

Rulemaking Comments

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USNRC

From: Schwarz, Jon [jon.schwarz@nebraska.gov]
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To: Rulemaking Comments
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December 20, 2010 (11:00am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Sir,

The attached comments concern Federal Register Notice 10 CFR Parts, 30, 32, 33, 34, 35, 36, 37, 39, 51, 71, and 73 (NRC-2008-0120) "Physical Protection of Byproduct Material".

If you have any questions, please call me.

Jon

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NEBRASKA
EMERGENCY MANAGEMENT AGENCY

Review of NRC Rule-Making RIN 3150-AI12, NRC-2008-0120

Page Reference	Comment	Potential Impact
	<p><u>General Comment:</u> The impact costs to develop, implement and maintain an access and security program for agencies will required at least the addition of one FTE (Full Time Equivalent) employee which many businesses and states can no afford. Based on the fact that the Federal Government has yet to come in with accurate costs to a new program, NRC's estimates of the costs to implement this program are highly suspect!</p>	<p>The costs to implement these programs must be passed on to the customers which will raise the cost of doing business to everyone in an economic time where increased costs may put many out of business, including those who work with radioactive materials. This will increase the demand for those that stay in business and result in additional cost increases to the customers.</p>
	<p><u>General Comment:</u> This rulemaking is what is called the 1% rule. Everyone must suffer for the few that have errored in the past. While some radiological sources go missing each year, this is almost always due to owner/licensee negligence. This rulemaking only demonstrates that the NRC is attempting to incese the level of safeguard categories 1 and 2 quantities of radioactive material are safe.</p>	

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	<p><u>General Comment:</u> The Nebraska Emergency Management Agency has one CD V-794 Calibrabor that was last loaded in 1982 with a category 2 quantity. The calibrator is no longer used to calibrate the CD V-715 survey meter. Implementing a security and access program following the NRC rulemaking would not be cost effective. FEMA, the original owner of the calibrator/source, does not want to take it back. In these economic times, the State does not have the funds to have a civilian contractor assume responsibility for it. The DOE orphan source program personnel say they will pick the source up when they get around to it, but they have "other" larger sources to take care of first, which more than likely means after the NRC implements it's rulemaking.</p>	<p>The State of Nebraska does not have and will not provide the FTE and the funding to develop, implement, and maintain the NRC access <u>and</u> security program to NEMA at this time as described in the rulemaking.</p>

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PRM-71-13 Paragraph II.B.5 What is the role of the Reviewing Official; Page 33909	The Nebraska Emergency Management Agency (NEMA) strongly objects to the requirement that the "Reviewing Official" be fingerprinted whether that person be titled the "Reviewing Official" or the "Trustworthy and Reliability Official". The "Reviewing Official" for NEMA is the Agency Human Resources Officer who reviews the hiring and interview process and conducts the background investigations. This information is then passed on to the Assistant Director, NEMA, who is the "Trustworthy and Reliability Official" who by position already has a Secret Clearance and the confidence of the Governor of the State who appointed him. It is the T&R official who makes the T&R decision for unescorted access to the agency's single category 2 source. NEMA strongly feels there is no need for a requirement that the "Reviewing Official" needs to be fingerprinted and have a background investigation completed as the Agency Human Resources Officer who as the "Reviewing Official" has no need or access to the source.	Unfunded mandate and extra work. Who then checks the "Human Resource Officer" as being "Trustworthy and Reliable" if the "Human Resource Officer" is reviewing the information for the "Trustworthy and Reliability Official"?
PRM-71-13 Paragraph II.B.6 and B.7 What is informed consent? What is a personal history disclosure? Page 33909	If this rule comes to fruition, will the NRC come out with a standard consent form and background questionnaire form similar to what the Department of Defense now uses?	So everyone asks the same questions and evaluates on the same basis throughout the U.S.
PRM-71-13 Paragraph B.7 What is a personal history disclosure? Page 33909 Also Paragraph 8, What are the components of a background investigation? Page 339110	The NRC Commissioners can have all the intent they want, but just how does the NRC propose one go about checking credit history of an applicant. The three credit companies are notoriously behind with the most accurate and correct information to get a precise credit history on the employee being investigated. Also, how does one handle an applicant who has just has his/her identity stolen and trying to get it back as well?	Undo extra work and costs for all involved with no security benefit to the nation, NRC, Nebraska or the Agency, and no health risk to the public.

