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October 12, 2010 (4:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

October 4, 2010

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

Subject: Docket ID NRC-2008-0120

Dear Sir/Madam:

Northwestern University hereby submits comments on the proposed 10 CFR 37 published June 15, 2010, in Volume 75, No. 114 of the Federal Register. We agree that the requirements for security of sources containing category 1 and category 2 quantities of radioactive material should be consolidated in regulation. However, the existing regime of increased controls implemented through orders or other legally binding methods appears to be adequate to control the risk from malevolent use of these sources.

If any information is available that demonstrates the inadequacy of the existing regime, it should have been presented in the discussion of the proposed rule to justify the substantial expansion of the requirements for controlling access to these large sources. Since no such justification was present in the discussion, the rule should only cover the requirements put forward in the orders and other legally binding methods used by the Agreement States.

In the definitions section (§37.5), please change the definition of Local Law Enforcement Agency (LLEA) by removing the requirement that the agency be a government entity. Under our current security plan, Northwestern University Police Department serves as the LLEA and is able to operate in each of the two municipalities in which the University is located. They are a fully badged and sworn police force with the authority to make arrests and provide armed response in locations where category 1 and category 2 quantities of radioactive materials are housed.

§37.23(e)(3) requires the reviewing official to document the basis for concluding whether or not there is reasonable assurance that an individual granted unescorted access to the security zone is trustworthy and reliable. This is an unreasonable requirement. The only written documentation should be the basis for denying unescorted access. That would then be used during the challenge process described in §37.23(g). No written documentation should be required for describing the basis for granting unescorted access.

We strongly oppose the inclusion of credit history checks and review of local criminal history in the background investigations. Neither of these measures is likely to provide information that will prevent unauthorized access and they present a large burden on the licensees. Further discussion of this topic can be found in our answers to specific questions posed in the discussion section of the FR notice.

Template = SECY-067

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The following discussion addresses specific questions posed in Section II of the Discussion in the FR notice.

B5. The role of the Reviewing Official

1. Does the Reviewing Official need to be fingerprinted and have a FBI criminal records check conducted?

Since the Reviewing Official determines who has unescorted access to category 1 and 2 sources, the FBI criminal records check should be required.

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

Reviewing Official should meet all of the requirements for unescorted access.

3. Are there other methods that could be used to ensure the Reviewing Official is trustworthy and reliable?

Only those methods used for candidates for unescorted access should be used for the Reviewing Official. If alternate methods are proposed for the Reviewing Official, they should also be available for those wishing unescorted access.

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

One more criminal record check is not a large burden when compared to the potential risk.

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

This question must be answered by the legal counsel for the various state radiation protection agencies.

B8. The components of a background investigation.

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

Because most of the candidates at this university are not from the local area, a local criminal history review is not warranted. All major violations would be found in the FBI report. This item should be optional if included in the final rule.

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

During the worst economic period in the past eighty years, the information provided by a credit history check would have almost no bearing on the determination of trustworthiness and reliability. We do not feel that a failure to meet financial obligations presents a serious threat to security.

Furthermore, a requirement to complete the credit history check presents a serious financial burden on the University, especially in the absence of actionable information. A report that provides data for the US costs \$4.00, requires a signed statement, SSN and date of birth. A request for Canada costs \$60.00 plus costs. International reports generally cost \$60.00 if they are even available.

These are the costs per candidate and we sometimes have as many as 100 individuals with unescorted access. If the result has little to no bearing on a determination of trustworthiness and reliability, why require licensees to bear this burden?

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

This question is best answered by the various state agencies responsible for administering the Agreement State program. In Illinois, however, recent legislation prohibits discrimination based on credit history. The statute contains exceptions that could be used in this case, but the spirit of the law says that poor credit should not affect an individual's access to the workplace. We consider the security zone around the irradiator to be a workplace for graduate students and laboratory technicians.

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

The elements of the background investigation that are currently required under the IC orders and equivalent Agreement State methods present an adequate approach, balancing the risk against the probability of an undesirable event occurring. Any expansion of these elements without any justification or example of why they are not adequate is inappropriate at this time. The main focus of the background investigation should be to verify information provided by the applicant. If the information is correct, a positive result is expected.

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

If the purpose of a background investigation is to verify the truth of the applicant's information, there is no subjectivity involved. Regarding the criminal history records check, subjectivity is involved, but the amount of subjectivity is kept to a minimum if the arrest and conviction records show that the criminal history was from many years before.

