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General Comment

Comments on Docket ID NRC-2008-0120
Specific to part 10CFR37

See attached file(s)

Attachments

NRC-2008-0120-DRAFT-0095.1: Comment on FR Doc # 2010-25397

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12/28/2010

**Bruce Busby, CHP
1100 Fairview Ave N
Seattle, WA 98109**

Subject: Comments on Docket ID NRC-2008-0120

To Whom It May Concern:

Thank you for the opportunity to provide comments on the proposed revision to the 10CFR 37.

While I do support safe use of radioactive materials, I do not feel in the case of self shielded irradiators, (such as JL Shepherd Mark 30 and GammaCell 1000), that there is really significant risk of malicious use or theft to warrant the incredible amount of requirements being proposed in the 10CFR 37 revision. The present precautions are more than adequate. I actually feel the proposed requirements produce an unacceptable risk to public health by waste of funds on needless additional security, which could be used for researching disease and providing actual benefit.

General Comments:

Using a blanket regulation, for such diverse sources is not appropriate. There is a huge difference in risk between a mobile source as used in industrial radiography or well logging, than a installed self-shielded irradiator. And using the same controls of medical uses like gamma knives or brachy therapy devices is nearly absurd, with patients having 'access' to the materials of concern. This regulation revision is a poor excuse for actual accountability and control, and should be scraped, and revisited with a broader view of what is the actual risk, and what actions are commensurate with that risk, to protect the materials. Prudent security measures commensurate with the risk.

There is some confusion in proposed text with the phrase 'Background Check' though out Part 37. It seems to mean different things, used in different context.

Background: local criminal history records checks
37.23 criminal history records check. the background investigation
37.35 (7) Criminal history review. (only local review)
37.27 (a)(2) ... criminal history record now is the fingerprint record
37.23 9g)(2) ...FBI criminal history records check

I suggest reviewing the whole of the proposed changes, to make sure of consistent use of all terminology, not just "Background Check".

Specific Comments:

Item 37.5 Definitions

“*Trustworthiness and reliability*” definition is vague and subjective. Using subjective terms in the definition such as “dependable” and “unreasonable” makes it impossible to apply.

“*Background investigation*” means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

Response: does this mean the FBI finger prints, which is not conducted by the licensee?

Item 37.11 Specific Exemptions.

Add (c) Any licensees who possess category 1 or 2 sources used exclusively for medical or research use will be exempt from this subpart with the exception of section 37.43 (a).

Discussion: The public benefits directly from medical and research use of these sources, and as such, should have a higher acceptable risk. This is the basic premise behind the Patient Release Criteria (10CFR35.75) and exemptions found in 10CFR30.

Item 37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.

(a)(3) By (30 days after the final rule is published in the Federal Register), each licensee that is authorized to possess a category 1 or category 2 quantity of radioactive material on (effective date of this rule) shall submit information concerning the licensee’s compliance with the requirements of this subpart to the appropriate NRC regional office specified in § 30.6.

Response: 30 days is not long enough. Also, this is vague, does not require the licensee to be in compliance, just submit information about the compliance. As such, there is no actual date the licensee has to be in compliance.

Recommendation: Change 30 days to 180 days. Clarify if licensees must be in compliance at the end of this period and what if they are not?

(b) General performance objective.

The licensee’s access authorization program must ensure that the individuals specified in paragraph (c)(1) of this section are trustworthy and reliable such that they do not

constitute an unreasonable risk to public health and safety or the common defense and security.

Response: Programs or licensees cannot ensure people are “trustworthy and reliable”. Either they are or they are not, but nothing the licensee or program can do can change that.

Recommendation: Provide concrete and non-subjective criteria for what is “trustworthy and reliable”.

Item 37.23 Access Authorization Program Requirements

(a)(2) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by § 37.43(c) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

Response: It is not necessary that users be trained on the security plan. There is no reason, they are just using the device. Less people who know the security plan, the better in my mind.

Recommendation: Delete this requirement.

(b)(1) ... The nominated individuals shall undergo the background investigation aspects that are required by § 37.25(a)(2) through (a)(9) before their names and fingerprints are submitted to the NRC.

Response: It is unclear why the prints must be submitted following the background investigation. Is that because the NRC will be appointing the reviewing official based solely on the fingerprint results? If so, there is no requirement that the licensee submit to the NRC the results of the background investigation, so really there is no reason why the fingerprints need to be submitted after the background investigation is completed. The fingerprint process can be protracted and it would be more timely if the fingerprints and the background investigation could be done at the same time.

Recommendation: Delete the above sentence from (b)(1)

(b) (2) Reviewing officials must be required to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information, if the licensee possesses safeguards information, as part of their job duties.

