuss with a couple of individuals during one of the
8 breaks on the time frame of the implementation of the
9 rule. I've heard estimates of 2012, 2013. I've even
10 heard rumors that there are going to be further delays
11 on the implementation of the rule; it has been
12 requested by some entities.

13 Part of the rule states that the agreement
14 states have three years to comply with the final rule,
15 which means that while NRC licensees must quickly
16 comply with the final rule when it happens, agreement
17 state licensees get possibly three years grace,
18 depending of course on the speed with which a
19 particular agreement state works.

20 Now without discussing equitable
21 implementation, and just for information only for the
22 rest of the group, can anyone on the panel give any
23 best guess as to when the final rule may be published
24 and when implementation is expected? Thank you.

25 MS. HORN: What I can tell you is that the

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1 final rule is due up to our Commission at the end of
2 2011. I can't predict how quickly they will act on a
3 final rule. Sometimes they act very quickly,
4 sometimes it takes a while. It took about six months
5 for the proposed rule. This is a big rule. I would
6 expect it to take four to six months before they would
7 actually make their decision on whether they were
8 going to approve it or not.

9 Assuming they do give the approval, once
10 they have done that it will take a minimum of another
11 three months to go through OMB on the information
12 collection aspects because that has to be approved
13 before we can actually publish the final rule. So
14 you're looking probably into the fall, maybe even
15 winter of 2012 before this rule would actually end up
16 being published.

17 The way that the -- the implementation
18 time frame that we're currently planning to give is
19 270 days, so you're talking another nine months. So
20 you're talking well into 2013 before the rule would
21 actually be effective for NRC licensees. States do
22 have another three years once the rule is published
23 and in effect before they have to adopt their
24 regulations. And that's true for any rule, that isn't
25 just true for this Part 37, but it's true for

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1 anything.

2 So I hope that can clarify.

3 MS. FAIROBENT: Lynne Fairobent, AAPM.

4 Merri, you forgot one important factor in
5 that whole schedule, that is providing that it has not
6 been determined that there are substantive changes
7 made based on public comment, which would cause the
8 rule to be reissued as a proposed rule.

9 MS. HORN: She is correct. If we end up
10 making -- we feel that we need to make substantive
11 changes to the rule, and that would be adding new
12 requirements, not taking requirements away from the
13 rule, we would go out and renotice. We might not
14 renotice the entire rule, it might just be a portion
15 of it. We usually go out for a 75-day comment period
16 on that, it would depend on how extensive. But that's
17 something very hard to predict.

18 MR. MAIER: And you are?

19 MR. HEDGER: Thank you.

20 Troy Hedger from Alpha Omega Services.

21 We do a lot of reciprocities and probably
22 you've seen stuff from us before. But one of the
23 questions that I have, as we have -- we work under two
24 agreement states and so we send our licenses out to
25 the NRC and such. Now, when we do some work and the

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1 agreement state hasn't adopted the NRC plan, we're
2 still going to fall under -- when we do the
3 reciprocity, when we get the reciprocity grant back
4 from you, we're still going to have to fall under your
5 regulations. Correct?

6 Okay. So basically -- I know there's --
7 and the reason why I asked the question, because I
8 don't think -- I'm not sure how many radiographers
9 would take that into consideration that, yes, you may
10 be in an agreement state, but you still need to make
11 sure that you're following what the NRC does because
12 even though they say three years, you know, if you're
13 planning on doing reciprocity, you might want to take
14 that into consideration.

15 MR. THOMPSON: You're working in two
16 agreement states. Right?

17 MR. HEDGER: Well, I have -- we've got
18 licenses in two agreement states. See --

19 MR. THOMPSON: Okay.

20 MR. HEDGER: -- our operating license and
21 we serve California. Okay.

22 Let's say that we decide to do something
23 in an NRC state, then basically we make reciprocity.

24 MR. THOMPSON: Right.

25 MR. HEDGER: Okay. They grant it to us,

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1 and then so basically we're following under their
2 rules. They tell us, You're going to follow our rules
3 when you're within our jurisdiction.

4 Okay. With that jurisdiction I'm looking
5 at Part 37 saying, Okay, I have to have all these for
6 my temporary, you know, job sites or whatever I'm
7 doing. So I have to be prepared to do all this stuff.

8 And I just wanted to make a comment just so that some
9 of the people who do -- especially radiographers, I
10 imagine they do -- they go across, you know, borders
11 and things like that, is that you'll need to keep
12 that in mind.

