Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Physical Protection of Byproduct Material
Public Meeting

Docket Number: (n/a)

Location: Rockville, Maryland

Date: Monday, September 20, 2010

Work Order No.: NRC-432 Pages 1-167

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 + + + + +

4 PUBLIC MEETING ON DRAFT IMPLEMENTATION GUIDANCE

5 FOR 10 CFR PART 37

6 PHYSICAL PROTECTION OF BYPRODUCT MATERIAL

7 + + + + +

8 MONDAY,

9 SEPTEMBER 20, 2010

10 + + + + +

11

12 The meeting convened in the Nuclear

13 Regulatory Commission Auditorium, Two White Flint

14 North, 11545 Rockville Pike, Rockville, Maryland at

15 8:30 a.m., Elva Bowden Berry, Facilitator, presiding.

16

17 PRESENT:

18 ELVA BOWDEN BERRY, Office of the General Counsel, NRC

19 MERRI HORN, Office of Federal & State Materials and

20 Environmental Management Programs, NRC

21 FRANK COSTELLO, Pennsylvania Department of

22 Environmental Protection

23 ADELAIDE GIANTELLI, NRC

24 PAUL GOLDBERG, NRC

25 GARY PURDY, NRC

26

1 T-A-B-L-E O-F C-O-N-T-E-N-T-S

2 WELCOME:
3 Elva Bowden Berry, Facilitator..... 3
4 Mark Thaggard, NRC..... 4
5 PART 37 PROPOSED RULE OVERVIEW:
6 Merri Horn, NRC..... 8
7 GROUND RULES FOR MEETING:
8 Elva Bowden Berry, Facilitator..... 23
9 PART 37 SUBPART B GUIDANCE:
10 Access Authorization Program Discussion:..... 24
11 PART 37 SUBPART C GUIDANCE:
12 Physical Protection Requirements During
13 Use Discussion:..... 85
14 PART 37 SUBPART D GUIDANCE:
15 Physical Protection in Transit:..... 120
16 PART 37 IMPLEMENTATION GUIDANCE OPEN DISCUSSION:. 144
17 SUMMARY AND NEXT STEPS:
18 Merri Horn, NRC..... 165
19 ADJOURN:
20 Elva Bowden Berry..... 166
21
22
23
24

1 P-R-O-C-E-E-D-I-N-G-S

2 8:34 a.m.

3 FACILITATOR BOWDEN BERRY: Good morning,
4 everyone. My name is Elva Bowden Berry and I am an
5 attorney in the Office of the General Counsel. I am
6 going to be facilitating this meeting this morning.
7 And the purpose of the meeting is to
8 gather comments on the Draft Implementation Guidance
9 for the proposed Title 10 of the Code of Federal
10 Regulations Part 37, Physical Protection of Byproduct
11 Material.
12 And Mark Thaggard is going to give some
13 opening remarks first and then Merri Horn is going to
14 give some remarks and she will introduce everyone.
15 I just want to start out first with some
16 logistics. The exits are behind you and in that lobby
17 area out there, the bathrooms are out there as well,
18 you are able to go up to the lobby level and walk
19 around, go to the cafeteria. You can't go past the
20 guards and your name tag must be displayed clearly.
21 This meeting will be conducted through the
22 GoToMeeting, so we have people on the phone that are
23 able to participate in the meeting. I would ask you
24 when you come to the mike to give your comments, speak
25 directly into the mike and try not to make comments

1 without using the mike, because the people on the
2 phone lines won't be able to hear you.
3 For those of you on the phone lines, when
4 you are not speaking, so that we don't hear background
5 noise and everything, I would ask you to mute your
6 phone and then when you want to speak, then you can
7 let Amanda know through message to the GoToMeeting and
8 I'll put you in the queue and we will be able to get
9 you to participate in that manner.
10 The other thing I would like to ask
11 everyone to mute your electronic devices or turn them
12 off, whichever you prefer, so it won't interrupt the
13 meeting.
14 And also, we have a Court Reporter who is
15 transcribing the meeting, so we need everyone to speak
16 clearly and, like I said, use the mike. When you come
17 up to the mike, please, please, state your name, where
18 you are from clearly, so that the Court Reporter can
19 get that information.
20 So with that, we will get started. And
21 Mark Thaggard?
22 MR. THAGGARD: I would just like to say
23 good morning, welcome. The slide up there says Josie
24 Piccone, but I'm not Josie. My name is Mark Thaggard.
25 Josie apologized, she couldn't be here. I'm Josie's

1 deputy. I'm the Deputy Division Director for the
2 Division of Intergovernmental Liaison and Rulemaking
3 in the Office of Federal, State and Materials and
4 Environmental Management Programs here at the NRC.
5 On behalf of the NRC, we really appreciate
6 you being here. We know everybody has very busy
7 schedules and we appreciate you taking time out to be
8 here today.
9 This is the second of two public meetings
10 that we are having on this Draft Guidance Document.
11 The first one happened a couple of weeks ago.
12 I want to being with just a few general
13 comments on rulemaking. Writing the regulations is
14 one of the most important things that we do here at
15 the NRC. Regulations are important because they
16 provide the vehicle for implementing national policy
17 and also for achieving the Agency's goals of
18 maintaining safety and security.
19 Guidance documents are also very important
20 and from the licensee's standpoint, sometimes maybe
21 more important.
22 Guidance documents typically include the
23 details of an acceptable way to implement the rule.
24 The rule on the guidance document are thus
25 intertwined.

1 One of the most important parts of
2 guidance development is what we are doing here today,
3 that is providing an opportunity for stakeholder
4 involvement in the process. Public participation is a
5 cornerstone of the Agency to make the Agency's
6 business more open and transparent.
7 As I have already mentioned, guidance
8 documents provide the information on what the NRC
9 views as an acceptable method for implementing the
10 proposed Part 37.
11 The Part 37 Rulemaking would place the
12 security requirements for the use of Category 1 and
13 Category 2 quantities of radioactive materials into
14 the regulations.
15 In developing the proposed rule, the staff
16 considered a number of sources, including the existing
17 security order, lessons learned from implementing
18 those orders. We also considered recommendations from
19 an independent external review panel and an internal
20 materials program working group, as well as we also
21 considered some input that we received when we
22 published preliminary rule language.
23 The Independent Review Panel was chartered
24 to identify vulnerabilities in the NRC's Material
25 Licensing Program with respect to import/export in

1 specific and general licenses. It was also chartered
2 to validate the ongoing byproduct material security
3 efforts and evaluate the apparent presumption that
4 pervades the NRC licensing process.
5 This effort was followed by an internal
6 materials program working group that conducted a
7 comprehensive evaluation of the material program to
8 identify short and long term strategies to mitigate
9 security vulnerabilities.
10 In addition, we also received a Petition
11 for Rulemaking filed by the State of Washington that
12 requested GPS tracking for vehicles transporting
13 portable radioactive devices. The key aspects of the
14 proposed rules are the Access Authorization Program,
15 Security During Use and also Transportation Security
16 requirements.
17 The proposed Part 37 Rule was published in
18 the Federal Register on June the 15th. It is
19 currently open for public comment until October 13th.
20 I strongly encourage you to submit any comments that
21 you have. I hope that you actively participate in our
22 process here today, since you have taken the time to
23 be here.
24 We really do want your perspective and
25 input. Your comments will help us to enhance the

1 guidance and make the document useful and informative.
2 The rule together with the guidance will
3 provide an important tool for maintaining the security
4 of our nation.
5 And so once again, I want to welcome
6 everyone here. And as I said at the beginning, I
7 appreciate you taking the time out from your busy
8 schedule to be with us. We value your input and
9 encourage you to speak candidly.
10 At this time, I would like to introduce
11 Ms. Merri Horn. She is going to provide a brief
12 overview of the proposed rule. She is the project
13 manager for both the rule and also for the guidance
14 document.
15 MS. HORN: Thank you, Mark. I, too, want
16 to thank everyone for taking time out of your very
17 busy schedules to attend our meeting today. The
18 purpose of today's meeting is to obtain your input on
19 the Draft Guidance Document for Part 37. But before
20 we go to the guidance, I do want to do a quick, about
21 a 15 minute, overview of the key provisions of the
22 rule.
23 Next slide, please. Actually, it should
24 be Slide 4. Well, I'll go ahead and start and
25 hopefully you will -- there you go.

1 The primary objective of this rulemaking
2 is to provide reasonable assurance of preventing the
3 theft or diversion of Category 1 or Category 2
4 quantities of radioactive material.
5 Next slide. The proposed rule would
6 create a new Part 37 that would contain the security
7 requirements for Category 1 and Category 2 quantities
8 of radioactive material. It would also contain the
9 security requirements for the transportation of small
10 quantities of irradiated fuel, basically less than 100
11 grams.
12 We are also making a number of conforming
13 changes to other parts, such as Part 34 or Part 39,
14 Part 35, which are, basically, pointers back to Part
15 37.
16 Next, Slide 6. The major provisions of
17 the rule are contained in three subparts as Mark
18 mentioned. Subpart B contains requirements for the
19 Access Authorization Program, Subpart C contains the
20 requirements for Security During Use and Subpart D is
21 the Transportation Security provisions.
22 I'll briefly discuss the key provisions in
23 each subpart.
24 Next slide. The Access Authorization
25 Program requires that anyone with unescorted access to

1 Category 1 or Category 2 quantities of radioactive
2 material undergo a background investigation that
3 includes fingerprinting and a criminal history records
4 check along with several other elements.
5 The background investigation must be
6 completed before an individual can have unescorted
7 access to the material. We have actually relieved
8 several categories of individuals from the background
9 investigation element, so I think there is about 13
10 different categories. So if someone fits in one of
11 those categories, you don't actually have to conduct a
12 background investigation for them. You would still
13 need to document. You could still choose to, but you
14 would not be required to.
15 The proposed rule also contains a
16 grandfathering provision, so that if you have been
17 granted unescorted access to material under any of the
18 NRC orders or under the agreements date orders or
19 other legally binding requirements, you would not have
20 to undergo the background investigation again.
21 We do require a reinvestigation every 10
22 years, so at that point, then you would have to
23 undergo the full investigation or the renewal of
24 investigation.
25 There are also provisions in the proposed

1 rule that would allow the transfer of background
2 information between licensees, so if you are a service
3 provider and you have done the background
4 investigation for your employees, if the client that
5 you are going to be serving is willing to accept that,
6 they could be granted unescorted access without that
7 client organization doing another background
8 investigation.
9 Next slide. Oh, I'm sorry, stay there.
10 Slide 8. A reviewing official is the individual that
11 must make the determinations on whether an individual
12 will be permitted unescorted access to radioactive
13 material. That has been called different things,
14 depending on what orders that you received. I believe
15 an increase in controls, this is called a trustworthy
16 and reliability official.
17 Your HR Department can actually still
18 conduct the background investigation, but it's the
19 reviewing official must actually make that final
20 decision. The decision must be based on the
21 information obtained as part of the background
22 investigation and the determination basis must be
23 documented.
24 One of the key differences from the IC
25 Orders or Increased Control Orders is that the

1 reviewing official just undergo fingerprinting and the
2 other elements of the background investigation and
3 just also be approved by either the NRC or an
4 agreement statement.
5 This is one of the areas that we are
6 specifically requesting comment, so if you have
7 concerns with that provision, we certainly encourage
8 you to provide those comments. Licensees would be
9 required to provide an employee with the right to
10 clarify for correct information obtained during the
11 background investigation before a negative finding is
12 made on an individual and they are denied access.
13 Licensees would be required to have
14 procedures to implement the program and protect
15 information obtained during the investigation and to
16 keep records.
17 Another new provision is requirement to
18 conduct an annual program review of that particular
19 program.
20 Next slide. While some of the elements of
21 the background investigation are different, many of
22 the basic requirements are the same as the orders.
23 You still have to do an education. You still have to
24 do your employment history. So some of those things
25 are very, very similar.

1 A key difference is a credit history
2 evaluation, which is a proposed new requirement. We
3 have already gotten a lot of feedback on that
4 particular provision, so I suspect we will hear a lot
5 more today. This is another area where we are
6 specifically inviting public comment. Your comments
7 really can make a difference on where we come out on
8 these particular aspects.
9 And I do encourage you to provide
10 information as to why a particular aspect would be
11 difficult to implement and not just note that you are
12 opposed to it. Comments that provide the rationale
13 are a lot more helpful to us.
14 Slide 10. Moving on to the security
15 requirements during use of the Category 1 and Category
16 2 quantities of radioactive material. A key provision
17 is development of a security plan. That's somewhat of
18 a new provision from the orders. The orders actually
19 required you to have a written security program. So
20 the concept was there before, but now we are actually
21 saying you need a written security plan.
22 The security plan would contain the
23 licensee's security strategy and a description of the
24 measures used to implement the requirements.
25 Licensees would be required to have procedures to

1 implement the security program and to conduct training
2 for those employees with unescorted access.
3 Now, neither procedures of training were
4 actually covered in the orders, but I think most
5 licensees probably do have procedures and training
6 programs in place, but we are actually requiring it
7 with the proposed rule.
8 Licensees will be required to coordinate
9 with local law enforcement agencies on what we call
10 the LLEA that provides the response to any threats at
11 the facility. The proposed rule does not require a
12 prearranged plan with the LLEA, only that you request
13 that the LLEA enter into such a plan. We would
14 require documentation of any coordination activities
15 that you undertake.
16 For licensees that conduct work at a
17 temporary job site, you would be required to notify
18 the LLEA near the job site for any activity where the
19 licensee would be located at the site for longer than
20 seven days. This is a notification requirement and
21 not a full coordination, so there is a little bit of a
22 difference.
23 Again, this is another area where we are
24 particularly interested in your input and your views
25 on this aspect. Another area where we have already

1 gotten a lot of comments on both the guidance and the
2 rule for this area. And again, I'll point out that
3 your comments are more beneficial when they explain
4 why a provision would be difficult or impossible to
5 implement versus just something saying you are
6 opposed.
7 Slide 11. Licensees would be required to
8 establish security zones around the material to
9 monitor and detect unauthorized entry or removal of
10 the material. Alarms and surveillance are examples of
11 methods that could be used for that. The licensee
12 would be required to respond to any actual or
13 attempted theft, sabotage or diversion of the material
14 to assess the situation and take appropriate actions.
15 This appropriate action could include notifying the
16 LLEA or the NRC.
17 Included is a requirement to maintain the
18 security-related equipment and test equipment to make
19 sure it is operational. That's a new requirement.
20 For mobile devices that are in a vehicle or a trailer,
21 you need to use a method to disable the vehicle or
22 trailer in addition to having the two separate
23 physical controls.
24 Now, this again is another area where we
25 are seeking input. Should we offer some sort of an

1 exemption in the rule for instances where disabling
2 the vehicle could be a major safety concern, such as
3 an operation in an oil field. We are looking to
4 whether this is something that should be included in
5 the rule, should be handled on a case-by-case basis,
6 maybe go in the guidance. So your input ideas on that
7 would be most welcome. And again, an annual program
8 review would be required along with reporting of
9 events.
10 Slide 12. Moving on to the Transportation
11 Security Program. This would include verification of
12 license authorization when transferring Category 1 or
13 Category 2 quantities of material and it would now
14 apply to all licensees transferring material and not
15 just the M&D type licensees.
16 Licensees would be required to conduct
17 preplanning and coordination activities with the
18 receiving licensee and in the case of Category 1
19 shipments, also with state officials.
20 A new provision is the need to establish a
21 no later than arrival time for the shipment. And,
22 basically, if the shipment has not arrived by the set
23 time, the licensees would begin an investigation to
24 see what happened to the material.
25 For Category 1 shipments, advance

1 notifications to the state and NRC would be required.
2 Licensees would be required to notify the LLEA and
3 NRC if a shipment of Category 1 materials is
4 determined to be lost or stolen.
5 For Category 2 shipments, you would just
6 have to notify the NRC.
7 Next slide. For Category 1 shipments,
8 movement control centers with the capability to
9 actively monitor shipments as well as telemetric
10 position monitoring would be required. This could be
11 GPS. It could be some other method. Licensees would
12 be required to provide both primary and backup
13 communication capability from the transport vehicle in
14 order to request emergency assistance, if that was
15 necessary. They need to have procedures covering both
16 normal and contingency operations and workers must be
17 trained on those procedures.
18 Next slide. For shipments of Category 2
19 quantities of radioactive material, licensees would be
20 required to maintain constant control and surveillance
21 during transit, to have communication capabilities to
22 summon assistance for shipments. If a carrier is
23 used, the carrier must utilize a package tracking
24 system that requires a signature before release of the
25 package.

1 Going on to the next slide, please. There
2 are actually eight areas where we are specifically
3 inviting comment on this rule. Obviously, you can
4 comment on any aspect and we encourage you to do so,
5 but particularly in these eight areas, we really are
6 looking for your input. And for each of those areas,
7 we have asked a number of questions to try to get
8 additional information.
9 In these particular areas, you will be
10 assisting us in making our final decision, because we
11 are not totally sure this is the way we want to go yet
12 or not. So in this particular areas, it really is
13 important that you provide the comments. And again,
14 provide comments that provide a little more detail.
15 What's the problem that you have with it and not just
16 I'm opposed.
17 Slide 16. As Mark mentioned, the proposed
18 rule was published in the Federal Register on June
19 15th. The comment period currently ends on October
20 13th. We have received several requests recently for
21 an extension of the comment period on that. While I
22 believe that it will likely be approved, we do not
23 have a final determination on that. We should know
24 hopefully fairly soon on that.
25 Again, I encourage you to submit comments

1 on the final rule. Currently, the final rule is due
2 to the Commission in December 2011.
3 Slide 17 actually provides the methods for
4 submitting comments on the proposed rule. You could
5 also provide any written comments to me. You could
6 leave them with the registration desk or hand them to
7 the other NRC people. Okay. The slide up there also
8 has the information on the guidance document, the
9 comments on that are due November 12. And again, we
10 have received several requests for an extension of
11 that comment period. Final decision has not been
12 made.
13 There is a handout, I believe, a page in
14 your slides that actually gives you the information on
15 how to submit comments on both the guidance and the
16 proposed rule. Comments on the guidance are the
17 purpose of the meeting today. And the meeting
18 transcript will be added to the guidance docket. We
19 will also accept any written comments today in
20 addition to the oral comments that you are providing.
21 Again, if you have a written comment that
22 you would like to go ahead and submit, you can leave
23 it with the registration desk. You can give it to me
24 or one of the folks up here at the table.
25 Everyone says that the devil is in the

1 details. The guidance document is intended to provide
2 those details. For this document, we used a different
3 format than we have in the past. It's a Q&A. There
4 is a lot of Q&A that was already available that was
5 issued for the orders, the Increased Control Orders,
6 so we, basically, took that and put it into a bigger
7 guidance document and added additional Q&A where we
8 needed it.
9 Guidance is provided on all of the
10 provisions of the rule, except for the definitions.
11 There seems to be a disconnect from our slides there
12 and what we have on the handouts. There should be a
13 slide 20, I'm hoping, but, basically, the guidance
14 document is set up, and actually you have copies of
15 it.
16 The box at the top tells you the title of
17 the particular section that you are talking about.
18 Then the second box on the page contains the actual
19 rule provision. The section directly under the rule
20 text box contains a brief explanation of that rule
21 provision and then it is followed by the Q&As that
22 provide guidance for that particular rule provision.
23 Now, I would actually be interested in
24 your feedback on whether you like this format or
25 whether the simpler format or style would be easier

1 for you to use. So either in your comments or catch
2 me at one of the breaks, I would certainly be
3 interested in what you have to say in that area.
4 But the guidance document is intended to
5 be useful, helpful to you, providing you additional
6 information on what we mean by a particular rule
7 provision.
8 Today we are here primarily in a listening
9 mode to get your input and to gain understanding of
10 any comments or concerns that you may have with the
11 guidance document. We will try to answer some of your
12 questions, but we are, basically, here to listen to
13 you. We recognize that the guidance and the rule are
14 intertwined, but today's meeting is on the guidance
15 document.
16 Comments on the guidance can actually
17 influence the rule where we end up with it. While it
18 is not likely to result in the removal of a provision,
19 it certainly can result in that provision being
20 modified.
21 In addition to those to whom you have
22 already met today, we have several members of the
23 working groups and I would like to introduce them
24 before we get going.
25 And actually, if you could stand or raise

1 your hand, when I mention your name, so they can see,
2 put a face and a name together. From the NRC, we have
3 Gary Purdy. He is from our Office of Nuclear Security
4 and Incident Response. He is one of the senior
5 technical people involved with the rulemaking and the
6 guidance.
7 We have Paul Goldberg from FSME and he is
8 one of the technical folks also involved. From the
9 State of New York we have Robert Dansereau. He will
10 be up at the table when we talk about the Subpart C
11 provisions. And he is from the State of New York.
12 And Frank Costello from the Commonwealth of
13 Pennsylvania and he will be here for the
14 transportation security portion.
15 Today's meeting is actually divided into
16 four sessions. A session each on the main topics,
17 which is Access Authorization, Security During Use and
18 Transportation Security. And then at the end, we are
19 going to have a session, basically, to cover any other
20 topic or any issue that maybe we didn't get to because
21 we ran out of time in one of the earlier sessions.
22 Things to think about as you are getting
23 ready to do your comments. Are there areas in the
24 guidance that you feel are too specific, areas where
25 you feel additional clarification may be needed, areas

1 in the guidance where you don't think we have
2 addressed a topic adequately?
3 Are there areas where you think the
4 guidance is just wrong and it's not implementable as
5 written? We want to hear those types of things.
6 The first session is going to be on the
7 Access Authorization Program. And I'll now turn the
8 meeting back over to Elva, so she can go over the
9 ground rules and we can get on to the main purpose.
10 FACILITATOR BOWDEN BERRY: Hi. I'll just
11 mention again to mute your electronic devices, because
12 a lot of you came in after I said that and I mentioned
13 that there is a Court Reporter and we are transcribing
14 it, so you need to speak into a mike and speak clearly
15 and one at a time, please.
16 The other thing is, as Merri mentioned, we
17 have a lot of ways for you to make comments. If you
18 want to make a comment, you can go to the mike and
19 introduce yourself or if you want to write down your
20 comment and give it to one of us, I'll be walking
21 around, I have green cards. There is white cards in
22 the back on the table.
23 Also in the back on the table, I hope you
24 got a chance to pick up the feedback form and we would
25 also like your comments on how the meeting went today.

