



MAYO CLINIC

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January 17, 2011

DOCKETED
USNRC

Secretary
US Nuclear Regulatory Commission
Washington, DC 20555-0001

January 18, 2011 (4:30 pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RE: Comments to Proposed Rulemaking – 10 CFR Part 37,
Physical Protection of Byproduct Materials
Docket ID NRC-2008-0120

Dear Madam Secretary,

We are writing in response to the request for comments in your June 15, 2010 proposed rules regarding the physical protection of byproduct materials. Attached are several comments and suggestions for improving the proposed regulation. If you have any questions regarding these comments, feel free to contact Jeff Brunette at (507) 284-9463 or brunette.jeffrey@mayo.edu.

Sincerely,

Glenn Sturchio, PhD, CHP
Radiation Safety Officer

Template = SECY-067

DS10

10 CFR Part 37 Proposed Rules Physical Protection of Byproduct Materials

The following are comments and suggestions from Mayo Clinic in Rochester, Minnesota related to the proposed 10 CFR Part 37 from the Nuclear Regulatory Commission (NRC). These rules would replace any orders from the NRC regarding increased control of IAEA Category 1 and 2 sources of radioactive materials.

Rule changes we recommend:

- **§37.25 Background Investigations** – Change the scope of all background checks to cover the most recent 7 years instead of the 10 year period recommended within the draft rulemaking.

The standard criminal history and credit checks only go back 7 years. Many states charge an additional fee to extend the checks beyond 7 years to as much as \$25 per check. If an individual lived in more than one location within the prior 10 years and each location charged an additional fee, the cost per check could escalate significantly.

- **§37.25(a)(5) Military history verification** – Remove this requirement from the proposed rulemaking.

Our Human Resources department and their credentialing vendor have stated that the return rate for requests has only been approximately 20%. Additionally, when the requests are returned it has typically taken between 3-6 months to receive the military history report. Verifications require the completion of a military release of records form with the hand signature from the person for whom the licensee is requesting verification. Finally, the cost of the verification would be an additional \$80 per person. Therefore, we believe that the added cost of this check together with the poor rate of return and length of time of response would not significantly add any value to the background checks being performed.

- **§37.5 Definitions. Unescorted access** – Maintain the current interpretation that an individual having unescorted access to several less than Category 2 quantity sources which are secured behind their own physical barrier would not require inclusion in the trustworthiness and reliability determination program.

Within the proposed rule, "Unescorted access" is defined to include individuals who have access to sufficient quantities of radioactive materials such that the individual could successfully accumulate lesser quantities of material into a category 1 or category 2 quantity. Under that interpretation an individual with access to three HDR sources (two in use and one new one at source exchange), even if the individual sources are each behind their own physical barriers, is considered to have unescorted access to a Category 2 quantity of material. This individual would fall under this rulemaking and would need to complete the background checks. This is a significant change from the prior increased controls orders which allowed sources that were secured from removal by their own individual physical barriers to be treated individually as below a Category 2 quantity. This has the potential to greatly increase the number of individuals who will need background checks completed or require very complex source handling procedures to prevent the ability to aggregate sources.

- **§37.23(b) Reviewing Officials** – Revise the rulemaking to allow reviewing officials who already have fingerprints on file with the NRC to not have to submit fingerprints again.

In many cases, the appointed reviewing official may also be the individual who was the previous Trustworthiness and Reliability Official (T&RO) under the previous increased controls orders. In becoming the T&RO, these individuals have already submitted fingerprints to the NRC and have had a criminal records check performed by the NRC. Therefore, there should be no reason to repeat this check under the new “reviewing official” title.

- **§37.25(a)(6) Credit history evaluation** – Remove the credit history checks because it appears they may not be legally obtained for the purpose of determining unescorted access privileges.

From reading the Fair Credit Reporting Act, it is unclear whether employers are allowed to request credit reports for the purpose of determining unescorted access privileges. At the very least, there are specific procedures that would need to be followed to request the reports, conditions of use for adverse actions, and proper disposal of the records; none of these items are covered in the proposed Part 37 regulation. Additionally, it is very difficult if not impossible to obtain a complete credit history check on foreign nationals and can be very costly.

- **§37.43(a)(4) General Security Program, Security Plan** – Remove the requirement that individuals retain a copy of the security plans until license termination even if the plans are no longer necessary due to reduction of materials below category 2 levels.

§37.43(a)(4) requires that licensees retain a copy of the security plan as a record until the Commission terminates the license. Within the draft guidance document it states that licensees who reduce their possession limits below the IAEA Category 2 levels must still maintain documentation of the security plan until the license is terminated. If a licensee is no longer allowed to possess materials that would require a security plan, what value does maintaining records until license termination provide? Being required to maintain records for 5 years may make sense so that the regulatory agency can inspect the records prior to destruction. However, after inspection, there is really no value to maintaining these records.

Clarifications we recommend:

- **§37.25(a)(7) Criminal history review** – Please clarify what is meant by a “local criminal history review”.

A criminal history review in the county of residence should be adequate for meeting the proposed rule. The current rulemaking is not clear as to whether a state or county criminal records check would be appropriate.

General Comments:

- **Cost of background checks** – The NRC needs to revise their cost estimates in their justification for the rulemaking.

The NRC’s cost estimates within the proposed rulemaking are well below the actual cost of implementing the background checks. We are currently spending approximately \$85 per

employee for the background checks required by the increased controls orders plus another \$40 for the fingerprinting and FBI background check. Adding in the credit checks and military records check would add significantly to this amount (up to \$400 per person additional expense if the individual was in the military within the past 10 years or if a foreign credit history were needed). Additionally, rechecking each individual every 10 years will cost approximately \$400 per person for Mayo (assuming half will require foreign credit checks and including staff time conducting the checks).

- Initial "Compliance Audit" Inspection – Once this rulemaking becomes final, we highly recommend performing "compliance audit" based reviews similar to what was performed after implementing the increased controls orders.

When the increased controls orders were initially issued, the NRC and agreement states conducted initial "compliance audit" inspections where licensee's programs were reviewed with a level of discretion and without citation as long as the licensee made significant efforts to address the orders. During those inspections the licensing agency would point out areas where improvements were needed or where the licensee may have misinterpreted sections of the order.

**Fax**200 First Street SW
Rochester, Minnesota 55905**To: Secretary****Date: 1/17/2011****Company: US Nuclear Regulatory Commission****Fax: 301-415-1101****No. of Pages (including cover sheet): 5****Phone:****Delivery Instructions:** Routine Urgent**Special Instructions:****From: Glenn Sturchio, PhD, CHP****Fax: 507-284-0150****Phone: 507-284-9463****Message:**

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