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PRM-71-13 Paragraph II.B.9 Where does a licensee submit the fingerprint cards for processing? Page 339110	The submission of fingerprint cards to the NRC which then forwards them to the FBI for a background investigation is cumbersome, time-consuming and appears to only be done to provide an additional revenue source to the NRC. The State of Nebraska has already experienced NRC losing one set of Cards that have been sent to the NRC. If it is up to the licensee to make the T&R determination. Why not allow the Licensee to submit the fingerprint cards and request for background investigation directly to the FBI.	Less delay in obtaining information to make a T&R determination for unescorted access. Might even be less cost.
PRM-71-13 Paragraph II.B.10 What should a licensee do if an individual or entity contacted as part of a background investigation refuses to respond? Page 339110	What is the definition of a "Timely Manner" according to the NRC.	Whether a licensee is considered in violation or not.
PRM-71-13 Paragraph II.B.12 Is a licensee required to have procedures for conducting background investigations? Page 339110	As it seems that the NRC and FEMA are so fond of "written procedures", why doesn't the NRC go a head and write a generic set of procedures for the conduct of background investigations as guidance for licensees. The NRC should have these written and published prior to the rule going into affect.	May produce some standardization throughout the U.S. or at least provide the licensee some assistance in coming into compliance with the NRC rulemaking.

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PRM-71-13 Paragraph II.B.14 How frequently would a reinvestigation be required? Page 339111	The requirement for 10 year requirement for reinvestigation will cost money which obviously the NRC will not fund. It will take someone to be fully immersed in following the program closely to ensure this requirement is met, another cost. Further the requirement for credit check does nothing to ensure someone is T&R because it is so unreliable.	Unfunded mandate by a federal agency and undo extra work and costs for all involved with no security benefit to the nation, NRC, Nebraska or the Agency, and no health risk to the public.

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PRM-71-13 Paragraph II.B.21 Who would be relieved from background investigation requirements? Page 339111	This paragraph states "Under section 149.b of the AEA, the NRC may, by rule, relieve individuals from the fingerprinting, identification and criminal history records check requirements if it finds that such action is "consistent with its obligation to promote the common defense and security and to protect the health and safety of the public." The Nebraska Emergency Management Agency is tasked by the Nebraska Emergency Management Act (Reissued Revised Statutes of Nebraska Section 81-829.31; Sections 81-289-36 to 81-289-75) which states that the purpose of the Act (and the personnel who carry it out in NEMA) are to among other things reduce the vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural, technological, or manmade disasters and emergency, civil disturbances, or hostile military or paramilitary action; provide an emergency management system embodying all aspects of preparedness, response, recovery, and mitigation.	It would appear that the Nebraska Emergency Management Act and those personnel who work under it are "promoting the common defense and security and protecting the health and safety of the public." As NEMA also is responsible for all-hazard planning and exercising and participates in Nuclear Power Station exercises on an annual basis, the Agency and its personnel are demonstrating a trustworthiness and reliability toward the citizens of the State. It is the contention of the Nebraska Emergency Management Agency that it be exempt from this rulemaking except for providing physical security for it's one category 2 quantity source until such time as it can be relieved of responsibility for that source by the DOE orphan source program.

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PRM-71-13 Paragraph II.C.4 Would a license be required to have security procedures? Page 339113	Exactly what is the purpose of keeping "superseded portions" of the security procedures for five years? This is just another added burden to the licensee and does not add to the security of the source(s) for concern or protect the health and welfare of the public.	Unfunded mandate - cost of storage space; easily misplaced or lost data causing the assessment of infraction/fine against the licensee.
PRM-71-13 Paragraph II.C.5; What training would be required? Page 339113	It can be understood that training needs to be conducted with personnel who have unescorted access to source(s) of concern. The question is why once again do records need to be maintained for five years? As long as a licensee can show that it is conducting annual training or refresher training (holding records for 1 year), that should be enough. Define the term "Adequate Training". What must training entail? Local Law Enforcement Agencies (LLEA) do not have the time or the inclination to have be "told" how to do their job! The only thing an LLEA needs to know if alerted or notified of an alarm and the licensee location is that the location has radioactive materials and that the materials may be in the process of being stolen.	Once again, extra man-hours required to annually track, train, and maintain training records and the extra man-hours required to document whether or not LLEA will play nice or not, etc. etc. The space to maintain all these records for 5 years and then the man-hours and cost to shred and destroy the records. All this for one category 2 source of concern within our agency.

