ISSPA
SAFE AND SECURE AT THE SOURCE
INTERNATIONAL SOURCE SUPPLIERS AND PRODUCERS ASSOCIATION
WWW.ISSPA.COM

PR 30,32,33,34,35,36,37,39,51,71 and 73 (75FR33901)

January 14, 2011

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Ms. Cindy K. Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKETED
USNRC
January 14, 2011 (4:00 pm)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

77

Subject: Request for Public Comment on "Physical Protection of Byproduct Material; Proposed Rule" (75 FR 33902) and Draft Guidance Document (75 FR 40756); Docket Number NRC-2008-0120

Dear Ms. Bladey,

The International Source Suppliers and Producers Association (ISSPA) is an association founded by companies that are engaged in the manufacture, production and supply of sealed radioactive sources and/or equipment that contain sealed radioactive sources as an integral component of the radiation processing or treatment system, device, gauge or camera. ISSPA appreciates the opportunity to provide comments on the Commission's proposed rule and implementation guidance for Physical Protection of Byproduct Material, published in the Federal Register (FR) in June and July of 2010.

We are pleased that the Nuclear Regulatory Commission (NRC) has prepared implementation guidance in parallel with the proposed rule and that an effort was made to engage with stakeholders through public meetings during the comment period. In fact, several ISSPA member companies sent representatives to the NRC sponsored workshops held this September; these members found those workshops to be well organized and informative.

ISSPA and their member companies support the NRC's efforts to codify these Orders into the regulations through the Part 37 rulemaking. This being said; Industry is rightfully concerned that the proposed rulemaking imposes additional and more stringent requirements than those found in the Orders which would result in additional costs to Industry that cannot be supported with quantifiable measures.

The Commission is urged to consider the following general comments as the Proposed Rule is being developed:

1. Industry has been absorbing the costs associated with implementing the requirements of these Orders as well as the costs associated with other security measures such as the National Source Tracking System and specific Import/Export licensing requirements. This monetary burden of compliance has required some licensees to scale back operations, reduce the

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amount of resources allocated for other aspects of operation, and has made it challenging for some of our member companies to remain competitive in the global market. Industry does not agree that there is justification to impose additional and more stringent security measures, when the perceived benefits provided by these measures cannot be quantified and the current security measures required by the Orders have been demonstrated robust and effective.

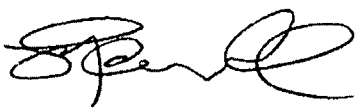
2. The security Orders were developed and issued to licensees using a graded approach, taking into account the nature of the business and quantity of material authorized to possess, yet the proposed rule attempts to envelop the byproduct community as a whole. Industry believes it is more appropriate to divide the proposed Part 37 rule into sub-parts based on the type of business and security risks associated with each. The implementation guide could be formatted in an industry/risk specific manner similar to NUREG 1556.

3. Trustworthiness and Reliability determinations of individuals granted unescorted access to Category 1 and 2 quantities of materials is a critical element to ensuring the security of these materials; yet the current Orders and proposed rule fail to provide definitive criteria that would qualify or disqualify an individual from obtaining unescorted access. This lack of criteria makes an inspection against the requirements subjective and inconsistent. NRC should strongly consider developing specific criteria to disqualify or grant an individual unescorted access to materials or information, or they should consider developing a method similar to the Transportation Safety Administration's Transport Worker Identification Credential (TWIC™) program.

4. While the NRC has regular oversight of individual Agreement State programs through its Integrated Materials Performance Evaluation Program (IMPEP), the NRC should evaluate its authority under IMPEP against the authority granted to the Secretary of Transportation under U.S.C. Title 49 Section 5125 – Preemption, and ensure that the NRC is authorized and capable of preempting an Agreement State regulation pertaining to the Physical Protection in Transit of Category 1 and 2 quantities of radioactive materials if the Agreement State regulation does not comply with the general criteria provided in USC 49 §5125 before relinquishing its regulatory authority to the Agreement States. If the NRC concludes that it is indeed appropriate for the Agreement States to regulate the physical protection of category 1 and 2 quantities of radioactive material while in transit then a mechanism has to be in place to ensure these Agreement State regulations cannot add requirements in addition to those provided in Part 37.

