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January 14, 2011

January 14, 2011 (4:00 pm)

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

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: Wisconsin DHS Comments on Docket NRC-2008-0120, Physical Protection of Byproduct Material

Dear Rulemakings and Adjudication Staff:

The Wisconsin Department of Health Services (DHS), Radiation Protection Section is pleased to provide the following comments on Docket NRC-2008-0120, the proposal to add a new Part 37 to Title 10 of the Code of Federal Regulations that addresses security requirements for category 1 and category 2 quantities of radioactive material.

DHS feels strongly that the Increased Control (IC) Orders have worked well since they were issued in 2005. DHS supports NRC in introducing regulations concerning the physical protection of byproduct material; however, DHS believes that the regulations should closely mirror the IC Orders, unless there is evidence that the contents of the IC Orders are not sufficient for protecting public health and safety.

DHS disagrees with having the Reviewing Official approved by the regulator. DHS is not eager to assume the burden of approving a proposed Reviewing Official based solely on the results of the individual's FBI criminal history check, without access to the other elements of the background investigation. It is not clear from the proposed rule whether licensees would request the FBI criminal history check of proposed reviewing officials directly from NRC and then submit the report to the Agreement State or whether licensees would submit fingerprints to the Agreement States and then Agreement States would request the FBI criminal history check of proposed reviewing officials from the NRC. It would be a significant administrative burden for Agreement States to request FBI criminal history checks on behalf of licensees.

DHS is also concerned about the license verification requirements for transfers of material between licenses of the same company. It is not sensible to require companies who hold licenses in multiple jurisdictions to contact the regulator to verify their own licenses prior to transferring material between licenses.

Answers to specific questions posed in the proposed rule are attached. Thank you for the opportunity to comment on this important rule action.

Template = SECY-067

DS10

Sincerely,

Megan Shober
Nuclear Engineer-Senior
Radiation Protection Section
State of Wisconsin

Page 33909

1. *Does the reviewing official need to be fingerprinted and have a FBI criminal records check conducted?*
Yes, but the reviewing official should not be required to have unescorted access to category 1 or 2 quantities of radioactive material.
2. *Are the other aspects of the background investigation adequate to determine the trustworthiness and reliability of the reviewing official?*
The reviewing official should be subject to the same reviews as other individuals who require unescorted access. This should include fingerprinting and an FBI criminal records check for reviewing officials.
4. *Does the requirement to fingerprint the reviewing official place too large of a burden on the licensee?*
No.
5. *Do Agreement States have the necessary authority to conduct reviews of the nominated individual's criminal history record?*
Indirectly. We would have to contract with our Department of Justice for this service. We would have to promulgate rules to have direct authority to conduct reviews.

Page 33910

1. *Is a local criminal history review necessary in light of the requirement for a FBI criminal history records check?*
No.
2. *Does a credit history check provide valuable information for the determination of trustworthiness and reliability?*
No.
3. *Do the Agreement States have the authority to require a credit history check as part of the background investigation?*
Yes.
4. *What are the appropriate elements of a background investigation and why are any suggested elements appropriate?*
The appropriate elements are fingerprinting and FBI criminal history records check, verification of true identity, employment history evaluation, verification of education, military history verification, and character determination.
5. *Are the elements of the background investigation too subjective to be effective?*
The credit history check is too subjective to be effective. In addition, credit history evaluations should not be required for 10 year reinvestigations.

Page 33914

1. *Do Agreement States have adequate authority to impose the information protection requirements in the proposed rule?*
Yes, we have the authority to impose requirements to protect the security plan and implementing procedures.
2. *Can Agreement States protect the information from disclosure in the event of a FOIA request?*

We do not keep licensees' security plans or implementing procedures on file. We would be able to protect the information from disclosure.

3. *Is the proposed rule adequate to protect the licensees' security plans?*

Yes.

4. *Should other information beyond the security plan and implementing procedures be protected under this proposed requirement?*

No.