13 MR. THOMPSON: I didn't understand your
14 question.

15 MR. HEDGER: Okay.

16 MR. THOMPSON: If the reverse happens, if
17 you're going into another agreement state, the
18 agreement states will remain under the orders until
19 they adopt the regulation.

20 MR. HEDGER: Right.

21 MR. THOMPSON: So --

22 MR. HEDGER: But would --

23 MR. THOMPSON: -- you actually fall back
24 to the increased control orders when you're working in
25 an agreement state under reciprocity.

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1 MR. HEDGER: Correct.

2 MR. THOMPSON: Provided they have not
3 adopted the rule, which you're going to need to follow
4 up --

5 MR. HEDGER: Right. And that's why I'm
6 sort of saying regardless of the three years, I mean I
7 would just -- because actually Chris Duhon, my -- the
8 guy who runs our Louisiana facility, we were talking
9 about it, I said, I don't care when the state, when
10 Louisiana accepts it, you're going to do it when the
11 NRC says we're going to do it, just because it's
12 better to be in compliance with the NRC.

13 That's -- as I see it, that's the minimum
14 that we need to do, because the states, they'll take
15 the minimum and they will add upon -- you know, add to
16 it. So, anyway, I just wanted to make that comment.

17 MR. MAIER: Anyone else? Any comments,
18 any questions about the implementation?

19 MS. ROUGHAN: Kate Roughan, QSA Global.

20 A question and a couple of comments. If
21 the rule -- the comments back on the proposed rule are
22 so significant you need to reconsider some of the
23 proposals, will that then be reissued for comment
24 before it goes to final?

25 MS. HORN: If we were to end up making

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1 substantive changes where there's -- we're adding
2 things that weren't addressed in the proposed rule,
3 then, yes, we probably would renote it for comment a
4 second time, though it could be just limited to those
5 new provisions.

6 MS. ROUGHAN: Right. Okay. And just a
7 general comment. I echo what Scott had said earlier.

8 I think the licensees take their responsibilities
9 very seriously in handling this radioactive material.

10 None of the licensees in this room, or out there,
11 want to be the one where the terrorist stole the
12 source from them. It's the last thing we want to have
13 happen.

14 With that said, the orders as they exist
15 now seem to be fairly effective. Maybe not 100
16 percent, but they're fairly effective. And go back to
17 that regulatory risk analysis. You're saying it's
18 going to cost 400 million to almost a billion dollars
19 over 20 years to implement this proposed rule with no
20 quantitative benefits to the regulatory agencies,
21 licensees, to the general public. That just --
22 there's a disconnect there.

23 MR. J. MILLER: John Miller with
24 International Isotopes.

25 Everything that Kate just said --

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1 (General laughter.)

2 MR. J. MILLER: -- plus I think, you
3 know, on top of it, putting the orders into regulation
4 is the right thing to do. You know, there's no
5 transparency with the orders, regulations,
6 stakeholders, everybody gets to see what the industry
7 is doing, what the NRC is doing. So that is
8 perfectly -- you know, the right thing to do.

9 I think trying to shoehorn all the orders
10 into one single governing regulation is going to be
11 very difficult because in the discussions that we've
12 heard today, big differences in the security concerns
13 that a radiographer has versus a medical facility
14 versus the M&D, and the NRC purposefully issued orders
15 to these industries on a industry-by-industry basis, I
16 think taking into that -- those differences into
17 consideration.

18 You know, granted, there's also, you know,
19 a risk analysis that was done, and it's more important
20 to get these orders out to this group of people first
21 and then trickle it down based on risk. And I think
22 that consideration needs to be made when the
23 regulation is put into place.

24 MR. MAIER: Going once? Going twice?
25 Third and final call?

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1 Scott.

2 (General laughter.)

3 MR. CARGILL: Scott Cargill, Valley X-Ray
4 again.

5 I do want to thank you all for giving us
6 this opportunity. I don't want you to walk away
7 thinking this is just a bunch of people coming in to
8 gripe about this.

9 You mentioned avenues to get the word out
10 kind of thing. We talked about ndtma.org, asnt.org is
11 another one. I would like to see the federal
12 government, NRC specifically in this case, put out
13 some -- put a list server up. There is technology
14 easily done where we can just hit it and it'll
15 automatically kick things out to us as well. I'd like
16 to see that transparency a little bit more.

17 The original order I had no clue of until
18 the guidance came out. I think the proposed changes
19 are a little premature. Just from today's
20 conversations I think there's some serious need to go
21 back and review them. I would implore you to go back
22 and look at them. Obviously some of these changes are
23 going be a large impact on our operations.

