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OFFICE OF THE EXECUTIVE VICE PRESIDENT—
CHIEF FINANCIAL OFFICER

DOCKETED
USNRC

OFFICE OF THE PRESIDENT
1111 Franklin Street, 10th Floor
Oakland, California 94607-5200

OFFICE OF RISK SERVICES

January 12, 2011 (4:45 pm)

January 11, 2011

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

RE: Proposed Part 37(RIN 3150-AI12, NRC-2008-0120)

To Whom It May Concern,

The University of California Radiation Safety Officers Workgroup (the Workgroup) would like to offer comments in response the Proposed Part 37(RIN 3150-AI12, NRC-2008-0120). With regard to the proposed rule overall, there does not appear to be any justification for revising the current requirements, other than to codify them. There is no discussion regarding the inadequacy or insufficiency of the current requirements; therefore, the rule should simply codify the existing controls without revision.

Section II.B.5: regarding whether the reviewing official should be fingerprinted as part of the trustworthiness and reliability determination.

In our opinion, the real issue is whether or not the reviewing official must have access to safeguards information (SGI) or unescorted access to Category 2 sources (and above). It is stated in the proposed rule docket that the Commission does not currently have the authority to require reviewing officials to be fingerprinted if the reviewing official does not require access to SGI or unescorted access to Category 2 sources (and above). It appears that the Commission intends to close a gap, created by Congress, by requiring that the reviewing official have such access. This undermines the credibility of the regulatory framework, and may actually negatively impact security by requiring that (in many circumstances) the person best suited for the job of reviewing official be bypassed in favor of another less qualified person.

In many large institutions, such as the University of California system, the reviewing official is in the Human Resources Department, and has no need whatsoever for access to SGI or to the Category 2 sources (and above). These persons routinely make decisions related to applicants' trustworthiness and reliability, not just relative to radioactive sources, but to controlled substances, to the patient populations at the University of California medical centers, and to other sensitive or vulnerable populations, equipment and information.

The alternative (albeit not one that should be seriously considered) to replacing the reviewing official is to manufacture a reason for the reviewing official to have the access required by the proposed rule. This is anathema to both the integrity of the regulatory framework and to safety.

The proposed rule docket does not discuss any circumstances that motivated the decision to identify a means to have the reviewing officials fingerprinted; i.e., there is no discussion of the current controls having been found inadequate

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or insufficient. While the Workgroup does not believe it is necessary for the reviewing official to be fingerprinted, if the Commission intends to pursue this, it should be through a grant of authority from Congress, and not by imposing contrived requirements upon the reviewing official.

Section II.B.8: regarding the elements of the background investigation.

The proposed rule docket does not provide justification for adding to the elements of the existing background checks. The new rule should simply codify the existing controls. The requirements to review an applicant's 1) credit history covering the most recent seven years, and 2) local criminal history including all residences in the past ten years are too prescriptive, and not necessary to evaluate a person's trustworthiness and reliability. Although many institutions routinely perform a credit history review and local criminal history review prior to employment, these elements should be reviewed at the discretion of the employer, rather than required. In particular, since there are no criteria for rejecting an applicant based on any of the elements of the background investigation, adding more elements to the review really does little or nothing to improve security. The licensee has full discretion to allow unescorted access to Category 2 sources (and above) irrespective of any particular finding in the background investigation; therefore, the elements of the background investigation should be left to the employer. The current requirements in this regard are adequate and not too onerous. They should not be revised.

Section II.C.6: regarding the protection of information.

Many implementing procedures are necessary that will not include specific security measures designed to protect the sources. These procedures and forms, like how to apply for unescorted access, how to add people to Radiation Use Authorizations involving irradiators, or procedures on record destruction, among others, do not require the protection enumerated in the proposed section 37.43.

Comments on Specific Proposed Rules.

10 CFR 37.23 (e) (3) states in part: "The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual granted unescorted access to category 1 or category 2 quantities of radioactive material is trustworthy and reliable. "Reasonable assurance" is not defined in 10 CFR 37.5.

