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January 13, 2011

January 14, 2011 (4:00 pm)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Docket ID [NRC-2008 -0120] Proposed Rule – Physical Protection of Byproduct Material.

Dear Sir/Madam:

Please find listed below comments on the proposed rule regarding the Physical Protection of Byproduct Material published on June 15, 2010 in volume 75, No. 114 of the Federal Register. We agree with the rationale for increasing controls to further protect any Category 1 and 2 sources but are concerned about the regulatory burden that will be imposed by some of these proposed regulations.

1. Federal Register Background Information: Credit Checks. Section II.B.8 of the Federal Register notice reads: "The full credit history evaluation reflects the Commission's intent that all financial information available through credit reporting agencies is to be obtained and evaluated as part of the trustworthiness and reliability evaluation."

The proposed requirement that a full credit history check must be evaluated in order to deem an individual as trustworthy and reliable seems excessive and not a definitive indicator that a person is both trustworthy and reliable. Please consider that this proposed rule will place an undue regulatory burden on entities that may have a high turnover of trustworthy and reliable applicants, such as universities and research facilities. This proposed rule could turn out to be very costly to such facilities and also difficult to effectively implement. Finding a complete credit history for individuals from outside of the U.S., especially if there are a large number of these individuals, would prove to be both expensive and time consuming.

Additionally, we do not believe that there is any evidence that a good credit history is necessarily justification of trustworthiness and reliability or the corollary that a low credit score is indicative of an individual who is not trustworthy. Many factors go into assigning a credit score, and we cannot find that there is a solid correlation between having less than stellar credit and a person not being a trustworthy individual.

Presently Congress is considering passing the Equal Employment for All Act, which would "amend the Fair Credit Reporting Act to make it unlawful to base adverse employment decisions against prospective and current employees on consumer credit reports." This Act could prove to be detrimental to the proposed rule regarding credit checks, in that if a candidate's job description requires having access to Category 1 or 2 sources, but they do not have a satisfactory credit history, that individual would not be granted access to the radiation sources that are required for them to perform their job and would adversely affect their employment.

2. Part 37.5 Definitions: Escorted Access. Part 37's definition of escorted access states: "accompaniment while in a security zone by an approved individual who maintains line of sight..." Although this is a straight-forward, easy way to define escorting I'd argue that certain video surveillance systems provide improved security. If an escorted individual has malicious intent it's easier for them to incapacitate their escort than to subdue the security guard who is watching a real-time video from a safe distance. I'd suggest changing the definition to: *Escorted access means that the actions of the individual are observed 100% of the time while they are in the security zone.*

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3. 37.21(c)(1) Need to Clarify Background Investigation Requirements for Certain Individuals.

Part 37 is very clear that Reviewing Officials, individuals who will have unescorted access and others need to have background investigations. What would be the requirement for an engineer designing the security systems for an irradiator room if that individual would not be given unescorted access? It would help licensees if the requirements for individuals with access to sensitive information were clearly described. I suggest using the T & R requirements from NRC Order EA-05-090 as the model for this population of individuals.

4. 37.23(b)(2) Access Authorization Program/Reviewing Official. Part 37 states that "*Reviewing officials must be required to have unescorted access to category 1 or category 2 quantities of radioactive material...*" Considering that many licensees will use members of their Human Services Department as Reviewing Officials, people who are not trained radiation workers, these individuals should not be given full access to any radioactive materials. Consider changing the wording to: "*Reviewing officials must meet the necessary requirements to have unescorted access to category 1 or category 2 quantities of radioactive material....*"

5. 37.45(a)(1)(viii) LLEA Notification to Licensee of Downgraded Response Capabilities. Part 37 states that the "*LLEA notify the Licensee whenever the LLEA's response capabilities become downgraded or incapable of providing a timely armed response.*" This could be an impossible requirement to meet considering that LLEA does not fall under NRC jurisdiction and is not held to follow the requests made by a licensee. Since response capabilities are covered in 37.45(a)(4), I feel 37.45(a)(1)(viii) could be deleted, making it solely the Licensee's responsibility to verify the LLEA's capabilities on a 12 month basis.

6. Part 37.51 Maintenance, Testing and Calibration. Part 37.51 mandates that the licensee implement a maintenance, testing, and calibration program that requires quarterly testing of intrusion alarms, associated communication systems, and other physical components of the systems used to secure and detect unauthorized access to Category 1 or 2 sources of radioactive material. This requirement will place undue regulatory burden on the licensee with a benefit that is not commensurate with the effort to implement the program. The systems that are implemented to secure the sources are robust and have performed with a high level of reliability. There is no reason to implement a quarterly testing program. Some of the safeguards that have been implemented were installed by the source manufacturer and it may be easier for a licensee to have the manufacturer's field representative test some of these safeguards when they perform the annual preventative maintenance. Requiring the licensee to hire the services of the manufacturer on a quarterly basis would impose undue cost and unwarranted regulatory burden. We agree that a maintenance, testing, and calibration program should be required; however we recommend that it be implemented on an annual basis.

Thank you for the opportunity to provide comment on this proposed regulation. Please contact me at 732-594-8075 or adam_cook@merck.com if you have any questions.

Sincerely,



Adam Cook
Health Physicist – Merck & Co., Inc. – Rahway, NJ Site

Rulemaking Comments

From: Cook, Adam [adam_cook@merck.com]
Sent: Friday, January 14, 2011 1:49 PM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0120 Comments
Attachments: NRC-2008-0120_Comments.pdf

To whom it may concern

Please find the attached comments for Proposed Rule NRC-2008-0120 on the Physical Protection of Byproduct Material

<<NRC-2008-0120_Comments.pdf>>

Thank you

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