

**Rulemaking Comments**

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**From:** Welling, Mike (VDH) [Mike.Welling@vdh.virginia.gov]  
**Sent:** Tuesday, January 18, 2011 3:44 PM  
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USNRC

January 18, 2011 (4:30 pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

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Attached are Virginia's comments to the Part 37 proposed rule.

<<1-11 Part 37 comments.docx>>

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Template = SECY-067

**VIRGINIA RADIOACTIVE MATERIALS PROGRAM**  
**COMMENTS ON NRC'S PROPOSED PART 37**

Dear Sir or Maam:

We would like to thank you for the opportunity to comment on NRC's proposed Part 37. The Virginia Radioactive Materials Program (VRMP) would like to submit the following comments for your review.

1. The VRMP agrees that security of Category 1 and 2 sources are an important process to protecting the United States from improper use of this material. The VRMP also agrees that regulations are the correct method for implementing this security measure instead of orders as it allows for input from the affected licensees and the public. By using regulations it also shows the American population steps that are being taken to ensure their security.
2. For 37.21(a)(3) VRMP feels that 30 days may not be enough time for licensees to respond. We recommend that the date be changed to 60 days after the final rule is published.
3. For 37.21(a)(4) VRMP feels that new licensees must have the physical portion of Part 37 prior to a license being issued. The physical protection is part of a pre-licensing visit requirement for new licensees and licensing agencies should ensure implementation of the proper physical security protection before issuing a license.
4. For 37.23(b) VRMP disagrees with requirement #2 where the reviewing official must be required to have unescorted access. The decision on whom to name as the reviewing official resides with the licensee, licensing agencies should not dictate whom should have unescorted access to the radioactive material. VRMP recommends that this be removed from the proposed regulations.
5. For 37.23(b)(4) VRMP disagrees with the requirement that the licensing agency approve the reviewing official. The security protection system is the responsibility of the licensee and thus all decisions should rest with them. The licensing agency's responsibility is to ensure the licensee follows the regulations, we should not be dictating personnel choices or practices to the licensee. VRMP recommends that this statement be removed from this section.

6. VRMP recommends that section 37.23(b)(5) and (6) be removed from the proposed regulation as we do not agree with the licensing agency approving the reviewing official.
7. For 37.25(a)(6) VRMP disagrees with adding a credit history evaluation as part of the background investigation. VRMP feels this will not add relevance to the background investigation and potentially impedes personal rights. According to the Fair Credit Reporting Act, employers must receive written authorization from the individual to view a report and then must give the worker a copy along with a written description of the person's rights before taking any adverse action based on what is in the document. According to an article in the Washington Post written by Michelle Singletary, Eighteen states and the District of Columbia are considering legislation to restrict the use of credit history reports in hiring.
8. For 37.25(a)(7) VRMP does not agree with the requirement of obtaining a criminal history review from local criminal justice resources. Some licensees reside in rural locations with limited access to local resources and due to the current economic environment some local resources have limited capabilities in responding to such requests. VRMP recommends that this section be removed from the proposed regulations.
9. For 37.27(c) VRMP recommends removing "and credit history" from this section.
10. For section 37.45(a)(1) VRMP does not agree with placing a burden on the licensee in regards to Local Law Enforcement Agency (LLEA) ability to respond and their willingness to participate with the licensee. This burden should fall under either the Federal Bureau of Investigation (FBI) or Homeland Security (DHS). VRMP recommends removing parts (iv), (vii), (viii) and (ix) from this section.
11. For section 37.45(b) VRMP does not agree with the addition of LLEA notification for temporary job sites. In order to store material at temporary jobsites the licensees must obtain permission from the licensing agency which would include physical security measures being utilized. For licensees like radiographers who use Category 1 or 2 sources at temporary jobsites more than 7 days, storage is normally kept in the darkroom on their truck which meets the physical security measures of the regulations. Also some licensees only work at the temporary jobsite and then return the sources to their place of storage. Notifying LLEA of these jobs will not increase the security any greater than the individual protection provided. This section would not add any protective measures to securing these sources from malevolent use, it would only add more work to the licensees and licensing agencies due to need for training of LLEAs in sometimes rural areas. VRMP recommends this entire section be removed from the proposed regulation.

12. For section 37.47 VRMP recommends this be removed from the proposed regulation as it only creates confusion in the program. Security zones will not add any benefit that the physical security measures do not already present.
13. For section 37.51 VRMP recommends that the testing frequency be amended to monthly instead of every 3 months.
14. For section 37.75 VRMP recommends including the Agreement State Program to the list of notifications. The Agreement State Programs are not always listed as the Governor's designee or included in the states notification list.
15. For section 37.77 VRMP recommends including the Agreement State Program to the list of notifications. The Agreement State Programs are not always listed as the Governor's designee or included in the states notification list.

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