In addition to the fundamental comments provided above, comments specific to the proposed rule are provided in the attached enclosure.

Sincerely,



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ISSPA Comments on the Proposed Rule and Implementation Guidance for Part 37 Physical Protection of Byproduct Material in Category 1 and Category 2 Quantities

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Draft Regulatory Analysis

Comments:

The Regulatory Analysis fails to provide evidence that the estimated costs that will be incurred to implement and comply with the additional requirements provided by the proposed rule will improve the safety and security of category 1 and 2 quantities of radioactive material or provided any other benefit for that matter. There is no technical data provided to support the statement "Although significant costs are incurred as a result of the rule the qualitative benefits associated with the rule outweigh its cost" contained in Section 5. Decision Rationale. If there is evidence that suggests the security measures implemented through the current Orders are inadequate in the protection of public health and safety or common defense and security then this information should be presented in a technical basis document available to stakeholders.

The NRC acknowledges that Industry will bear the brunt of the estimated $450 to $612 million cost associated with the proposed rule. These costs coupled with the costs associated with other security related initiatives, such as the National Source Tracking System, could have a detrimental effect on the Industry, as well as the consumer. In an ideal situation it would be considered unreasonable to institute a rule that contains requirements beyond those currently in place without being able to quantify a benefit by doing so; considering the current economic conditions, proposing costly regulations with no tangible benefit is irresponsible.

Industry also believes the Regulatory Analysis cost estimates are significantly less than what could be expected. Appendix A underestimates the time requirements and costs associated with some of the tasks evaluated. Specifically the costs associated with conducting background investigations and the resources expended in the planning, coordination and notifications associated with the shipments of category 1 quantities of materials do not reflect the actual burden of conducting these tasks under the current Orders.

Furthermore, the number of individuals affected by the proposed rule is underestimated. For instance

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the NRC estimates that an average 12 individuals (2 Reviewing Officials and 10 employees) per facility will require fingerprinting under the proposed rule. It is unclear how the NRC arrived at this figure when the number of individuals that have been fingerprinted under the current Orders far exceeds this estimate. Some licensees, most often small business, conduct background checks on all of their employees. Small business rely on the flexibility of their workforce; as the proposed rule is written there is little alternative to conducting background checks on every employee. Essentially, any employee of a licensee that possesses category 1 or 2 quantities of material that has access to the facility after normal working hours, i.e. ability to gain entry and disable the alarm system would require a background check.

Industry is concerned that the Regulatory Analysis does not address how harmonization between the NRC proposed rule and eventual Agreement State regulations will be assured; specifically in regards to the requirements contained in Subpart D Physical Protection in Transit. Inconsistencies between Agreement State transport security requirements could greatly hinder the ability to transport category 1 and 2 quantities of radioactive materials in commerce. It is unclear if the NRC considered maintaining the Physical Protection in Transit security measures in Order space or alternately transferring this authority to the US Department of Transportation to ensure that security measures during transit remain consistent.

Subpart A – General Provisions

§37.5 *Aggregated*

Comment:

Recommend providing Q&A style clarification of the term Aggregated in Section §37.47 Security zones section of the Implementation Guide.

Basis for Comment:

It is unclear if the phrase "common physical barrier" used in the definition of the term Aggregated applies to storage and/or transportation containers or to the area in which multiple sources are located.

For example if multiple category 3 sources are contained in separate shielded and locked casks, that if combined would exceed a category 2 quantity of material, were located in a common room or storage cage would the common room or storage cage need to be controlled as a security zone?

