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**Docket:** NRC-2008-0120  
Physical Protection of Byproduct Material

**Comment On:** NRC-2008-0120-0038  
Physical Protection of Byproduct Material

**Document:** NRC-2008-0120-DRAFT-0068  
Comment on FR Doc # 2010-13319

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USNRC

October 13, 2010 (9:17am)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

## Submitter Information

**Name:** Radiation Safety Officer  
**Submitter's Representative:** NA  
**Organization:** Major West Coast Educational Institution  
**Government Agency Type:** State

## General Comment

Comments being submitted for Docket ID NRC-2008-0120 in attached file.

## Attachments

**NRC-2008-0120-DRAFT-0068.1:** Comment on FR Doc # 2010-13319

Template = SECY-067

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There are several concerns in a general sense, because the Trustworthy and Reliability (T&R) program usually gets thrust upon the Radiation Safety Office which would not have the expertise to undertake a background investigation as onerous as set forth in the proposed rule. In addition, resources at all institutions are dwindling in this time of recession and budget cuts. The timing could not be worse for an expansion of the T&R program.

A basic question is why this unreasonably onerous series of steps and the 10 year period related to background investigation warranted? Is there any indication that the existing 3 year period was not adequate? Is this truly a reasonable investment of resources to protect the public?

We provide some answers to specific questions posed by NRC on page 33910, Federal Register /Vol. 75/No. 114/ Tuesday, June 15, 2010:

NRC Question (1) Is a local criminal history review necessary in light of the requirement for a FBI criminal History check?

Our opinion is no, it is unnecessary. All local criminal investigations in the United States requiring fingerprinting results in a copy of those fingerprints being sent to the FBI. Attempting to get local criminal history leaves us (in many cases) without any idea of how to accomplish this. In some states, all local criminal history resides in a central state repository, like the State Police. However, this may not be the case in all states. Determining how to obtain local criminal histories for all states in which an individual has resided during the past 10 years would be exhausting to explore.

NRC Question (2) Does a credit history check provide valuable information for the determination of trustworthiness and reliability?

Our opinion is no, it is unnecessary. Without having any criteria given by NRC as to what an adverse credit history consists of (including a bankruptcy), then no meaning can be attached to this. Opinions of the relevancy of credit histories between institutions and between "Reviewing Officials" will vary widely. An important reality is that many Americans have spotty credit histories, and the current economy has caused this to be even more prevalent. Approximately 40% of Americans have essentially zero savings and live from paycheck to paycheck. A catastrophic illness in the family, a serious accident, or the loss of employment by a breadwinner in a downturned economy could all easily leave a family unable to pay bills and devastate their credit history.

NRC Question (3) Do the Agreement States have the authority to require a credit history check as part of the background investigation?

We have no opinion on this question. We are not even sure that our Attorneys General will allow us to do a credit check on an individual who has already employed at our institution, regardless of whether the individual provides signed and informed consent.

NRC Question (4) What are the appropriate elements of a background investigation and why are any suggested elements appropriate?

In our opinion, no single element can be taken alone and needs to be evaluated in the context of all available information collected using reasonable and readily available data sources.

One important element which has shown its value to is fingerprinting an individual for a FBI Criminal History Records Check. This is appropriate for indicating if an individual is prone to theft, violence, deception, and general bad judgment. Prior to the requirement for an FBI Criminal History Records

Check, our Attorneys General limited us to a local criminal history check, but this was unsatisfactory since it did not cover jurisdictions beyond those within the state.

A second important element is recommendations from co-workers and supervisors for a reasonable period of time. The 3 year period defined in the Order Imposing Increased Controls, EA-05-090, is a reasonable length of time.

A third important element is a listing of all employers and technical or research positions held for a reasonable period of time. A 3 year period as defined in the Order Imposing Increased Controls, EA-05-090, is a reasonable length of time. From this list of employers and technical and research positions, a determination can be made for contacting a reasonable number of those employers or co-workers to verify satisfactory and accurate employment history.

Attempting to obtain employment information from every previous employer for a lengthy period of time is impossible, since a preponderance of employers (in our experience) will not give any information about a previous employee, whether that information is positive or adverse. This is due to fear of litigation. A person contacting a previous employer to do a background investigation is lucky to get concurrence on dates of employment.

The educational verification is also NOT a useful element of a background investigation. IC Order requirements of education verification indicate a misunderstanding of the individuals needing access to Category 1 and Category 2 materials. Often those needing access (such as animal handlers) do not have education beyond high school. A significant percentage of professional staff members were educated in foreign countries, and documents such as foreign diplomas and transcripts could easily be forged and are extremely difficult to verify. For these professionals (staff and faculty) it is much more important rely on the network or mentors, and peers who are familiar with the individual's professional experience, reputation, and qualifications. Lack of those qualifications and experience becomes readily apparent in a research environment.

NRC Question (5) Are the elements of the background investigation too subjective to be effective? Our opinion is guarded on this matter. Any background investigation will inevitably rely on some degree of subjectivity in order to be effective. If absolute strict guidance is given, such as not granting access to anyone with a felony arrest record, then this can seriously jeopardize an individual's career even though that arrest may have occurred 20 years in the past. Some degree of subjectivity has to be used to evaluate the situation and the individual. However, a greater amount of guidance in the regulations would be appreciated in many situations, since decisions made by a T&R Official (or reviewing official) without guidance in the statutes leave the employing institution at risk of litigation.

NRC Question (6) How much time does a licensee typically spend on conducting an investigation for an individual?

Exact metrics on this question have not been generated, but anecdotally some investigations on individuals with a long history in the institution or familiar to the reviewing official take as little as 10 minutes to do the investigation, with a few hours to do paperwork, fingerprinting, and mailing. Some investigations have taken two or more 8 hour days. It is estimated that an average is about 4 hours per individual.

## Rulemaking Comments

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**From:** Gallagher, Carol  
**Sent:** Wednesday, October 13, 2010 8:56 AM  
**To:** Rulemaking Comments  
**Subject:** Comment on Physical Protection of Byproduct Material  
**Attachments:** NRC-2008-0120-DRAFT-0068.pdf

Van,

Attached for docketing is a comment letter on the above noted proposed rule (75 FR 33901) that I received via the regulations.gov website on 10/12/10.

Thanks,  
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by TWMS01.nrc.gov  
([148.184.200.145]) with mapi; Wed, 13 Oct 2010 08:57:07 -0400  
Content-Type: application/ms-tnef; name="winmail.dat"  
Content-Transfer-Encoding: binary  
From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>  
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>  
Date: Wed, 13 Oct 2010 08:56:18 -0400  
Subject: Comment on Physical Protection of Byproduct Material  
Thread-Topic: Comment on Physical Protection of Byproduct Material  
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