5. *Should the background investigation elements for determining whether an individual is trustworthy and reliable be the same as for determining access to category 1 and 2 quantities of radioactive material?*

The investigation elements should all be the same (including requiring fingerprinting for reviewing officials who do not require unescorted access to quantities of concern).

Page 33916

1. *Is there any benefit in requiring that the LLEA be notified of work at a temporary jobsite?*

No.

2. *Should notification be made by licensees for work at every temporary jobsite or only those where the licensee will be working for longer periods?*

Notifications should not be required for work at temporary jobsites.

3. *If notifications are required, what is the appropriate threshold for notification of the LLEA?*

Notifications should not be required for work at temporary jobsites.

4. *Will licensees be able to easily identify the LLEA with jurisdiction for temporary jobsites?*

No.

5. *Are LLEAs interested in receiving these notifications?*

In our experience, LLEAs are probably not interested in receiving these notifications.

Page 33917 (Section 17)

1. *Should relief from the vehicle disabling provisions be provided?*

Relief should come via a request for an exemption on a case by case basis and authorized by license condition.

2. *Have licensees experienced any problems implementing this aspect of the Increased Controls?*

Not in Wisconsin.

3. *Should there be an exemption written into the regulations or should licensees request an exemption to obtain relief?*

Licensees should request an exemption on a case by case basis.

4. *If an exemption is included should it be a blanket exemption or specific for the oil and gas industry?*

An exemption should not be written into the regulations.

5. *Does the disabling provision conflict with any State requirements?*

No.

Page 33917 (Section 19)

1. *Are these the appropriate items and thresholds to be reported to the LLEA?*

Yes.

2. *Are these the appropriate items and thresholds to be reported to the NRC?*

Yes.

3. *Should suspicious activities be reported? If so, what type of activities should be considered suspicious?*

Licensees shouldn't be required to report suspicious activities. "Suspicious" is a highly subjective term and shouldn't be defined in the regulations. Licensees should use their best judgment in reporting suspicious activities to the LLEA or NRC as they see appropriate.

4. *Is the timeframe for reporting appropriate?*

Yes.

Page 33918

1. *Should there be license verification requirements for transfers of category 2 quantities of radioactive material?*

For category 2 quantities, it would be acceptable to wait for the license verification system to be developed. If licenses must be verified prior to the system being developed, the license should be verified once for transfers of category 2 quantities. Radiographers routinely receive sources from suppliers and it would be an undue burden on the regulator and the source supplier to require suppliers to verify licenses with each transfer of category 2 quantities of material.

2. *How would address verification work for shipments to temporary job sites? Would States be able to accommodate such requests with their current record systems?*

There is no way for us to verify addresses for temporary jobsites (except for reciprocity).

3. *How frequently should license verification be required?*

License verification should not be required for every transfer of category 2 quantities of material. This would place an undue burden on the regulator and the source supplier.

Rulemaking Comments

From: Shober, Megan L - DHS [Megan.Shober@dhs.wisconsin.gov]
Sent: Friday, January 14, 2011 3:20 PM
To: Rulemaking Comments
Subject: Docket ID NRC-2008-0120
Attachments: Part 37 comments_Jan11.doc

Attached are comments from the State of Wisconsin, Radiation Protection Section concerning 10 CFR Part 37.

Sincerely,

Megan Shober
Radiation Protection Section
State of Wisconsin
(920) 448-5346

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14:19:40 -0600

From: "Shober, Megan L - DHS" <Megan.Shober@dhs.wisconsin.gov>

To: "'Rulemaking.Comments@nrc.gov'" <Rulemaking.Comments@nrc.gov>

Date: Fri, 14 Jan 2011 14:19:39 -0600

Subject: Docket ID NRC-2008-0120

Thread-Topic: Docket ID NRC-2008-0120

Thread-Index: Acu0KF6BZjzf3m2ES96aqYvlsWLTg==

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