§37.5 *Lost or missing licensed material*

Comment:

Recommend linking this definition with the no-later-than arrival time definition and providing a specific criterion in regards to time to locate material in transit.

Lost or missing licensed material means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose whereabouts have not been traced in the transportation system within 8 hours past the scheduled no-later-than arrival time.

Basis for Comment:

The term "readily" is subjective and would make compliance and enforcement of the reporting criteria established in §37.81 difficult. An 8 hour investigation period seems reasonable.

§37.5 *No-later-than arrival time*

Comment:

Recommend revising the no-later-than arrival time criteria to 24 hours.

Clarify that the no-later-than arrival time applies to domestic shipments only.

No-later-than arrival time means the date and time that the **domestic** shipping licensee and **domestic** receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no later-than-arrival time may not be more than 24 hours after the estimated arrival time for shipments of category 1 or 2quantities of radioactive material.

Basis for Comment:

There are far too many variables outside of the domestic licensees control to allow for an accurate N-L-T estimate for imports or exports.

Estimating the arrival time within a 2 hour time period for Category 1 materials and a 4 hour time period for Category 2 materials is completely unrealistic. In the case of a Category 1 shipment, the shipment follows a specific route and an estimated time of arrival can be calculated using this route. However,

experience has shown that as a result of state variations, Category 1 shipments have been inspected during transit more frequently, have, in some cases, been held to wait for an escort to arrive, compounding variable such as traffic, road conditions and weather would make it nearly impossible for the consignor to estimate a time of arrival for long haul consignments within a 2 hour window. Category 2 shipments are usually transported via common carrier. Common carrier delivery guarantees (especially when dangerous goods are involved) are not accurate to within 4 hours. The 2 and 4 hour criteria would simply result in modifications to the N-L-T or ultra conservative estimates of N-L-T.

§37.5 *Safe haven* means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

Comment:

Recommend revising the definition as follows:

Safe haven means a readily recognizable and readily accessible site from which the transport crew can notify and wait for the local law enforcement authorities, in the event of an emergency.

Remove the sentence "The NRC expects safe havens to be identified and designated by the licensee based on discussions with appropriate State personnel" from paragraph A4 Section §37.75(a) of the implementation guide

Basis for Comment:

The phrase "security is present" is unclear; does this mean a security guard force or does it mean a security fence? The NRC provides examples of what would qualify as a safe haven in the implementation guide so the phrase only adds confusion to the definition.

Licensees have attempted to contact States in the past for a list of safe havens; these requests have been fruitless. The definition of safe haven is sufficient to allow the licensee to identify safe havens.

Subpart B – Background Investigations and Access Authorization Program

§37.23(b)(2) Reviewing officials must be required to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information, if the licensee possesses safeguards information, as part of their job duties

Comment:

Delete this paragraph in its entirety.

Basis for Comment:

The role of the Reviewing Official is to evaluate the information obtained as part of the background investigation and make a determination of an individual's trustworthiness and reliability using the implementation guidance. This task can be accomplished without gaining access to category 1 or 2 materials or safeguards information. The Reviewing Official may be an individual that doesn't work in a facility that contains category 1 or 2 materials. Requiring that the reviewing official is authorized unescorted access to category 1 and 2 quantities of material could also result in additional training

requirements such as radiation worker that the licensee would have to provide. Nothing is gained by requiring a reviewing official to have unescorted access to Category 1 and 2 materials or safeguards information.

§37.23(b)(3) Reviewing officials cannot approve other individuals to act as reviewing officials.

Comment:

Delete this paragraph in its entirety.

Basis for Comment:

Unless there are additional steps or consideration in the background investigation and determination of a Reviewing Official that the NRC conducts that is beyond the scope of the background investigation the licensee conducts to deem an individual trustworthy and reliable then a reviewing official should be able to approve another individual as a reviewing official. This authorization would give the licensee flexibility to modify their employees' job duties.