1 So if you could fill out that form and you could hand
2 it to one of us or you can drop it in the mail, then
3 we would really appreciate that.
4 With that, I think we will get started.
5 Oh, okay.
6 MS. HORN: We actually have a booth
7 outside the room that is set up on the National Source
8 Tracking System, so if you have any questions about
9 that system, stop by and introduce yourself to Katie
10 Derr and she will try to answer any questions that you
11 might have.
12 FACILITATOR BOWDEN BERRY: I believe we'll
13 start with the presentations. Okay. We're going to
14 start with comments. So anyone who wants to go first.
15 Do you have anybody on the phone line, Amanda? Okay.
16 Thank you. Introduce yourself and tell us where you
17 are from and then you can tell us your comment.
18 MS. CASEY-KEYES: Hi, Debbie Keyes with
19 AMEC Earth and Environmental. We do industrial
20 radiography. The issue that we have with the Access
21 Authorization Program is the credit check. It tends
22 to be way too subjective in looking at credit reports,
23 unless specific guidance is going to be issued on what
24 to look for in a credit report that would deny someone
25 access.

1 The other issue that we have with that is
2 we are relying on information from the three credit
3 reporting agencies taking that as to be up to date and
4 correct information and that is normally not the case
5 with the three major credit reporting agencies. Thank
6 you.
7 FACILITATOR BOWDEN BERRY: Thank you for
8 your comment. Again, we are talking about the Access
9 Authorization section.
10 MS. ASENCIO: I have the same concern
11 about the credit history relation.
12 FACILITATOR BOWDEN BERRY: Can you
13 introduce yourself on the phone line?
14 MS. ASENCIO: Pardon?
15 FACILITATOR BOWDEN BERRY: Can you
16 introduce yourself?
17 MS. ASENCIO: Yes, I'm on the phone. Can
18 you hear me?
19 FACILITATOR BOWDEN BERRY: We can barely
20 hear you. You are going in and out, but could you
21 introduce yourself first?
22 MS. ASENCIO: Yes. I'm Carmen Asencio
23 from Pontificia Catholic University of Puerto Rico. I
24 have the same comment about the credit history.
25 FACILITATOR BOWDEN BERRY: Okay. You

1 agree with the last commenter about the credit
2 history. Is that it?
3 MS. ASENCIO: Yes.
4 FACILITATOR BOWDEN BERRY: Okay. Thank
5 you for your comment.
6 MS. ASENCIO: Okay.
7 FACILITATOR BOWDEN BERRY: Do we have
8 anyone else? Can you mute your phone, so that we
9 don't hear the background noise and we can get the
10 other commenters, please? Thank you.
11 PARTICIPANT: Hello?
12 PARTICIPANT: Yes, hello? Hello?
13 FACILITATOR BOWDEN BERRY: Hi. Can you
14 hold on one minute and can you --
15 PARTICIPANT: Yes.
16 FACILITATOR BOWDEN BERRY: -- mute your
17 phone?
18 PARTICIPANT: Yes.
19 FACILITATOR BOWDEN BERRY: Thank you. We
20 have a commenter on the floor.
21 PARTICIPANT: Okay.
22 MR. DEFILIPPI: Pete Defilippi,
23 Westinghouse Electric Company. I realize in the
24 proposed rulemaking you provide exceptions for
25 individuals that were granted authorization under the

1 I&C Order. Will you be doing the same for reviewing
2 officials who are designated as trustworthy and
3 reliable officials by the NRC under the I&C Order?
4 MS. HORN: No. We do not plan to
5 grandfather the reviewing officials on the I&C Orders.
6 If you were a reviewing official under the orders for
7 the Ram QC, over the M&D and the Panoramic
8 Irradiators, that those would be grandfathered because
9 they were fingerprinted.
10 MR. DEFILIPPI: If the T&R official was
11 fingerprinted and underwent a background investigation
12 under the I&C Order, would they be grandfathered?
13 MS. HORN: If they had been fingerprinted,
14 then, yes.
15 MR. DEFILIPPI: Okay. Thank you.
16 MR. HART: Tim Hart with United States
17 Navy. I'm a little bit curious 37.29 provides
18 exemptions, provides relief from the background check
19 for any of the federal security clearance, is that
20 going to be allowed to be used for reviewing
21 officials? Are they going to be able to use that as
22 opposed to going through a security check? Are we
23 going to have to have reviewing officials get their
24 own?
25 MS. HORN: No, they could use that.

1 FACILITATOR BOWDEN BERRY: Did we have
2 somebody on the phone line who wants to make a
3 comment?
4 MS. ASENCIO: Yes.
5 FACILITATOR BOWDEN BERRY: Can you
6 introduce yourself, please?
7 MS. ASENCIO: Yes. I'm Carmen Asencio
8 from Pontificia Catholic University in Puerto Rico. I
9 was concerned about the credit history report for a
10 person -- hello?
11 FACILITATOR BOWDEN BERRY: We're still
12 here. Go ahead.
13 MS. ASENCIO: You there?
14 FACILITATOR BOWDEN BERRY: Yes.
15 MS. ASENCIO: Okay. Because I think that
16 what it says here, a full credit history may be
17 coerced into participating in malicious act. I think
18 that not because we have -- somebody has a poor credit
19 history, maybe a very good credit history also, but
20 may be coerced to do malicious things. And I don't
21 see the justification for this credit evaluation.
22 FACILITATOR BOWDEN BERRY: Okay. Thank
23 you for your comment.
24 MS. ASENCIO: Okay.
25 MR. DAVIS: Hi. I'm Phil Davis with

1 Hospira. First question I would have, I haven't heard
2 it addressed, will Part 37 replace all of the
3 temporary orders?
4 MS. HORN: No.
5 MR. DAVIS: And the second thing I'll make
6 a comment about the credit history check. I'm in
7 agreement. I'm not certain how I would use the credit
8 history check in evaluating a person to see if they
9 were trustworthy and reliable, unless the NRC is going
10 to provide specific guidelines that would either make
11 a person qualified or not qualified.
12 MS. HORN: Well, first of all, it is our
13 intent to rescind all of the orders or withdraw them
14 once the rule is in place. That would be a phased
15 approach for anyone that received an NRC order. Those
16 orders would be withdrawn upon the effective date of
17 the rule.
18 If you are in an agreement state and you
19 received an NRC order under the Common Defense and
20 Security, that order would be withdrawn once that
21 particular state had adopted the regulations. So it
22 would -- since the states have up to three years to
23 adopt a regulation, you might actually remain under
24 the orders, the NRC order for three years. But once
25 that state adopted those regulations, then we would

1 withdraw the order.

2 The same with the states, once they have

3 adopted the regulations, they would rescind whatever

4 mechanism they had used to impose those requirements.

5 As far as the credit check, it's just

6 intended to be just another tool. There are several--

7 I think there were eight or nine elements of the

8 background investigation. They are all supposed to be

9 looked at in total in making that determination.

10 So just because someone may have some

11 credit issues, does not necessarily disqualify you

12 from receiving access to the material. It's the same

13 way with if you had some minor offenses, criminal

14 history, that wouldn't necessarily mean that you

15 couldn't have unescorted access to the material. You

16 would just need to look at all of those things in

17 total.

18 It might mean that you need to take a

19 little closer look at some of the other aspects. So

20 it really isn't intended to be a total package.

21 MR. MULLINS: Hi. I'm Don Mullins from

22 Georgetown University, Assistant Radiation Safety

23 Officer. And my question has to do with currently

24 under the IC, if someone has been at the institution

25 for greater than a three year period, then they are

1 deemed trustworthy and reliable based on a supervisory
2 reference or employment reference.
3 What was the thinking to go through a 10
4 year recheck on people who have been at an
5 institution? And that's really the problem we have.
6 We have got people at the university that have been
7 there for at least 10, probably 13, 15 years and now,
8 you are asking us to run a credit history check on
9 these individuals and a local law enforcement check.
10 What was the thinking behind that? Now,
11 this individual has been at the institution, been
12 using the material for 10 years and now you are saying
13 to check his credit history and local law enforcement
14 check on someone. And to me, that's just so far
15 fetched to think why you would do that.
16 MR. PURDY: Gary Purdy, NRC. Basically,
17 the reason why we do that 10 year cycle is to check
18 for any lifestyle changes that you may not be aware of
19 in the individual. Other agencies, if you had -- from
20 the ATF, if you were cleared to handle explosives, to
21 own explosives, you would be doing the check every
22 five years. Basically, it's just a check to see if
23 there is any lifestyle changes.
24 All of us up here who have federal
25 clearances, we have a 5 or 10 year cycle that we go

1 through reinvestigation also.

2 FACILITATOR BOWDEN BERRY: Do we have

3 anyone on the phone line? Those of you on the phone,

4 please, mute your phones, so that we don't hear the

5 background noise, please. Thank you.

6 MR. ISTRE: Okay. This is Daryl Istre

7 from Houston.

8 FACILITATOR BOWDEN BERRY: Can you repeat

9 your name? It didn't come through clear.

10 MR. ISTRE: Daryl Istre.

11 FACILITATOR BOWDEN BERRY: Harold East?

12 MR. ISTRE: Yes.

13 FACILITATOR BOWDEN BERRY: Okay. Thank

14 you.

15 MR. ISTRE: Okay. And I had a question

16 about that reverification. On reverification, does

17 that mean the entire background history check needs to

18 be performed, education, informant, references and

19 fingerprinting?

20 FACILITATOR BOWDEN BERRY: Your question

21 didn't come through clearly. Can you repeat it again?

22 MR. ISTRE: Okay. I was just wondering

23 that on the reverification.

24 MS. HORN: The 10 year reinvestigation

25 does not include all of the elements of the initial

1 investigation. It currently includes the credit
2 history check and the local criminal history check.
3 MR. ISTRE: Okay. Great. Thank you.
4 FACILITATOR BOWDEN BERRY: Can you mute
5 your phone, please? Any more comments on that
6 section?
7 MS. ASENCIO: I'm here.
8 FACILITATOR BOWDEN BERRY: Hello?
9 MS. ASENCIO: Hello?
10 FACILITATOR BOWDEN BERRY: Yes.
11 MS. ASENCIO: Yes.
12 FACILITATOR BOWDEN BERRY: Can you state
13 your name and then you can give us your comment.
14 MS. ASENCIO: I already did. It's Carmen
15 Asencio from Puerto Rico.
16 FACILITATOR BOWDEN BERRY: Okay. Can you
17 mute your phone, please?
18 MS. ASENCIO: Pardon?
19 FACILITATOR BOWDEN BERRY: Can you mute
20 your phone? Can you silence your phone so that we
21 won't hear any background noise from you? Hello?
22 MS. HORN: Well, let me throw a couple of
23 things out. Are there other aspects of the background
24 investigation elements that you have concern with? We
25 have heard quite a bit about the credit checks and we

1 have heard a little bit about the local criminal
2 history. How about some of the other aspects?
3 MR. SCHWARTZ: This is John Schwartz from
4 Nebraska. Have you calculated the cost that it is
5 going to cost each organization to comply with these
6 requirements? The reason I'm asking this is because
7 right now, in the State of Nebraska, we have Volunteer
8 Fire Departments that have radiological survey
9 instruments respond to radiological transportation
10 accidents.
11 In this fiscally tight period, they can't
12 even afford to have the instruments calibrated. And
13 so in the State of Nebraska, the legislature
14 authorized us to do the calibration for a lower sum of
15 money. So if you institute this, it's going to cost
16 us more, which is going to cost the volunteers more
17 and they won't get anything calibrated.
18 So again, my question is have you
19 calculated what this is going to cost the organization
20 to implement the new guidance?
21 MS. HORN: There was a draft regulatory
22 analysis that was prepared to support the proposed
23 rule. That is a separate document. It's available on
24 regulations.gov under the rule docket. We invite
25 comments on that, those were our estimates, things

1 that we thought it would cost. We're always looking
2 for comments in those areas, because you are the ones
3 that are actually out there implementing and probably
4 have a better idea of how much something costs. So we
5 do encourage comments on that particular document.
6 I will point out that emergency responders
7 actually are one of the categories that we have
8 provided relief for in the rule, so that they would
9 not have to undergo a background investigation. I
10 don't know, most of the survey meters that the
11 responders might be using probably would not contain a
12 Category 2 source, though perhaps there are some that
13 would.
14 MR. SCHWARTZ: No, ma'am. What I'm
15 talking about is, for instance, my calibration lab
16 that does the calibrations would have to implement
17 these procedures. We have one calibration tech that
18 calibrates anything from one company to another
19 company's stuff. We sent him to school. And then you
20 want us to implement this program, that includes
21 training, background investigations and everything
22 else for maybe a total of four people.
23 And now, you are talking about time and
24 money and maybe another full time employee, which the
25 State of Nebraska is not going to give us. So

1 basically, you're going to tell us to shut down the
2 program.
3 MS. HORN: There are provisions in the
4 rule for relief of some state employees. If there is
5 other categories of individuals that you think warrant
6 being provided relief, so that you wouldn't have to
7 undergo the background investigation, provide that in
8 a comment on the rule and the guidance, either one,
9 but primarily on the rule and we would certainly
10 consider adding additional categories.
11 MR. SCHWARTZ: Okay.
12 MS. HORN: If we felt it was warranted.
13 MR. SCHWARTZ: The document concerning the
14 cost, do you have that handy, the name?
15 MS. HORN: It's called a regulatory
16 analysis and I don't have it. I didn't bring that
17 down with me, but it is in regulations.gov. If you go
18 to the regulations.gov site and you look under the
19 docket ID NRC-2008-0120, the regulatory analysis will
20 be one of the documents that is listed there. You
21 will see all the comments, too, so there are actually
22 a lot of documents now that are on that particular
23 docket.
24 But I think you can probably actually
25 search under regulatory analysis under that and find

1 it.

2 MR. SCHWARTZ: Okay.

3 MS. HORN: It's also under ADAMS.

4 MR. SCHWARTZ: NRC-2008 dash what?

5 MS. HORN: Dash 0120. It's also available

6 in ADAMS, but, I apologize, I don't have the accession

7 number with me.

8 MR. SCHWARTZ: Okay. Thank you, ma'am.

9 MS. HORN: Thank you.

10 FACILITATOR BOWDEN BERRY: We have a

11 commenter on the floor, so hold the phone line,

12 please.

13 MR. HART: Tim Hart with the Navy. What

14 do you expect to gain from local law enforcement

15 background check that you wouldn't get from the FBI?

16 You're doing both and if the FBI doesn't see it, then

17 I can't believe that there would be something in the

18 local law enforcement records that the FBI couldn't

19 see.

20 MR. PURDY: Gary Purdy again. There are

21 differences between the two that for local offenses

22 they report it, from what I understand, to the FBI and

23 sometimes there may be something in the local record

24 that hasn't been reported to the FBI that they will

25 catch, at that point.

1 MR. HART: You might want to check with my
2 understanding that after 9/11 the capability was given
3 to the FBI to go down and see everybody, all the way
4 down to the local law enforcement, including local
5 police departments in small towns. So if the FBI
6 can't see it, is it even something I would consider?
7 MR. PURDY: And just for clarification,
8 our office of admin, administration, actually is the
9 ones who send things down to the FBI and receive the
10 criminal history records. And sometimes those records
11 are incomplete because the local law enforcement
12 hasn't completed the record. And so it gives you a
13 more complete picture.
14 FACILITATOR BOWDEN BERRY: The lady at the
15 mike?
16 MS. LANGHORST: Hi, I'm Sue Langhorst,
17 Washington University in St. Louis. I understood for
18 reviewing officials, those of us who have been
19 trustworthiness and reliability officials would be
20 grandfathered in. Is that correct?
21 MS. HORN: No, that's not correct. Under
22 the Increased Controls, it would not be. If your
23 particular reviewing official had been fingerprinted,
24 maybe because they had access to material safeguards
25 or for some other reason, then yes, they could serve

1 without being fingerprinted.

2 MS. LANGHORST: So those --

3 MS. HORN: So if they had not been, they

4 would have to be fingerprinted and they are not

5 grandfathered.

6 MS. LANGHORST: So those of us who have

7 been fingerprinted, we would be grandfathered in?

8 MS. HORN: You could be grandfathered in,

9 yes.

10 MS. LANGHORST: And how does NRC approve

11 that then? Do we -- what is the guidance as far as

12 submitting that information or do we -- how does that

13 work? I didn't get that out of the guidance.

14 MS. HORN: I guess we will have to think

15 about that a little bit. The idea is you would just

16 provide the name to your regulator, so that they would

17 know who it is and you could note that this individual

18 has already been fingerprinted in and approved for

19 access.

20 MS. LANGHORST: What is your estimate of

21 time frame it would take the NRC to go through this

22 review to approve reviewing officials? I realize it

23 involves FBI fingerprint background check for those

24 who haven't had it, but how long can a licensee expect

25 to wait for that approval?

1 MS. HORN: Well, I know that the FBI check
2 comes through fairly quickly and we would be looking
3 at that. We have done the reviews for some and, to be
4 honest, I don't know how long those are taking, so we
5 will have to get that information.
6 MS. LANGHORST: Okay. I know that we have
7 gone through quite a few fingerprinting, background
8 checks and there are just some individuals who don't
9 give good fingerprint records. So would that be the
10 same process as with someone trying to get unescorted
11 access approval through a licensee through the
12 multiple cards that would happen in the same way for
13 reviewing officials?
14 MS. HORN: It would happen the same way,
15 yes, because the FBI needs to have distinct
16 fingerprints or whatever the terminology is, so that
17 they can actually run it through the system. So if
18 they are not legible whether it is being someone that
19 is trying to get access or something that would be a
20 reviewing official, it's the same issue.
21 MS. LANGHORST: Thank you.
22 MS. HORN: And you might have to resubmit.
23 FACILITATOR BOWDEN BERRY: The gentleman
24 at the mike and then we will go to the phone lines.
25 MR. DAVIS: A follow-up question regarding

1 the 10 year background check, local law enforcement
2 check. As I recall, the orders came out that
3 originally required the local law enforcement check as
4 well as an FBI background check. And then a
5 subsequent amendment came out that eliminated the
6 local law enforcement check.
7 So what is changing on this 10 year
8 requirement?
9 MR. PURDY: That's two different issues
10 here. The local history, like I said, it gives you a
11 more complete picture of that and the FBI for the
12 initial investigation. If someone has been in the
13 area for 10 years, then you look at -- just by looking
14 at the local history, then you are good. You should
15 have a complete picture of that person, what they have
16 been up to for that last 10 years.
17 Going through the FBI, they need to be
18 coming through us and perhaps doing name checks or
19 something like that, that's another possibility, but
20 we believe that is the local criminal history and
21 credit history is enough to determine if there has
22 been a lifestyle change for an individual.
23 FACILITATOR BOWDEN BERRY: Okay. We will
24 go to the phone line. Is there anyone there who has a
25 question? Okay. Again, on the phone line, if you can

1 mute your phone, it would be helpful, because we are
2 hearing background noise. Thank you. We're going to
3 go to the gentleman at the mike.
4 MR. MULLINS: Just a quick question on the
5 10 year checks again. Is that going to -- the 10 year
6 clock start running upon the implementation of 37 or
7 is that back to the beginning of when we fingerprinted
8 the individual?
9 MS. HORN: It would actually be back when
10 you were fingerprinted and you got your initial
11 approval.
12 FACILITATOR BOWDEN BERRY: We'll go to the
13 lady at the mike. I think she was up first.
14 MS. KOVATS: Hi. Catalina Kovats from
15 Georgetown University. I have a couple of comments
16 and concerns. One of them is with the foreign
17 nationals. We have a lot of graduate students and
18 such that are foreign nationals. We have had
19 difficulties with their educational checks and their
20 employment history, especially from certain countries.
21 Now, I don't know how one would do then a
22 credit check and how would you even attempt to get
23 something from somebody that just came into this
24 country? That's one question and comment.
25 MR. PURDY: Do you want to go one at a

1 time?

