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STATE OF WASHINGTON
DEPARTMENT OF HEALTH

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DOCKETED
USNRC

January 13, 2011

January 14, 2011 (4:00 pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Reference: Rulemaking RIN 3150-AI12, Docket ID NRC-2008-0120, FSME-10-048

We have several comments that fall into three key areas where we believe NRC's proposed rule misses the mark:

1. Transport of sources:
 - Failure to require Global Positioning System (GPS) or equivalent tracking for category 2 sources.
 - Failure to require carrier drivers to have trustworthiness and reliability.
2. Reviewing Officials:
 - Should be approved by a single agency – NRC.
 - Should not be required to have unescorted access.
3. Local Law Enforcement Agency (LLEA):
 - Should be notified for every job site regardless of duration of use.
 - Should be provided standardized information.

Please see our detailed comments enclosed. Thank you for the opportunity to comment on this important proposed rule.

If you have any questions, please do not hesitate to contact Debra McBaugh at 360-236-3221 or e-mail debra.mcbaugh@doh.wa.gov.

Sincerely,

Terry C. Frazee, Director
Office of Radiation Protection

Enclosure: Detailed comments on Proposed Rule

Template = SECY-067



DS 10

Washington State's Detailed Comments on Proposed New Rule

for

Physical Protection of Byproduct Material 10 CFR Part 37

First, we are very disappointed that the proposed rule does not follow through on the recommendations made in Governor Christine Gregoire's PRM-71-13 letter to require GPS tracking for trucks carrying category 2 quantities of radioactive material, such as radiography sources, or alternatively, for the rule to give States the flexibility to be more stringent than NRC. Chairman Klein wrote back saying NRC would process the request for GPS tracking as a petition for rulemaking and "will consider your request for flexibility to impose more stringent requirements in parallel with the petition." It is true the letter was recognized in the Fed Register notice for the rule, but NRC did not request comments on the issues raised and provided no further discussion or explanation of the decision made. Neither of our two recommendations was included in the proposed rule. GPS or equivalent tracking is not required for category 2 sources and states were not given flexibility to be more stringent.

NMED shows that since the letter was sent, another truck carrying radiography sources was stolen. It is easy to say this is only one, so there is no problem. However, it only takes one to become the terrorist event none of us wants to see. GPS tracking is very inexpensive and an easy way to help with rapid recovery should preventative measures fail. We think GPS tracking for category 2 sources should be required.

- 37.21 (c)(1)(ii) and 37.29(j) – Part 37 requires Trustworthiness and Reliability (T and R) for all licensee staff approved for unescorted access to category 2 quantities of radioactive material. It is inconsistent that 37.21(c)(1)(ii) omits T and R and 37.29(j) exempts T and R for carriers' drivers and riders with unescorted access to category 2. Devices and sources are more vulnerable during shipment by a non-licensee carrier than under licensee or manufacturer control. Therefore, carriers must require T and R for their staff with unescorted access to category 2 as well as category 1. Licensees must confirm carriers' T and R before transferring their category 1 or category 2 sources to the carrier. We request you delete 37.29 (j) and include category 2 as well as category 1 in 37.21(c)(1)(ii).
- 37.23(b)(1) – We agree that reviewing officials should have the same security review as those with unescorted access, including criminal background checks and fingerprinting by the FBI. We do not support Agreement States approving reviewing officials. Approving reviewing officials is far beyond Agreement States' scope of routine radiation protection, licensing and inspections. Fingerprinting, FBI background checks, criminal history, and approval of all reviewing officials should stay at the NRC level, with regulatory compatibility NRC.

- 37.23(b)(2) - We do not support reviewing officials being “required to have unescorted access”. However, if NRC insists they must, then we request that 37.23(b)(2) read that reviewing officials must also have radiation safety training and a valid reason for each visit. This is standard procedure for radiation workers. Human resources staff are often reviewing officials and do not usually have radiation safety training. Add this sentence to both 37.23(a)(2) and 37.23(b)(2):
 - “In addition to training required by Part 37, anyone with unescorted access to category 1 or category 2 radioactive materials must have the radiation safety training necessary to perform their duties safely, and must also have a valid reason for each visit”.
- 37.45(b)(1) – Notifications to LLEAs of temporary job sites. We surveyed LLEAs and they believe they need to know the sites, no matter how long they will be used, so they can plan for emergencies. Please remove the 7-day restriction. LLEA concern is for providing immediate response, especially to remote areas. They request a standardized form be used by states that clearly indicates the high priority of the information provided. It is also important to address the needed security for the messages sent to the LLEAs.
- 37.49 (a)(3)(ii) - This allows category 2 to be missing for up to a week before the licensee notices. 2005 IC Orders require the licensee to respond immediately to any actual or attempted theft, sabotage, or diversion. 37.49 (a)(3)(ii) should read: "For category 2 quantities of radioactive material, the licensee must maintain control of licensed material, secure it from unauthorized removal or access, and without delay, detect and recover all stolen, missing or lost licensed material."
- 37.25 (a)(6) - Full credit report. We are concerned that good licensee staff will not be approved due to poor credit rating. Medical problems, divorce, bad economy, and identity theft are situations beyond a person’s control. We recommend that the NRC defer this aspect of the rule, pending further review of the serious impact it may have on licensees, staff and the industry. At the very least, if a full credit history is required, then Part 37 must make clear that a bad credit report is only part of a T and R review and is not a deal breaker for otherwise qualified staff.
- 37.25 (b) - We support grandfathering individuals already found to be T and R.
- 37.5 – For consistency, the definition of “aggregated” should include unsealed sources and bulk material as found in 75 FR 33906, item 7. We also recommend changing “physical barrier” to “physical security barrier”. This will match (as it should) footnote 3 to ICs Table 1, and will contrast (as it should) with 10 CFR 73.2 “physical barrier” definition.
- 37.101 – Replace “safeguard” with “protect”. Safeguard should be only used when referring to Safeguards.

Rulemaking Comments

From: McBaugh, Debra (DOH) [Debra.McBaugh@DOH.WA.GOV]
Sent: Thursday, January 13, 2011 8:36 PM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0120
Attachments: 0366_001.pdf

We are attaching comments from the State of Washington regarding the proposed new rule Part 37 on Physical Protection of Byproduct Material.

We thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact me.

<<0366_001.pdf>>

DMcB

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