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USNRC

January 12, 2011 (11:25 am)

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64

January 5, 2011

Ms. Merri Horn  
Office of Federal and State Materials and Environmental Management Programs  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Ms. Horn:

SUBJECT: Comments on Proposed Rule on Physical Protection of Byproduct  
Material

Lovelace Respiratory Research Institute (LRRI) has accepted the invitation to submit written comments related to the proposed rules affecting 10 CFR Parts 30, 32, 33, 34, 35, 36, 37, 39, 51, 71 and 73. Please find our input below.

In general, LRRI supports the NRC effort to replace the orders with the proposed rules. It is hoped the issuance of the new rules will be accompanied by guidance documents to assist in the implementation by licensees.

§ 30.32

The wording implies the application must include an affirmation the proposed security program meets the requirements in part 37. Rather the application should include a proposal as to how the requirements will be satisfied and be subject to evaluation for sufficiency. Suggest the paragraph be reworded.

- (1) An application for a specific license to use, store, or transport category 1 or category 2 quantities of radioactive material must include information outlining the applicant's security program designed to satisfy the requirements in part 37 of this chapter.

§ 37.21

First mention is made of the time frame (30 days after the final rule is published) by which an NRC licensee would be required to implement the proposed requirements.

Discussion states that Agreement States have 3 years to promulgate the rules. As there are differences between the existing Orders and the proposed rules, this time difference may cause problems with licensees holding both NRC and Agreement State licenses. Agreement States will be required to promulgate rules at least as stringent as those put forth by the NRC. With that knowledge, provisions need be made so licensees that who modify their programs to comply with the NRC requirements are not cited as non-compliant with the Agreement State license.

§ 37.23 (b) (1)

The current Orders do not require the submittal of fingerprints to the NRC for the Trustworthy and Reliable (T&R) Officer or, in the terminology of the proposed rules, the reviewing official. We would have no objection to mandating the reviewing official be fingerprinted as it makes sense that such a criminal records check is one part of determining the trustworthiness and reliability of the reviewing official. Previously allowed were exemptions based on submittal to other governmental programs, such as those to access Select Agents or government clearances. These programs allow for our personnel to be trained to take the fingerprints. Without this allowance, one would assume the individuals nominated as reviewing officials will require an additional set of fingerprints. This will add additional costs to the licensee and essentially duplicate effort. Based on two reviewing officials, submittal to the NRC will increase costs by about \$200, which includes the \$26 fee to submit to the NRC, labor to travel to an authorized agency and fees to have the authorized agency take finger prints. If it is decided Agreement States will also be required to conduct a review of the nominated individual's criminal history, our costs will double.

§ 37.23 (b) (2)

The current Orders do not require the T&R Officer to have unescorted access as fingerprints are not required. This section as proposed would require the reviewing official to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information. It would seem the goal is to minimize the number of individuals with unescorted access to such materials and this requirement is contrary to that goal. Under the circumstances as outlined, it would seem premature to require fingerprinting of the reviewing official until the statutory changes to the Atomic Energy Act can be made.

§ 37.23 (b) (5)

The proposed requirement states the reviewing official may not make any trustworthiness and reliability determinations or permit unescorted access until they have been approved by the NRC. Questions then remain as to length of time required by the NRC to approve/deny the initial application of the reviewing official and the programmatic impact during the transition period.

§ 37.25 (a) (6)

The proposed rules require an evaluation of the full credit history of the individual requesting unescorted access. Additional guidance by the NRC as to what constitutes an evaluation and what should result in denial of a favorable trustworthy and reliable decision is necessary, especially given that the three national credit agencies all report on different items and use different algorithms in determining credit worthiness.

The proposed rule requires attempts be made to ascertain the individual's credit history and financial responsibility if the person is a foreign national or individual who has resided outside the United States. Again guidance is required by the NRC as to what would be considered the relevant entity for the country, how should the information obtained be characterized when compared to information readily available in the United States, and what time frame is appropriate for a response. Such credit checks are outrageously expensive and would cost our program approximately \$1000 per individual affected.

§ 37.25 (a) (7)

This paragraph requires a criminal history review as part of the background check. One would assume that this is part of § 37.25 (a) (1) – the FBI identification and criminal history records check. If the licensee is required to approach each jurisdiction in which a person may have resided in the previous 10 years, substantial time and cost will be involved.

Thank you for the opportunity to comment. If you need additional clarification regarding the remarks made, please contact either myself at (505) 348-9578 or via email at [emarshall@lrri.org](mailto:emarshall@lrri.org) or Ms. Amber Escovedo, Security Manager and T&R Official, at (505) 348-9474 or via email at [aescovedo@lrri.org](mailto:aescovedo@lrri.org).

Sincerely,



Elaine Marshall  
Radiation Safety Officer

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