2 MS. KOVATS: Yes.

3 MR. PURDY: Okay. I know you were here

4 from the beginning and when we went to the Increased

5 Controls, this has always been an issue, especially

6 with the universities and other areas that, you know,

7 bring in graduate students.

8 You, basically, have got to do the best

9 you can for that individual. If you are trusting that

10 individual with other hazardous chemicals or other

11 controlled substances, then maybe you can use that as

12 part of your background check or you can choose to

13 escort these individuals, depending on your particular

14 situation.

15 MS. KOVATS: But what about the credit

16 history check? How would you do that?

17 MR. PURDY: Then you would have to put

18 down we tried, we couldn't. They are a foreign

19 national. We couldn't find the -- their country

20 didn't allow us to perform a credit history check.

21 MS. KOVATS: Okay. Second one.

22 MR. PURDY: Just document what you do.

23 MS. KOVATS: Okay. That's easy enough, I

24 can write. Local criminal checks. One thing that is

25 there, what is local? Okay. And case in point, I

1 live in Derwood, right? So is it the local City of
2 Rockville, City of Gaithersburg, is it Montgomery
3 County? Is it the State Police of Maryland? Is it
4 D.C., because I work in D.C.? Where would you go with
5 that?
6 MR. PURDY: This area, it would be more
7 difficult in this area where you have multiple states
8 coming together, but my first -- we will have to
9 clarify this and think on it a little bit more, but
10 I'm thinking more in the area of where the individual
11 resides, but we will have to -- this area is more
12 difficult.
13 MS. KOVATS: Yes.
14 MR. PURDY: Because they can be Virginia,
15 D.C., Maryland and --
16 MS. KOVATS: Yes. And when people go on
17 vacations and things, it could be some place else and
18 you would be missing that piece of information.
19 MR. PURDY: We're not asking you to track
20 where they go all the time.
21 MS. KOVATS: All right. The other comment
22 is in a lot of cases you are very specific like 365
23 days or three months or whatever. I have had
24 experience with working with local law enforcement and
25 sometimes it takes us almost two or three months just

1 to try to set up a meeting with them and it is because
2 of their schedule and how much they are going out and
3 about.
4 I would hate to be penalized for the fact
5 that even though we have -- we are trying to get it
6 together and we didn't meet the 90 days or something
7 like that, if you could make it a little bit broader
8 or give a little plus and minus, I think that would
9 help.
10 MR. PURDY: Also, I think what would help
11 would be just documentation that you have made the
12 attempt.
13 MS. KOVATS: Okay.
14 MR. PURDY: And that you are -- you have a
15 meeting set up and this is the date, you know, that
16 they were available and make sure that it is -- you
17 know, you have done what you had to do. We can't
18 force the local law enforcement to show up at any
19 particular time. So just document and then meet with
20 them when you can.
21 MS. KOVATS: Okay. Thank you.
22 FACILITATOR BOWDEN BERRY: Thank you.
23 Let's take the gentleman to my far right.
24 MR. DEFILIPPI: Pete Defilippi,
25 Westinghouse Electric Company. My question relates to

1 the scope of the investigation. In the employment
2 area, you are requesting a 10 year previous employment
3 history. With some individuals, that could be quite
4 voluminous amount of employment, particularly with
5 somebody that goes in the trade areas. You could
6 possibly have as many as 100 different employments
7 minimum.
8 My only question is well, what was the
9 rationale for 10 years versus other areas of NRC where
10 the scope of the investigation is somewhat reduced
11 from that? I don't argue it in the area of education
12 and military, because the scope could possibly be in
13 that area. But the employment seems quite onerous.
14 On the reinvestigation, it would be
15 relatively simple, because most individuals would have
16 stayed with the employer, so the 10 year check is
17 relatively easy to do at that point. But for the
18 initial one, that could be a quite extensive effort.
19 MS. HORN: We're trying to be consistent.
20 10 years seemed like a reasonable time to go through.
21 If you really, you know, think there is going to be
22 some difficulties, I wouldn't expect someone to have
23 hundreds, but perhaps there are some that have that
24 many. Document that in your comments and, you know,
25 explain why it could be a problem, why you think it

1 should be a different time frame.

2 But to be honest with you, 10 years seems

3 like a reasonable time frame and that's what we went

4 with with the renewal, too.

5 MR. DEFILIPPI: Okay. Thank you. And I

6 also ask that you look within the NRC itself to look

7 in other areas, such as Access Authorization and other

8 areas, to look at the similar scope of the

9 investigation. But I will make the comment. Thank

10 you very much.

11 FACILITATOR BOWDEN BERRY: For those of

12 you on the phone line, I hate to keep repeating

13 myself, but we want to get a clear transcript and we

14 are hearing a lot of background noise. We don't have

15 the ability to mute the phones from here, so we need

16 you to, when you are not speaking, mute your phone so

17 that it doesn't come through on the transcript. Thank

18 you.

19 We are going to take the next gentleman on

20 the floor.

21 MR. YOUNG: Good morning. Jonathan Young,

22 STERIS Isomedix Services. I have multiple questions.

23 I'm sure you might want to hide the mike, but

24 clarification on the grandfathering clause.

25 I'm a panoramic irradiator order person.

1 So in 2003, we did the initial background checks.
2 2006, fingerprinting. So when does -- when would the
3 expiration date be, in the fall of 2013 or somewhere
4 in 2016?
5 MS. HORN: I guess I would say go with the
6 fingerprints, the 2016, because that gives you a
7 little more information.
8 MR. YOUNG: Okay. Well, that's
9 significant. And just as an FYI, I have 300 plus
10 people that are in this program that I have to manage
11 and we anticipate $100 fee for the background check,
12 $100 fee for the credit history check, so my tab for
13 this is $60,000 that we have to match.
14 Can I keep going or should we rotate?
15 MS. HORN: Ask another question, no one
16 else is up.
17 MR. YOUNG: There was in the guidance
18 document with regard to the reviewing official an
19 inference that each of the Agreement States has to
20 approve the same official. My reviewing official was
21 initially approved as a result of the irradiator
22 order, but there is an inference in the answer to
23 Question 2 of 37.23(B) that the Agreement States would
24 be approving the reviewing official, rather than NRC.
25 MS. HORN: The Agreement State would

1 approve the reviewing officials in their given state.
2 If your current reviewing official has already
3 undergone the fingerprinting, then they would be
4 grandfathered under the state's requirements also, so
5 you would not have to have them redone.
6 MR. YOUNG: Okay. So even though I have
7 jurisdiction in nine Agreement States, I don't have to
8 go back and submit that?
9 MS. HORN: I guess it would depend on how
10 you do it. If you have one reviewing official that
11 does your entire company across the whole country, you
12 could have them approved by the NRC and then you
13 wouldn't have to submit it to each individual state
14 the fingerprints again. And if they have already had
15 that, obviously it sounds like they have, they
16 probably would be grandfathered in under NRC and you
17 wouldn't have to go to each state.
18 MR. YOUNG: Okay.
19 FACILITATOR BOWDEN BERRY: Let's take the
20 lady at the mike and then we can come back to you. Is
21 that okay?
22 MS. LANGHORST: I have a bunch, too, so
23 let him go through his bunch.
24 FACILITATOR BOWDEN BERRY: Oh, okay. Go
25 right ahead, sir.

1 MS. LANGHORST: I didn't want to hog
2 either.
3 MR. YOUNG: There is a requirement to
4 maintain a list of those people who have been denied
5 unescorted access as a result of the review process.
6 And I'm just curious as to why. Now, you have to
7 understand since 2006, with employee turnover, I have
8 been through about 400 of these. And the number of
9 people that we have actually denied is three in total.
10 So I'm curious as to why we are required
11 to maintain a list of those people who have been
12 denied.
13 MS. HORN: Well, it sounds like it would
14 be a small list, so it would be easy to keep. The
15 idea is so that you would know those individuals who
16 should not be granted access, so that that list could
17 be given to -- I don't know if you had a guard or what
18 have you, you would know that they couldn't go into an
19 area unescorted. So that's really the intent.
20 It's you have those that can have the
21 unescorted access, but if anyone has actually been
22 denied, we wanted you to have a list of those, so you
23 were a little more aware of who they are and they
24 wouldn't unintentionally get access.
25 MR. YOUNG: Okay. Well, we have other

1 checks and balances in our program that would prevent
2 that, so it's not something that needs to be shared
3 with the Government? Oh, no, it's purely internal.
4 MS. HORN: The list was not intended to be
5 submitted to the NRC or it would be available if we
6 wanted to inspect, but it's not something that you
7 would submit officially to us as a document.
8 MR. YOUNG: Okay. Great.
9 MS. LANGHORST: Can I do a quick follow-up
10 on that question? Sue Langhorst, Washington
11 University in St. Louis.
12 What is the regulatory basis for keeping a
13 list of those that have been denied access? I didn't
14 see that requirement in the regulations. And I would
15 hope it wouldn't get there, either.
16 MS. HORN: Well, it was a requirement that
17 you maintain the list. Again, the idea is so that you
18 know those individuals that shouldn't have access to
19 the material and it makes it a little easier to
20 identify. If it's something, you know, you think that
21 would be overly burdensome, again, you know, we
22 encourage you to provide comment.
23 MS. LANGHORST: I'll clarify. I don't
24 think it is overly burdensome for the licensee to know
25 that. I don't think it has to be available for

1 inspection. Although, I hadn't asked one of my
2 questions on the list.
3 MS. HORN: Okay.
4 MS. LANGHORST: Again, Sue Langhorst,
5 Washington University in St. Louis. I'm one of those
6 that has quite a few folks in our Increased Controls
7 Program. And our list is not a paper list. It's a
8 record in a computer program that is secured. So we
9 don't have a real list that you have to here is Rev.,
10 you know, 2010, here is Rev. 2009. We don't have
11 those lists. It's a continually living list.
12 Are those adequate and should that be
13 discussed in the guidance that gives our licensees
14 knowledge to know it's not just a paper list that you
15 have to print out every so often?
16 MS. HORN: No, that's actually valid. my
17 view is that it could be a computer list. And we can
18 clarify that in the guidance and in the rule, if
19 necessary.
20 MS. LANGHORST: I can go for another
21 question if you are okay?
22 MR. YOUNG: Go ahead.
23 MS. LANGHORST: Thank you. I am a little
24 confused about the difference between granting a
25 person access and giving them access. For instance,

1 if we choose at Washington University to make one of
2 our HR folks a reviewing official, gosh, I lost the
3 term, they have to be granted access. But do we ever
4 have to turn on access for them? And so to me, the
5 start of when a person is like their 10 year would be
6 when we granted them access. But if they don't need
7 to have access, we won't turn it on. But I realize
8 you guys require that they meet access, so you can
9 fingerprint them. And it's the silliest thing I have
10 heard.
11 MS. HORN: Well, I'm not going to disagree
12 with you. I wish there was another way that we could
13 have gotten there, but unfortunately, because of the
14 way the Energy Policy Act was written, there isn't.
15 You wouldn't have to turn it on, as you
16 call it. If you never really wanted to allow them
17 access to your material, that would be perfectly
18 acceptable. We wouldn't require it. But they have to
19 be kind of on the list, because that's the way in
20 which we can require the fingerprinting.
21 MS. LANGHORST: A clarification question.
22 I have two. In reading through the guidance, we talk
23 about fingerprint and criminal history records. Does
24 that mean the FBI report only or does that mean a copy
25 of their fingerprint card also? I hope not, because

1 we have not been keeping a copy of their fingerprint
2 cards and we don't want to.
3 MS. HORN: You probably don't have a copy,
4 because you turn them in.
5 MS. LANGHORST: Right.
6 MS. HORN: No. It would be the FBI
7 record.
8 MS. LANGHORST: I think that should be
9 clarified, because I think it's confusing.
10 And then in documenting our background
11 records and what we can get and can't get, and yes, we
12 have international folks that work with us, but we
13 have people who work all over the U.S., too, and
14 getting background checks from all those states are
15 near impossible.
16 What is a licensee's best effort? It's
17 kind of like what is reasonable?
18 MS. HORN: I agree, that's a good
19 question. We can provide some more examples, I think,
20 of some of these areas, but it really is going to vary
21 on a case-by-case basis what would be a best effort.
22 In one case, it might not be good enough in another.
23 So it really becomes a judgment call. But as long as
24 you are documenting what you have done and what you
25 are able to do and what you were only able to attempt

1 to do, that should satisfy the requirements.

2 MS. LANGHORST: And so that will show up

3 then in the inspection guidance? Is that developed

4 yet or would we have --

5 MS. HORN: You know, to be honest, I don't

6 know if inspection guidance is provided for comment or

7 not, but that would typically be developed once the

8 final rule is more in place.

9 MS. LANGHORST: I have one more, shall I?

10 Okay. This is a comment and I realize this guidance

11 document is to be in place for implementing this part

12 no matter when. But at the beginning here, I think it

13 would be very helpful to have what is Increased

14 Controls requirement, what are these requirements.

15 And I think it is very important that the NRC get out

16 to all material licensees that even though you weren't

17 under Increased Controls, these rules are going to put

18 you under Increased Controls, because you have people

19 who have access to the congregation of the amount of

20 material of your license. And I don't think all

21 licensees understand that.

22 MS. HORN: That's a point well-taken. We

23 did not do a matrix or crosswalk, which is what you

24 are referring to, because there are so many different

25 orders. But maybe if we just did it for the Increased

1 Controls, we will consider that.

2 MS. LANGHORST: I think you should do it

3 for all the --

4 MS. HORN: We'll take it under advisement.

5 MS. LANGHORST: -- orders.

6 MS. HORN: Well, unfortunately, some of

7 them contain SGI information, so you couldn't in a

8 public document.

9 MS. LANGHORST: But it would be helpful

10 for your licensees if you could transmit that and have

11 that be part of their commenting.

12 MS. HORN: We will take that under

13 advisement.

14 MS. LANGHORST: Thank you very much.

15 FACILITATOR BOWDEN BERRY: Thank you. The

16 gentleman at the mike.

17 MR. YOUNG: John Young with STERIS

18 Isomedix. A question with regard to service providers

19 that have been granted or have been deemed trustworthy

20 and reliable by their own companies that come on-site

21 for the receipt, transfer, removal of Category 1 and 2

22 sources.

23 In 37.23(a), there is a requirement that

24 says unescorted access can't be given until training

25 is done. And which would be interpreted as training

1 at my facility for my security plan, which seems
2 somewhat illogical since these service providers, the
3 technicians that come, are handling the Category 1 and
4 2 sources as a part of their service.
5 Should there be some sort of exemption
6 from that training requirement for those M&D service
7 providers?
8 MR. PURDY: Well --
9 MR. YOUNG: Otherwise, I will immediately
10 have to escort them.
11 MR. PURDY: -- we will have to clarify. I
12 believe the requirement talks about having the
13 appropriate level of training. That service provider
14 may only need to know a little piece of your security,
15 not the whole thing. That piece of it is analogous to
16 when you do your health and safety training, when you
17 bring in the janitorial staff or in hospitals, your
18 nurse's staff, you will give them annual training on
19 the health and safety requirements and you give it to
20 the level that is appropriate for that person.
21 So if they go into your lab and they are
22 removing the right trash, this is the same sort of
23 thing that you give the training appropriate to that
24 level of -- level of training appropriate for that
25 individual. If he is a janitor, you tell him, you

1 know, what to do when you hear an alarm after that
2 point.
3 For a service provider, it may be
4 something completely different and I think we will
5 need to clarify what they have, especially since they
6 are there handling the material.
7 MR. YOUNG: That's right.
8 MR. PURDY: Yes.
9 MR. YOUNG: Okay.
10 MR. PURDY: We will have to clarify that,
11 but thank you.
12 MR. HART: Tim Hart with the Navy. The
13 order does a nice job of telling you what you've got
14 to get security clearances for people that work for
15 you, but we have a number of organizations that have
16 used contract companies to put/install and to maintain
17 security systems. And, in fact, some of our
18 organizations do not even have the design diagrams of
19 their security systems.
20 So it's kind of a two-part question. What
21 is the licensee expected to do to verify that the
22 company that you had install your alarm system is
23 trustworthy and reliable? You know, for instance,
24 would they have to be bonded? It might be an option.
25 But that's not addressed in any of the guidance or

1 the rule.

2 And the second one is you have

3 requirements for controlling documents, the designs of

4 security systems certainly would have some kind of

5 document, what responsibility do you have for

6 verifying that the company that designed/built your

7 security system is controlling those documents

8 properly?

9 MR. PURDY: Well, that's actually in the

10 next part, but for physical security, there is a part

11 in Subpart C that talks about security service

12 providers and they can provide this just as with

13 service providers that come to do work on your --

14 maintenance on your equipment that has radiological

15 material.

16 There is another group of service

17 providers that come in to just do your security

18 system. They have to be determined to be trustworthy

19 and reliable, except for fingerprinting. And they can

20 provide you with certification that says that they

21 have done that and that will be good for you. Just as

22 a service provider is coming to work on your device

23 and brings you a certificate that says I have been,

24 you know, deemed trustworthy and reliable and meet the

25 requirements of whatever requirements, they are

1 meeting the ICs, the M&Ds or whatever they are
2 meeting.
3 The same thing here. And hopefully when
4 you go through that process in picking that service
5 provider, that you are going through looking for
6 someone who is -- a company that has been in business,
7 trustworthy and reliable, because you are,
8 essentially, handing the keys of your facility to this
9 company, so hopefully there is a good background check
10 on that company before you bring them in to do work in
11 your facility.
12 But, like you said, there are requirements
13 for you, the licensee, to protect that security
14 information and I don't think we have any
15 clarification on what the service provider would have
16 to do to protect that information, since they are not
17 a licensee. We will have to clarify that, I think.
18 FACILITATOR BOWDEN BERRY: Thank you for
19 your comment. Go ahead.
20 MS. ROUGHAN: Kate Roughan, QSA Global. A
21 question on the reviewing official. Right now with
22 the additional checks that have to be done, in terms
23 of the credit check and the character reference check,
24 where you have to seek out a person that the
25 prospective employee has not given you their name, I'm

1 not sure how we are going to do that to begin with.
2 But I don't know how we can rely on
3 information from the individual that we can't find to
4 get some information on the prospective employer, but
5 it leaves a lot, because of these subjective pieces of
6 information, of legal liability perhaps on the
7 reviewing official.
8 In the proposed rule, there is no pass/
9 fail criteria for any of the checks that are being
10 done as part of the background check, so it's up to
11 the reviewing official to make that assessment. It's
12 their judgment call. If you have to deny access to
13 someone to a Cat 1 or Cat 2, you may be denying them
14 employment, so the reviewing official will be subject
15 to potential legal liability if they deny employment
16 to an individual, based on arbitrary information.
17 Again, there is no pass/fail criteria
18 given in the guidance document. Is there any thoughts
19 to providing some type of checklist? You must meet
20 these specific requirements before someone can have
21 access.
22 MR. PURDY: At this time, no. And I
23 don't, to be honest with you, think that it is really
24 appropriate to have a checklist for the background
25 investigation. As many people have talked about here

1 and the other public meeting, credit history is a part
2 of the requirements. In these economic times, you
3 might not have the best credit history.
4 MS. ROUGHAN: Okay.
5 MR. PURDY: So yes, that may be a reason
6 eventually that they get denied. On our side of the
7 fence here, that's the number one reason why you don't
8 get a clearance, actually, is the credit history, poor
9 credit history. But that's just a piece of the
10 puzzle. And you really need to do the interview
11 piece, too. In my opinion, you need to do that
12 interview piece also to understand maybe this person
13 is going through tough times right now and they really
14 are trustworthy and reliable, even though they have a
15 bad score or they have had some lapses in judgment in
16 the past.
17 And it seems to me that your legal
18 liability increases if you're just having a checkbox,
19 yes, no, kind of checkbox without any subjectivity of
20 the interview process or looking at the whole
21 background information as a whole.
22 MS. ROUGHAN: I agree. You have to take
23 in all those factors, but, again, you are leaving it
24 down to an individual at the licensee that has to make
25 a decision whether or not to give this person

1 employment, whether there is no guidance given on how
2 to make that assessment.
3 MR. PURDY: We have some guidance if we
4 need to enhance that, we will take that. But again,
5 you know, any employer is under -- if you deny anybody
6 employment, I suppose, they can come back and say the
7 same thing. I mean, there is always that liability
8 there. Two, that just because they don't -- this is a
9 background check for unescorted access. You could
10 choose to escort or have them work in teams or
11 something that meets your requirements.
12 MS. ROUGHAN: Another comment on the
13 Access Authorization. Again, the reviewing official,
14 if you have someone that does not commonly have access
15 to the Category 1 and Category 2, such as an HR
16 person, and you want to grant them or you want to make
17 them a reviewing official, if you do that, do they
18 also have to have the requisite radiation safety
19 training to have access to handle the material?
20 For instance, just for radiography and
21 other materials there is a basic training that has to
22 be passed before someone can actually work with the
23 material. So would that be a requirement of the
24 reviewing official also, giving them access to the
25 material?