§37.23(b)(4) Reviewing officials nominated by the licensee and approved by the NRC are the only individuals who may make trustworthiness and reliability determinations and permit unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

Comment:

Revise this paragraph to include access to safeguard information.

Reviewing officials nominated by the licensee and approved by the NRC are the only individuals who may make trustworthiness and reliability determinations and permit unescorted access to category 1 or category 2 quantities of radioactive materials or safeguards information possessed by the licensee.

Basis for Comment:

Shouldn't authorization to safeguards information or safeguards information-modified be included?

§37.23(b)(5) Reviewing officials may not make any trustworthiness and reliability determinations or permit any individual to have unescorted access until they have been approved as a reviewing official by the NRC.

Comment:

Revise this paragraph to delete the phrase "or permit any individual to have unescorted access" and include licensee reviewing official.

Reviewing officials may not make any trustworthiness and reliability determinations ~~or permit any individual to have unescorted access~~ until they have been approved as a reviewing official by the NRC or by a reviewing official of the licensee.

Basis for Comment:

The deleted portion of the requirement is redundant, if the reviewing official cannot make a T&R determination then they can't take the next step as required by §37.23(e)(2).

Adding the reference to reviewing official of the licensee would support the earlier comment to delete §37.23(b)(3)

§37.23(e)(2) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information required by this subpart and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on disqualifying information obtained at any time during the background investigation.

Comment:

Unless the NRC provides a list of disqualifying factors delete the term "disqualifying" from the paragraph.

The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information required by this subpart and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on ~~disqualifying~~ information obtained at any time during the background investigation.

Basis for Comment:

There is only (1) instance where the NRC provides a disqualifying factor, that is in §37.23(d) "...Refusal to provide, or the falsification of, any personal history information required by this subpart is sufficient cause for denial or termination of unescorted access".

Annex B of the implementation guide only provides guidance on what to consider when conducting the evaluation.

§37.23(e)(3) 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. Licensees shall maintain a list of persons currently approved for unescorted access authorization and a list of those individuals that have been denied unescorted access authorization. When a licensee determines that a person no longer requires unescorted access, the licensee shall immediately remove the person from the approved list and take measures to ensure that the individual is unable to obtain unescorted access.

Comment:

Recommend revising the paragraph as follows:

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. ~~Licensees shall maintain a list of persons currently approved for unescorted access authorization and a list of those individuals that have been denied unescorted access authorization~~. When a licensee determines that a person no longer requires unescorted access, or meets the access authorization requirements, the licensee shall take immediate~~ly remove the person from the approved list and take~~ measures to ensure that the individual is unable to obtain unescorted access.

Basis for Comment:

There is no value to "maintaining a list" of individuals denied access and individuals approved access. The Licensee may develop procedures on their own that generates a list or they may develop a badge system that indicates a person's level of access.

§37.23(h) ALL

Comment:

Recommend changing record retention period from 5 years to 3 years.

Basis for Comment:

This retention period is more consistent with other license record retention requirements.

§37.23(h)(3) The licensee shall retain the list of persons approved for unescorted access authorization and the list of those individuals that have been denied unescorted access authorization for 5 years after the list is superseded or replaced.

Comment:

Delete this paragraph in its entirety.

Basis for Comment:

There is no value to maintaining these lists when complete documentation is required by §37.23(h)(1).

§37.25(a)(6) Credit history evaluation.

Comment:

Delete this paragraph in its entirety.

Basis for Comment:

Unless the NRC provides disqualifying criteria that would be provided in a credit history report then the cost expended by the licensee in both time and money, and the intrusion in an employee's personal finances is not warranted. The other aspects of the background check are sufficient to make a T&R determination without the need to obtain a credit history report.

§37.25(a)(7) Criminal history review.

Comment:

Delete this paragraph in its entirety.