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<p>PRM-71-13 Paragraph II.C.6.(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)? Page 339114</p>	<p>No!</p>	<p>Unfunded mandate, more costs to the states, more man-hours without additional personnel to meet the requirement.</p>
<p>PRM-71-13 Paragraph II.C.7; What is the purpose of a security zone? Page 339114</p>	<p>Clarify! Rule discusses "Security Zone" and then goes on to talk about "Security Zones". Is there supposed to be one security zone designated, or two or more security zones designated?</p>	<p>Creates confusion when talking about a single zone and then discussing zones which means more than one.</p>
<p>PRM-71-13 Paragraph II.C.13; What coordination would be required with local law enforcement agencies? Page 339115</p>	<p>In the first part of paragraph C.13 it states "Licensees would be required to coordinate, to the extent practicable, with the LLEA to discuss LLEA response to threats to the licensee's facility." DEFINE "To the Extent Practicable." C.13 goes on to state "Coordination activities also include requesting information from the LLEA concerning the LLEA's capabilities to provide a timely armed response and to participate in drills or exercises..." LLEA's likely will not want to disclose their capabilities.</p>	<p>Speaking only for NEMA, this is an unfunded mandate; requires drills and exercise man-hours and FTEs not available, nor money for drills or exercises. Does not really contribute to the security of the source of concern, nor does it contribute to the health and safety of the public.</p>

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<p>PRM-71-13 Paragraph II.C.13; What coordination would be required with local law enforcement agencies? Page 339115 Cont'd.</p>	<p>Further, for licensee's and LLEAs to participate in drills and exercises requires funding for overtime, etc. This is another unfunded mandate! The LLEAs, at least in Lincoln, NE constantly respond to alarms, both false and real, so having to have them participate in drills and exercises should not be a requirement. C.13 states "The Licensee would be required (responder's emphasis) to enter into a written agreement with the licensee that describes the LLEA's commitments to provide response. This part says "required" not "to the extent practicable". LLEA's don't have to enter into agreements as this is already part of their responsibilities and obligations. C.13 states, "The Licensee would be required ("not to the extent practicable") to document its coordination efforts, including times, dates, and locations of meetings and a list of licensee and staff present at the meetings which requires more time and record keeping space. Licensees would be required ("not to the extent practicable") to update their security plans with the affected LLEA s every 12 months but doesn't say how long to hold on to the old security plan.</p>	<p>Requires additional man-hours to document meetings, etc. and we assume to maintain these records, BUT does not say how long records must be maintained, 5 years... 10 years...?</p> <p>Requires additional man-hours just to enter into written agreement for what is already an LLEA obligation and THEN update the agreements every 12 months whether the agreements need it or not!</p>

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<p>PRM-71-13 Paragraph II.C.13; What coordination would be required with local law enforcement agencies? Page 339115 Cont'd.</p>	<p>C.13 requests that the LLEA notify the licensee when the LLEA's capabilities become degraded which LLEAs will object to whether for a short or long term event. If the LLEA agreed that their capabilities have been weakened, exactly what does that accomplish? Nothing. Also, if an LLEAs capabilities have been degraded and assets are busy with "other" matters, the NRC needs to take into consideration that the LLEA WILL NOT have the ability to notify all the radioactive licensee's within their jurisdiction.</p>	<p>If it leaked out that LLEA had a weakened capabilities, bad people would be more interested in the more vulnerable, i.e. people and other soft targets. Licensees will not be notified of LLEAs degraded capabilities.</p>
<p>PRM-71-13 Paragraph II.C.14; What if the LLEA declines to coordinate with a licensee? Page 339115 Cont'd.</p>	<p>The paragraph states "The NRC recognizes that it cannot exercise authority over LLEAs' or any party, over which the licensee has no control and the NRC had no legal jurisdiction". Apparently the NRC does not completely recognize this fact or it would not have placed paragraph II.C.13 in the rule-making.</p>	<p>Waste of licensee time.</p>