1 MS. HORN: I would say it would depend on
2 your individual circumstances. If you are actually
3 going to, I believe the other lady called it granting
4 them access, actually, checking the box saying yes,
5 you can now go into this facility and be near the
6 material, then you probably would want to, if they are
7 actually going to be going in.
8 If you were not going to do that, then you
9 probably would not need to give them radiation safety
10 training. Just the basic that you would need for
11 working at any facility.
12 MS. ROUGHAN: So there is a difference
13 between granting them access and then actually giving
14 it to them? As long as -- so that needs to be clear.
15 And just in general, the whole Access
16 Authorization Program has added quite a large
17 administrative burden to what we did before.
18 Everything you do has to be documented. You make a
19 phone call and a character reference, that has to be
20 documented. You have to have procedures in place of
21 how you actually go through the background check and
22 deny or grant access.
23 It seems very, very onerous, at this
24 point, from a documentation standpoint, whereas,
25 existing systems seem to be working. And I'm not sure

1 why there has to be so much documentation for that
2 program. In addition, there is an annual program
3 review, which we have already put procedures in place
4 to do this. Why do you then have to do an annual
5 review on your procedures?
6 MS. HORN: Well, the annual program review
7 is to take a look to see yes, you actually are doing
8 what you said you were supposed to be doing. And
9 sometimes you will find areas where you could maybe
10 make some improvements where something could be done
11 maybe simpler or easier or maybe you are not doing it
12 as thoroughly as you need to be. So from that aspect,
13 I think an annual program review is a good idea.
14 As far as some of the documentation,
15 particularly in the procedure area, I actually think
16 it helps the licensee, because then you have a set way
17 in which you are doing it. So I think it helps the
18 person that is going to be the reviewing official,
19 going to be implementing other aspects of the program.
20 If there are some specific aspects of the
21 documentation that you think is overly burdensome, you
22 know, please, provide that comment and we will take
23 that under consideration in the rule.
24 MS. ROUGHAN: Okay. Thank you.
25 MR. GOLDBERG: One comment, Kate, on the

first question you just asked. In Annex B of this subpart, we do have some guidance. It's not a checklist. It's some guidance on making that overall judgment of trustworthiness and reliability. It does lay out the factors. It gives you some basis for evaluating. But again, they are judgments that the licensee has to make.

FACILITATOR BOWDEN BERRY: We will take the gentleman at the mike.

MR. HELMSTETTER: I'm Tim Helmstetter, Northrop Grumman, Newport News. We had a two-step process for bringing people in that became radiographers. They did a background check through the company and then there was also the DoD security clearance. Well, over time, the HR side of it would change how in depth the background checks were.

So we decided to drop back to the DoD, which takes longer, but I wanted to confirm that the DoD's security background checks meet all the requirements that the NRC is looking for.

MS. HORN: We would accept that. You would just have to provide documentation that they actually have received that clearance from DoD.

MR. HELMSTETTER: Thank you.

FACILITATOR BOWDEN BERRY: Is there

1 someone on the phone line who would like to make a
2 comment? Okay. Again, for those of you on the phone
3 line, please, mute your phone, because we are hearing
4 like if you flip pages of paper or whatever, we are
5 hearing that in the audience and it is, you know,
6 interrupting the transcription. So, please, mute your
7 phone.
8 We will take the gentleman on the floor.
9 PARTICIPANT: There's one on the phone
10 again.
11 MR. DEFILIPPI: Pete Defilippi. I would
12 just like to echo the concern that this woman
13 mentioned regarding the training that would be
14 required for the reviewing official.
15 PARTICIPANT: Good morning.
16 MR. DEFILIPPI: I would ask --
17 PARTICIPANT: Oh, yes, I've been --
18 FACILITATOR BOWDEN BERRY: Hold on.
19 PARTICIPANT: Sorry.
20 FACILITATOR BOWDEN BERRY: Is there
21 someone on the phone line who wants to speak? Hello,
22 we are hearing your conversation.
23 PARTICIPANT: David Allard, you may want
24 to mute your phone.
25 MR. ALLARD: Oh, sorry. I thought I was

1 muted.

2 FACILITATOR BOWDEN BERRY: Can you,

3 please, mute the phone? We are hearing your

4 conversation.

5 MR. ALLARD: Sorry.

6 FACILITATOR BOWDEN BERRY: Thank you. We

7 are going to take the gentleman on the floor now.

8 MR. DEFILIPPI: Thank you. I just want to

9 reiterate the concern that this woman made. I think

10 that I would ask for some regulatory clarification in

11 the rulemaking such that it could be stated that the

12 reviewing official must meet all the necessary

13 requirements for access, but not necessarily use the

14 words grant, because the only way you can do that from

15 a regulatory -- from an inspection point, someone

16 would be looking at the access list. And that access

17 list is usually done by radiation safety officer or

18 other who will determine whether the individual can

19 gain access to the physical area.

20 And therefore, the training requirements

21 that she mentioned would be imposed. And that's

22 probably not your intention, I would think, from your

23 comments, so if the language could be clarified in the

24 rulemaking, that would be helpful. Thank you.

25 MR. SIMPSON: I have a question.

1 FACILITATOR BOWDEN BERRY: Thank you for
2 your comment. Okay. On the phone line, please,
3 introduce yourself.
4 MR. SIMPSON: Yes. This is Dan Simpson,
5 Radiation Safety Officer from Goddard Space Flight
6 Center. I'm going to tag onto the previous question
7 was, here we have security that performs eyes on each
8 individual. And what I wanted to make sure is that,
9 the other person was asking about the DoD, it meets
10 the intent of the requirement for the checks on
11 individuals, because we have a personnel security
12 individual who is not considered the reviewing officer
13 right now, who provides information to me of the
14 trustworthy and reliability officer, the old term, and
15 we document from his saying that they had a favorable
16 review, that they met all the intents.
17 And just to make sure that I'm not missing
18 something in the upgrade here for the requirements.
19 MS. HORN: There are several categories in
20 37.29 that list different types of categories of
21 individuals that are relieved from the fingerprinting
22 and the other background investigation elements. If
23 the specific program which they are under is listed
24 there, then there definitely would be relief from
25 that. If there is other programs that you think maybe

1 meet those requirements and you would like to see us
2 expand that list, you know, please, provide that as a
3 comment.
4 But the idea is if you have undergone some
5 sort of security background for another organization,
6 that included fingerprinting, then that would be a
7 category and we would give you relief. But if it's
8 not, take a look at that listing and if your
9 particular type of background investigation isn't
10 listed there, please, make that a comment, because we
11 can consider adding some other categories of
12 individuals to that list or some other examples.
13 In some cases, maybe we would add some
14 more examples to the guidance document.
15 FACILITATOR BOWDEN BERRY: The lady on the
16 floor.
17 MS. LANGHORST: Sue Langhorst, Washington
18 University in St. Louis. The discussion about annual
19 reviews and reviewing officials reminded me of a
20 question I had as I was reviewing the regulations, the
21 proposed regulations.
22 Because NRC will be approving reviewing
23 officials, my first question, will that show up on the
24 license?
25 MS. HORN: No, it's not the intent that it

1 would show up on the license.

2 MS. LANGHORST: And so --

3 MS. HORN: You would receive a letter

4 saying that such and such has -- we have reviewed the

5 fingerprinting and we find them acceptable to be the

6 reviewing officials. I don't know exactly what the

7 wording will be.

8 MS. LANGHORST: Okay. I know at

9 universities it's really nice to talk to other

10 universities to find out how they skin these cats, to

11 sort of say. And I just wonder if there is a

12 capability of a reviewing official who has been

13 approved by the NRC, if those people could also grant

14 some access to assist in reviewing a program at

15 another licensee that that could be helpful in doing

16 these annual reviews.

17 So I throw that out there as just a

18 suggestion for consideration. Thank you.

19 FACILITATOR BOWDEN BERRY: Go ahead, sir.

20 MR. DAVIS: Phil Davis with Hospira once

21 again. We have been talking about access control and

22 the background checks that supports fingerprints and

23 supports for unescorted access to material. The field

24 interpretation to this is that if someone is involved

25 in the chain of alerting local law enforcement, that

1 they have to meet the same background. Now, is this
2 changing? Are you backing off from what you are now
3 enforcing?
4 MS. HORN: I'm not quite sure I followed
5 your question. I apologize.
6 MR. DAVIS: I'm saying today in the field,
7 your inspectors are saying if an individual is
8 involved in alerting local law enforcement or could be
9 involved, they have to go through the same background
10 check, fingerprinting, etcetera, as a person who has
11 unescorted access.
12 MS. HORN: No.
13 MR. DAVIS: That's what is actually
14 happening.
15 MS. HORN: No. The intent is you would
16 only have to undergo the fingerprinting, etcetera, if
17 you actually have unescorted access to the material,
18 which would be Category 1 or Category 2, or you have
19 access to SGI information, because those requirements
20 are in Part 73 already.
21 MR. DAVIS: Okay.
22 MS. MILLER: Hi. Marie Miller, Region I.
23 I wanted to clarify. Phil never talked on the
24 telephone. I think the issue is -- and the way
25 Increased Control Orders, if you have a situation

1 where they are part of the security plan, under Part
2 73 when that came out, then there was a requirement
3 there for fingerprinting and access control.
4 So it was further clarified with the
5 change in Part 73, so that if the security guards, for
6 example, they don't have access to the material, but
7 they have access to the security plan and that aspect
8 of calling LLEA. So for example, if the security
9 guard was called and they chose not to call or gave a
10 clear-all signal, you know, those are the kinds of
11 things that under Part 73, they do need to be
12 fingerprinted.
13 MS. HORN: And if your security plan was
14 considered SGI and they had access, then they still
15 would need to be, because those requirements are still
16 in the regulations.
17 Subpart C does have some provisions for
18 access to security information and such things as your
19 security plan, your procedures. So if they had access
20 to some of that, they would have to undergo a
21 background investigation, but it would not -- it does
22 not contain all of the elements. It doesn't contain
23 the fingerprinting aspect.
24 So there are some requirements also in
25 Subpart C if you have access to information.

1 MR. PURDY: Just to clarify. Part 73 has
2 to do with protection. The piece that we are talking
3 about is protection and safeguards information. And
4 for certain licensees, some manufacturing distribution
5 licensees, the large panorama of irradiator licensees,
6 their security plans are considered safeguards
7 information and so those particular licensees, NRC and
8 Agreement States, are subject to the requirements of
9 Part 73. But that doesn't include -- the IC licensees
10 do not have to implement Part 73.
11 FACILITATOR BOWDEN BERRY: Sir, at the
12 mike.
13 MR. SMITH: My name is William Smith with
14 Southern Nuclear Company. And I guess my question was
15 related to the Part 73. Part 73 applies to special
16 nuclear material and if you have more than 100 grams
17 of irradiated fuel. And it only addressed the
18 safeguards information and how you handle it relates
19 to Category 1, Category 2. So I don't see the
20 connection with protecting the Category 1 and Category
21 2 based on Part 73 and that's one of the exceptions
22 you allow a nuclear plant to use.
23 MS. HORN: The security provisions for
24 actual protection of the Category 1 and Category 2
25 materials would be in Part 37 not Part 73. But Part

1 73 in addition to having security provisions for
2 special nuclear material, it also contains the
3 provisions for the protection of safeguards
4 information.
5 And some of the material facilities that
6 possess the panoramic irradiators, the M&D licensees,
7 those that are transporting Category 1 quantities of
8 material, some of their security information would be
9 considered safeguards under Part 73. And
10 specifically, that's 73.21 and 73.23 for these types
11 of facilities.
12 Those regulations are currently on the
13 book and we are not changing them, at this time.
14 Hopefully that clarifies a little bit.
15 FACILITATOR BOWDEN BERRY: Merri, could
16 you also tell us what M&D is?
17 MS. HORN: Oh, M&D stands for manufacture
18 and distributor licensees.
19 FACILITATOR BOWDEN BERRY: Is there
20 someone on the phone line with a comment or question?
21 Okay. We have someone going to the mike.
22 MR. BHAT: My name is Ram Bhat. I'm from
23 U.S. Air Force. We got a master material license.
24 And my question is that DoD has got a database which
25 would immediately, if I give my Social Security

1 Number, tell me whether I got security clearance or
2 not.
3 But when we hire a contractor at the
4 headquarters where we manage the master material
5 license, we don't have a source at the facility where
6 we manage it, but there are distant locations, but the
7 contacts will be managing the -- as a reviewer or
8 action officer or contractor or maybe a database
9 manager.
10 And when I asked our security people that
11 they -- actually, they have got the same -- they go to
12 the same kind of security clearance as the civilians
13 or military people go through. So do they need any
14 separate investigation, FBI and fingerprinting, or is
15 it enough?
16 MS. HORN: If they have gone through the
17 same type of security background investigation as, I
18 guess, the military members of DoD, then, yes, that
19 would probably be adequate. You would have to have
20 documentation of that in your records to say that this
21 person has undergone and has some sort of security
22 clearance. But that you wouldn't necessarily have to
23 do it again. You could if you chose to, but you would
24 not be required to.
25 MR. BHAT: Okay. Thank you.

1 MS. HORN: I want to clarify a little bit
2 more for the previous gentleman. There is a provision
3 in Part 37 that if you have a security program under
4 Part 73 for your special nuclear material, you would
5 not have to meet the provisions of Part 37.
6 So that a lot of the utilities actually
7 have radiography sources and other types of materials,
8 so that if they were protecting that under the
9 security provisions for SNM and they applied those
10 same provisions to their Category 1 source or Category
11 2 material, they wouldn't have to follow Part 37. So
12 that's just a little extra clarification.
13 FACILITATOR BOWDEN BERRY: We are about 20
14 minutes away from a break. Is there anyone on the
15 phone line with a comment or a question? Okay. The
16 gentleman on the floor.
17 MR. SMITH: Yes. This is William Smith
18 with Southern Nuclear Company and that brought up
19 another question. Typically, in your physical
20 security plan, you do not address protection of
21 Category 1/Category 2 material, you address the
22 special nuclear material. So does that mean you would
23 need to update your physical security plan or how
24 would that work?
25 I'm trying to figure out the applicability

1 for a nuclear power plant and waste processors.

2 MS. HORN: The idea is if you have agreed

3 that you are going to protect it under the provisions,

4 the same provisions that you do to protect your SNM,

5 you would not need to implement Part 37. You would

6 need to document in some manner that that is what you

7 are doing, whether or not it specifically calls out,

8 your security plan, or not the protection of the

9 Category 1/Category 2 wouldn't be as important as long

10 as you are applying those measures and that we somehow

11 have that on the record.

12 MR. SMITH: Thank you.

13 FACILITATOR BOWDEN BERRY: And SNM, Merri,

14 is Special Nuclear Material? Okay. Thank you.

15 MR. PURDY: Just a real quick follow-up.

16 You had talked about waste facility. Yes, it would

17 apply to your waste facility, but we have issued the

18 Increased Control System Decommissioning Reactors and

19 those -- there are exceptions to whether or not they

20 would -- it's in guidance and we need to add it to

21 this guidance, about whether they need to implement

22 the Increased Controls for waste that is, you know,

23 dispersed or clothing large amounts of contaminated

24 clothing or maybe even piping. We would not require

25 implementation of the Increased Controls.

1 But we have that guidance. We have that
2 developed as part of the Increased Controls that have
3 been sent to the Decommissioning Reactors that needs
4 to be added to this document.
5 MS. SCHLUETER: Yes. If I might, Janet
6 Schlueter, Nuclear Energy Institute. There is another
7 category of licensees that would probably fall into
8 that and that would be the fuel cycle facilities. If
9 you could add some sort of clarification for Part 40
10 and Part 70.
11 MS. HORN: I believe there is some
12 clarification in there for the Part 70 in the
13 guidance. I'm not sure if we added the Part 40 or
14 not, but that's a good point. We could do that.
15 MS. LANGHORST: Sue Langhorst, Washington
16 University in St. Louis. Since we kind of got onto
17 this topic, I was waiting for the security program
18 part, but my question is who needs -- if people have
19 access to your list of people, I'll say "list," they
20 need to be considered trustworthy and reliable. They
21 have to go through that background check?
22 The reason I ask is we have researchers
23 using irradiators. They publish all the time. They
24 have to get funding. People know that they use these
25 irradiators. You have a blood bank. You have an

1 irradiator. People know you have got an irradiator in
2 many blood banks.
3 If you have a gamma knife facility, you
4 advertise that use of that facility to get your
5 patients the proper care. And so we have to recoup
6 some of our costs in these background checks and the
7 time it takes us to do this all. We have to charge
8 the departments.
9 Well, aren't they knowing who is involved
10 with the irradiator? Do we have to have everybody who
11 has any knowledge that someone has some access to an
12 irradiator checked off as trustworthy and reliable?
13 It really does get onerous to figure out where does it
14 stop. What is the line? Because we don't have these
15 irradiators just for fun. We really need them and
16 they are essential to our research and our clinical
17 care.
18 MR. PURDY: Well, basically, what the
19 regulation is is you have to do the T&R check for your
20 reviewing official, anybody who has access to
21 information to your security plan, who has unescorted
22 access to your materials. So we know it's not a
23 secret who has access to the material in many
24 facilities.
25 We are not asking you -- those other

1 individuals won't know your security plan, won't have
2 unescorted access to the material or anything like
3 that, so they can't -- you don't need to do a
4 background check on them.
5 MS. LANGHORST: I think the list is in the
6 regulations. I'll go back and look, but I believe --
7 MR. PURDY: Right. The complete list.
8 People are going to know whose individual name is on
9 there.
10 MS. LANGHORST: Okay.
11 MR. PURDY: But, yes, we --
12 MS. LANGHORST: That's very --
13 MR. PURDY: -- understand --
14 MS. LANGHORST: -- confusing.
15 MR. PURDY: -- you are not going to be
16 able to hide that list of who has access. It's in the
17 university setting and everybody knows who is doing
18 what. But you don't need to advertise that list,
19 either.
20 MS. LANGHORST: That's correct.
21 FACILITATOR BOWDEN BERRY: And T&R is
22 trustworthy?
23 MR. PURDY: And reliability.
24 FACILITATOR BOWDEN BERRY: And
25 reliability. Thank you. Any more comments or

1 questions? What about on the phone line?

2 MR. ALLARD: Yes, this is David Allard.

3 Sorry about that technology failure there a little

4 while ago. My Blackberry did say it was muted and it

5 was not.

6 FACILITATOR BOWDEN BERRY: Okay.

7 MR. ALLARD: Just a comment. We actually

8 have a licensee that does not have fingerprints. It

9 is a rarity, but apparently this individual was born

10 this way and does not have fingerprints. So I just

11 thought I would throw that out. That is a rare

12 scenario, but there are individuals out there in the

13 population that do not have fingerprints. Thanks.

14 FACILITATOR BOWDEN BERRY: Thank you for

15 your comment. Do ahead, sir.

16 MR. MULLINS: Hi, Don Mullins from

17 Georgetown University again. Still talking about the

18 10 year reverification. And the other gentleman said

19 that his T&R clearance was in 2003 and the fingerprint

20 results came back in 2006. And you said well, 2016.

21 What about individuals who are T&Red only for

22 sensitive information? We have authorized users who

23 may not have or need access to the material, but they

24 have sensitive information as to location and strength

25 and things like that.

1 Are those individuals or only unescorted
2 individuals required to have a 10 year reverification?
3 So they have never been fingerprinted, in other
4 words, they have been T&Red under the old ICs to have
5 access to sensitive information, but never been
6 fingerprinted because of grant money and other things
7 like that.
8 MR. PURDY: I'm sorry, you caught us and
9 we're drawing a blank actually as to whether the
10 individuals who have access to the security
11 information itself should be reinvestigated. In my
12 opinion, they should, but we will have to check the
13 rule and clarify in the guidance.
14 FACILITATOR BOWDEN BERRY: Thank you. Do
15 we have anyone on the phone line who wants to make a
16 comment or ask a question? Anyone else in the
17 audience?
18 Okay. Then maybe we will just break
19 early. So it's around 10:16, so we will break for
20 like 15 minutes. Okay. All right. So come back at
21 around, what did we say, 10:40, 10:35. 10:40, 10:40.
22 Come back at 10:40.
23 Okay. Please, make sure your badge is
24 viewable, especially, if you're going to go up to the
25 lobby area. Thank you.

1 (Whereupon, at 10:16 a.m. a recess until
2 10:44 a.m.)
3 FACILITATOR BOWDEN BERRY: Okay. We're
4 going to get started again. I want to remind everyone
5 to mute your cell phones or other electronic devices.
6 And for those of you on the phone lines, we're going
7 to try to mute you from here, so that we don't get all
8 of the background noise and then we will open up the
9 lines when we are ready to go to the phone lines to
10 hear a comment or a question. And then after you are
11 done with your comment or question, we will mute the
12 line again.
13 So if you are talking and nobody is
14 responding to you, it's because we have you muted, but
15 we will open up the phone lines, so just be patient
16 with us. Okay.
17 So now, we are going into another portion
18 of our meeting and we are going to discuss Subpart C,
19 which is Physical Protection Requirements During Use.
20 Okay. So we will get started. Anyone with a comment
21 or question? Do you want to open up the phone line to
22 see if anyone on there has a comment or question about
23 Subpart C? Is there anyone on the phone line?
24 Comment or a question on the phone line?
25 All right. We're going to mute the phone

1 lines again. And we will have the lady at the mike.

