

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

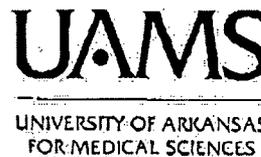
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Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-001
Attn: Rulemaking and Adjudications Staff

DOCKETED
USNRC

October 8, 2010 (9:31a.m.)

RE: Docket ID NRC-2008-0120

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

To Whom It May Concern:

The University of Arkansas for Medical Sciences (UAMS), Arkansas Radioactive Materials License, ARK-0001-02110, has reviewed the above noted document and would like to submit the following comments.

UAMS has been operating under the current IC and Fingerprinting Orders since their issuance. We believe that the currently approved trustworthiness and reliability programs have been working quite well and that the regulations should reflect the current Orders. The proposed rule appears to be overly prescriptive and we are concerned about the practicability of some of the proposed changes. In addition, the proposed rule places additional decision-making responsibilities regarding trustworthiness and reliability on our reviewing official but there is little or no guidance to assist with this decision-making.

10 CFR Part 37.23, Access Authorization Requirements, Paragraph (b)

The trustworthiness and reliability official requirements established by the Orders have worked well at UAMS. While Arkansas Department of Health Radioactive Materials Program staff has extensive personal and professional knowledge about the currently approved UAMS trustworthiness and reliability officials, this may not be the case with other licensees. It would seem that it would be more practical for licensees, who have a more intimate knowledge of their staff, to continue to designate and determine the trustworthiness and reliability officials.

The following response is provided to the questions relating to the Reviewing Official presented in the Federal Register on page 33909:

- 1. Does the reviewing official need to be fingerprinted and have a FBI criminal records check performed?

Yes but only if the reviewing official also requires unescorted access to Category 1 and Category 2 quantities of radioactive material or access to security information and

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security information. We do not believe that in all cases the reviewing official would require access.

2. Are the other aspects of the background investigation adequate to determine the trustworthiness and reliability of the reviewing official?

Yes, but specific guidance and acceptance or rejection criteria should be available for use by the licensee.

3. Are there other methods that could be used to ensure that the reviewing official is trustworthiness and reliability?

We believe the current system established under the Orders is sufficient.

4. Does the requirement to fingerprint the reviewing official place too large a burden on the licensee?

No, currently all reviewing officials also have access to material and have undergone the complete background check required under the Orders.

5. Do Agreement States have the necessary authority to conduct reviews of the nominated individual's criminal history record?

Not Applicable

10 CFR Part 37.25, Background Investigations

We believe the currently required elements of the background investigation are sufficient. What additional value will be obtained from the proposed additional requirements of a credit history evaluation, verification of true identity, military history verification, and criminal history review from local criminal justice resources? In most instances, we believe when faced with the prospect of a credit history review most individuals would choose to not pursue unescorted access. An individual's credit history is a very personal issue and does not seem relevant when attempting to determine trustworthiness and reliability as it applies to security of radioactive materials.

This proposed rule will be an increased burden to UAMS. Many of our approved individuals are foreign nationals and research students and obtaining the information required under the Orders is often troublesome enough. Compliance with additional requirements such as 10 CFR 37.25(a)(6), "...For individuals including foreign nationals and United State citizens who have resided outside the United States and do not have established credit history that covers at least the most recent 7 years in the United States, the licensee must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries;" would be extremely difficult and time consuming.

We have also noted that the Nuclear Regulatory Commission (NRC) has not provided any guidance regarding the determination of trustworthiness and reliability or any acceptance or rejection criteria for each of these requirements. This information must be available to licensees to ensure consistent implementation.

The following response is provided to the questions relating to the background investigation requirements presented in the Federal Register on page 33910:

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

We believe the FBI criminal history records check is sufficient. The local criminal history review would be an unnecessary increased cost and burden to UAMS.

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

No. We believe that this requirement may be a possible invasion of privacy. We do not believe that a credit history check will provide any useful information for the determinations of an individual's trustworthiness and reliability.

As noted above, if the proposed rule becomes regulation, specific guidance and acceptance or rejection criteria for evaluating an individual's credit history and interpreting the findings of the evaluation must be available to licensees and the prior to the adoption of the proposed rule.

