NONDESTRUCTIVE TESTING MANAGEMENT ASSOCIATION
PO Box 470338 • Celebration, FL 34747 • Telephone & Fax 321.939.0277 • http://www.ndtma.org

45

October 28, 2010 **PR 30,32,33,34,35,36,37,39,51,71, and 73 (75FR33901)**

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKETED
USNRC

November 10, 2010 (4:30pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Attn: Rulemakings and Adjudications Staff

Re: Docket ID NRC-2008-0120

To Ms Annette Vietti-Cook:

I am writing on behalf of the Government Industry and Affairs Committee (GIAC) to comment on the Physical Protection of Byproduct Material Proposed Rule (Part 37).

The committee requests you seriously consider our comments and suggestions about some aspects of the proposed rule as we believe these additional requirements will negatively impact our industry.

- 37.23(b) Access Authorization Program Requirements

  We strongly object to having the NRC or an Agreement State approve our "reviewing officials". The proposed rule does not say what screening criteria will be used by the Agency to approve or deny nominated reviewing officials. This proposed rule makes little sense and does not add any reasonable assurance that the "Approved" reviewing official will make the right decisions when he, in turn, approves another individual for unescorted access to Category 1 or 2 quantities of radioactive material. Does any evidence exist that the current order, which requires a "T & R Official" that is not "approved by a state agency or the NRC", has in any way, posed a threat to our national security? If there is no evidence then we see no benefit to making this change.

  Questions Posed:

  1. *Does the reviewing official need to be fingerprinted and have a FBI criminal records check conducted?* No, without some kind of justification, we believe this request is unnecessary.
  2. *Are the other aspects of the background investigation adequate to determine the trustworthiness and reliability of the reviewing official?* No, not necessary.
  3. *Are there other methods that could be used to ensure that the reviewing official is trustworthy and reliable?* None needed. The reviewing official has not been proven to be Untrustworthy or Unreliable.
  4. *Does the requirement to fingerprint the reviewing official place too large of a burden on the licensees?* Yes and it is totally unnecessary for the reviewing official to have access to Category 1 or 2 quantities of radioactive material to make a determination of trustworthy and reliability.
  5. *Do Agreement States have the necessary authority to conduct review of the nominated individual's criminal history record?*
     We do not know if Agreement States have the authority but believe it would put an undue burden on them to perform this review.

- 37.25(a)(6) Background Investigations

  We strongly object to requiring "credit history checks" in addition to the other background investigations already required. Not only will it be an added expense and added burden on HR, but much of the information received on a credit history check will already be included on the "personal history disclosure". Then there is the question of how to base our acceptance decisions. Should an applicant be denied because he has a bad credit rating or has had financial problems in the past? Many employees have poor credit records but are currently very trustworthy and reliable. This is one of the worst economic periods in recent history and asking our reviewing

Template=SECY-067 DS10

officials to include someone's credit history when making their decision would cause confusion and be extremely difficult to interpret. We feel this proposed rule will not only add unnecessary expense to each licensee but will provide very little useable information in determining acceptance for unescorted access to Category 1 or 2 radioactive material.

Questions Posed:

1. *Is a local criminal history review necessary in light of the requirements for a FBI criminal history records check?* No, it is redundant. Do you not trust the FBI to report the truth?
2. *Does a credit history check provide valuable information for the determination of trustworthiness and reliability?* Absolutely not. A credit history check would only cause confusion and unnecessary expense to licensees. We believe it would be a waste of time.
3. *Do the Agreement States have the authority to require a credit history check as part of the background investigation?* We do not know if Agreement States have the authority to require a credit history but feel it would be an invasion of privacy if they did.
4. *What are the appropriate elements of a background investigation and why are any suggested elements appropriate?* We believe the current requirements are sufficient and no other elements need to be added.
5. *Are the elements of the background investigation too subjective to be effective?* Yes
6. *How much time does a licensee typically spend on conducting the background investigation for an individual?* The time required to get background investigation information varies between the different third party providers but usually takes around ten working days if all information provided the third party is correct, i.e.; dates previously employed, telephone numbers of previous employers, etc. The background investigation is already a burden and any additional elements would only slow the existing process.

- 37.25(a)(9) Character and Reputation Determination from References Not Provided by the Applicant and Documentation.

We believe this will put an undue burden and expense on all licensees. As stated previously, there is no evidence that spending the extra amount of time and money required to check character and reputation from references not provided by an applicant will enhance the security of our existing program or the security of the general public in any way.

Subpart C – Physical Protection Requirements during Use

If an IC licensee aggregates sources and it results in a quantity of material that meets Category 1 or 2 quantities, the requirements should be implemented. However, without time consuming research, how would the Agency know if sources were aggregated to meet Category 1 or 2 quantities of concern. This seems especially confusing, time consuming, and costly to coordinate and track.

We believe that physical protection requirements during use has already been met and there just isn't any evidence that requiring licensees to try and track locations of small amounts of source material so as not to aggregate a required quantity is unnecessary to protect the security of the general public.