2 MS. LANGHORST: Hi, Sue Langhorst,

3 Washington University in St. Louis. There is

4 confusion with co-location, aggregation. And what's

5 the term if somebody has access to all these various

6 remote locations? What's that term?

7 FACILITATOR BOWDEN BERRY: What is it?

8 PARTICIPANT: Temporary access.

9 MS. LANGHORST: No, no, no. If you have

10 access to more than Category 2 Level material

11 throughout a facility, that's when you have to

12 implement the trustworthiness and reliability. I

13 would ask the NRC in your guidance, and I'm looking at

14 the 37.41 and you give examples. It tells a licensee

15 when they have to put in a security plan and they

16 don't have to put in a security plan, based on co-

17 location or aggregation.

18 But I would ask you to take that and

19 expand a little bit, so that licensees understand if

20 people have access to these places where they could

21 gather more than Category 2 Levels, I think you need

22 to put that in there, so that everybody knows clearly

23 the added impact that these regulations are going to

24 have. Thank you.

25 FACILITATOR BOWDEN BERRY: Okay. Again,

1 we're discussing Subpart C. You can come up to the
2 mike, introduce yourself and speak directly into the
3 mike.
4 MS. CASEY-KEYES: Debbie Keyes with AMEC
5 Earth and Environmental. I have two comments and one
6 question. We do industrial radiography, so my
7 comments have to do with, first off, the notification
8 to the LLEAs for temporary job sites. One of the
9 questions for comment was if the seven day temporary
10 job site that was lasting seven days or more was a
11 good time period and did the LLEAs want to be
12 notified?
13 My feeling is that the LLEAs have gotten
14 their training when we started instituting the
15 Increased Controls. Prior to that, they didn't know a
16 lot about radioactive materials and what was going on.
17 When we first had to go get our agreement with them,
18 we walked into the building, the minute we mentioned
19 radioactive materials, nobody even wanted to speak to
20 us. It took us four months to get to a person to talk
21 to and then they sent us the bomb squad.
22 So it took a while, but now we have a good
23 understanding and a good rapport. A lot of the
24 places, a lot of the LLEAs are going to be smaller
25 police departments that do not have any knowledge or

1 training of this or very little.

2 In the Phoenix area, we're from Phoenix,
3 Arizona, just in the valley and in the area that we
4 work in, there is no less than 32 different agencies
5 that we would have to deal with on all the temporary
6 job sites. Again, most of them not having any
7 knowledge of radioactive materials and what.

8 So if we were to notify them for a short
9 period that we were going on a job, they wouldn't
10 really know why we were notifying them or what they
11 needed to do in that instance.

12 My other comment is on the quarterly
13 training and drills. Our LLEA that we have the
14 agreement with is more than willing to do anything
15 that we need done. The response time, at the moment,
16 is about --

17 MR. PURDY: Stop.

18 MS. LANGHORST: Okay. But it is very,
19 very good. The quarterly drills and stuff, they are
20 willing to particulate in. Their concern, like every
21 other state agency at the time, is very shorthanded
22 and their budgets are very low. Who is going to pay
23 for that? Again, we are not the only ones in that
24 area that would need them to do this and it would take
25 them a considerable amount of time to participate in

1 this for everyone in the area.

2 So their concern is where are they going

3 to get the budget to do this?

4 MR. PURDY: Just one point of

5 clarification. With the LLEA notification and

6 coordination, coordination first, it's voluntary.

7 Basically, we can't require them to do anything. If

8 they can participate when you do drills or whatever

9 you are going to do, what you decide to do quarterly,

10 that would be great. If they can't afford to, then

11 again I would document that we offered them, you know,

12 the opportunity and they could not do that because of

13 manpower requirements or budgetary requirements and go

14 ahead and do, you know, your exercise that you want to

15 do.

16 But I would recommend documenting at the

17 least. If they can participate, that's great. If

18 they can't, we realize they can't. And also, as far

19 as the notification for the temporary job site,

20 basically, as with the Increased Controls, Part 37 is

21 a multi-layered approach. The security is not -- in

22 order to get your best -- in order to meet the

23 requirements, you need to have all the pieces put

24 together. And one of those pieces is a fast response

25 from the LLEA.

1 And we are hoping that by notifying the
2 LLEA when you are at a temporary job site, that you
3 would get a fast response, the same as you would get
4 with the coordination efforts. You are hopefully
5 moving up in their line when they determine what calls
6 -- when they prioritize their calls, if they have
7 multiple calls going on, hopefully that they would put
8 you more towards the top of the list. And that was
9 the plan in the notification.
10 We realize that would be very difficult,
11 may be very difficult to implement and that's why we
12 asked that question specifically and we are looking
13 for comments on that.
14 MS. HORN: I just want to remind everyone
15 that when you are making your comments or asking your
16 questions to, please, be careful, so that you don't
17 actually give us safeguards information, this such as
18 response time and things like that are considered
19 sensitive information and should not be discussed in a
20 public meeting.
21 FACILITATOR BOWDEN BERRY: And to clarify
22 for the record, they were discussing LLEA, which is
23 Local Law Enforcement Authority. Okay. We're going
24 to open up the phone lines and see if there are any
25 questions there. Do we have anyone on the phone line

1 with a comment or a question? No? Okay. We're going
2 to mute the phone lines again. And we are going to go
3 back to the floor.
4 MS. LANGHORST: Sue Langhorst, Washington
5 University in St. Louis. I don't know that it is
6 guidance in this guidance document, but it sure would
7 be helpful. It's very hard to provide you concrete
8 comments on the regulations and the guidance and
9 preserve our security information. And so I guess
10 some guidance on that would be very welcome.
11 MS. HORN: Well, you do need to avoid
12 providing specific information that would be
13 considered sensitive. Rulemaking is a public process,
14 so all of the comments we receive on the rulemaking
15 will be made public, so you do have to be very careful
16 about that.
17 You certainly can't give things such as,
18 I'll say the numbers like the response time, the
19 number of guards that you might have, I don't know if
20 weapon reaction doesn't apply here, but you couldn't
21 give that sort of information. So you will have to be
22 sensitive to that. But I think for the most part, you
23 probably can be general enough that you can get what
24 your concern is without delving into those sorts of
25 details.

1 MS. LANGHORST: Like an offer.

2 MR. BHAT: Ram Bhat from U.S. Air Force.
3 And we have got master material license and issue
4 permits to the Air Force installations. And let's
5 take an example that we issue the permit with
6 Increased Control to Installation A and they have got
7 a permit, shall we call permit license, permit
8 radiation safety officer.

9 And then each department's responsibility
10 to go and check annually whether the need-to-know
11 information, that means only the specified people need
12 to know the information, documentation and everything
13 on the security and the fire and local LLED, is it the
14 responsibility of permiter or if you are not doing,
15 are we in violation i the instructor goes and checks
16 it?

17 MS. HORN: The master material license,
18 it's probably up to the licensee and how they want to
19 approach some of that. If they want to allow, I guess
20 they are called, the permittees to do some of that
21 versus doing it at the national level, some things
22 could be done at the national level and you wouldn't
23 necessarily have to delegate it further down. So it
24 really depends on what the specific thing was.

25 But you could certainly have whoever the

1 master or the RSO for the whole master material
2 license do some of those coordination activities or it
3 could be delegated down to someone at the permittee
4 level to go out and do those coordination activities.
5 It would really be up to you. You would just need to
6 document that you have done what is required.
7 MR. BHAT: Thank you.
8 FACILITATOR BOWDEN BERRY: Any more
9 comments or questions on Subpart C? Okay.
10 MS. ROUGHAN: Kate Roughan, QSA Global.
11 Just some comments that came up at the Texas public
12 meeting regarding the Local Law Enforcement Agency.
13 Many of the licensees that go to temporary job sites,
14 they have actually said that calling 911 actually
15 works and that seems to be the easiest solution. If
16 you do have a problem, you call 911 and you get the
17 proper response as opposed to trying to determine who
18 is the Local Law Enforcement Agency for that
19 particular area where they are doing the temporary job
20 site.
21 It could be a local jurisdiction, a
22 parish, a county and it's very difficult for the
23 licensees to determine who they really are required to
24 contact for the temporary job sites. So again, it
25 appears, currently, that picking up the phone and

1 calling 911, you get a response and that seems to be
2 adequate.
3 A couple of other comments. I don't know
4 if anyone wants to jump in on Local Law Enforcement,
5 but --
6 FACILITATOR BOWDEN BERRY: I think you are
7 fine.
8 MS. ROUGHAN: All right. I'll keep going.
9 FACILITATOR BOWDEN BERRY: You may keep
10 going.
11 MS. ROUGHAN: Just a question on the
12 weekly check. For some of the larger licensees and
13 manufacturers and distributors, you may have a very
14 large inventory of sealed sources that are at the
15 Category 3 and Category 4 Level that are on the same
16 security zone. Would the weekly check be required to
17 do, basically, a weekly inventory of all the
18 individual sources? Because they add up to an
19 aggregate quantity of Category 2. Was that the intent
20 of the rule?
21 MR. PURDY: The intent was more for
22 individual sources. Now, aggregation, that's a whole
23 messy area. And if they could aggregate a Category 2
24 quantity, we will have to clarify in the guidance on
25 that one. We will have to think about that a little

1 more on how we want -- how we believe that should
2 apply to aggregation.
3 You know, but mostly, the original
4 thinking was that it would be the individual Cat 1,
5 Category 1/Category 2 sources. We will have a look at
6 aggregation of sources and we believe it should be
7 implemented.
8 MS. ROUGHAN: That will need clarification
9 in the final rule, because if you do require an
10 inventory of all the Cat 3 and Cat 4 that can be
11 aggregated to Cat 2, that's quite a lot of, well,
12 work, physical labor and actually radiation exposure.
13 So it doesn't coincide with the ALARA principle.
14 MR. PURDY: Great. Thank you.
15 MS. ROUGHAN: Another question pertaining
16 to security zones. Again, for industrial radiography,
17 they are required to set up controlled areas,
18 restricted areas and high radiation areas. Would it
19 be a reasonable assumption that the security zone
20 would be that high radiation area where they have to
21 maintain direct visual surveillance throughout that
22 operation?
23 MS. HORN: That would be acceptable. It's
24 really up to the licensee to set the zone wherever
25 they want. They could use the same zone as the

1 radiation safety area or they could choose to use a
2 different area.
3 MS. ROUGHAN: All right. Thank you.
4 MR. SMITH: William Smith with Southern
5 Nuclear Company. For a waste processor you would have
6 bulk material possibly in high integrity containers.
7 So how would the aggregation of different radionuclide
8 contents work with that? Because you may have one
9 high integrity container that has seven curies in it,
10 another one have one curie, so if you aggregated those
11 different containers, you could have Category 2 or
12 Category 1.
13 MR. PURDY: Well, it would be depending on
14 how -- the configuration of the facility. If those
15 containers for -- aggregation has to be if you can go
16 through one physical barrier and get to a Category 2
17 quantity, then you have got to implement.
18 Now, if they are in high -- the HICs, the
19 high integrity containers, if those are sealed
20 containers or have locks on them, they might not --
21 all that material might not be considered to be
22 aggregate and, therefore, you wouldn't have to
23 implement.
24 There is also, like I mentioned earlier,
25 we will be adding additional guidance on waste, on how

1 to help to apply this to waste. We will have to come
2 in and ask for an exemption of whether to apply this
3 to waste or not, but we are not really concerned about
4 low specific activity of waste that happens to
5 aggregate up to Category 2 Levels or higher. But you
6 will have to comment. And we have guidance on that
7 already, it's just not in this document. We are
8 already applying that guidance to decommissioning
9 reactors right now.
10 FACILITATOR BOWDEN BERRY: Okay. Let's go
11 to the phone line and see if anyone has a comment or
12 question. Anyone on the phone have a comment or
13 question? Okay. No comment or question on the phone
14 line. We are going to mute the phones again.
15 MS. LUNDGREN: I have a question.
16 FACILITATOR BOWDEN BERRY: You have a
17 question or a comment?
18 MS. LUNDGREN: Yes.
19 FACILITATOR BOWDEN BERRY: Please,
20 introduce yourself and go ahead.
21 MS. LUNDGREN: Karen Lundgren, RSO at
22 Cargill. My question is what is the physical barriers
23 that is acceptable, so we do not aggregate this?
24 MR. PURDY: Well, basically, physical
25 barriers are very -- it sounds easy, but it is a

1 difficult thing to define in this. And, basically,
2 the bottom line that we have been using for the ICs is
3 if you have to break it, then it's a barrier. If you
4 have to break that to get through to get to the
5 material, it can be a barrier.
6 And the reason why we don't have, I can
7 tell you that a barrier is 6 inches of reinforced
8 concrete or something like that. We didn't take it
9 that far. We do not have a design basis threat, so we
10 can't tell you exactly what is adequate. And in other
11 cases, we wouldn't want a barrier for the temporary
12 job site. You would have a different kind of barrier,
13 perhaps, either individual could act as the barrier or
14 something like that to prevent someone from coming in
15 to a security zone.
16 So right now, it's any wall, door,
17 anything that will prevent somebody from gaining
18 access to the material. What you are trying to do is
19 funnel the individuals to an access point where you
20 are controlling access to the material or the device,
21 such as a door to a room or something like that.
22 And do we have some sort of definition?
23 FACILITATOR BOWDEN BERRY: The person on
24 the phone line who just asked a question, can you
25 state your name again? I don't think it came through

1 clearly.

2 MS. LUNDGREN: Karen Lundgren.

3 FACILITATOR BOWDEN BERRY: Okay. Thank

4 you.

5 MS. LUNDGREN: Okay.

6 FACILITATOR BOWDEN BERRY: Anyone else on

7 the phone line with a comment or a question?

8 MR. MILLER: This is Bryan Miller. I do

9 have a comment.

10 FACILITATOR BOWDEN BERRY: Go ahead, Mr.

11 Miller.

12 MR. MILLER: Going on with Lynne's

13 question. In a manufacturing facility like that,

14 there are no doors, there are no really good ways to

15 segregate the material. I do want to say that you

16 should key on the -- you know, if you have to break

17 it, you know. And I think the NRC has determined

18 like, you know, welding of a bolt that secures the

19 fixed gauge in place, you know, just as long as, you

20 know, you would have to break that bolt or that nut to

21 take that device off, well, that's a barrier in

22 itself.

23 So there is facilities out there that are

24 just, you know, not clear cut. You know, like I said,

25 they don't have the rooms, the doors that segregate

1 all their gauges that are in the plant itself. So
2 what Lynne -- I have had this question before is, you
3 know, the definition of the barrier. And I think, you
4 know, for the industry like that, you have to key on,
5 you know, does something have to get broken in order
6 to get the gauge to be able to take it down and
7 aggregate it with the other gauges that might be in
8 the same room or room, I mean, the facility area.
9 MR. PURDY: Right. And we do have quite a
10 few fixed gauge facilities. There is a variety of
11 things that is in the current guidance. Like I said,
12 welding the bolt, cables, cages. There is a variety
13 of things that can be done that will be considered an
14 additional barrier, so that your gauges are not
15 aggregated and would not have to implement.
16 Now, there are some facilities that
17 actually have, rather than doing those things to
18 their gauges, decided just to implement the Increased
19 Controls, at this point, and those same facilities
20 will be implementing Part 37.
21 FACILITATOR BOWDEN BERRY: Okay. We're
22 going to mute the phone lines and we are going to go
23 to a speaker on the floor. Thank you. Go ahead.
24 MS. CARR-GREER: I haven't really been
25 thinking about this part of the rule, because I

1 thought I just sort of knew the answer. Allene Carr-
2 Greer and I represent blood banks and the self-shield
3 blood irradiators that I just thought well, this
4 doesn't apply.
5 And so -- but some of your answers are
6 making me think that maybe I should know the answer.
7 I should ask the question, so I will definitely know
8 the answer. And it's about aggregating the self-
9 shielded blood irradiators. Facilities that have more
10 than one blood irradiator, so they have more than one
11 self-shielded source, what does that have to do with
12 aggregating?
13 MR. PURDY: Well, those -- in the case of
14 a self-shielded irradiator, there is enough activity
15 in that one irradiator to cause you to have to
16 implement the Increased Controls or Part 37.
17 MS. CARR-GREER: Already?
18 MR. PURDY: Already, yes.
19 MS. CARR-GREER: Okay.
20 MR. PURDY: So each individual blood
21 irradiator, whether they are in separate rooms or all
22 in one room, you know, it --
23 MS. CARR-GREER: This was just --
24 MR. PURDY: -- won't matter.
25 MS. CARR-GREER: -- one of the bits that

1 might have caused the Increased Controls to be
2 implemented.
3 MR. PURDY: Yes.
4 MS. CARR-GREER: Okay.
5 MR. PURDY: Well, there is more than
6 enough there in that one bit.
7 MS. CARR-GREER: Gotcha. Okay.
8 MR. PURDY: Yes.
9 MS. CARR-GREER: Okay.
10 MR. PURDY: If you have other material in
11 that same room, then you just end up securing it --
12 MS. CARR-GREER: Thank you.
13 MR. PURDY: -- because it's in that room.
14 MS. KOVATS: Hi. Catalina Kovats from
15 Georgetown University again. On 37.43 in the
16 questions and answers, there was a part in there that
17 stated that the RSO needed to keep the management
18 informed about their security program. Now, given
19 that you are supposed to be doing clearances on people
20 that are given information on the security program, do
21 you do -- is there a SUNSI type of thing that you can
22 do that is outside of the fingerprinting, background
23 checks or credit checks and Local Law Enforcement or
24 what level of clearance do you need to give these
25 individuals that you are going to be providing

1 information about the security program?

2 MS. HORN: If you give me the information,

3 the security plan, some of the procedures, then, yes,

4 they would need to have the -- everything except the

5 back -- basically, everything except the FBI check and

6 the fingerprinting, because that's not required for

7 access to the information.

8 Just I guess it would depend on what kind

9 of level of information you are going to be providing

10 them. If you are going to be giving them a lot of

11 detailed information, then definitely you would want

12 them to be -- to have undergone a background

13 investigation of some sort.

14 If you're just giving them a very high

15 level, then it probably would not be necessary.

16 FACILITATOR BOWDEN BERRY: Okay. Is there

17 anyone on the phone line who has a comment or a

18 question?

19 MR. MILLER: Again, this is Bryan Miller

20 with the State of Nebraska. I do have a comment, too.

21 I heard the speaker say that a lot of individuals

22 like that are implementing the ICs, because they have

23 a question in aggregation or, you know, trying to be

24 on the safe side. I find that to be, you know,

25 totally opposite here in the State of Nebraska.

1 And I think a lot of the Agreement States
2 where, you know, these Increased Controls are so
3 onerous to the licensees that they do not want -- you
4 know, they will do anything to not implement them, you
5 know, such as, you know, decreasing their possession
6 limits and, you know, getting rid of sources and stuff
7 like that.
8 As for the individuals that cannot, you
9 know, meet that possession limit, that are keeping
10 them -- you know, ensuring that they are not co-
11 located, you know, some of the bigger facilities,
12 broad scope, places like Cargill where they have to
13 have that possession limit, they are doing everything
14 they can to not implement them.
15 Like I said, because they are so onerous
16 to the individuals. I mean, there is just so much you
17 need to know about it. My question is, you know, now
18 you don't -- the Increased Controls right now that are
19 out there per orders, if you can keep them separated,
20 you know, not co-located, you don't have to have a
21 security plan. This new regulation indicates that
22 even though that you will have -- you know, if you
23 have a possession limit and that there -- you know,
24 even though they are never going to be co-located, you
25 still will have to have a security plan in place.

1 You know, like I said, that's applying or
2 making them, you know, go that extra mile for
3 something that will never, you know, in their minds
4 and in their abilities, that will never go -- you
5 know, never happen, which I think is above and beyond
6 what should be required.
7 You know, if they can ensure that they are
8 never co-located, you know, they should be -- you
9 know, not exempt, but, you know, out of the Increased
10 Controls. They should not have to have a security
11 plan. You know, they shouldn't even have to really
12 thought about a security plan, they just -- they are
13 just saying we will never co-locate.
14 Now, with the new regulations, the Part 37
15 that is coming out, you are requiring them to have a
16 security plan. My first question is why is that --
17 why does the NRC think that is a way to go, a change,
18 you know, I guess bettering the Increased Controls by
19 making them have a security plan, what drove that?
20 And then my, you know, kind of follow-up
21 question is for those facilities that we will not co-
22 locate, you know, up to Category 2 or 1 activities,
23 what would be an acceptable plan? And can they talk
24 about it? Do they have to have, you know, pencil to
25 paper? Do they have to, you know, have a PR person?

1 You know, how -- if that is going to be kept into the
2 regulations, hopefully, you know, the implementation
3 guidance will have guidance on, you know, what would
4 be an acceptable security plan for facilities that,
5 you know, are never going to aggregate to the Category
6 2 or Category 1 sources. Thank you.
7 MS. HORN: The way that the rule is
8 written right now, he is correct that if you are
9 authorized to possess Category 1/Category 2 material,
10 you do have to have a security plan. This is an area,
11 I think, that we will be providing some additional
12 clarification in the final rule.
13 The idea is if you are actually authorized
14 to possess the material, you could get it tomorrow and
15 all of a sudden you would be needing to implement it.
16 So the idea was that you would be thinking about this
17 in advance and you're going to have a plan.
18 If on the other hand you feel that you are
19 really never going to do that, your security plan does
20 not need to be as extensive. What you really need to
21 do is document how you are going to be keeping the
22 material separate. You know, we are never going to
23 co-locate or we are never going to possess or we're
24 never going to do certain things, but you would
25 document how you are keeping that material apart.