Basis for Comment:

There is no justification in expending resources to conduct a 10 year local criminal history review when §37.25(a)(1) requires an FBI fingerprint based criminal history record check. The FBI criminal history would include anything of significance that a local criminal history check would indicate. A local criminal history check may have misdemeanor offenses and traffic violations that the FBI criminal history report

may not contain, but these types of offenses are not even considered in Annex B of the implementation guide so how is the expense of conducting a 10 year local criminal history check justified?

The cost to the licensee can be significant if an individual has lived in multiple jurisdictions over the previous 10 years.

§37.25(c) Reinvestigations.

Comment:

Recommend removing the credit history check requirement.

"Licensees shall conduct a criminal history update ~~and credit history reevaluation~~ every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigations must be completed within 10 years of the date on which these elements were last completed and must address the 10 years following the previous investigation".

Basis for Comment:

There would be no need to conduct a credit check for reasons provided in the comments to §37.25(a)(6).

§37.33(a) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this subpart and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall ensure that its entire access program is reviewed at a frequency not to exceed 12 months.

Comment:

Recommend increasing the review frequency from 12 to 36 months.

Basis for Comment:

A 12 month review frequency for a program that should see little revision once it is put into place seems excessive. The benefit of conducting annual reviews of what should be a fairly static program would be minimal and justifying the cost of these reviews would be difficult. Non-conformities would most likely be discovered during the implementation of the program and corrected upon discovery.

Subpart C – Physical Protection Requirements During Use

§37.41(b) *General performance objective.* Each licensee shall establish, implement, and maintain a security program that is designed to monitor, and without delay detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

Comment:

Revise the performance objective as follows:

General performance objective. Each licensee shall establish, implement, and maintain a security program that is designed to monitor, ~~and without delay~~ detect, assess, and respond to ~~an actual or attempted~~ unauthorized access to category 1 or category 2 quantities of radioactive material.

Basis for Comment:

The phrase "without delay" is unrealistic during normal business hours. During normal business hours a business' security system will not be set to alarm. Areas that may contain category 1 or 2 quantities may be locked and unoccupied but not monitored. Unauthorized access whether actual or attempted would only be detected "without delay" if individuals were in the vicinity and could witness the access or attempt to access.

After business hours an armed security system could detect (without delay) unauthorized access to an area that contained category 1 or 2 quantity of material but may not be able to detect an "attempt" to access the area. The attempt may have failed without compromising a security measure or triggering an alarm.

§37.43 General security program requirements.

Comment:

This section is very prescriptive. Many licensees will already have a security plan that has been reviewed by the NRC or an Agreement State. These earlier plans were written to demonstrate compliance with the security order that the licensee had been issued. Revising security plans written to the Orders or developing new security plans will require a significant amount of the licensees' time and resources. Additionally these same licensees would have developed procedures to implement their security plans and they would have conducted training on these procedures and security plans. The proposed rule should allow a period of 120 days from the effective date of the rule for the licensees to transition from their current security plans, procedures and training. An additional 120 days should be given to licensees that may not have plans procedures and training in place.

Basis for Comment:

An additional 120 days (instead of 30 days) following the NRC suggested 270 day after publication effective date of the proposed rule is a reasonable time frame to transition from or implement new security program requirements. Alternatively the proposed rule could go into affect 1 year after publication.

§37.43(d)(4)(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable by the required background investigation in § 37.25(a)(2) through (a)(10) has been provided by the security service provider.

Comment:

Clarification of this requirement is needed suggest revising as follows:

Security guard service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable by the required background investigation in § 37.25(a)(2) through (a)(10) has been provided by the security service provider.

Basis for Comment:

The term "security service provider employees" could refer to those employees of the security alarm service provider. It doesn't appear that the intent of the NRC was to require the §37.25(a) background checks on individuals that do not access the facility and simply monitor the facilities security system from an off-site location.

§37.45(a)(1)(ii) A description of the licensee's security measures that have been implemented to comply with this subpart;

Comment:

Recommend deleting this paragraph in its entirety.