24 But, again, thanks for giving us this
25 opportunity, and thanks for coming.

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1 MR. MAIER: That would be a great ending
2 comment, I think.

3 (General laughter.)

4 MR. MAIER: But, no. No, not quite.

5 MR. ALLEN: My name is Garry Allen and I'm
6 with Rinehart and Associates here in Austin.

7 Reading from the *Federal Register*, under
8 Appendix A of the proposed rule, it says, The average
9 licensee would have a one-time cost of approximately
10 \$27,000, and an annual cost of approximately 25,700 to
11 fully implement this. Has there been any changes is
12 that, or is it going up or down, or -- I understand
13 that a small operation would have a little less cost
14 than some of the bigger operations that's been
15 described in here.

16 But there's probably going to be a bottom
17 line that you're going to have to do this much in
18 order to comply, even if you're a small operation.
19 And do you have any idea what that price is going to
20 be, and will it go up or down or what the situation
21 might be in that?

22 MS. HORN: All I can see, the costs that
23 were provided, and those are actually from the
24 regulatory analysis, which is a separate document, and
25 it lays out our best guess of what the cost and the

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1 benefits are. And Kate is right, this is more
2 qualitative on the benefit side. We have tried to do
3 a good faith estimate of what we thought the costs
4 were.

5 If you disagree with some of the, you
6 know, the estimates and the assumptions that we've
7 used, please let us know. Because you're the ones
8 that are actually out there implementing it. You have
9 a better idea of what something's going to cost than
10 what we do. We've tried to document all of what the
11 assumptions are, how we got to those numbers.

12 It really depends -- that was an average
13 cost, it depends on the licensee, some might end up
14 spending more, some might end up spending less. In
15 some cases you may already have some of this. I
16 suspect that many of you have already done training on
17 some of the security measures, so you may not be
18 developing a brand new program. But because there was
19 no previous requirement for training, we've assumed
20 the entire cost of doing a training program in there.

21 So it's going to vary by licensee.

22 When we look at the final rule, we'll look
23 at the provisions that are in the rule and make our
24 best estimates on what those provisions would cost,
25 and that'll be reflected in the final reg analysis.

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1 MR. ALLEN: So that may be coming --
2 upcoming -- an adjustment in the actual cost.

3 MS. HORN: We will base it on the
4 provisions that are in the final rule, and, yes, we
5 would make any adjustments based on comments that we
6 received based on what the final rule actually looks
7 like.

8 MR. ALLEN: Okay.

9 MR. MAIER: I'll go to Norm here.

10 And, Norm, I apologize, I didn't catch
11 your last name the last time you spoke.

12 MR. LANIER: Norm Lanier with Tracerco.

13 A question about the reviewing officer.
14 Once you get fingerprinted and get qualified as a
15 reviewing officer, will that transfer over to future
16 employers?

17 MS. HORN: I'll say that that would
18 actually be up to the future employer. The background
19 information can transfer from one employer to another.
20 The individual would have to make a request that that
21 information be transferred to their new employer and
22 so it would be up to that new employer whether they
23 wanted to repeat it or to rely on the information that
24 the other licensee had given them.

25 MR. LANIER: I guess as a follow up to

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1 that, that also applies to like industrial
2 radiographers. I know with my experience in
3 industrial -- when I was in the industrial radiography
4 industry, it seemed like I would turn over about 60
5 percent of my work force every year based upon if
6 somebody down the road was offering 50 cents an hour
7 more.

8 So having said that, you know, unless
9 there's something in place to where that person, if he
10 goes through the fingerprint check, if he can't
11 transfer it over to another employer, you can see
12 rotating in and out of people, sometimes two and three
13 times a year, this same guy's going to have to go
14 through a fingerprinting process, because a lot of
15 employers are reluctant because I paid for this, I'm
16 not going to transfer it to this guy if he's moving
17 over there for 50 cents an hour.

18 And it seemed like there ought to be
19 something within the rule where you can transfer, you
20 know, this acceptability under -- just being approved
21 for that.

22 MS. HORN: You can certainly provide the
23 information -- information sharing is allowed. If
24 you're going somewhere else, that information can be
25 transferred to the new licensee. If the previous

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1 employer doesn't want to transfer it, that's a
2 slightly different issue. If that's something you
3 think we need to address in the rule, you know, please
4 provide a comment along those lines.

5 MR. HEDGER: Troy Hedger from Alpha Omega.

6 And I really don't want to just hear
7 myself talk, but you just said something and I just --
8 so you transfer the information. I'm all -- that's
9 great. So what date do I use to -- is it the initial
10 date that the background was done, then I take 10
11 years from that, not I take that information and I
12 look at it, it's, okay, 10 years from today.

