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October 1, 2010

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

Docket ID NRC-2008-0120

Re: Comments to Proposed Rules and Regulatory Guidance Pertaining to Physical Protection of
Byproduct Material (10 CFR 37)

Thank-you for the opportunity to comment on the proposed rules supplanting NRC Orders covering security of sources of concern. We recognize the importance and complexity of ensuring that sources of concern be safeguarded from malicious acts of terror.

1. 37.23(b)(1) – Reviewing Official; Reg Guide Q/A 7
This rule states that the T&R Reviewing Official does not need NRC approval if he/she has already been approved. If the T&R Official has completed the background checks and fingerprints according to the NRC Orders and is listed on an Agreement State license as the T&R Official, would that person need to repeat the background checks and fingerprints to satisfy this 10 CFR 37 requirement?
2. 37.23(e)(3) – Determination basis; Reg Guide Q/A 6
 - a. Does an email from a T&R Reviewing Official that documents the determination basis favorably approving an individual for unescorted access fulfill this requirement? The email informs the person of the T&R results and contains the person's name and T&R Reviewing Official's name and date of approval. The T&R Official initials or signs the copy retained for inspection, which serves as the required documentation.
 - b. In such a case, must the correspondence going to the approved person be marked as "confidential" or other restricted access annotation?
 - c. If Human Resources personnel and contracted agencies perform the background checks, must the T&R Reviewing Official review all collected information on each T&R applicant or can the Official rely on a summary assessment supplied by Human Resource specialists, who have broader experience in this area?
3. 37.25 – Background Investigations
The increased background requirements in the T&R program place a significant financial burden on licensees. Presently, the cost to this licensee is \$131 per applicant, excluding the \$100 average cost for processing new employees. The T&R application cost includes \$25 for fingerprinting, \$26 for fingerprint processing through the NRC and FBI, and \$80 for a

WorldScan. We expect gathering information on military and credit history will increase the cost per approved person to \$155 for U.S. records. Credit history and military records on applicants from foreign countries are prohibitively expensive, providing they are even obtainable and information reliable.

4. 37.25(a)(5) – Military History

We question the relevance of obtaining military history. What criteria does the T&R Reviewing Official use to assess unreliability? Would we expect more information than the branch of service, years of service, and type of discharge? Would the record contain drug offenses or the outcome of non-judicial punishment or court martial trials? Would a Bad Conduct Discharge be reason for disapproval? How is military history obtained from foreign countries? For practical implementation of this requirement, especially for foreign nationals, the NRC should perform this service.

5. 37.25(a)(6) – Credit History; Reg Guide Q/A 2

In general, how do we evaluate and interpret the credit scores and other credit history information? It seems that only credit score trends would be meaningful, whereas a single score provides little or no insight. The NRC should consider performing the credit history evaluation, if this information is necessary. By sheer volume, the NRC can do credit checks much more cost effectively than individual licensees, particularly on foreign nationals. Additionally, the NRC can apply uniform criteria for acceptance or disapproval. Otherwise, obtaining credit history information for licensees will be a red herring. At best, we won't know what the information means, and at worst it will be too expensive to obtain for persons coming from outside the U.S.

The answer to question 2 in the proposed regulatory guide does not answer the question, "How do we evaluate the credit history of a person applying for unescorted irradiator access who has either lived abroad or is a foreign national?" The question relates to my statement above. Your answer should give guidance on interpreting credit history information and it doesn't. Your answer to question 2 inadequately answers another good question, "Credit information on foreign nationals will be expensive and nearly impossible to get. What do licensees do?" The answer mentions we can use multiple resources, but fails to note what those resources might be, how many of those resources we must use, and what kind of expense they might incur.

6. 37.31 – Protection of Information

The NRC Orders on Increased Controls defined "sensitive information" and specific requirements and guidance for identifying and labeling sensitive information. We agree with the proposed rules that remove the concept of sensitive information and address information security in relevant sections of the proposed rules.

7. 37.43(c)(1) – Training; Reg Guide Q/A 4

The guidance suggests that all employees and students in universities, even those not involved with the security program, receive training on the security program for sources of concern. We question the value of this recommendation. It undermines our attempts to keep sources of concern low key. Spotlighting sources of concern through institutional training

would do more harm than good. What would be the content of training to people not involved with the security program? This training, no matter how innocent, would only advertise to a wider audience the presence of sources of concern. This answer should be stricken. Only persons directly involved with the security program should receive initial and annual training.

8. 37.43(c)(1) – Training; Reg Guide Q/A 5
Guidance for this rule suggests that licensees test trainees on security program information. When we give local emergency responders or NRC/Agreement State representatives our Security Plan, do we have to test them on their understanding?
9. 37.49(b) – Monitoring, Detection, and Assessment; Reg Guide Q/A 3
The guide states that licensees cannot perform their own vulnerability assessment. This is confusing, perhaps because “vulnerability assessment” is not defined. Most licensees have layers of security protection with graded alarm levels. In-house security staff responds to all alarms; however, local law enforcement is beckoned for any suspicious activity or activation of an imminent threat alert, such as a tamper alarm. The answer to this question implies that the local law enforcement agency must respond to all alarms, even minor alarms. We regard such a standard as unwise, inappropriate, and counterproductive.

We hope our comments help you understand our challenges in interpreting the security requirements succeeding the NRC Orders. In view of the greater goal of keeping sources of concern safe and secure, as well as preparing our organization for regulatory inspections, we need a clear understanding of your expectations. We encourage inspectors to assist licensees in our efforts to comply with these standards.

Please call me if you have any questions or concerns.

Sincerely,



Thomas Mohaupt, M.S., CHP
Radiation Safety Officer