Recommend deleting the 4th bullet from A5 of section §37.45(a) from the implementation guide.

Basis for Comment:

In many cases this information would be classified as SGI or SGI-M information and would require handling and control in accordance with §73.21. There appears to be little if any benefit in providing this information to the LLEA that would warrant the dissemination of SGI or SGI-M.

§37.45(a)(1)(vii) A request that the LLEA notify the licensee whenever the LLEA's contact information changes;

Comment:

Revise this paragraph as follows:

For locations not served by x911; a request that the LLEA notify the licensee whenever the LLEA's emergency contact information changes;

Basis for Comment:

In most locations x911 is used to contact emergency responders including the LLEA. If a licensee is in an area not served by x911 then it is important that the LLEA notify the licensee if there is a change in the emergency contact number.

§37.45(a)(1)(viii) A request that the LLEA notify the licensee whenever the LLEA's response capabilities become degraded or it becomes incapable of providing a timely armed response

Comment:

Recommend deleting this paragraph in its entirety.

Basis for Comment:

There is no prescribed action for the licensee to take if the LLEA provides this information so what is the point of obtaining it? Secondly, the LLEA may not consider a reduction in response capabilities the type of information that they would be willing to divulge.

§37.45(a)(1)(ix) A request for information about the LLEA's willingness to participate in drills and exercises

Comment:

Recommend deleting this paragraph in its entirety.

Basis for Comment:

Requesting this information from the LLEA would imply that there is a requirement that the licensee conduct security drills or exercises and include the LLEA if they are willing. There is however no requirement to conduct drills and exercises so what benefit is there to request the LLEA's willingness to participate in an activity that isn't planned. If the NRC intendeds to conduct security drills or exercises on a case-by-case basis then it would be more appropriate for the NRC to contact the affected LLEA and request their participation.

§37.45(b) LLEA notification for temporary job sites.

Comment:

Recommend deleting this section in its entirety.

Basis for Comment:

The LLEA notification requirement for temporary job sites should simply be that the licensee verify that x911 is available at the temporary job site and if not, identify and document the contact information for the LLEA that has jurisdiction where the temporary job site is located.

If the LLEA needs to be notified when the licensee is at the temporary job site the licensee will contact the LLEA. The back and forth formal notification does nothing but burden the licensee and the LLEA.

§37.47 Security Zones

Comment:

Include a provision that exempts the security zone requirements for category 1 or 2 quantities of material that are stored in casks or packages that require specialized equipment to move, open or

access, if that equipment is unavailable.

Basis for Comment:

There are instances where material is stored in heavily shielded containers that require heavy equipment just to move the container or even remove the lid. If a forklift or crane is available to move or access the material then the physical characteristic and integrity of the container is sufficient to prevent access.

§37.49(a) (1) Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries

Comment:

Recommend deleting the phrase "without delay" from this paragraph.

Licensees shall establish and maintain the capability to continuously monitor and detect ~~without delay~~ all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries

Basis for Comment:

The phrase "without delay" is unrealistic during normal business hours. During normal business hours a business' security system will not be set to alarm. Areas that may contain category 1 or 2 quantities may be locked and unoccupied but not monitored. Unauthorized access whether actual or attempted would only be detected "without delay" if individuals were in the vicinity and could witness the access or attempt to access.

§37.49(a) (3)(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(A) Electronic sensors linked to an alarm;

(B) Continuous monitored video surveillance; or

(C) Direct visual surveillance

Comment:

Add a 4th method: (D) Security zone intrusion detection alarm.

Basis for Comment:

When the intrusion detection system is monitoring the security zone an attempt to gain unauthorized access into the security zone results in an alarm that is equated to an attempt to remove or sabotage the material. During normal business hours when an intrusion detection alarm to a security zone is disabled the licensee prevents unauthorized access into security zones with locks, physical barriers, and

surveillance or some combination of each. It is during these periods that a tamper indicating alarm or radiation detection alarm or video surveillance could alert the licensee of an unauthorized attempt to remove radioactive material from the security zone.

