

Georgetown University
Radiation Safety Committee

LM-12 Preclinical Science
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DOCKETED
USNRC

Radiation Safety
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January 19, 2011 (10:15 am)

January 18, 2011

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Physical Protection of Byproduct Material (10 CFR part 37); Proposed Rule
Docket ID NRC-2008-0120

Dear Sir/Madam:

On behalf of Georgetown University and the Radiation Safety Committee we appreciate the opportunity to provide our comments on the above referenced issue. We have reviewed the proposed rule and implementing guidance, and participated in the NRC Public Meeting held September 20, 2010. During the meeting, several questions posed by GU were deferred for further NRC review. Please review the transcripts and provide clarification on those issues. In addition, we respectfully include several issues for further NRC consideration.

- 1) When the NRC Orders were issued, it appeared that the NRC was requiring broad sweeping, unfunded physical security upgrades/enhancements and background checks. It was apparent that the Orders required NRC Licensees to perform "security clearances" that are similar to the background checks performed for government employees (*i.e.*, Department of Energy, L and Q clearances), without:
 - the benefit of governmental authority and personnel resources (*i.e.* Federal Bureau of Investigations (FBI)) to perform these checks;
 - a consistent Agency (FBI) to ensure that access control afforded by the applicant's Trustworthiness and Reliability (T&R) process was, in effect, equally applied;
 - sufficient guidance to ensure that licensees employing a commercial "Background Check" company would obtain the same set of inquiries from the service providers to ensure that consistent information was obtained for Trustworthiness and Reliability Officials (TRO) to render judgements in a consistent manner;
 - the benefit that TROs who are part of the Radiation Safety Office Staff (RSOS) [subject to both orders], are provided some type of "clearance" and credentialing that has national recognition and portability in future employment; and,
 - the benefit that Licensee employees subject to these requirements would gain some type of "clearance" and credentialing that has national recognition and portability in future employment [that government employees are provided].

Despite the above, Licensees developed and implemented procedures, were inspected, and compliance was verified. We recommend the NRC and other agencies develop [through interagency task groups], a unified "tiered" system for some type of "clearance" and credentialing that has national recognition and portability in future employment. In addition, we recommend that this credentialing include some form of "universal ID card" which would readily identify the individual and employer to Local Law Enforcement Agencies, HazMat Responders, FBI, and other agencies for access to the site in the event of emergencies.

- 2) The NRC Orders were issued in phases to each different group of licensee (Panoramic and Underwater Irradiators, M&D, etc.) based on the relative risk and radioactivity. Then Byproduct RAMQC Licensees were issued the Increased Control Orders in 2005 (EA-05-090) and orders requiring fingerprinting and criminal history records checks for unescorted access in 2007 (EA-07-305). Those Orders included some distinctions in the requirements for fixed vs. portable quantities of concern.

We are concerned that the proposed Part 37 has moved away from this “tiered” approach to an umbrella, “one size fits all” approach. In addition, this is overly prescriptive without consideration for the differences in the types of facilities. We strongly recommend that NRC returns to the “tiered” approach in the final rule.

- 3) The NRC supported and recommended that Licensee’s volunteer to participate in the Department of Energy (DOE), National Nuclear Security Agency’s (NNSA) Global Threat Reduction Initiative (GTRI) program. The Proposed Part 37 does not acknowledge or differentiate its requirements for fixed facilities which have completed or are in the process of completing participation in the GTRI.

We strongly recommend that NRC acknowledge the differences between facilities that merely meet the NRC requirements and those that have the robust security provided by the GTRI. We recommend that NRC staff visit institutions that have successfully implemented the GTRI upgrades to assist the development of “tiered” requirements. This is important since Licensees will be unable to meet specific requirements prescribed in proposed Part 37.

- 4) Licensees developed/implemented procedures, installed security upgrades and developed emergency response procedures. Although licensees had a difficult start up, the current security programs have been inspected by the NRC (at least once) and are fully operational. The “tiered” approach should also be adopted for identifying various types of individuals. For example:
 - Principle Investigators (PI) responsible for their research programs require an understanding of the process for their research staff to be granted unescorted access. PIs do not need to go through the process themselves as they don’t always perform the actual research. Ensuring that they complete the T&R components allows them access to the information but not the facility.

We request clarification whether a reinvestigation is required for individuals who have access to sensitive information only, and if so, the procedure that should be followed.

- The Order’s T&R components also included a “tiered” approach by distinguishing different requirements for individuals who had been with the licensee for greater than three years versus those who had less than three years. For individuals with the Licensee for greater than three years, the Licensee could review the individual’s employment history (*i.e.* personnel files) and obtain the supervisor’s standardized recommendation.

We believe this system should be retained for the initial and reinvestigation T&R program for researchers who have been with the University for a long period of time (*i.e.* 10 years). As an example, references obtained from coworkers and supervisors [who have daily interactions with the individual] provides more valuable character information than obtaining their education and employment history records for the last ten years.

- The Security Plan training should also follow a “tiered” approach whereby the level of training is commensurate with the individual’s “need to know”. Clearly RSOS and Institutional Security Personnel need an understanding of the Security Plan which is greater than the user or PI needs.