Response: Why? This is contrary to limiting access to the units. If they do not have any reason to have access, why would you give them access????

Recommendation: Delete (b) (2)

(b)(4) Reviewing officials nominated by the licensee and approved by the NRC are the only individuals who may make trustworthiness and reliability determinations and permit unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

Response: It's confusing how the State will interface with this requirement. Fingerprints are sent to the NRC and not the States. This begs the question, how are the States going to approve reviewing officials?

Recommendation: NRC and the agreement states have to decide how the reviewing officials will be vetted for agreement state licensees.

(e)(1) and e(2) ... evaluation of all the information required... and ... evaluated all of the information required...

Response: There is several of the required items could be impossible to obtain. So, if required to review all of the required information means it will be impossible to allow unescorted access to some personnel.

Recommendation: Change "all the information required" to "collected background investigation information"

(e)(3) "...no longer requires unescorted access, the licensee shall immediately remove the person..."

Response: Requiring immediate response to a non-emergency is not warranted. This could simply be done in a timely manner, with less onus on the licensee and without any reduction in security.

Recommendation: Substitute the words "as so as practical" for "immediately".

37.25 Background investigations.

(a) ... must encompass at least the 10 years preceding the date of the background investigation or since the individual's eighteenth birthday...

Response: 10 years is an arbitrary time frame. It is too long to be an effective measure of the persons current state of "reliability" and provides no better information than 3 years.

It will be more expensive to go back further, without any benefit. It is more important what has happened in the last few years of the person's life, not distant history.

Recommendation: Change '10 years' to "3 years"

(a)(2) ... licensee...

Response: does this mean anyone or do you mean the licensee's reviewing official?

Recommendation: change licensee to reviewing official.

(a) (2) ...Licensee shall verify the true identity.... to ensure that the applicant is who he or she claims to be.

Response: Making it the licensee's responsibility to establish anyone's 'true identity' is not always possible. ID's can be forged, and very few licensees are experts at identifying forged documents. The terms 'true identity' and 'ensure' are too strong and can not be guaranteed.

Recommendation: This section needs to be re-written to just state the licensee is responsible to review the identification documents. This is just part of the identification process, and should not be written as such that it requires the impossible.

(a) (2) ... compare to personal information data to identify any discrepancy in the information....

Response: This is vague, what personal information does this concern and what should the licensee do with discrepancies? For instance, name, birthday, address... what if the name is different because of marriage, or addresses do not match due to moving or... Lets face it, what is the chance that someone will provide different information to the licensee than is on their ID???

Recommendation: This should be written such that the licensee should review available information from ID and that provided to the Licensee by the applicant, and resolve any discrepancies.

(a)(3) Employment history evaluation.

Licensees shall complete an employment history evaluation. Licensees shall verify the individual's employment with each previous employer for the most recent 10 years before the date of application

Response: It's very possible the employee has not worked before, so there will be no way to verify that. The fact that the employee could be a foreigner, the employment history evaluation could be very expensive. 10 years is way too long, and there is no stopping point in this section to the 18th birthday.

Recommendation: Change (a)(3) to

Licensees can use **one** of the following:

- (i) Employment History evaluation
- (ii) Verification of Employment
- (ii) Military history evaluation

Also, change "10 years" to "3 years" or until the persons 18th birthday, which ever is shorter.

(a)(6) Credit History evaluation

Response: In dealing with terrorist, I do not accept that someone will 'sell out' just because they are in debt or have bad credit. If terrorist are going to influence someone with a million dollars, the credit history is not applicable.

Many countries do not have a combined credit history reporting agency. At our facility, we have personnel from 56 different countries. To even attempt to garner credit histories will be expensive and for some, impossible. I do not believe any regulation should be adopted that is impossible. It weakens the logic behind requiring this, when it will be not possible to accomplish for a good percentage of our workers. Documenting attempts to get the information does not have the same weight as getting the information, so either this requirement is useful or it's just a waste of time and money.

Without any guidance to what is the trigger where someone would be considered not trustworthy or reliable, this regulation is meaningless and subjective.

Recommendation: delete this section and all references to credit history checks in the regulation

(a)(7) Criminal History Review

Response: This is the local criminal history check. Again, we have workers from 56 countries, many of whom will have been in the area only a short while, making this requirement also useless or biased toward locals. As mentioned, 10 years is too long.

This does not specify which 'local criminal justice resource' should be used. Is that city, country, or state police? What is 'local'? Local to the licensee, or local to the person? What if the person lives in another State than the licensee? Just seems short sighted.

If someone has a serious infraction, it should be caught on the FBI fingerprint check.

Recommendation: Delete this section

(a)(8) Character and reputation

"... has been and continues to be trustworthy and reliable."