1 And that's something that in the final
2 rule we will, assuming the provision remains, actually
3 provide some additional clarification and change the
4 language a little bit. And we can also provide more
5 information in the guidance.
6 MR. MILLER: Thank you.
7 FACILITATOR BOWDEN BERRY: Thank you,
8 commenter. We are going to mute the phone lines and
9 go to the speaker on the floor.
10 MS. FAIROBENT: Lynne Fairobent, AAPM.
11 Actually, he started down the same line that I was
12 going to go. And, Merri, I guess my recommendation
13 would be if NRC decides to grant the extension for the
14 public comment period for both the proposed rule and
15 the implementation guidance, I think it would be
16 beneficial if perhaps additional points on this
17 clarification of aggregation and co-location could be
18 included in that, because I am very concerned,
19 especially in the medical community, for licensees
20 that do not have blood irradiators or gamma knives.
21 This rule has not been on their radar
22 screen at all. And now if they have sources, for
23 example, multiple HDR sources, of which we went
24 through leaps and bounds to keep out of the orders,
25 because they were not being co-located, but now

1 perhaps under the new aggregation requirements and
2 triggers might actually cause some facilities to have
3 to consider the initial or brief security plan to
4 demonstrate that they will not be co-located, I'm
5 afraid that this bulk or large group of licensees are
6 not even going to be aware of this rulemaking.
7 And I think that the examples in the
8 medical community because the number of Category 2
9 sources was so limited under the orders, it is a
10 relatively small universe of licensees. But the
11 potential now for the aggregation down with Category 3
12 sources that are in use in medicine may actually cause
13 triggers for, one, the security plan to say that
14 you're not going to do it. And then, two, the trigger
15 of one has to develop a security plan.
16 We heard in Austin and I don't think it is
17 that clear, does that then trigger the need to get a
18 reviewing official cleared and certified by either NRC
19 or the state in order to develop the security plan,
20 you know, sort of a chicken and an egg scenario, which
21 is first, because I really think that there is a lot
22 of licensees out there that have no concept of what
23 this implication might be.
24 FACILITATOR BOWDEN BERRY: If there is
25 anyone with cards and you want me to read your

1 questions, then you can just get my attention and I'll
2 pick up your card. Anyone on the phone line with a
3 question or comment? Okay. We are going to mute the
4 phone lines and go to floor again. Thank you.
5 MR. CHARBONNEAU: Yes. My name is Kevin
6 Charbonneau from Yale University. In the proposed
7 rule, there is a discussion about suspicious activity
8 surrounding theft and sabotage. But in the guidance
9 document there is really no mention of it. I think
10 there is a lot of room for discussion when it comes to
11 what those suspicious type activities are.
12 And I think some examples would be very,
13 very helpful. Loss of power, as an example, or
14 somebody accidentally cutting a wire or, you know,
15 triggering a security system by accident, those kind
16 of things would be very, very helpful to understand
17 how the reporting increments would hold true.
18 MS. HORN: I will point out that that was
19 one of the areas that we were specifically inviting
20 comment was the reporting and specifically the
21 reporting of suspicious activity. So, you know,
22 please, provide those comments on the rule, too.
23 FACILITATOR BOWDEN BERRY: Any more
24 questions or comments on the phone? Nothing on the
25 phone. We will go --

1 MS. HORN: Let me throw out something for
2 you to think about. In the area of the security plan,
3 is there enough guidance in the document that
4 describes what needs to be in your security plan? I
5 know we have the issue of you don't actually possess
6 materials, don't co-locate and what needs to be in it,
7 but just assuming that you do have aggregated material
8 and you are going to have to be implementing a
9 security plan, is there enough information in the
10 guidance document to help you develop that? Are there
11 some areas where we need to add additional detail?
12 We really haven't gotten a lot of comment
13 on that, either at this meeting or the other one,
14 about that particular aspect.
15 FACILITATOR BOWDEN BERRY: Do we have
16 anyone on the phone line who wants to comment or ask a
17 question about the section Merri just discussed? No.
18 Anyone on the floor?
19 MS. ROUGHAN: Kate Roughan, QSA Global.
20 One of the questions on what you just asked, Merri, is
21 for temporary job sites, would they need, the
22 licensee, to have a specific security plan for each
23 temporary job site that they go to? Would it be
24 acceptable to do a generic with certain additional
25 things that you may have to do at the temporary job

1 sites?

2 MS. HORN: No. The idea is that you would

3 have a generic plan that you would apply to different

4 sites that you go to. You would not need to have a

5 specific one for each site.

6 MS. ROUGHAN: Okay. Thanks.

7 MS. LANGHORST: Sue Langhorst, Washington

8 University in St. Louis. As I was reading through

9 that portion of the guidance document, I know with the

10 Increased Controls Orders it was definitely one-size-

11 fits-all. Am I understanding that the specific

12 requirements that you have at each of your location,

13 each of your Increased Controls security zone, you

14 have different levels of security, based on what

15 source you have there and what kind of protective

16 devices it has already?

17 Does that allow you to be more

18 performance-based in how you apply your security

19 requirements? I don't know how better to ask that

20 question.

21 MS. HORN: Well, my view is that it does.

22 I think there is a lot of flexibility written into

23 exactly what security measures that you choose to use

24 for your facility. And it's really what works best

25 for you, as long as you are meeting those basic

1 requirements. I mean, we do require, you know,
2 surveillance and be able to monitor/detect.
3 But how you do that is really up to the
4 licensee. And you could use whatever works best, as
5 long as it meets the performance aspect. So I think
6 there is a lot of flexibility written in.
7 MS. LANGHORST: And so in the case of a
8 blood bank facility where you have a 24/7 work force
9 right there, that could be used instead of electronic
10 means? I mean, that's acceptable or --
11 MR. PURDY: Again, it will be up to your
12 regulator, but, yes, that could be one way that you
13 could do it. If you have someone there 24/7, however,
14 I want to advise that that doesn't always work out.
15 We have seen in the past that sometimes they actually
16 do shut down and they have nothing in place.
17 MS. LANGHORST: Okay. Thank you.
18 FACILITATOR BOWDEN BERRY: We're going to
19 open the phone line. Is there anyone on the phone
20 with a question or a comment? Hello? Okay. We will
21 mute the phones again and go to the floor. Anyone
22 with a question or a comment on Subpart C?
23 MS. MILLER: Fill in the void, but, Marie
24 Miller, Region I. Under Security Zones, 37.47(a), it
25 talks about security zones as being permanent or

1 temporary. And the wording that is used for the
2 security zones for permanent is well-understood in
3 regard to the purpose, being that it isolates and
4 controls. And that then it affords the time to meet
5 the overall security philosophy of detecting and
6 deterring.
7 But when you go to the temporary security
8 zone, the regulations refer to the temporary security
9 zone could be established just with direct
10 surveillance by an individual. It would seem that it
11 would be better just to establish different
12 definitions, one for a permanent security zone and one
13 for a temporary, because actually it is difficult for
14 an individual to isolate the device. It provides
15 control, but not isolation.
16 FACILITATOR BOWDEN BERRY: Thank you for
17 your comment. Anyone else with a comment or question
18 on this subpart? Anyone on the phone line with a
19 comment or a question?
20 MR. MILLER: This is Bryan Miller with the
21 State of Nebraska. The security zones, that was
22 something that was kind of new with this Part 37. You
23 know, it did originally come out with the orders, the
24 first orders to the irradiators and the manufacturing
25 distributors.

1 What brought that back, you know, into the
2 ICs, the security zone? And I did like the last
3 comment, you know, the two different definitions and
4 then the comment before that, you know, the 24 hour
5 surveillance. Can you have a 24 hour surveillance for
6 your permanent security zone? You know, that falls
7 into the definition of your temporary one, but that
8 doesn't really fall into the definition of your
9 permanent one for the blood irradiators.
10 And then just another comment about the
11 blood irradiators and the 24 hour surveillance. You
12 know, that all falls in an exhibit. I think it was
13 brought up. It is awful hard to have complete 24 hour
14 surveillance, you know, eyeball on that machine. The
15 late shift if they go to lunch or take breaks, you
16 know, nobody is around watching that machine, then you
17 are in violation. So the 24 hour surveillance eyeball
18 on the device is relatively tough to do.
19 But again, you know, where did the or why
20 did the security zones come back into the ICs? And
21 the comment about the permanent as opposed to the
22 temporary one that the last caller or comment did, but
23 it was a very good comment. Thank you.
24 MR. PURDY: The security zone came back.
25 It's really very similar to what is in the -- it's

1 really a name -- change in name only. The ICs was
2 access to the material or the device that contained
3 the material. And the licensee was able to determine
4 at what point they wanted to have that and whether you
5 had to require unescorted access.
6 And generally, that tended to be a room
7 with a door and maybe a protected room. The same
8 concept as the security zone. And so we went back to
9 that. That was one reason we went back to that. It
10 was the same idea, but this also, by having the
11 concept of the zone, is to try to get people to detect
12 a little earlier, you know, and to give you more time
13 to intercede any -- interdict any individual who is
14 attempting unauthorized access.
15 But in practice, I believe that it is
16 really no change for most IC licensees. They get to
17 decide where they want to draw the line, so if they
18 have a line that is the room, currently under the ICs,
19 it can be that same line with Part 37.
20 MR. MILLER: It's just for those ICs that,
21 you know, have that defined room, defined security
22 zone?
23 MR. PURDY: No, but it -- yes, that's
24 true. And we added --
25 MR. MILLER: Thank you.

1 MR. PURDY: -- a little more. It has a
2 little bit more security, but, really, the way, in my
3 opinion, it has been implemented is probably really
4 just a change in name.
5 FACILITATOR BOWDEN BERRY: Okay. We are
6 going to mute the phone lines and go back to the
7 floor.
8 MR. SMITH: William Smith with Southern
9 Nuclear Company. I have one comment. You mentioned
10 the security plan could be generic. And the
11 Department of Transportation has a new rule effective
12 October the 1st that have you addressing security plan
13 for site-specific locations that cover the Category 1
14 and Category 2 material. So I don't know if those two
15 mesh or not.
16 MS. HORN: We will have to probably bring
17 that up in the afternoon session. We will have our
18 transportation people here that can probably answer
19 that question. I am aware that there is a requirement
20 with DOT, but I am not familiar with the specifics of
21 it.
22 FACILITATOR BOWDEN BERRY: Okay. Do we
23 have any more comments or questions on the phone line?
24 Okay. We are going to mute the phones again and go
25 to the floor.

1 MS. SYLVESTER: Ruth Sylvester with
2 America's Blood Centers. I have a question on the
3 LLEA coordination. And as was mentioned earlier in a
4 lot of the rural areas where they have volunteer fire
5 departments and stuff, when you're talking about
6 coordinating with them, I would assume that would
7 include, you know, coordinating plans and stuff.
8 Would there not need to be some sort of background
9 check or security on the people with the LLEAs that
10 have not or are perhaps volunteers and stuff and are
11 not Government employees?
12 MR. PURDY: Well, I haven't -- we haven't
13 been asked this question before about volunteer LLEA.
14 If you are an active law enforcement officer, you are
15 considered to be trustworthy and reliable. But if you
16 are --
17 MS. SYLVESTER: Okay. I get -- I was
18 thinking of --
19 MR. PURDY: -- I don't know --
20 MS. SYLVESTER: -- like the volunteer fire
21 departments and stuff, which would be part of your
22 first responder units.
23 MR. PURDY: Well, the first responders are
24 now exempt from access to the material. I don't know
25 if they will need actually access to you security plan

1 in order to fight fire at your facility. They will
2 need to know where the material is, obviously, but I
3 don't think they will need to know --
4 MS. SYLVESTER: But not for the security.
5 MR. PURDY: -- the specifics of that plan.
6 MS. SYLVESTER: Okay.
7 MR. PURDY: And how it is implemented.
8 MS. SYLVESTER: Okay.
9 FACILITATOR BOWDEN BERRY: We are going to
10 go to the phone line. Is there anyone on the phone
11 line with a comment or question? Okay. We will mute
12 the phones again. And anyone on the floor with a
13 comment or question? We are discussing right now,
14 Subpart C, Physical Protection Requirements During
15 Use.
16 Merri, do you want to go on to the next
17 subpart? All right. Any comments or questions on
18 this subpart? Last chance on the phone line before we
19 go on a break.
20 Okay. Well, with that said, we will go on
21 break early again and we will break for lunch. I
22 guess we have like an hour for lunch. Let's see --
23 MS. HORN: It's actually a little longer.
24 FACILITATOR BOWDEN BERRY: A little longer
25 than an hour.

1 MS. HORN: It looks like you will get two
2 hours. We are scheduled to start back up on Subpart D
3 at 1:30.
4 FACILITATOR BOWDEN BERRY: At 1:30, right.
5 MS. HORN: So --
6 FACILITATOR BOWDEN BERRY: We will break
7 for lunch until 1:30. Remember when you go, if you go
8 to the lobby area, have your badge, your ID, you know,
9 available and viewable. Okay. If you exit the
10 building, you will need to enter through the back of
11 the building again, so remember that. Thank you.
12 (Whereupon, the meeting was recessed at
13 11:30 a.m. to reconvene at 1:32 p.m. this same day.)
14
15
16
17
18
19
20
21
22
23
24
25

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

2 1:32 p.m.

3 FACILITATOR BOWDEN BERRY: Good afternoon,
4 everyone. We're going to start the afternoon session.
5 Okay. We were talking about the implementation
6 guidance for Part 37, which is the Physical Protection
7 of Byproduct Materials. And earlier today, we covered
8 Subpart B of the guidance document, Access
9 Authorization, and then we discussed Subpart C, which
10 is Physical Protection Requirements During Use.
11 So this afternoon, we will be discussing
12 Subpart D, which is the Guidance of Physical
13 Protection in Transit. And then we will open it up
14 to, you know, discuss just the guidance in general.
15 So I want to remind you all to silence
16 your electronic devices and remind you when you go to
17 the mike to ask a question or give a comment to
18 introduce yourself and tell us where you are from.
19 For those of you on the phone line, we
20 will have the phones muted and when I say we are going
21 to the phone lines, we will open them up and you will
22 be able to speak. Again, for you all, introduce
23 yourself and then you can state your comment or
24 question. And after you are finished, then we will
25 mute the phone, so we don't hear the background noise.

1 And so with that, we will have Merri
2 introduce any new panel members and we will get
3 started.
4 MS. HORN: Okay. Paul Goldberg is still
5 with us, Frank Costello is a member of the working
6 group, he is from the State of Pennsylvania or
7 Commonwealth of Pennsylvania.
8 MR. COSTELLO: Thank you.
9 MS. HORN: And Adelaide Giantelli will be
10 joining us here in a few minutes and she is from the
11 Office of Nuclear Security and Incident Response. And
12 she is our true expert on security issues for
13 transportation. If she is unable to join us, Gary
14 Purdy will rejoin us here at the table.
15 FACILITATOR BOWDEN BERRY: Thank you,
16 Merri. Okay. So we will open it up for comments on
17 Subpart D, which is the transportation section.
18 Everybody is hesitant. Come to the mike. All right.
19 We'll go to the phone line. Open the phone line.
20 Does anyone have a comment or a question on Subpart D?
21 PARTICIPANT: It's 032757.
22 FACILITATOR BOWDEN BERRY: Hello on the
23 phone line, are you giving us a question or a comment?
24 Okay. No question or comment on the phone line.
25 Then we will mute the phones and we will go back to

1 the floor. Go ahead.

2 MS. ROUGHAN: Kate Roughan, QSA Global. A
3 question on the licensing verification system. In the
4 proposed rule, there are two options to assure the
5 recipient is authorized to possess the material. It
6 is either the upcoming licensing verification system
7 that the NRC plans to implement or the shipper has to
8 call the regulatory authority.

9 There is a lot of concerns in terms of
10 both of those options. The regulatory authority, a
11 lot of the Agreement States, at this point, have
12 workers on furlough. It would be tough to get a quick
13 answer of whether or not we can ship to a customer to
14 see if they are authorized for a specific source or a
15 certain possession limit.

16 Are there any other options that could be
17 implemented?

18 MS. HORN: That is an issue that we are
19 kind of watching. We are hoping that the license
20 verification system will be up and running and then be
21 fully tested before the rule goes into effect. If it
22 is not, we will be looking at some other options. It
23 is possible that we might delay the implementation
24 date of this particular aspect until that system is
25 fully up and operational.

1 This is an area where we have invited
2 comment. One of the concerns is if you just get a
3 copy of the license from someone is how do you know
4 that license hasn't been amended or terminated, you
5 know, and everything is still valid in it?
6 So we are inviting comment in this
7 particular area. People have some suggestions. But
8 you are right. It is a concern if the LBS is not up
9 and operational. And if you had to call the
10 regulatory, even for the NRC, it's a lot of calls.
11 And that is certainly not our preferred method of
12 doing that. So that's something we will be taking a
13 hard look at.
14 MS. ROUGHAN: Okay. Relating to that
15 then, for some of the larger manufacturing
16 distributors, they tend to get a lot of returns from
17 throughout the United States. We are in
18 Massachusetts, that could result in the State of
19 Massachusetts getting 30 or 40 calls a day to say is
20 QSA authorized to take this source back. Is there any
21 thinking that perhaps for some of the larger licensees
22 or M&Ds that routinely accept return sources, some
23 type of exemption on that type of thing?
24 MS. HORN: That's certainly something that
25 we could take a look at, if you would make those, when

1 you submit your comments, suggest something along
2 those lines. We do recognize it is an issue if that
3 system is not up and operational. So other options
4 that maybe could be used in the interim, we are open
5 to those suggestions.
6 MS. ROUGHAN: Okay. Thank you.
7 MR. HART: Tim Hart with the United States
8 Navy. The Navy has a master materials license and we
9 have about 140 to 150 permittees that we issue permits
10 to. And we have a number of them that they have IC
11 programs and are allowed to receive quantities of
12 concern.
13 How do you see the NRC or Agreement States
14 or licensees getting the information on who they can
15 ship to in the Navy? Are you going to have us provide
16 you with copies of the permits or are we going to have
17 to run our own program?
18 MS. HORN: Actually, that's a good
19 question and I honestly don't know the answer. We
20 will have to think about that a little bit. Your
21 master license doesn't list the individual permittees.
22 MR. HART: Right.
23 MS. HORN: So we will have to think about
24 that and see what the best way to implement that
25 aspect would be.

1 MR. HART: Kind as a follow-on part, are
2 we going to -- one of the things you need to think
3 about is we have commands to transfer permittees to
4 transfer between themselves. And so would they also
5 need to come to you? Because, I mean, we get it from
6 like QSA Global, Shepherd, pick your poison. But we
7 also have people that transfer in between.
8 MS. HORN: I have to think about that a
9 little bit, too, because, technically, you are
10 transferring from and to the same licensee, because
11 you have a master. You are doing it under the master
12 license. But I know that the permittees are a little
13 different, so, to be honest, I don't know. We will
14 have to think about that.
15 MR. HART: That's just something to think
16 about.
17 MS. HORN: It raises some interesting
18 implementation issues for the master material
19 licenses.
20 MR. HART: Yes. Thank you.
21 FACILITATOR BOWDEN BERRY: I forgot this
22 reminder initially that, you know, you want to be
23 careful about discussing any safeguard information,
24 because this is a public meeting, so you don't want to
25 reveal any of that information.

1 All right. We're going to open up the
2 phone line. Does anyone have any questions or
3 comments?
4 DR. PARKER: This is Roy Parker.
5 FACILITATOR BOWDEN BERRY: Okay. Go
6 ahead, Mr. Parker.
7 DR. PARKER: First off, my usual
8 disclaimer that views and comments I have do not
9 necessarily reflect those of any of my clients.
10 To begin with, the first issue is that by
11 restricting a licensee to offering no more than a
12 certain amount of Category 1 material to a carrier is
13 in de facto regulating a carrier. And what the --
14 that places an imposition upon the carrier because
15 what will happen is that the licensee will call and
16 say okay, we want more than one vehicle out here
17 today. And some carriers just cannot operate in that
18 fashion.
19 So such a regulation requirement will
20 impose very much on the licensee by not being able to
21 get out a full amount if the carrier cannot and
22 probably will not accommodate them on sending out a
23 second vehicle.
24 FACILITATOR BOWDEN BERRY: Okay. Anyone
25 else on the phone line with a comment or a question?