13 MS. HORN: No --

14 MR. HEDGER: Okay.

15 MS. HORN: -- it would be --

16 MR. HEDGER: That's what I thought.

17 MS. HORN: -- the 10 days -- 10 years --

18 MR. HEDGER: Okay.

19 MS. HORN: -- from the initial
20 investigation.

21 MR. MAIER: Additional comments,
22 questions?

23 (No response.)

24 MR. MAIER: Okay. I think we've reached
25 the end, and I'm still standing.

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1 I guess with my uninformed perspective on
2 the rule and the guidance, I came up with a couple of
3 things that I guess I saw and wrote down in between
4 people talking. A big issue on Subpart B on the
5 credit history, a question of liability. Merri threw
6 out the concept of possible weighting of categories,
7 depending on how much material you had, and also make
8 something industry specific, an industry specific
9 plan.

10 For Subpart C questions about the
11 temporary job site, what -- how big is a temporary job
12 site when you're running 50 miles, 70 miles of
13 pipeline, how long are you in a particular location
14 for it be called a temporary job site as opposed to
15 something else. For law enforcement coordination, why
16 isn't 9-1-1 good enough. And a good definition of
17 security zone seemed to be something that several
18 people were calling for.

19 Questions about the weekly inventory, some
20 folks were asking for a little bit more guidance on
21 that, and then the big one that we kind for finally
22 beat to death was the question about local law
23 enforcement agency notification, how do you verify
24 that they've gotten the message and that -- how do you
25 prove to the regulator that you have made a good faith

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1 effort to provide that notification, by calling them
2 all the time, or are we be accused of crying wolf.

3 And who -- more than one person has asked
4 who is the offshore local law enforcement agency for
5 offshore activities, and who's going to be responsible
6 for putting a lot of this into context through
7 training and education of the local law enforcement
8 agencies.

9 And for the travel -- or for the transit
10 portion, more than one person was in favor of
11 investigation of a possible central notification
12 authority to make all those notifications through.

13 And I didn't put anything down from the
14 parking lot, but Leslie has got it all on tape, and we
15 will be able to get those transcripts out to you in a
16 couple of weeks.

17 And at this point I -- well, before I do
18 turn it over to Merri to close it out, I will urge you
19 once again, if you do have written comments, of
20 course, you're always able to send those written
21 comments through those various means that are on the
22 back of the agenda, the sheet with the agenda.

23 And please, please, please, please, please
24 take the time to either do it here or take it home and
25 mail it in, fill out an NRC public meeting feedback

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1 form, tell us what you think should be done
2 differently. We've got another meeting in a couple of
3 weeks and we could benefit greatly from your
4 perspective on what went well, what didn't go well for
5 this particular meeting.

6 With that, I'll turn it over to Merri to
7 talk about the next steps, and she can close us out.

8 MS. HORN: Well, first of all, I really do
9 appreciate all you taking the time out today and
10 attending this meeting. We've got a good -- a lot of
11 really good input, and we appreciate that. That's
12 what the purpose for this meeting was. So it's
13 important to help us make a better rule, made better
14 guidance.

15 As far as next steps, the current end of
16 the comment period on the rule is October 12, I'm
17 sorry, and November 13 for the -- or do I have this
18 backwards -- anyway October and November for the rule
19 and the guidance. If you're going to be asking for an
20 extension to that comment period, I'd actually
21 encourage you to get that in within the next couple of
22 weeks.

23 We will not here be making that
24 determination. We would make a recommendation to the
25 Commission, and it would be the Commission's decision

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1 on whether or not we would extend the comment period.

2 If we do extend the comment period on the rule, we
3 would also extend the comment period on the guidance,
4 and we would probably end up with the same end due
5 date.

6 The methods, again, for submitting
7 comments are on the back of the agenda. You can
8 follow any of those methods. If any of you have
9 written comments on either the guidance or the rule
10 that you would like to give to us, we'd be happy to
11 take them back and make sure that they're docketed and
12 put onto to the official docket.

13 But with that, I thank you very much. We
14 will actually all still be here until five o'clock,
15 because that's how we advertised the meeting, so we
16 will be sticking around. If any of you want to come
17 up and just informally chat, the majority of us will
18 still be here.

19 And, again, thank you very much for
20 attending. We really do appreciate it, and I
21 encourage you, submit those comments, provide the
22 information as to why something is a problem. And
23 thank you.

24 (Whereupon, at 3:21 p.m., the meeting was
25 concluded.)

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