The NRC needs to clarify this in the final rule.

- NRC needs to clarify which date is used to determine the date of the required ten year recertification (T&R date or FBI report review and approval date).
- 5) NRC needs to provide information on how Licensees may obtain Military History verifications.
- 6) We understand and agree that the Reviewing Official (RO) should have the same level of scrutiny as the individuals who they are approving for unescorted access and should be familiar with the facility. For this reason, some Licensees have appointed their RSOS as the T&R Officials.

NRC should provide clarification for the following:

- If the T&R Officials have also been fingerprinted what procedure should be followed to nominate them as ROs?
 - The proposed procedure for ROs is for the Licensee to perform background investigations and only submit their fingerprints to the NRC for a criminal history check. Providing NRC with only the fingerprints separates the background investigation components, and does not provide NRC with the total picture. We believe that all background investigation components should reside with the Licensee. NRC should devise a corresponding procedure for nominating ROs.
- 7) We strongly disagree with the need for credit history checks. Given the current economic climate there may be a myriad of reasons for individuals having credit has problems. The Implementation Guidance states:
- “The credit report verifies the name, address and social security number of the applicant and can provide prior addresses and employment that can be used for more extensive criminal searches as well as cross-referencing employment information.”
- Review of the credit reports from the three major credit bureaus (Transunion, Equifax and Experian) demonstrates that they do not all provide the same information, have incorrect and inconsistent information and do not provide credit scores without an additional fee. For example:
- Transunion: contained name, address and social security number; contained prior addresses up to eighteen years ago, but not in chronological order; and, did not contain former employment.
 - Equifax: contained name, address and social security number; contained incomplete and incorrect prior addresses, but not in chronological order; and, contained former employment including an incorrect employer.
 - Experian: contained name, address but not social security number; contained prior addresses up to twenty eight years ago, but not in chronological order; and, did not contain former employment.

Due to these inconsistencies, none of the credit bureaus provide a complete accurate picture, and raise more questions which require intrusive questioning of the Licensee's employees. Please refer to the comments made by the National Consumer Law Center's Chi Chi Wu, in the Testimony before the US House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit dated May 12, 2010, particularly sections I.C. and I.D.

Additionally, the NRC states:

“For individuals including foreign nationals and United States citizens who have resided outside the United States and do not have established credit history that covers at least the most recent 7 years in the United States, the licensee must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries.”

Most importantly, the NRC provides no guidance on how to obtain these credit histories from other countries, nor specific criteria for evaluating them if they are available. Using a private consumer reporting agency will be incredibly expensive without a benefit. Past experience obtaining other requested foreign documents have not been successful. In many cases the report was unavailable, they were unable to get the report after numerous attempts, or there were no responses to inquiries. As a result, this requirement will be discriminatory to Americans since they have credit reports no matter how reliable or unreliable the information.

We strongly recommend that the NRC eliminate this requirement. If the NRC decides to retain this requirement, it must provide Licensees with specific criteria for evaluating the reports.

- 8) We strongly disagree with the need to obtain local criminal history reviews considering that the local law enforcement agency (LLEA) is required to report the information to the FBI. The EEOC Informal Discussion Letter dated February 22, 2005 states:

“Because arrests and investigations alone are not reliable evidence that a person actually has committed a crime, the Commission has concluded that an employer rarely will be able to justify making broad general inquiries about whether an applicant ever has been arrested or been the subject of an internal company investigation.”

Another problem is determining which of the multiple LLEA is to be used, especially in metropolitan areas, since an individual may travel through multiple jurisdictions on a daily basis. Even if the NRC defines local law enforcement to be the LLEA responsible for the area where one resides, how does the RO determine that information? The applicant may not even know which is the correct LLEA. IF NRC retains this requirement, it needs to provide specific procedural guidance.

We recommend that the NRC retain the FBI background check for the ten year reinvestigation.

We thank you for your consideration.
Sincerely,

Catalina E. Kovats, M.S.
Radiation Safety Officer

PUBLIC SUBMISSION

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Physical Protection of Byproduct Material

Comment On: NRC-2008-0120-0070
Physical Protection of Byproduct Material; Extension of Comment Period

Document: NRC-2008-0120-DRAFT-0111
Comment on FR Doc # 2010-25397

Submitter Information

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General Comment

See attached file(s)

Attachments

NRC-2008-0120-DRAFT-0111.1: Comment on FR Doc # 2010-25397

Rulemaking Comments

From: Gallagher, Carol
Sent: Wednesday, January 19, 2011 8:48 AM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Physical Protection of Byproduct Material
Attachments: NRC-2008-0120-DRAFT-0111.pdf

Van,

Attached for docketing is a comment from Catalina Kovats on the above noted proposed rule (3150-AI12) that I received via the regulations.gov website on 1/18/11.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by OWMS01.nrc.gov
([148.184.100.43]) with mapi; Wed, 19 Jan 2011 08:48:47 -0500
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Wed, 19 Jan 2011 08:48:12 -0500
Subject: Comment on Proposed Rule - Physical Protection of Byproduct Material
Thread-Topic: Comment on Proposed Rule - Physical Protection of Byproduct
Material
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X-MS-TNEF-Correlator:
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