1 DR. PARKER: Now, let me weigh in one
2 more, just maybe some response or rebuttal to that
3 particular issue on that thing. But that is a major
4 concern to both the licensees and to the carriers.
5 And in reality, it doesn't make very much sense
6 because the carrier can then go down to a second
7 licensee and that second licensee can then add a limit
8 to the same vehicle.
9 So I think that particular requirement
10 needs to have some very close scrutiny to see really
11 what the rationale and what the basis should be on
12 that.
13 FACILITATOR BOWDEN BERRY: Okay. Thank
14 you for your comment.
15 MS. GIANTELLI: Mr. Parker, this is
16 Adelaide Giantelli from the NRC. Just to clarify your
17 comment, you are stating that for Category 2
18 shipments, you can't aggregate up to a Category 1
19 quantity. A single licensee cannot aggregate their
20 shipments beyond a Category 1 amount, otherwise, then
21 they are tripping into higher security requirements.
22 Whereas, if two licensees were to put
23 Category 2 quantities on one transport, that would be
24 permitted. Am I correct in my clarification?
25 FACILITATOR BOWDEN BERRY: Mr. Parker, are

1 you still on?

2 DR. PARKER: At the present time. I know

3 there is a discrepancy now between the fact that the

4 DOT has said that the restriction is on some things,

5 on a per package basis, where the Part 37 seems to be

6 thinking on a vehicle -- on at least a licensee's

7 transfer to a single vehicle basis. So there is some

8 discrepancy between the carrier requirements as

9 proposed by the DOT and what you are sort of de facto

10 imposing to the licensee on the carrier.

11 MS. GIANTELLI: We will have to look at

12 that. I will have to see what the DOT requirements

13 are in terms of per package. Our requirements are

14 each licensee is responsible for their own shipments.

15 There are certain security when you have a tattooed

16 quantity and it's tripped up into a Cat 1. You have

17 to put up that much more. We don't expect one

18 licensee to have knowledge of what another licensee is

19 doing with the carrier, so, in that case, we don't put

20 requirements directly -- any requirements directly on

21 the carrier. It's all the licensees.

22 DR. PARKER: Well, now, even on the same

23 thing, for example, it really becomes a real burden

24 for a licensee to request a carrier to send out a

25 second vehicle or one or more vehicles just to

1 accommodate and to split that thing up. Whereas, if
2 it goes to the second licensee, there's going to be
3 that much on the vehicle anyway.
4 And so in order to -- for a -- a carrier
5 cannot really operate very effectively on, basically,
6 a per demand taxi basis for coming out and serving,
7 you know, one customer. The carrier system, it's just
8 not set up like that.
9 FACILITATOR BOWDEN BERRY: Okay. Thank
10 you, Mr. Parker. We're going to mute the phone lines
11 now and go to a speaker on the floor.
12 MS. ROUGHAN: Kate Roughan, QSA Global. I
13 can just add a little bit more to that, because I know
14 exactly what he is referring to. We are a
15 manufacturer distributor and we routinely have to ship
16 out more than Category 1 sources to the airport to
17 FedEx to get redistributed. So what we have done, as
18 a company, so we don't have to do the enhanced
19 security on that shipment from our facility to the
20 airport, is that you split the shipment into two.
21 So we are requiring the carrier to come
22 back an hour later to take the remaining six or seven
23 packages, whatever, so at least both those two
24 shipments are a lower Category 1, because, otherwise,
25 on a daily basis, we would be transporting Category 1

1 shipments. And that's a lot of enhanced security, a
2 lot of added cost and we just couldn't accept that
3 basically. So we have gone around the system,
4 basically, and that's causing a problem for the
5 carrier, at this point.
6 FACILITATOR BOWDEN BERRY: Thank you for
7 that comment. Anyone else with a comment or a
8 question? Remember, you can also use your comment
9 cards and I'll come around and collect them if you
10 don't want to go to the microphone.
11 Okay. Let's open up the phone line again
12 and see if there is anyone on the phone line with a
13 comment or question. Anyone on the phone line? No,
14 okay. We will go back to the floor. Go ahead, go
15 ahead.
16 MS. ROUGHAN: Kate Roughan, QSA Global.
17 And another thing on the licensing verification
18 system, there was a question if a company transfers
19 their material to their own company, but it's under
20 another license, would that require a license
21 verification, since it's the same company, but just a
22 different location under a different license in
23 Agreement State perhaps. I'm not sure how that would
24 work.
25 MS. HORN: I believe as the rule is

1 written, you would probably have to verify that. But
2 I think that's something that would be fair that you
3 wouldn't need to, because both of them would be your
4 license. So we will take a look at that.
5 MS. ROUGHAN: Related to licensing
6 verification, it's not clear to me how the licensing
7 verification system, once it is implemented, is
8 actually going to allow a shipper to check someone's
9 possession limit. It sounds like somehow we would
10 have to have access to the NRC ourselves or somehow
11 route that through NRC to get the approval, as opposed
12 to just viewing a license imaged to verify that before
13 we do a shipment.
14 MS. HORN: Well, since the system isn't
15 actually designed and in place, I don't know exactly
16 how it is going to work. But the original concept was
17 that there would be information in the system. And so
18 that you would query the system and it would come back
19 and give you, yes, you can send it, because that
20 amount of material is below the -- it's within their
21 possession limits of their license and so, therefore,
22 you could ship it, because they are authorized to
23 receive it.
24 As they have been doing a little bit more
25 in the implementation, I don't know exactly what type

1 of details they are going to. Paul, is there anything
2 you can add on that? Are you involved?
3 MR. GOLDBERG: No. I think that's
4 correct. It would -- the shipping licensee would have
5 to look at the receiving licensee's license and
6 determine and know their inventory at the same time
7 and determine whether --
8 MS. HORN: No.
9 MR. GOLDBERG: -- the shipment --
10 MS. HORN: That doesn't --
11 MR. GOLDBERG: -- would put them over.
12 That's not something you can do short of having an LDS
13 kind of system in operation.
14 MS. ROUGHAN: One of the concerns with
15 that is that again, from industrial radiography, it's
16 a very mobile type of industry. The customer may need
17 a new source tomorrow, so they would be shipping back
18 an old source from the manufacturer today, but you
19 have 24 hours to get things into NSTS, so there could
20 be -- it may look like they can't accept that source,
21 but in reality they can. It's still within their
22 possession limit by the time the source gets there.
23 Is there any consideration to make sure we
24 don't delay shipments that are needed under that
25 system?

1 MS. HORN: Those are the types of things
2 that they will have to be looking at as they develop
3 the system. The idea is, from the rule standpoint,
4 are you authorized to receive it? It wasn't
5 necessarily that you would go and look at their
6 inventory, too. The LDS system in connection with
7 NSTS may do some of that, but that actually isn't a
8 requirement of the rule.
9 MS. ROUGHAN: Okay. Yes, that's not real
10 clear, the way I read it, at this point, but that's
11 good to know anyway.
12 FACILITATOR BOWDEN BERRY: Just to clarify
13 for the record, you are saying NSTS, which is the
14 National Source Tracking System, correct?
15 MS. ROUGHAN: Right.
16 FACILITATOR BOWDEN BERRY: Okay. Go
17 ahead.
18 MS. ROUGHAN: Question or comments
19 regarding the preplanning and coordination of arrival
20 times. Again, from a quantity standpoint, you think
21 about a company doing anywhere from 30 to 60 transfers
22 a day of Category 2 sources, preplan and follow-up
23 each individual source that arrive by the expected
24 time is very onerous. We would have to hire people to
25 do that, to track sources on a daily basis seeing that

1 it got to its destination.

2 The current system that we use, we use

3 Federal Express. We can go in and check that the

4 recipient actually received the source by just

5 checking -- going into the tracking number, it's

6 signed for, we know they got it. It's a very

7 effective system. In adding this additional

8 preplanning and coordination, have the recipient get

9 back to us within four hours that they received or

10 didn't receive it is going to be a very onerous

11 system. It's going to be almost impossible to

12 implement.

13 FACILITATOR BOWDEN BERRY: Okay. Thank

14 you for your comments. Anyone else? Let's open the

15 phone line. Anyone on the phone have a comment or

16 question?

17 DR. PARKER: This is Dr. Parker again. I

18 would like to point out that the requirement for a

19 carrier type of tracking system is not very well-

20 defined. A lot of people think that a tracking system

21 is one thing or as I could tell you, there are

22 tracking systems and tracking systems and tracking

23 systems and not all of them accomplish what most

24 people think that they will accomplish.

25 Not going into details, but I will point

1 out that, for example, some tracking systems track
2 paperwork and not packages.
3 FACILITATOR BOWDEN BERRY: Okay. Thank
4 you for your comment. Is there anyone else on the
5 phone line who has a comment or a question? Okay.
6 We're going to mute the phone lines again and go back
7 to the audience. You all are really quiet. What did
8 you have for lunch? No comments or questions on
9 Subpart D, the transportation section?
10 Merri, did you have any questions that you
11 wanted to pose?
12 MS. HORN: No, they have actually
13 already --
14 FACILITATOR BOWDEN BERRY: Comments?
15 MS. HORN: -- addressed my feeder
16 questions.
17 FACILITATOR BOWDEN BERRY: All right. Go
18 ahead, sir.
19 MR. BHAT: My name is Ram Bhat. I'm from
20 U.S. Air Force. This is kind of a general question.
21 I don't know whether it fits in here or not. Suppose,
22 let's say, there is an Increase Control source like
23 Type 2 or Type 1 Category. It is in other part of the
24 world, I'll not name where it is, and you want to
25 bring it back to United States. And now, it's

1 international rules and regulations required.

2 Apart from that, maybe we may need, what

3 they call, a normal impact statement or these things.

4 Are there any guidance on this?

5 MS. HORN: The requirements that are in

6 Part 37 would only apply during the domestic aspect of

7 the --

8 MR. BHAT: Yes.

9 MS. HORN: -- transportation. It wouldn't

10 apply to the international aspect of it. Depending on

11 what the material is, you might or might not need an

12 import/export license under Part 110. It would depend

13 on what the material was and then you would have to

14 follow your license and whatever requirements are in

15 Part 110.

16 MR. BHAT: Okay. Any information guidance

17 from the audience experience? Thank you.

18 FACILITATOR BOWDEN BERRY: We will open

19 the phone lines and see if anyone there has a comment

20 or question. Nothing from anyone on the phones?

21 Okay. Do you have a question or a comment?

22 MR. MILLER: Just kind of a question.

23 FACILITATOR BOWDEN BERRY: Will you give

24 us your name?

25 MR. MILLER: This is Bryan Miller with the

1 State of Nebraska. The question is safe havens. Can
2 you elaborate a little bit on the safe havens and
3 having to identify safe havens in the coordination of
4 shipping Category 1 material?
5 MS. GIANTELLI: The guidance provides a
6 definition of safe havens. It is a location where the
7 vehicle can pull off for emergency assistance.
8 Assistance could be both for something standard, like
9 there is something wrong with the transport vehicle or
10 there is a blown out tire or anything like that or it
11 could also be for something more threatening, such as
12 suspicious activity. Somebody is trailing the vehicle
13 or, you know, there is some sort of motions going on
14 against the vehicles, some sort of specific
15 threatening or suspicious threatening activity against
16 the transport vehicle.
17 Safe havens typically should be well-lit,
18 easy access from the highway type of locations. They
19 should be pulled together from coordination between
20 the licensee and the state when developing a route
21 that they are going to transport that material
22 through. We do push licensees to coordinate locations
23 of safe havens with the state, because the states know
24 their roads better than the Federal Government does,
25 you know, in terms of what is there.

1 Examples of good safe havens are police
2 barracks, state trooper barracks, it could be a
3 military installation, depending on where it is. It
4 could also be a rest stop or a truck stop area. It
5 really depends what the state identifies as a good
6 place for the vehicle to stop. They shouldn't be too
7 far apart along the route and really should be used in
8 emergency situations.
9 MR. MILLER: When you say state, is that
10 the regulatory agency or is that the shipee or where
11 you are shipping it to, the licensee that they are
12 shipping it into? Is it the Department of
13 Transportation? And the safe havens, you know, is
14 there -- there has to be a safe haven every 100 miles,
15 every 50 miles. There has to be two on the route.
16 You know, in coordinating the safe havens, you know,
17 if transportation, you know, to a licensee, you know,
18 like let's say from a manufacturer that has never had,
19 you know, transportation to that licensee, you know,
20 the first question is how then -- you know, they don't
21 know the route.
22 And how do they know where the safe havens
23 are? Would they have to go and run the route prior to
24 the actual shipment of that material to figure out
25 where the safe havens are? You did indicate that the

1 states would have a better idea of where the safe
2 havens are. And, you know, when you say state, that's
3 a broad category.
4 You know, is it the police, the local law
5 enforcement? Is it the Nebraska State Patrol, you
6 know, the state patrol? Is it the regulatory agency?
7 You know, I am a regulatory agency, but I would have
8 no idea where, you know, a safe haven would be, you
9 know, going up Highway 75, you know, through the State
10 of Nebraska.
11 You know, so that's -- like I said, it
12 seems a little broad in having to name the safe havens
13 and identifying safe havens prior to the shipment. I
14 see where it could get a little bit onerous on the
15 transportation company. Thank you.
16 MS. GIANTELLI: I understand your points.
17 And I think we should take another look at the
18 guidance and see if we can narrow down the description
19 a little bit more, so it's not quite so broad.
20 Truthfully, it's where -- it has to be done in
21 coordination with the state, with whatever state
22 agency is going to provide a response along that
23 route.
24 It goes to how quickly the state can give
25 help if the carrier needs it, so those are kind of the

1 primary criteria. There is no requirement for the
2 particular number of safe havens that should be along
3 the route. It really is case-by-case specific
4 depending on what roads are being used and what
5 locations you are at and how remote they are from an
6 urban area.
7 But we will think it over again in the
8 guidance and see what we can do to improve the
9 definition.
10 MR. MILLER: Yes. And then like I said,
11 the only individuals from the state, you know, from a
12 large state, that would know, you know, other than the
13 routes themselves, may be the state patrol that are in
14 that area or assigned to that area. And other than
15 that, you know, I don't see anybody else in the state
16 that would actually know, you know, definite safe
17 haven places, except for the known, like I said, rest
18 stops, but those are only along interstates, highways.
19 FACILITATOR BOWDEN BERRY: Sir, can you
20 identify yourself? I don't remember at the beginning
21 you doing that.
22 MR. MILLER: Sorry. It's Bryan Miller
23 with the State of Nebraska.
24 FACILITATOR BOWDEN BERRY: Okay. Thank
25 you. Is there anyone else on the phone line? Okay.

1 We are going to mute the phone line and go to a
2 commenter on the floor.
3 MR. SMITH: William Smith with Southern
4 Nuclear Company. My question is related to the part--
5 if you have a Part 50 license and you meet the
6 exemptions from Part 37, does that exempt you from all
7 of the subparts? Because some of the other ones sound
8 like they may apply.
9 MS. HORN: It would not exempt you from
10 the Transportation Security requirements in Subpart D.
11 And we will clarify that in both the guidance and in
12 the rule, but that's a good point. It would really
13 just be the Security During Use at the site and your
14 Access Program.
15 MR. SMITH: Thank you.
16 FACILITATOR BOWDEN BERRY: Go ahead, sir.
17 MR. DAVIS: Phil Davis, Hospira. One
18 question to clarify. If under the Executive Orders
19 you do not have to be certified as RAMQC Transport,
20 would that change under Part 37?
21 MS. HORN: I'm not sure what you are
22 referring to by the certification under the RAMQC.
23 MR. DAVIS: Well, I didn't -- I'm not a
24 licensee of an Agreement State, but under the
25 Executive Orders, there was a -- and I don't recall

1 the order. If you were actually in control of the
2 material during transport, you had to meet similar
3 requirements that Part 37 is, essentially, spelling
4 out now.
5 And I'm just simply saying if I'm not in
6 charge of shipping material at this present time, does
7 Part 37 change that in any way?
8 MS. HORN: No. The transportation -- the
9 security requirements in Subpart D would only apply if
10 you are going to be transferring the material during
11 the transportation of it. Sending Category 1 or
12 Category 2 material from Point A to Point B.
13 MR. DAVIS: Okay. So if someone else is
14 doing the shipping to me, I don't have to worry about
15 what they are doing?
16 MS. HORN: That's right. There would
17 still be some preplanning and coordination activities
18 that they would conduct with you, but they would
19 actually be responsible for making those security
20 arrangements. Now, there would be some requirements
21 on you for like when you receive the material to
22 notify them that, yes, indeed, you have gotten it or
23 if you didn't get it, to let them know so an
24 investigation could be started. But the actual
25 transportation security measures, the shipping

1 licensee would be responsible.

2 MR. DAVIS: And if I wanted to send it

3 back to them and they took possession of it at my

4 location, they would then be the transporter in that

5 scenario also?

6 MS. HORN: As long as that agreement was

7 in writing.

8 MR. DAVIS: Okay. Thank you.

9 MR. HART: Tim Hart with the United States

10 Navy. It's nice that the regulations tell you that if

11 you are the shipper, you are responsible until it gets

12 to the site. And then when it's at the site, that

13 person that receives it supposedly got it, but we have

14 had several problems in the recent past where the

15 carriers have delivered material to the wrong place or

16 not done the coordination and/or delivered to the

17 right place, but just dropped the material on the

18 ground and drove away.

19 There does not seem to be any

20 consideration for holding the carrier accountable for

21 any of the problems that they kind of spring on the

22 licensees. Is there going to be any consideration for

23 addressing that in the reg?

24 MS. HORN: We actually regulate the

25 licensees. We typically do not regulate the general

1 carriers. That's through agreement that we have with
2 DOT. They are the ones that regulate the general
3 carriers. So the only way that we can get the
4 security measures is if we place those on the licensee
5 to make sure that they are employing a carrier that is
6 going to be using those measures.
7 FACILITATOR BOWDEN BERRY: Okay. We will
8 go to the phone line. Is there anyone on the phone
9 line with a question or comment? Okay. The phones
10 are quiet. So we're going to mute the phones again
11 and go back to the floor.
12 MR. HASS: Okay. Lou Hass, System One
13 Services. For the transportation by your own
14 vehicles, they have a not later than date. For
15 transporting ourselves with one of our licensed
16 radiographers, do we have to generate anything for the
17 not later than or, you know, there is not anything
18 down the road. Will we have to let NSTS know that we
19 are generating a shipment, but it is we are shipping
20 it to ourselves? Because we don't know, can we put a
21 truck on the road, you know, before he comes back, we
22 may send him to another job and some of the jobs are
23 you are there until you are done. So we have no idea
24 when he will come back.
25 MS. HORN: If you are not shipping the

1 material to another -- say another licensee, no. If
2 you are just using the material at a temporary job
3 site, you --
4 MR. HASS: Yes.
5 MS. HORN: -- would not have to do any of
6 the preplanning and coordination. We wouldn't
7 actually consider that to be a shipment for those
8 purposes.
9 MR. HASS: Okay.
10 MS. HORN: Obviously, you are privy to all
11 that information, because you generate -- you actually
12 have control of the source.
13 MR. HASS: Right. We were hoping nothing
14 was changing.
15 FACILITATOR BOWDEN BERRY: Any more
16 questions or comments on Subpart D? Okay. If not, we
17 will go to the next section, which is any comments you
18 have on the implementation guidance. We will go to
19 the phone line. Anyone on the phone line?
20 MR. MILLER: This is Bryan Miller with the
21 State of Nebraska.
22 FACILITATOR BOWDEN BERRY: Could you repeat
23 your name? We didn't hear that.
24 MR. MILLER: Bryan Miller.
25 FACILITATOR BOWDEN BERRY: Thank you. Go

1 ahead.

2 MR. MILLER: I'm sorry. I was using a

3 two-phone system here, too. I don't have a mute on my

4 phone, so I have one taped up and then asking

5 questions on another, which is kind of a bonehead and

6 not so good phone.

7 My question is along the lines of the

8 local law enforcement and I might have missed this or

9 wasn't on the line when we might have discussed this

10 earlier. And putting some of the requirements on the

11 local law enforcement like contacting the licensee if

12 they are shorthanded might not be able to respond, you

13 know, due to shortages in personnel and that might

14 affect, you know, the licensee's security plan.

15 I know -- you know, I want to say, you

16 know, it's a suggestion that you put out there to

17 them, but how can you require a non-licensee, you

18 know, such as local law enforcement, to give you

19 information on their status, you know? They are not--

20 you know, if they are shorthanded, they don't want,

21 willingly want people to know that they will be

22 shorthanded, you know, even though that you are a

23 Category 2 licensee or an Increased Control licensee.

24 But they are not going to willingly come

25 out and say that, hey, we can't respond to an incident

1 that might happen at your facility, because we don't
2 have the personnel. Any comments or questions that I
3 might have missed on that topic?
4 MS. HORN: Actually, I don't think that
5 particular aspect was raised this morning. But that
6 is a provision that we are taking a look at. I'm not
7 sure that that will actually make the final rule. We
8 have been thinking about it. We have got some
9 comments on it. So I don't know that it actually
10 will. I'm thinking right now that it probably will
11 not, but it is a request. It's not a requirement for
12 the LLEA. It is just we want you to request the LLEA
13 to provide that information.
14 It's the same way with developing a plan
15 with the LLEA. We don't require that, but what we do
16 require you is to ask them to enter into a plan,
17 because we think it's a good idea to have a
18 prearranged plan. If they are not willing to enter in
19 and actually do that activity, you are not going to be
20 in violation. All you have to do is document the fact
21 that hey, we tried to do this. We have asked them.
22 Here is the different interactions that we have had
23 and they are not willing.
24 That would be okay for us. Now, we may
25 contact them ourselves and say, hey, we really

1 encourage you to do this, but you would not be in
2 violation, because we cannot place the require -- we
3 don't regulate the LLEA, so we are not placing a
4 requirement on them that they have to do this. It
5 really is voluntary on their part.
6 We request that you do this and hopefully
7 most of them will. And I think with the orders, most
8 of them have. There have been a few incidents where
9 people -- some of the LLEA were a little unwilling
10 initially and after some discussions with the NRC
11 folks or state people, they were willing to enter into
12 those sorts of arrangements.
13 MR. MILLER: Okay. Yes, then it is -- I
14 think it is a requirement to try to figure out a
15 response time for the local law enforcement, you know,
16 that would fluctuate, you know, depending on their
17 manpower and, you know, depending on what -- whose
18 jurisdiction it is in.
19 So even, you know, we have some fixed
20 facilities that, you know, are in two jurisdictions
21 and it's, basically, almost around the time of day and
22 manpower on which jurisdiction would end up responding
23 to it, so that always put a -- well, just trying to
24 figure out -- determining a response time was hard for
25 that licensee. That's just a comment.

