

DOCKETED
USNRC

Bryan Lemieux
January 18, 2011 (4:30 pm) PO BOX 63068
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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
US Nuclear Regulatory Commission
Washington DC 20555-0001
Attn: Rulemakings and Adjudications Staff
Sent by email: rulemaking.comments(a)nrc.gov

Dear Ms. Bladey,

I am writing to express concerns I have with the proposed 10 CFR 37 regulations which are intended to replace the Increased Controls orders previously issued by the NRC. In particular, I take issue with certain exemptions granted under **37.29 Relief from fingerprinting, Identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials or other property**. Under current orders, this exemption only covers fingerprinting and associated criminal history checks, which seems appropriate in reducing redundancy. However, the expansion to include "other elements of the background investigation" is inappropriate for certain categories of individual, in particular those covered under section (k). For example, a favorably adjudicated Security Risk Assessment under the Select Agent program does not assess the depth and breadth of information required under the full background checks specified either by existing orders or the proposed regulations. The risk assessment only includes those checks specified under the Patriot Act, per the excerpt below:

“(2) The term ‘restricted person’ means an individual who—
“(A) is under indictment for a crime punishable by imprisonment for a term exceeding 1 year;
“(B) has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year;
“(C) is a fugitive from justice;
“(D) is an unlawful user of any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
“(E) is an alien illegally or unlawfully in the United States;
“(F) has been adjudicated as a mental defective or has been committed to any mental institution;
“(G) is an alien (other than an alien lawfully admitted for permanent residence) who is a national of a country as to which the Secretary of State, pursuant to section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), section 620A of chapter 1 of part M of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or section

40(d) of chapter 3 of the Arms Export Control Act (22 U.S.C. 2780(d)), has made a determination (that remains in effect) that such country has repeatedly provided support for acts of international terrorism; or
“(H) has been discharged from the Armed Services of the United States under dishonorable conditions.

Character determination, credit history, verification of education, verification of employment, and the gathering of corroborating information are not explicitly included in the above. Therefore the acceptance of a Security Risk Assessment in place of the more extensive checks creates a double standard and introduces potential vulnerability into the personnel reliability process. The information that would be analyzed for personnel under subpart (k) does not provide sufficient basis to assess whether an individual is Trustworthy and Reliable under the requirements set forth under either the NRC orders or under the proposed background check requirements.

Categories of individuals specified under subsection (k) should continue to be exempted from the fingerprinting requirements and associated criminal history checks as they are under the current orders but should also be required to undergo the “other elements” of the background investigations as is the current case.

Alternatively, the T&R and background check process could be streamlined to parallel the Select Agent Program Security Risk Assessment process for consistency in application.

Regards,

Bryan Lemieux
1/18/2011

Rulemaking Comments

From: kilroy21@comcast.net
Sent: Tuesday, January 18, 2011 12:51 PM
To: Rulemaking Comments
Subject: Comments on Proposed 10 CFR Part 37
Attachments: NCR 2008-0120.Comments (part 37).docx

Hello,

Please find attached a document with my comments on the proposed part 37 regulations with comment period ending today.

Thank you,

Bryan Lemieux

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12:51:23 -0500

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From: <kilroy21@comcast.net>

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

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Subject: Comments on Proposed 10 CFR Part 37

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