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<p>PRM-71-13 Paragraph III, Discussion of Proposed Rule by Section; Section 37.29. Page 33922</p>	<p>This paragraph states "Relief From Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials or Other Property" It then explains "This section would provide relief from the fingerprinting and criminal history records check requirements and background investigation requirements of this subpart for the certain categories of individuals.</p>	<p>Once again, it would appear that the Nebraska Emergency Management Act and those personnel who work under it are "promoting the common defense and security and protecting the health and safety of the public." As NEMA also is responsible for all-hazard planning and exercising and participates in Nuclear Power Station exercises on an annual basis, the Agency and its personnel are demonstrating a trustworthiness and reliability toward the citizens of the State. It is the contention of the Nebraska Emergency Management Agency that it be exempt from this rulemaking except for providing physical security for it's one category 2 quantity source until such time as it can be relieved of responsibility for that source by the DOE orphan source program.</p>
<p>PRM-71-13 Paragraph III, Section 37.33: Discussion of Proposed Rule by Section; Page 33923</p>	<p>Section 37.33 "Access Authorization Program Review" This section would outline the requirements for an annual access authorization program review to confirm compliance with the requirements of subpart B of 10 CFR part 37... Section 37.41</p>	<p>Once again the State of Nebraska will not at this point in time provide NEMA with the additional FTE's and funding to develop, implement and maintain an Access Authorization Program.</p>

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PRM-71-13 Paragraph III, Section 37.41: Discussion of Proposed Rule by Section; Page 33923	Section 37.41 "Security Program" This would require the establishment of a security program for quantities of concern; would establish general performance objectives of the security program; would establish program features that must be addressed in the security program; would require the licensees to that possess quantities of concern to submit information concerning the licensee's compliance with the security program requirements within 30 days of the rule's effective date.	Once again the State of Nebraska will not at this point in time provide NEMA with the additional FTE's and funding to develop, implement and maintain an Access Authorization Program.
PRM-71-13 Paragraph III, Section 37.43, Discussion of Proposed Rule by Section; Page 33923	Section 37.43 "General Security Program Requirements" This would require the development and writing of a security plan; require storage of revisions to the plan for five years and storage of the active plan for five years after the termination of the license and develop and maintain written procedures for implementation of the security plan.	Once again the State of Nebraska will not at this point in time provide NEMA with the additional FTE's and funding to develop, implement and maintain a Security Plan and SOP, nor the funding to provide the storage of revisions to the plan. Retaining changes to the security plan and SOPs does not in any way add to the protection of the health and welfare of the general public.
PRM-71-13 Paragraph III, Section 37.45, Discussion of Proposed Rule by Section; Page 33923	Section 37.45 "LLEA Coordination and Notification" This would require that the licensee attempt to coordinate with an LLE and would specify the types of information shared with the LLEA and require the licensee maintain records of its coordination activities with any LLEA.	Once again the State of Nebraska will not at this point in time provide NEMA with the additional FTE's to implement this NRC requirement.
PRM-71-13 Paragraph III, Section 37.47, Discussion of Proposed Rule by Section; Page 33923	Section 37.47 "Security Zones" This would require that the licensee establish security zones for quantities of concern material but does not delineate how many zones are required.	Rule is unclear for those licensees within fixed facilities.

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PRM-71-13 Paragraph III, Section 37.49, Discussion of Proposed Rule by Section; Page 33923	Section 37.49 "Monitoring, Detection, and Assessment". This would require that the licensee establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into the security zones; would require the licensee to maintain continuous capability for personnel communications and electronic data transmission and processing among site security systems; would require the licensee response without delay to any actual or attempted unauthorized access to the security zone.	Rule is unclear in that it discusses "zones" and "zone"... how many security zones are required, one, two, three? How much time is allowed for response? What does without delay mean?
PRM-71-13 Paragraph III, Section 37.55, Discussion of Proposed Rule by Section; Page 33923	Section 37.55 "Security Program Review". This would require that the licensee conduct a review of the security program every 12 months and document the results of the review and any findings and keep the records for five years.	Once again the State of Nebraska will not at this point in time provide NEMA with the additional FTE's to implement this NRC requirement.

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