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

At the University, this question is difficult to answer because many individuals are involved. We use a database for recording verifications of employment and education. This database is consulted by our partners in the various schools, departments and

institutes as they assist us in confirming that the information was verified. We seem to spend as much time transmitting fingerprint cards and logging the results of the criminal history check as we do on the background investigation.

C6. Protection of security-related information.

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

This question is best answered by the legal counsel for the various Agreement States.

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?

Under the proposed rule, the elements of the licensee's security plan must be maintained for inspection but are not submitted for approval by the regulating agency. The only information that must be submitted by the licensee is the identity of the reviewing official and his/her qualifications. In light of this, there would be very little licensee-specific information available for release under FOIA or equivalent. In Illinois, inspection reports are not available under FOIA. They are only available during the discovery portion of an enforcement proceeding.

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?

The proposed rule states that, except for those individuals relieved from background investigations and criminal history records checks in Section 37.29, only those individuals who have been deemed trustworthy and reliable by the reviewing official may have access to the security plan and implementing procedures. This does not appear to be overly burdensome on the licensees.

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

In addition to the security plan, implementing procedures and the results of the background investigations, the list of individuals who have been granted unescorted access to the security zone should also be protected. That would make it more difficult for an adversary to identify an "unwilling" accomplice.

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

All determinations that an individual is trustworthy and reliable should include a criminal history records check. Maintenance of two lists for the same quality (trustworthy and reliable) that do not require the same standard for inclusion invites confusion and non-compliance. The preferred requirement would be to allow access to the plan and

procedures on a need to know basis only to those individuals who have been deemed trustworthy and reliable by the licensee's reviewing official or those individuals relieved from background investigations by Section 37.29.

C15. Contacting the LLEA for work at a temporary jobsite.

Because we do not anticipate any licensed activities at temporary jobsites, we provide no comments on this topic.

C19. Reporting events to the NRC.

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

Under the current security plan, the University Police Department (UP) is considered the LLEA. They are also the lead agency at the University for monitoring the security zones for category 1 and category 2 quantities of radioactive materials. Because of this, the Radiation Safety staff is much more likely to learn about attempted unauthorized access or diversion from UP than for UP to hear about it from the Radiation Safety staff.

The rule should not require the LLEA to be notified if they originally told Radiation Safety staff of the event. UP is usually too busy to be bothered with transmission of information of which they are already aware.

Regarding the thresholds, we are not clear about what "suspicious" might mean. Reporting should be limited to actual or attempted theft or diversion. The reference to "suspicious" activity should be removed from the rule.

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

As stated in item 1 above, you should remove any reference to "suspicious" activity and restrict the reporting to actual or attempted theft or diversion of category 1 or category 2 quantities of radioactive materials.

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

The definition of suspicious is too subjective to be part of the physical security rule. Reports should be made for actual events, not suspicions.

4. Is the time frame for reporting appropriate?

Immediate reporting by phone and 30-day reporting in writing is consistent with the reporting regime used in other parts of 10 CFR.

D4. License verification for transfers to other licensees.

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?

For category 2 quantities of radioactive material, the requirements of 10 CFR 30.41 are appropriate for verifying that a transferee is authorized to receive the activity and form of the radioactive material being transferred, excluding the oral certification allowed for emergency shipments in sub-section 30.41(d)(3).

2. This item refers to address verification at temporary jobsites and will not receive any comments in this letter.
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.

No additional license verification should be required until after the expiration date on the license. Then a copy of the notice of timely renewal should be obtained and semi-annual checks made until the renewal license is issued.

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 licensee is still authorized to receive the material.

Experience with regulatory agencies indicate that amendments are not usually issued in a timely manner and enforcement actions grind through due process at a glacial pace, so the likelihood of a license being modified after a copy is obtained by the transferor is very small. Since there is a fee for amending an NRC license, no licensee is likely to request an amendment to remove authorization for a source it no longer possesses. In light of these realities, there does not appear to be any compelling reason to take extraordinary measures to verify the license has not been modified since the last check.

D21. Physical protection of rail shipments.

We do not anticipate transferring any category 1 quantities of radioactive materials via rail, so no comments are provided on this topic.

Thank you for the opportunity to provide comments on this proposed rule. Should you have any questions, you may contact me by voice at 847-491-5581 or by email at bsanza@northwestern.edu.

Sincerely,



Bruce J. Sanza, CHP
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Radiation Safety Officer