If the paragraph remains unchanged then revision is needed in the implementation guide that allows the licensee to rely on its main site wide intrusion detection system when the intrusion detection system is activated, the facility is not occupied by the licensee, AND the intrusion detection system can detect access to the security zone.

§37.51 Maintenance, testing and calibration

Comment:

Strike the use of the term "calibration" throughout this section

Basis for Comment:

What is exactly being "calibrated"? Radiation monitors are "calibrated" at frequencies recommended by the manufacturer usually not to exceed a period of 12 months. But how does one "calibrate" intrusion detection and communication systems. There are procedures to maintain and test these systems but the term "calibration" is out of place.

§37.53(b) For devices in or on a vehicle or trailer, utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

Comment:

Revise this paragraph as follows:

For devices in or on a vehicle or trailer, the licensee shall secure the vehicle or trailer containing the device from theft when not under the direct control of the licensee. This may be accomplished by removing the ignition key and arming a vehicle alarm system, or through the use of disabling device or by the removal of component that would result in the inability to operate the vehicle or trailer.

Basis for Comment:

There is the possibility that an individual using a mobile device needs to evacuate an area quickly requiring the use of a disabling device on the vehicle that would be used to evacuate the area could jeopardize the health and safety of the individual.

Subpart D – Physical Protection in Transit

§37.71 Additional requirements for transferring category 1 and category 2 quantities of radioactive material.

Comment:

(1) Delete any reference to the NRC's License Verification System.

(2) Provide a mechanism to conduct license verification on a frequency such as 6 months or 1 year.

(3) Reduce the record retention requirement from 5 years to 3 years.

Basis for Comment:

(1) The rule could be revised at the time when the LVS is operational, it is premature to suggest its use before the system has been put into place and proven reliable.

(2) Many transactions between licensees are routine, sometimes as often as weekly. It would become a burden to the licensee as well as the regulator to repeatedly verify the authorization of the same receiving licensee.

(3) Record retention should be consistent with that required by Department of Transportation regarding shipments of Class 7 radioactive materials.

§37.75(a)(2) Preplan and coordinate shipment information with the governor or the governor's designee of any State through which the shipment will pass to:

Comment:

Delete paragraphs §37.75(a)(2), including subparagraphs (i)-(v).

Basis for Comment:

The §37.77 advanced notification provided to the State by the licensee provides a sufficient amount of time for the State to contact the licensee if a revision to the route or additional State imposed controls, such as escorts are going to be implemented. Appendix A of the Regulatory Analysis indicates that there had been zero event notifications in the past 10 years regarding missing or lost material, suspicious activities, theft, or diversion of category 1 materials so how can additional coordination efforts that are not currently required by the Orders be justified.

Specifically in regards to §37.75(a)(2)(iii), the licensee would be unable to comply with the requirement to arrange for positional information sharing when required by the State. As written the States would be authorized to dictate which position tracking provider a carrier chooses to utilize, or the State could request that the carrier authorize the State to log into the tracking system utilized by the carrier, there are licensing fees and data communication fees associated with tracking systems. Unless the Federal government intends to develop and fund a single positional information tracking system the requirement of §37.71(a)(2)(iii) is unfeasible.

Specifically in regards to §37.75(a)(2)(v), safe havens – the proposed rule provides a definition for safe haven and the implementation guide provides examples of safe havens, the licensee and carrier are capable of determining safe havens along the route. Past experience has shown that requesting a State to identify safe havens has been fruitless.

§37.77 Advanced notification of shipment of category 1 quantities of radioactive material.

Comment:

Recommend advanced notifications to the governor of a State or the governor's designee be made through the NRC's Operations Center. The licensee could provide the advanced notification to the NRC Operations center with a list of States affected. The NRC Operations center would then transmit the advanced notification to the affected States.