10 CFR 37.23 (e) (3) states in part: "When a licensee determines that a person no longer requires unescorted access, the licensee shall immediately remove the person from the approved list..." "Immediately" is not realistic for routine terminations such as student graduations, deaths, and terminations not based on a change in a person's Trustworthy and Reliable (T&R) status. The only justification for "immediate termination" would be for demonstrated untrustworthiness or unreliability that would result in withdrawal of the person's T&R status. We suggest the rule read, "the licensee shall remove the person from the approved list in a timely manner, and no greater than 30 days after the determination is made."

10 CFR 37.23 (f) (3) requires "procedures to ensure that persons who have been denied unescorted access authorization are not allowed access..." Typically, a person granted unescorted access is then provided keys or codes to the source. A person not found trustworthy and reliable will not be provided a key or codes to sources. In the case of a person who had access, and for whatever reason is now denied access, there should be written procedures covering how future access is prevented (changing codes, returning keys, changing badge color, or other like procedures).

10 CFR Part 37.25 (a) (3) states: "Licensees shall verify the individuals' employment history for the most recent 10 years before the date of application." Given the lifespan of many employers, this language is too rigid. Consider, "The licensee shall attempt to verify the individuals' employment history for the most recent 10 years before the date of application; unsuccessful attempts must be documented and considered by the reviewing official in making the unescorted access determination." This approach would allow verbatim compliance and recognizes that business fail and overseas employers may be impossible to contact.

10 CFR 37.25 (a) (6) Use of the terms "full credit history" and "must document all attempts to obtain information regarding the individual's credit history and financial responsibility" are too broad and inconsistent with the actual risk of Category 2 sources. A more realistic approach might be to only require the licensee to request a credit history report and to provide the reviewing official the report for consideration or a statement that a report was requested, but none was provided for Category 2 source access. It should be up to the reviewing official to decide if they have enough information to grant unescorted access to a Category 2 source without extraordinary investigative effort and documentation.

10 CFR 37.25 (a) (7) use of the terms "shall obtain from local criminal justice resources the criminal history records" and "must cover all residences of record for the 10-year period" are onerous and not possible for many foreign students and researchers. Some provision must allow less than absolute compliance with these conditions.

10 CFR 37.33 use of: "shall evaluate all program performance objectives and requirements and shall ensure that its entire access program is reviewed at a frequency not to exceed 12 months" is onerous and unnecessary. Consider use of a sentence similar that found in 10 CFR 20.1101(c) "The licensee shall periodically (at least annually) review the security associated with the radiation protection program."

Section IX regarding the information collection requirements.

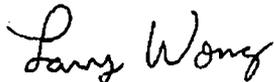
The potential impact of the information collections contained in this proposed rule is great, specifically in regards to the time and expense required to update the security plan, procedures, conduct additional background checks and training. We estimate the cost to implement the proposed changes would be about \$30,000/institution. The cost to maintain the plan would be about \$20,000/year at each institution. Reinvestigation every 10 years, including the repeat of the credit checks and criminal history check will add additional costs likely between \$10, 000-\$20,000 depending on the number of users that need to be re-checked. These are significant expenses for state funded entities such as the University of California campuses.

In conclusion, we strongly urge that these proposed regulations simply codify the controls that are already in place through orders, unless there is a significant change in the threat environment that could be significantly mitigated by revisions to the current controls.

If you have any questions regarding this information, please call Linda Kroger at (916) 734-7325.

Thank you very much for your assistance.

Sincerely,



Larry Wong
EH&S Program Manager
Office of Environment, Health, and Safety
University of California Office of the President

cc: UCRSO File

Rulemaking Comments

From: Linda Kroger [lakroger@ucdavis.edu]
Sent: Wednesday, January 12, 2011 4:30 PM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0120
Attachments: UC RSO Workgroup Response Letter NRC 2008-0120.pdf

Attached is our response to
Docket ID
NRC-2008-0120.

Thank you.

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To: Rulemaking.Comments@nrc.gov

From: Linda Kroger <lakroger@ucdavis.edu>

Subject: Docket ID NRC-2008-0120

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