Response: the term "trustworthy and reliable" has a definition in 37.1 and this section requires the references to be knowledgeable to that definition. Very few references can assert to the present status of an individual, as required by the words above "continues to be".

Recommendation: Remove the terms "trustworthy and reliable" from this section. Remove the connotation that the reference can attest to the present state of the individual in question.

(a)(9) Obtain independent information....

Response: This is impossible or cost prohibitive in many cases. As so, if it can not be done in some cases, then it biases the check and should not be required at all.

Recommendation: Delete (a)(9)

(a)(10)(ii) Obtain a confirmation of employment, educational enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

Response: it is unclear how a licensee shall accomplish this. If its not possible to get the information, its not possible...

Recommendation: delete (a)(10)(ii)

(c) Reinvestigation

Licensees shall conduct a criminal history update and credit history reevaluation every 10 years for any individual with unescorted access to category 1 or category 2 quantities

of radioactive material. The reinvestigations must be completed within 10 years of the date on which these elements were last completed and must address the 10 years following the previous investigation.

Response: 10 years is arbitrary time frame. To do a complete check again, makes no real sense, if the person has been employed with you for that long.

Recommendation: Delete (c) or make this a simpler evaluation of the person, such as a local criminal history check and supervisor evaluation.

37.27 Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

Response: some of this section duplicates sections in 37.25

Recommendation: The NRC should review section 37.25 and 37.

(a)(6) ... shall use the information obtained as part of a criminal history record check solely for the purpose of determining individual's suitability for unescorted access....

Response: Why? For instance, if the background check indicates the employee lied on an employment application, what could that information not be used to fire the employee?

Recommendation: Delete (a)(6)

(b)(2) Licensees may not...

Response: this requires an in depth knowledge of constitutional law, which many licensees will not have.

Recommendation: Delete (b)(2). The NRC should not be proposing any regulation that will be unconstitutional or be apt to be used to infringe on the rights of workers. The onus shall be on the regulatory agency, not the licensee.

(c) (2) Fees for fingerprint processing...

Response: Fees should be listed in regulation, and should have public comment period. I do not know of any other fee handled as 'see the website'

Recommendation: Put the fee cost in the regulation or make it free

(c)(3) The Commission...

Response: No where in the regulation does it specific what the NRC will do with the fingerprints once they have been submitted to the FBI or how long they will retain the personal information and the data received back from the FBI.

Recommendation: Specify exactly how long the NRC and the FBI will retain the fingerprints and personal information submitted and who they can or will share that information with.

37.29 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.

(b) A Member of Congress;

...

(d) The Governor of a State or his or her designated State employee representative;

(e) Federal, State, or local law enforcement personnel;

(f) State Radiation Control Program Directors and State Homeland Security Advisors or their designated State employee representatives;

(g) Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

Response: these persons would be escorted and so by adding them to this list confuses and complicates an already complicated process. There is no more guarantee that these persons are more reliable than other workers, so why proceed with exemptions that weaken the regulation.

Recommendation: Remove all of these 'exempt' persons

37.31 Protection of information.

(e) The licensee shall retain all fingerprint and criminal history records...

Response: it is unclear if the licensee is being asked to retain the fingerprints, or just the records returned from the FBI.

Recommendation: please remove the words "...fingerprint and ..."

37.43 General security program requirements.

(c) Training.

(2) In determining those individuals ...

Response: I agree with this section, but this conflicts with the **37.23 Access Authorization Program Requirements (a)(2)** that requires users to be trained in all aspects of the security plan.

Recommendation: if you remove the requirement in **37.23** for users to be trained, then there will not be a conflict.

(3) Refresher

Response: I disagree that annual refresher training is required. There is no reason why annual refresher training would be beneficial. This creates another level of bureaucracy where licensees will have to track each employee training date and ensure they are 'refreshed' at 12 months.

Recommendation: state that periodicity for refresher training is based on licensee's expectations and assessments for a need for refresher training.

(d) Protection of information.

(5) The licensee shall document the..... the licensee shall immediately remove the person...

Response: Being this is informational in nature and you will not be able to have the person 'forget' they were trained on the plan, I see no need for 'Immediate' removal. This word creates an attitude that there is some rush to remove the person from the list of people who have access to the plan. There is no good reason to immediately remove the person.

Recommendation: remove the word "immediately" and as "as soon as practical".

(6) When not in use, the licensee shall store their security plan and implementing procedures in a manner to prevent removal.

Response: this is exceedingly vague, "in a manner to prevent removal."

Recommendation: What if we say "secure the plan to prevent unauthorized access"

(8) Licensees that possess safeguards information or safeguards information modified handling....