Basis for Comment:

Reduces the record retention and notification burden on the licensee and would ensure consistency in how the States receive notifications.

§37.77(a)(1) The notification must be made in writing to the office of each appropriate governor or governor's designee and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Comment:

Provide an email address and fax number for the NRC point of contact receiving the notification.

Basis for Comment:

Currently the majority of advanced notifications under the RAMQC Order are made via email and fax. The NRC email address or fax that will receive these notifications should be readily available.

§37.77(a)(2) A notification delivered by mail must be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

Comment:

Recommend removing this option or require certified mail or delivery service.

Basis for Comment:

7 days prior to shipment date may not be sufficient time to allow an advanced notification transmitted through the regular mail to reach the intended recipient.

§37.77(a)(3) A notification delivered by any other means than mail must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the State.

Comment:

Recommend increasing 4 days to 7 days.

Basis for Comment:

The licensee should be expected to submit an advanced notification via fax or email 7 days prior to the shipment. This allows the recipient of the notification a sufficient amount of time to review and evaluate the details regarding the shipment. This added time would preclude the need to conduct pre-planning

and coordination with the State as required by 37.75(2). This advanced notification process has been effective for the past 6 years.

§37.77(b)(7) A point of contact, with a telephone number, for current shipment information

Comment:

Revise paragraph as follows:

A point of contact, with a telephone number, for ~~current~~ shipment information provided with the notification.

Basis for Comment:

The proposed rule as written could imply that contact information is needed for the driver(s) of the transport vehicle – this would be the source of the most "current" shipment information. If the intent is to provide a point of contact and phone number for a person with information pertaining to the notification then the paragraph should be revised.

§37.77(e)(1) Records

Comment:

Similar comments as before; change 5 year retention period to 3 years.

Basis for Comment:

Consistent record retention period for shipping documents

§37.79 Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

Comment:

Change the term "movement control center" to "communication control center".

Basis for Comment:

Consistent with terminology provided in the Orders.

§37.799(c)(1)(ii) Communication protocols.

Communication protocols must include a strategy for the use of authentication and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost.

Comment:

Language is unclear – Are there two codes a "duress code" and an "authentication code" or must the communication protocols include a strategy for the "use" and "authentication" of duress codes?

§37.79(c)(2) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, train crew, and movement control center personnel are appropriately trained in normal and contingency procedures

Comment:

Revise paragraph as follows:

Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, train crew, and ~~movement~~ communication control center personnel are ~~appropriately trained in or~~ provided current copies of normal and contingency procedures.

Basis for Comment:

It is simply unfeasible to provide "appropriate training" to a group of individuals that the licensee has no control over. If two drivers arrive at a licensees facility to pick up a shipment of category 1 quantities of material how is this training requirement met if one or both members of the driving team are replaced by a new person. The similar situation would arise for a train crew or a communications center. Instead, copies of the current procedures could be provided along with the shipping documents.

Rulemaking Comments

From: CHATEAUVERT, Carol [Carol.Chateauvert@nordion.com]
Sent: Friday, January 14, 2011 3:22 PM
To: Rulemaking Comments
Cc: MALKOSKE, Grant
Subject: Docket Number NRC-2008-0120 - response ltr. from G. Malkoske, Chairman, ISSPA
Attachments: img-114150940-0001.pdf

Subject: Request for Public Comment on "Physical Protection of Byproduct Material; Proposed Rule" (75 FR 33902) and Draft Guidance Document (75 FR 40756); Docket Number NRC-2008-0120

Attention: Ms. Cindy K. Bladey, Chief, Rules, Announcements and Directives Branch, Office of Administration

The attached letter is being sent to you on behalf of Grant Malkoske, Chairman, International Source Suppliers and Producers Association (ISSPA).

Regards,

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CC: "MALKOSKE, Grant" <Grant.Malkoske@nordion.com>
Return-Path: Carol.Chateauvert@nordion.com
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