

ENERGYSOLUTIONS

October 13, 2010

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CD10-0282

Annette Vietti-Cook, Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attn: Rulemakings and Adjudications Staff

October 14, 2010 (9:40am)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Solicitation for Public Comment on Proposed Rule for Physical Protection of Byproduct Material – RIN 3150-AI12, Docket ID NRC-2008-0120

Dear Ms. Vietti-Cook:

EnergySolutions has reviewed the subject proposed rule regarding the Physical Protection of Byproduct Material. We offer the following comments for your consideration.

1) Application of the Sum of Fractions – Page 33906, Number 7, of the Federal Register notice describes the U.S. Nuclear Regulatory Commission's (NRC) methodology for the "sum of fractions or unity rule." The aggregation rule as presented under the "sum of fractions" explanation does not adequately address scenarios where a large number of packages containing low concentrations of radionuclides of interest are stored over a very large area.

For example, a commercial waste processor could have several thousand packages in a common storage area, each containing waste forms of relatively low specific activity and each with a mass of several hundred to several thousand pounds. Another example is a radioactive waste disposal facility that has a 60-car train of radioactive waste within its controlled area. We believe the volume and mass required to obtain a category 2 quantity of material renders theft an incredible scenario. Furthermore, damaging and dispersing a category 2 quantity of material such that deterministic effects¹ result from internal or external exposures is not credible.

EnergySolutions proposes the following exemptions for the aggregation of packages that individually each contain less than a category 2 quantity of material. Materials meeting the limits below would effectively present a practical, individual barrier to theft and thus should be exempted from Increased Controls:

- Packages with an external volume exceeding 1 ft³
- Packages with a mass exceeding 100 pounds

¹ IAEA explanation of the derivation of "D" values in Code of Conduct on the Safety and Security of Radioactive Sources, 2004.

An alternative solution would be the addition of a specific activity threshold to the Category 2 table. Materials not exceeding the specified concentration values (sum of fractions could be applied to packages containing multiple radionuclides of interest) would be exempted from Increased Controls.

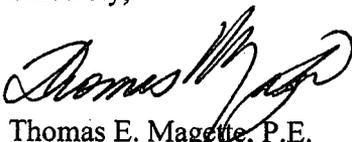
2) Timeframe for preparing and implementing security plan – Subpart C as proposed would require each licensee subject to this part to establish, implement, and maintain a security program. Furthermore, the licensee shall have 30 days to comply following the publication of the final rule and must implement the security program at least 90 days before it “...aggregates radioactive material to a quantity that equals or exceeds the category 2 threshold.” *EnergySolutions* is concerned that for some of the work we do it will not be possible to comply with these requirements as proposed.

EnergySolutions has a mobile NRC D&D license. The work performed under this license varies significantly from project to project. Security plans that are sufficiently robust to be effective also would vary significantly. It is not possible to prepare or implement a project-specific security plan without knowing the details of the project. In addition, we have conducted projects under this license that have necessitated mobilization and initiation of work within a matter of a few days, which would not be possible if 90-day advance notice were required.

EnergySolutions proposes that for mobile licensees, the proposed rule be modified to allow the preparation and submittal of a generic security plan that would be supplemented by a project-specific security plan prior to initiating work on any given project. Submittal of the generic security plan would be required within 30 days of publication of the final rule as proposed by NRC; however the 90-day requirement would not apply.

We appreciate the opportunity to comment on this rulemaking. Questions regarding these comments may be directed to me at (240) 565-6148 or temagette@energysolutions.com.

Sincerely,



Thomas E. Magette, P.E.
Senior Vice President
Nuclear Regulatory Strategy

Rulemaking Comments

From: Thomas Magette [TEMAGETTE@energysolutions.com]
Sent: Wednesday, October 13, 2010 3:51 PM
To: Rulemaking Comments
Subject: Comments on Proposed Changes to Part 37 attached
Attachments: EnergySolutions Comment Letter- 10 CFR 37 - FINAL 101310.pdf

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