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

Not Applicable

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

As noted above, we believe the currently approved background investigation required by the Orders appears to be satisfactory.

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

Yes. Without guidance or criteria, all aspects of the background investigation, including the currently required fingerprint results, are too subjective to be effective.

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

This depends on the individual being investigated. Foreign nationals and individuals who have been educated outside the US require additional time to verify information.

10 CFR Part 37.43, General Security Program Requirements

The following response is provided to the questions relating to the security program requirements presented in the Federal Register on page 33914:

1. Do the Agreement States have adequate authority to impose the information protection requirements in this proposed rule?

Not Applicable

2. Can the Agreement States protect the information from disclosure in the event of a request under a State's Freedom of Information Act or comparable State law?

Not Applicable

3. Is the proposed rule adequate to protect the licensees' security plan and implementing procedures from unauthorized disclosure, are additional or different provisions necessary, or are the proposed requirements unnecessarily strict?

We believe the proposed requirements are unnecessarily strict.

4. Should other information beyond the security plan and implementing procedures be protected under this proposed requirement?

No.

5. Should the background information elements for determining whether an individual is trustworthy and reliable for access to security information be the same as for determining access to category 1 and category 2 quantities of radioactive material (with the exception of fingerprinting)?

Yes.

10 CFR Part 37.45, LLEA Coordination and Notification

The UAMS Police Department is the LLEA for our facility. We have successfully coordinated with our Police Department under the Orders and do not believe any additional requirements are needed.

The following response is provided to the questions relating to the LLEA coordination and notification requirements presented in the Federal Register on page 33916: **All questions are Not Applicable.**

The following response is provided to the questions relating to mobile device requirements presented in the Federal Register on page 33917:

The following response is provided to the questions relating to the reporting of events requirements presented in the Federal Register on page 33917:

1. Are these the appropriate items and thresholds to be reported to the LLEA?

Yes

2. Are these the appropriate items and thresholds to be reported to the NRC?

Yes

3. Should suspicious activities be reported? If they are reported, what type of activities should be considered suspicious?

Yes. Again this is an area where the NRC should provide guidance or criteria to assist licensees in defining suspicious activities. This should, however, be guidance and we should be allowed to determine if in our case the activities was suspicious.

4. Is the time frame for reporting appropriate?

Yes

The following response is provided to the questions relating to the license verification requirements presented in the Federal Register on page 33918:

1. Should there be a requirement for verification of the license for transfers of category 2 quantities of radioactive material or would it be acceptable to wait for the system being developed before requiring license verification for transfers of category 2 quantities of radioactive material?

The present license verification process is acceptable. Once fully operation, the "system should be utilized.

2. We are interested in how address verification might work for shipments to temporary job sites and the ability of both licensees and the Agreement States to comply with such a requirement. For example, would States be able to accommodate such requests with their current record systems?

Not Applicable

3. We are also seeking comment on the frequency of the license verification. For example, should a licensee be required to check with the licensing agency for every transfer or would an annual check (or some other frequency) of the license be sufficient?

Due to the limited number of transfers, we would check with the licensing agency for every transfer.

4. If an annual check is allowed, how would the transferring licensee know if a license has been modified since the last check and that the license is still authorized to receive the material?

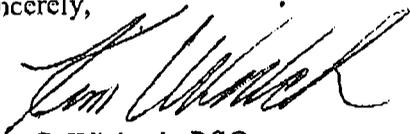
Not Applicable

The following response is provided to the questions relating to the requirements for an approved monitoring plan while the shipment is in a railroad classification yard presented in the Federal Register on page 33921: **All questions are Not Applicable.**

In conclusion, we believe that the requirements of the Orders are sufficient to ensure security of Category I and Category II materials and ensure that public health and safety is being protected. We understand that experience gained over the past several years while operating under the Orders may have identified some areas that need improvement, but we do not believe the substantial changes in the proposed rule are justified and in many instances are not achievable by licensees.

Thank you for allowing UAMS to comment on the proposed rule.

Sincerely,



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University of Arkansas for Medical Sciences

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