

5 November 2010

DOCKETED
USNRC

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

December 16, 2010 (1:28pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Rule Making RIN 3150-A112, NRC-2008-0120

10 CFR 37.25 Background investigations

- Section (a)(6) requires that licensees shall evaluate the full credit history of the individual who is applying for unescorted access authorization. A full credit history evaluation must include, but is not limited to, a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit history.

Comment: a credit history check provides an incomplete picture of the individual. Credit histories obtained from commercial vendors may document **what** happened (late payments, bankruptcies, judgments, etc), but they do not explain **why** it happened (loss of a job, medical issues, etc). To make a fair determination of trustworthiness and reliability, it is just as important to know why an unfavorable event (i.e. bankruptcy) occurred as it is to know that it occurred. To properly determine the trustworthiness and reliability of the applicant, due diligence on the part of the licensee would require highly intrusive investigations into the private life of the individual.

In addition, Title 11 of the United States Code, Section 525 makes it illegal to discriminate against employees or job applicants solely because of filing for bankruptcy.

- Section (a)(6) further requires that for individuals including foreign nationals and United States citizens who have resided outside the United States and do not have established credit history that covers at least the most recent 7 years in the United States, the must licensee to document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries.

Comment: This is unfair to individuals who have established a credit history in the United States. Individuals who have established a credit history in the United States and may have had difficulties due to the current economic crisis (bankruptcy, late payments, judgments, etc) will be at a disadvantage over individuals with a similar but undocumented credit history in another country. An employer may choose to allow access to the foreign national based on

incomplete information and deny access to a U.S. citizen based on more extensive but unfavorable information.

- Section (a)(7) requires that reviewing officials shall obtain from local criminal justice resources the criminal history records.

Comment: a local criminal history review provides no additional information beyond that provided by the FBI criminal history records check. This information comes from discussion with local law enforcement agencies and individuals who have long experience in conducting background checks for public agencies and private businesses. This is an unnecessary added expense.

General Comments

1. The proposed regulations provide no specific guidance on how to evaluate the results of an individual's background investigation. This leaves the licensees wide latitude to determine trustworthiness and reliability. One licensee may choose to deny unescorted access to an individual who has had a recent bankruptcy while another may choose to grant access based on attestations by the individual that he has "turned his life around." Therefore, this lack of guidance will result in inconsistent application of the intent of these new rules.

In addition, it is known that many individuals employed by industrial radiography companies have been convicted of one or more felonies. If these licensees are allowed to continue to grant unescorted access to such individuals, it is unfair to hold other institutions (i.e. colleges, universities, hospitals, etc.) to a different standard.

The NRC should review the regulations regarding denial of registration of individuals requesting access to select agents published in 49 CFR 73.8. These regulations provide specific guidance for denying an individual a certificate of registration to possess and/or work with highly toxic biological agents.

2. The proposed regulations ignore the fact that certain jurisdictions prohibit conducting credit history checks for employment purposes. It is unfair to licensees and individuals in areas where the practice is allowed and will result in inconsistent application of this rule.

Sincerely,

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Rulemaking Comments

From: Tom Morgan [morgant@aol.com]
Sent: Thursday, December 16, 2010 9:55 AM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0120
Attachments: NRC Rule re changes in 10 CFR 37.doc

Comments on proposed changes to 10 CFR 37

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