1 FACILITATOR BOWDEN BERRY: Thank you.
2 We're going to mute the phone lines now and go back to
3 the floor. And just to make sure the record is clear,
4 we're using the term LLEA, which is Local Law
5 Enforcement Authority, and LEA, which is Law
6 Enforcement Authority, they are both the same. So go
7 ahead, speaker in the middle of the room.
8 MR. HART: Tim Hart with the United States
9 Navy. I know that there are only three master
10 materials licensees. Will you, please, put something
11 in the guidance for how this is supposed to be
12 implemented by master materials licensees? Because, I
13 mean, there is nothing in the regs that even
14 recognizes that master materials licensees exist, in
15 general, and not in any specifics, but in general.
16 There is a whole bunch of the regulations going to be
17 unique for us to implement.
18 MS. HORN: Noted. And we will take a look
19 at that. It's a valid point. There are only the
20 three and there are some special implementation issued
21 related, because you are kind of a little bit between
22 the regulatory agency and a licensee, because you have
23 some of those provisions, because you issue your own
24 permits. So we will add some more information to the
25 guidance, that's a good point.

1 MR. HART: Yes. The problem is that you
2 can say whatever you like here and then I get my
3 regulators come down and tell me oh, that's not really
4 the way they wanted you to implement.
5 FACILITATOR BOWDEN BERRY: Thank you. Go
6 ahead, sir.
7 MR. THOMAS: Mark Thomas from STERIS
8 Isomedix Services. Just a follow-up question under
9 the Physical Security Requirements in the area
10 specifically of maintenance testing and calibration.
11 Is the intent -- in many situations, the material of
12 concern is within an inner concentric ring, layers of
13 security. Is the quarterly alarm testing requirement
14 applicable to outer rings of that security?
15 So in other words, the inner security zone
16 or the building perimeter itself? Because building
17 perimeter is large distribution center, a couple
18 hundred dock doors, things like that, that's a lot of
19 devices to test on a quarterly basis.
20 MS. HORN: Actually, I'm going to let -- I
21 think I'll let Gary take a shot at this one. But we
22 did talk about this at break. And the idea is those
23 measures around your defined security zone, you
24 definitely are going to need. Where you have
25 difference in depth, it's somewhat going to depend on

1 how you define it in your security plan, I believe,
2 but I'll let Gary take a shot.
3 MR. PURDY: I think that is correct. What
4 you define is if those outer perimeters -- if you are
5 using those to secure the source, then you should be
6 testing those, if they are part of your plan. If they
7 are not, it may not -- it's not a bad idea to test
8 them occasionally. But if it's, you know, a huge
9 burden, you may not want to do that every quarter.
10 But certainly the things that are involved in your
11 plan, you want to make sure that those systems are
12 operational.
13 FACILITATOR BOWDEN BERRY: Okay. Go
14 ahead. Step to the mike.
15 MR. SMITH: William Smith of Southern
16 Nuclear Company. A couple of comments related to
17 clarification on the exemption related to Part 50
18 plans and the Subpart Bravo, Charlie, you know, not
19 applicable versus Subpart Delta.
20 And also, I thought someone mentioned
21 earlier that it wasn't -- you know, you weren't
22 planning to regulate this related to radioactive
23 waste. Some of the processes would actually have
24 radioactive waste stored on-site or passing through
25 site that this might apply to.

1 And also at some of plants, you would have
2 radioactive waste in storage that is in containers,
3 controlled in a different method that this would
4 appear to apply to. I don't know if that was intended
5 or not.
6 In one of the Q&As it specifically
7 mentioned waste process and a laundry as being
8 applicable and at both of those places, the quantities
9 would probably be radioactive waste that would put
10 them over those Category 2 numbers.
11 MR. PURDY: The Part 37 will apply to
12 waste, but it's an area that would be amenable to
13 exemption, especially if you bring to us why that
14 material is protected. And again, we are more
15 concerned about individual sources of Cat 1/Cat 2 or
16 aggregate sources of that, but it does apply to
17 aggregate materials also, including waste.
18 But for those facilities, we do have --
19 already we have issued the Increased Controls of
20 decommissioning reactors and we have exemptions, have
21 been granting exemptions, specifically to the waste
22 material, especially low specific activity waste, to
23 those facilities. And we have some guidance that has
24 already been developed for reactor licensees, that
25 needs to be added to this guidance here. That will

1 help guide you as to when you should be asking for an
2 exemption or how you plan to meet the requirements of
3 37 in your exemption request.
4 Alternate means, I mean, to meet the
5 requirements of Part 37.
6 MR. SMITH: Is that guidance already
7 available that you are referring to to radioactive
8 waste?
9 MR. PURDY: It has been issued already for
10 decommissioning reactors. Like I said, it needs to be
11 added to this document.
12 MR. SMITH: But it's for operating
13 reactors?
14 MR. PURDY: No, decommissioning. These
15 were issued by FSME. I don't know what the entire
16 acronym stands for, but the material -- when a reactor
17 does into decommissioning, it goes from in our nuclear
18 reactor regulatory side over to the materials side for
19 recommissioning.
20 MR. SMITH: So for an operating plant
21 that would have radioactive waste?
22 MR. PURDY: We had not issued anything, at
23 least on the material side, and I don't believe NRR
24 has issued any additional orders for the protection of
25 radioactive materials, no.

1 MR. SMITH: Thank you.

2 FACILITATOR BOWDEN BERRY: Merri, do you
3 want to tell us what FSME stands for?

4 MS. HORN: I can't. It's Federal State
5 Materials -- no, I don't know actually.

6 PARTICIPANT: Federal State and
7 Environmental Management.

8 MS. HORN: And environmental management
9 programs. FSME is much easier to say.

10 FACILITATOR BOWDEN BERRY: Office of
11 Federal and State Materials Environmental Management
12 Program. Okay. I was going to, too, that's why I
13 asked you to do it. All right. Any more comments or
14 questions? Let's go to the phone line and see if we
15 have anyone there. You are a quiet bunch on the
16 phones. Okay. We are going to mute the phones again
17 and go back to the floor. Go ahead.

18 MS. ROUGHAN: Kate Roughan, QSA Global.
19 It seems that the licensees are reasonably happy with
20 working under the orders, at this point. And they are
21 working, they are effective. There is no evidence to
22 show that they are not effective. The proposed Part
23 34 in the guidance actually has a lot more detail in
24 it than what is in the orders.

25 And the regulatory risk analysis it goes

1 through what is the benefit to those additional
2 requirements? And the risk analysis says we are going
3 to spend from $400 million to almost $2 billion to
4 implement this, but yet there is no quantitative
5 benefit.
6 So I'm just curious. For us as licensees
7 to go back to our management and say we have to make
8 these changes, we have to hire additional people, but
9 I can't prove any benefit to my company or to industry
10 itself.
11 MS. HORN: Unfortunately, those types of
12 attributes are really just qualitative. They are very
13 difficult to put a monetary figure on to and typically
14 are not. We do feel that overall that these
15 provisions do provide qualitative benefit that
16 outweighs the cost. You, obviously, may disagree with
17 that and certainly we invite your comments on it.
18 We didn't actually -- I know that there
19 are some of the provisions, particularly in the Access
20 Authorization, where there are several new
21 requirements with the background investigation and for
22 some, the fingerprinting of the reviewing official
23 recognize that some of the procedures and training
24 requirements are new.
25 But for the most part, licensees do have

1 procedures. They do conduct the training. And the
2 actual security measures, to be honest, we really
3 didn't feel that there was that much of a step up. In
4 a lot of cases, there really wasn't any anticipation
5 that there would be anything different that you are
6 doing from what you are doing now that would meet the
7 Part 37 requirements.
8 So, you know, in those areas where you
9 really think well, there is a disconnect, let us know,
10 because that really in many cases was not the intent.
11 MR. MULLINS: Hi. Don Mullins from
12 Georgetown University. I had a quick question
13 regarding the verification of true identity, that's
14 37.25 in the regulations. And it seems to be in
15 slight contradiction with the guidance. The guidance
16 says that at least two forms of identification to
17 prove the identity of an applicant must be examined by
18 the licensee. Whereas, the actual 37.25(a)(2) doesn't
19 seem to state that you need two documents.
20 Is one driver's license good enough and
21 one state issued ID to begin the process?
22 MS. HORN: I'll take a look at that. I
23 don't think that the rule actually specifies the
24 number that you have to do.
25 MR. MULLINS: Q&A did.

1 MS. HORN: Yes, the Q&A does. We will
2 take a look.
3 FACILITATOR BOWDEN BERRY: Thank you. Go
4 ahead.
5 MS. LANGHORST: Sue Langhorst, Washington
6 University in St. Louis. I would beg to differ with
7 you that there is not a lot of extra things we are
8 going to have to do if this rule gets implemented as
9 is. One of the things that I don't think we touched
10 upon was what an individual has to provide in their
11 personal history. There is very little guidance in
12 that. And then if they don't remember a credit card
13 or something that comes up on their credit check, is
14 that they are withholding, they are lying about it? I
15 mean, that's a concern we have.
16 And so there is that cost to all of our
17 individuals who have to fill out that type of
18 information and then how we do a back and forth to
19 figure out how to sort through that. Credit history
20 is a big, big, big burden. We don't want it. We
21 don't think it is effective. We would like to see the
22 scientific data that shows it has any meaning.
23 It will be a big impact on us. And it's
24 hard to provide a lot of that detail in an open forum
25 here, but we will be providing stuff in writing.

1 MS. HORN: I will acknowledge that there
2 are some changes in the Access Authorization aspects,
3 which is mostly what you mentioned. But in the
4 Security During Use, the Subpart C, the Subpart D,
5 they are actually pretty close and we are not
6 expecting to do a lot more.
7 Now, I know in the transportation the
8 verification is more a requirement and the no later
9 than arrival time type things and some of the
10 preplanning and then we will work on that a little
11 bit. the LBS, we're going to be wanting some sort of
12 verification of exactly how all that will work out,
13 you know, because it's already a requirement for some
14 licensees to do this and now we are imposing it on
15 everyone.
16 Don't view that as a huge, huge change,
17 but I do acknowledge that the Access Authorization,
18 there are some bigger changes in that area.
19 FACILITATOR BOWDEN BERRY: Go ahead, sir.
20 MR. SMITH: Okay. William Smith with
21 Southern Nuclear Company. I guess this is related to
22 the Access Authorization. With the -- if a plant,
23 nuclear plant, did have to go by the Part 37, some of
24 the requirements in the Access Authorization there is
25 a delta between what the plants currently have to do,

1 and I was thinking about the 10 year background check
2 and some of those requirements, but there is other
3 parts of the regulations, 10 CFR Part 25, that don't
4 seem to be consistent. And I was wondering if you
5 would look at some of the other authorization programs
6 that we are already using to see if they would line
7 up? That's my comment.
8 FACILITATOR BOWDEN BERRY: Okay. Thank
9 you. Go ahead, sir.
10 MR. HART: Tim Hart with the Navy. An
11 observation and a question. Maybe I'll go with the
12 question first. On the -- in the questions for
13 37.11(a), you talked about exemption requests from
14 regulations for licensees. And you say the licensee
15 will need to submit an amendment request.
16 Are you really intending to submit an
17 amendment request for exemptions? We usually, I don't
18 know, submit our exemption request via form letter
19 without an amendment. Is that going to become -- is
20 that really the way licensing wants to do it?
21 MS. HORN: We can take a look at that. My
22 experience is usually when you are asking for an
23 exemption, that is a licensing action. Now, granted,
24 most of my licensing experience is more fuel cycled
25 than it is these types of materials, but, typically,

1 it would be an amendment action.

2 MR. HART: Okay.

3 MS. HORN: But we will take a look at

4 that.

5 MR. HART: And maybe it's just different

6 the way we do business, because we're -- I don't know.

7 And the other thing is that, you know, I've been

8 working with the NRC for 17 years and the mantra has

9 always been we do not regulate by exemption. And lo

10 and behold I find that 37.11 says "We're going to

11 regulate by exemption."

12 MS. HORN: Actually, if you look at most

13 provisions in 10 CFR, there are aspects where we will

14 grant exemptions if you ask and you can justify it.

15 It is correct, we don't want to regulate by exemptions

16 and there should be an exception. But if you can make

17 a good case, we will -- we do grant exemptions from

18 various regulatory requirements.

19 FACILITATOR BOWDEN BERRY: Let's go to the

20 phone line. Is there anyone on the phone line with a

21 comment or question? On the phones, we are hearing

22 your conversation, so if you don't want to be heard,

23 then you want to mute your phone? Is there anyone on

24 the phones with a comment or a question? If not, we

25 will mute the phones and go back to the floor.

1 Can you mute the phones? Okay. Thank
2 you. Go ahead, sir.
3 MR. POFF: Mike Poff with H&H Xray out of
4 Louisiana. I would like to kind of go back a little
5 bit for your law enforcement notifications. We do a
6 lot of radiography on large pipeline projects. Can we
7 define temporary job location? On a piping project,
8 you may cross several boundaries in several
9 jurisdictions on a daily basis. Do we call it the
10 actual reporting location where the truck is
11 dispatched to that day? I guess we need a definition.
12 MS. HORN: This actually came up in the
13 Texas meeting and we'll be taking a look at that and
14 see if maybe we can come up with some more guidance
15 for what is meant by temporary job site.
16 I will say that my view if you are
17 crossing -- particularly if you are crossing state
18 lines, you are probably at a new job site. So the
19 idea was if you are physically located at one location
20 for seven days or longer, that you would need to do
21 that notification. But if you are traversing down say
22 a pipeline that may cover 100 miles, I wouldn't
23 necessarily consider that one temporary job site.
24 But we will be adding some clarification,
25 assuming the requirement remains in the final rule, we

1 would be adding some additional clarification and
2 guidance for that.
3 FACILITATOR BOWDEN BERRY: Any more
4 questions or comments? Let's go to the phones.
5 MR. MILLER: On the phone.
6 FACILITATOR BOWDEN BERRY: Okay. You have
7 a question or comment?
8 MR. MILLER: Yes.
9 FACILITATOR BOWDEN BERRY: Introduce
10 yourself.
11 MR. MILLER: Bryan Miller, State of
12 Nebraska. Just to go along with that last statement
13 about notifying the Local Law Enforcement Agencies,
14 before -- I understand it might be removed from the
15 requirement, but before putting it into the draft, was
16 there contact with, you know, Local Law Enforcements
17 in getting their point of view on, you know, the
18 relevance of that requirement or, you know, the burden
19 that that might put on the Local Law Enforcement or if
20 that would be, you know, good information that they
21 would want or need from the material licensees?
22 You know, was there interaction with the
23 Local Law Enforcement, I guess is my question.
24 MS. HORN: Not to my knowledge.
25 MR. MILLER: Okay. So that -- I mean, so

1 putting stuff into our regulations without knowing the
2 impact on the other end is -- I don't believe should
3 be in a requirement for the licensees. Just not
4 knowing what that requirement in our regulars are, in
5 the NRC regulations is going to do the Local Law
6 Enforcement if it is going to overburden them or if
7 they are able to handle it should not be a
8 requirement. That is a comment.
9 FACILITATOR BOWDEN BERRY: Thank you for
10 your comment. Is there someone else on the phone line
11 who wants to make a comment or ask a question? Okay.
12 We are going to mute the phone lines again and go to
13 the floor.
14 MR. MULLINS: Hello, Don Mullins from
15 Georgetown University again. And my question, it
16 appears to be my favorite for the day, is on the 10
17 year reverification. Now, are you going to give us
18 some more guidance on how to do Local Law Enforcement?
19 I know, Catalina mentioned you may live near
20 different localities, but over a 10 year period of
21 time, one individual may have lived eight years in
22 Fredericksburg, Virginia and then the last year moved
23 up to northern Virginia. So do we just check northern
24 Virginia and forget the previous eight years?
25 My point is that the snapshot image at a

1 10 year time frame for someone who has been at an
2 institution 10 years, I'm not sure I know --
3 understand Gary's point that it is going to reflect
4 the life series change. But between a credit history
5 check for this person and just a quick snapshot of
6 where they are residing right now in the 10 year time
7 frame, I'm not sure what the benefit is to the
8 licensee in terms of garnering extra information that
9 this person is now subversive or is going to be a
10 malevolent activity person.
11 If they have been there working for 10
12 years and they are coworkers, it seems to me it would
13 be a much more logical step for the institution or the
14 licensee to do an internal review of someone who has
15 been there 10 years, rather than try to go to these
16 credit -- precreditreport.com or wherever you're going
17 to go to get this information that really doesn't have
18 a lot of back to it. It doesn't have a lot of
19 substance to it. Because if the Local Law
20 Enforcements aren't talking to the FBI in all the
21 instances, then certainly if the person has moved
22 around, the Local Law Enforcements aren't talking to
23 each other for sure.
24 So if you only have to -- we need more
25 guidance on that, on how to do it or just if someone

1 has been at a licensee for 10 years, then just to an
2 independent. Have you observed any changes in
3 behavior for this individual? Talk to coworkers.
4 Talk to supervisors.
5 MS. HORN: Particularly on the last aspect
6 of doing an internal review, please, provide that on
7 comments on the rule.
8 FACILITATOR BOWDEN BERRY: Any more
9 questions or comments? Let's open up the phone line
10 and see if there is any questions or comments there.
11 Anyone on the phone line want to make a comment or ask
12 a question? Okay. We will mute the phone lines and
13 go back to the floor. You're awfully quiet. Okay.
14 What was that?
15 MR. PURDY: Let me say just one real quick
16 thing on the local criminal history. I was just
17 thinking about before the last meeting, I was trying
18 to figure out how you do local criminal history. And
19 actually, I just Googled it and there is lots of
20 services and actually there is a nationwide/local on
21 many state websites and you can access criminal
22 history records of individuals.
23 So I'm not sure about every state if every
24 state does that, but there are -- they seem fairly
25 cheap and, you know, they are always the thing that

1 says free and you put someone's name in there and it
2 comes back and then to get the real information, they
3 want a couple of bucks to do that.
4 But I think you might be able to get
5 enough information on the Internet to help with that,
6 you could do it that way. But we will certainly take
7 a look at adding more guidance to that.
8 MS. HORN: Well, if there aren't any more
9 comments, it looks like you have kind of run dry here.
10 I want to thank everyone for coming to today's
11 meeting and providing the comments. We have gotten a
12 lot of good input from this. And we will take that
13 and the information that we received in Austin. Both
14 meetings were transcribed. The transcripts from those
15 meetings will be put on the docket for the guidance
16 document and we will certainly consider all of those.
17 I encourage you to provide comments on the
18 rule using one of the mechanisms that is identified.
19 A lot of the comments that you brought/raised today,
20 obviously, also apply to the rule. But the comments
21 today actually apply to the guidance document. So if
22 you want to make those similar comments for the rule,
23 please, do submit those comments.
24 Currently, the comment period for the rule
25 ends in mid-October and the guidance mid-November. It

1 is very likely that that will be extended to January
2 15th. We have had a number of requests and they are
3 still coming in. I got another one this morning.
4 So I have every anticipation that we will
5 be granting that, but I can't guarantee it. We should
6 know within the next week or so on the final
7 determination on that and we will get an extension
8 notice published in the Federal Register and we will
9 be notifying those individuals that actually made a
10 formal request.
11 We will also put the extension in the
12 regulations.gov site on both dockets, so it's very
13 likely the comment period will be January 15th for
14 both documents, but, again, I can't guarantee that.
15 So kind of watch out in the next couple of weeks to
16 see if it actually does get extended. But, please, do
17 submit your comments. We will take a look at them and
18 they do make a difference.
19 But again, not just I don't like this
20 provision or I'm opposed, please, explain why you
21 think something is a problem. That carries a lot more
22 weight.
23 FACILITATOR BOWDEN BERRY: Okay. Thank
24 you all for coming.
25 And, please, take the opportunity to fill

1 out the feedback form. You can mail it back or you
2 can hand it in to one of us. Thank you.
3 (Whereupon, the meeting was concluded at
4 2:34 p.m.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25