Response: "Safeguards information" nor "safeguards information modified handling" are not defined in this regulation.

Recommendation: define them

37.45 LLEA coordination and notification.

(a) LLEA coordination.

(1) A licensee subject to ...

Response: In general, the information mentioned in this section that is to be provided to the LLEA would reduce the security of the facility if the LLEA does not protect the information. Being the NRC has no jurisdictions over most of the LLEA in the country, this seems to be in poor judgment. I am guessing that most LLEA could receive a FOIA request and release the information.

Recommendation: re-evaluate what exactly has to be provided to the LLEA, such that their release of that information would not cause a breach in security.

(5) The licensee shall notify the appropriate NRC regional office listed in § 30.6(a)(2) of this chapter within three business days after the licensee becomes aware of any applicable state or local agency requirement that an initial response to an emergency involving radioactive materials must be provided by other than armed LLEA personnel.

Response: How would a licensee know this? LLEA is not going to tell every licensee in their area this type of information. So, this is really a nonsense require.

Recommendation: Delete it

(b) LLEA notification for temporary job sites.

Response: I find this whole section to be undoable, business considerations do not know when a job will come up at 3 days notice always and finding out WHO the LLEA in some areas will be restrictive.

Recommendation: delete the whole section (b)

37.47 Security zones

(c) Security zones must...

(1) Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers..

Response: It is not clear what exactly constitutes a physical barrier.

Recommendation: Define or provide guidance as to what constitutes a physical barrier.

37.49 Monitoring, detection, and assessment.

(a) Monitoring and detection.

(3) A licensee subject to this subpart shall also have a means to detect unauthorized removal of the radioactive material from the security zone.

Response: This requirement is unnecessary, with the controls in place. This will be a huge burden on licensees to establish. Also, the requirement does not even way that the alarm has to be to be monitored or by whom?

Recommendation: delete section (a)(3)

(b) Assessment. Licensees shall immediately assess each actual or attempted unauthorized entry...

Response: It's an unreal expectation that licensees can assess an attempted unauthorized entry. This increases the surveillance burden on licensees to monitor not just access but attempted access. So, incase someone walking by tries to open the door by access, this requirement requires licensees to be able to detect that and assess. There is no increase in security gained by that requirement.

Recommendation: delete the words "...or attempted..."

(d) Response. Licensees shall immediately respond to any actual or attempted unauthorized access

Response: It's an unreal expectation that licensees can assess an attempted unauthorized entry. This increases the surveillance burden on licensees to monitor not just access but attempted access. So, incase someone walking by tries to open the door by access, this requirement requires licensees to be able to detect that and assess. There is no increase in security gained by that requirement.

Recommendation: delete the words "...or attempted..."

37.51 Maintenance, testing, and calibration.

(a) Each licensee subject to this subpart shall implement a maintenance, testing, and calibration program to ensure that intrusion alarms, associated communication systems, and other physical components of tested for operability and performance at intervals not to exceed 3 months.

Response: This is an extremely vague requirement, to what standard are things to be tested and calibrated and to what performance standard? 3 months is arbitrary time frame, with no basis.

Recommendation: Provide standards for testing and calibration. Annual testing would be more consistent with other requirements.

37.55 Security program review

(a) Each licensee shall be responsible ... The review must include the radioactive material security program..

Response: Does this mean the security of all radioactive materials or just those in Cat 1 and Cat 2 as applicable to part 37?

Recommendation: Reword this statement to clarify what the review is supposed to be about.

37.57 Reporting of events.

(b) The licensee shall notify the LLEA upon discovery of any suspicious activity...

Response: I have a feeling this is subjective as to exactly what 'suspicious activity' is, and most licensees are not going to be able to apply this to actual situations.

Recommendation: Delete (b)

Thank you for your consideration

Bruce Busby

Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, January 04, 2011 8:43 AM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Physical Protection of Byproduct Material
Attachments: NRC-2008-0120-DRAFT-0095.pdf

Van,

Attached for docketing is a comment from Bruce Busby on the above noted proposed rule (3150-AI12) that I received via the regulations.gov website on 12/28/10.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Tue, 4 Jan 2011 08:43:13 -0500
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Tue, 4 Jan 2011 08:42:54 -0500
Subject: Comment on Proposed Rule - Physical Protection of Byproduct Material
Thread-Topic: Comment on Proposed Rule - Physical Protection of Byproduct
Material
Thread-Index: AcusFUmt/iSt17zmRMizFmc+swQLvw==
Message-ID:
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Accept-Language: en-US
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X-MS-TNEF-Correlator:
<6F9E3C9DCAB9E448AAA49B8772A448C55EE2C8D3D5@HQCLSTR01.nrc.gov>
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