The proposed rule requires an IC licensee to develop a security plan and specifically prescribes what needs to be included in that plan.
Licensees have already developed programs to implement the IC and fingerprinting order.

The proposed rule requires training and refresher training on security plans.
All licensees have trained their employees that have access to radioactive materials, and many licensees already hold refresher training, even though the security plan has not changed. We do not believe that training should be required for anyone other than an employee with access to radioactive material. We do not believe that any employee except one with access to radioactive material be given access to the security plan, therefore additional training would not be required.

Questions Posed:

1. *Do the Agreement States have adequate authority to impose the information protection requirements in this proposed rule?* We believe they do have adequate authority to impose the information protection requirements.
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?* We do not know.
3. *Is the proposed rule adequate to protect the licensee's security plan and implementing procedures from unauthorized disclosure, are additional or different provisions necessary or are the proposed requirements unnecessarily strict?* We believe the current provisions for protecting information is sufficient and no additional requirements are necessary.
4. *Should other information beyond the security plan and implementing procedures be protected under this proposed requirement?* No, we believe the information is already protected and no other requirements are needed.
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 material (with the exception of fingerprinting)?* We believe they should be the same.

- 37.43(a) General Security Program Requirements

The proposed rule requires security programs to include a description of the environment, building or facility where radioactive material is used or stored. Most companies in the industry (RT companies) use radioactive material in several different locations each day. This would mean that a separate security program would need to be established and documented for each use site. Since these "sites" often change daily (i.e.: pipeline locations), this would require at least one additional employee per crew to follow the workers around, assess the surrounding environment, write a security plan, and train the crew in the new security plan prior to any work being performed each day. In addition, a separate Security Plan would be required to make sure the Security Program is effectively functioning. This is not only redundant but extremely costly and confusing. We believe this would put an undue burden on all licensees with no evidence that it would in any way stop a terror attack or help protect the general public.

- 37.45 LLEA Coordination and Notification

The proposed rule would require licensees to notify the LLEA three days prior to using or storing radioactive material in their jurisdiction. First, how would a licensee know which LLEA is responsible for a specific jurisdiction other than their everyday office location? Secondly, many jurisdictions have multiple agencies. How would a licensee know which agency would be the first responder? Requiring a licensee to have this kind of information available to them for the entire United States is not practical. Third, constant notification to LLEA's could cause confusion. In the event of actual threat, the call may be ignored or thought of as just another bothersome notification.
We believe notification of LLEA for temporary jobsites is impractical and an unnecessary burden to licensees and LLEA alike. It would be more practical for the NRC, along with Homeland Security, to coordinate information with LLEA as to possible terroristic threats from a broader perspective. Requiring each and every licensee to notify and coordinate this information with the

different LLEA jurisdiction. We strongly disagree with this proposed rule as it is just plain ridiculous.

- 37.47 Security Zones

This proposed rule requires licensees have security zones around radioactive material in both permanent and temporary jobsites and during storage.
Requiring the use of security zones is unnecessary. As per the original I.C. Order, all licensees wrote procedures that require constant security of Category 1 or 2 quantities of concern whether in storage, in use at permanent facilities or at temporary jobsites. This proposed rule could cause confusion in certain types of jobsites where aggregation of multiple low level sources would constitute a security zone. Example: Many petro-chemical plants use low level sources to monitor product levels. Aggregation of these sources will constitute a security zone which would require direct control by approved individuals at all times and\or intrusion detection systems and physical barriers. This could mean that the entire plant would be a security zone and only trustworthy and reliable employees could enter. This is not only impractical, but extremely confusing. We disagree with this proposed rule to require security zones and feel it will not stop a terror attack or protect the general public.

- 37.75 Preplanning and coordination of shipment of category 1 or 2 quantities of radioactive material.

This proposed rule would require licensee's to coordinate "no later than" arrival and departure times with receiving licensee's. This rule would be extremely costly and time consuming to implement. Once a shipment is given over to a carrier it is out of our control and delays, routes through other states, safe havens, etc, are also out of our control. Requiring a licensee to be responsible for a carrier's route and delivery times is just not practical. If the NRC feels that requiring "no later than" arrival and departure times is that important to national security then they should require the common carrier to comply, not each licensee. We currently monitor the shipment of sources between the manufacturer and the licensee and back to the manufacturer via e-mail notifications. We also notify both the carrier and the NRC/Agreement State Agency if a shipment fails to be delivered within a "reasonable timeframe". Putting the added requirement of "no later than" arrival and departure times is extreme and unnecessary. We believe licensees already effectively track the movement of sources to and from manufacturers and other licensees without the need to impose additional regulation.

We have no issue with making the IC order into rule. We do, however, think that the changes and additions to the original order are unnecessary, time consuming and costly to all licensees and that no evidence exists to support these additions. The NRC's regulatory analysis itself concludes that there are no quantitative benefits to the implementation of the rule but would result in very significant costs to the licensees.

We appreciate the opportunity to comment and respectfully request that you consider our comments before imposing this rule.

Respectfully,

Gayle S. Staton

Gayle Staton
G.I.A.C. Chairperson

Curt Auzenne

Curt Auzenne
President NDTMA