

January 17, 2011

DOCKETED  
USNRC

January 18, 2011 (4:30 pm)

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

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: Docket ID NRC-2008-0120

To Whom It May Concern;

In response to the notice published in the *Federal Register* (75 FR 33902), I am providing comments on the proposed rule regarding Physical Protection of Byproduct Material. It should be noted that the opinions rendered in this letter are my own and don't necessarily represent my employer, Mayo Clinic. In the Federal Register notice, you specifically requested responses to the following questions related to background investigations. Responses to these questions have been provided by me and our Trustworthiness and Reliability (T&R) Official

*(1) Is a local criminal history review necessary in light of the requirement for a FBI criminal history records check?* We are of the belief that local background checks would not be necessary if FBI criminal investigations were also required. We had one situation at our facility where the criminal background check came up negative using our current system but was flagged by the FBI during the fingerprinting review process. In addition, in the State of Florida local counties are asked to report criminal activity to the state level. In many occasions, the state database is incomplete and/or inaccurate. We are now relying on county data to conduct our criminal background checks.

*(2) Does a credit history check provide valuable information for the determination of trustworthiness and reliability?* In my opinion, using credit information as part of the background investigation is highly subjective and makes the determination by the T&R Official much more difficult and time consuming. In addition, FCRA law specifies a maximum of seven years for a credit check as opposed to the ten years in proposed §37.25.

*(3) Do the Agreement States have the authority to require a credit history check as part of the background investigation?* We are not aware of any laws in the State of Florida that would prohibit us from conducting credit checks.

*(4) What are the appropriate elements of a background investigation and why are any suggested elements appropriate?* I have provided responses to the ten background investigation elements proposed in §37.25.

*(1) Fingerprinting and an FBI identification and criminal history records check:* Our vendor who currently conducts this service, only reviews the past seven years. We would need to verify that they could conduct a ten year check. There would probably be an additional cost associated with a 10 year check.

*(2) Verification of true identity:* Currently not being conducted at our institution.

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- (3) *Employment history evaluation*: Currently obtained in initial job application but would need to ensure that the past ten years is captured if proposed Part 37 is enacted.
- (4) *Verification of education*: Currently being conducted.
- (5) *Military history verification*: Currently being conducted *if* applicant disclosed they have been in the military.
- (6) *Credit history evaluation*: Currently not being conducted. See response above.
- (7) *Criminal history review*: Currently being conducted but only out to seven years. See response above.
- (8) *Character and reputation determination*: Currently conduct professional reference checks and typically only receive dates of employment and position held. **This will be difficult to achieve.**
- (9) *Independent corroborate of information provided by the individual*: Currently not being conducted. **May be difficult to implement. Unsure of process to be used.**
- (10) *Reinvestigations*: We would need to develop a process in order to comply with this proposed item.

(5) *Are the elements of the background investigation too subjective to be effective?* As mentioned previously, the credit check as well as the character and reputation determination are highly subjective and would make the T&R's determination more difficult.

(6) *How much time does a licensee typically spend on conducting the background investigation for an individual?* Currently, the reference/employment verification is a manual process and takes between 1 and 7 days to complete; FBI checks take 3 to 5 days; education verification, in most cases, 1 to 2 days, however, can take as long as 10 days; criminal background check can take 1 to 3 days to complete. According to our T&R Official, it is difficult to predict the ramifications to the process if the proposed Part 37 were enacted, however, some of the elements would have to be conducted manually, i.e., verification of identity, character/reputation determination and independent corroborator or reinvestigations. It is anticipated that these checks would each take between 7 to 10 days to complete. The verification of military service would be part of the background verification process currently in place and would add 5 to 10 days to the existing process.

In section §37.49(a)(2)(ii), the word 'nearby' needs to be clarified. NNSA representatives have recommended only silent alarms in the area immediately surrounding Category 2 sources.

Thank you for this opportunity to provide comments. If you have any questions, I can be reached at 904/953-8978.

Regards,

Kevin L. Nelson, Ph.D.  
Radiation Safety Officer  
Director, Environmental Health and Occupational Safety  
Mayo Clinic Florida  
4500 San Pablo Rd.  
Jacksonville, FL. 32224

## Rulemaking Comments

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**From:** Nelson, Kevin L., Ph.D. [JA RAD] [nelson.kevin2@mayo.edu]  
**Sent:** Monday, January 17, 2011 10:05 AM  
**To:** Rulemaking Comments  
**Cc:** Nelson, Kevin L., Ph.D. [JA RAD]  
**Subject:** Docket ID NRC-2008-0120  
**Attachments:** letter format NRC 10CFR37 Response.doc

NRC;

Attached please find comments associated with proposed Part 37 related to Physical Protection of Byproduct Material. Feel free to contact me if you have any questions. Thank you.

<<letter format NRC 10CFR37 Response.doc>>

**Kevin Nelson, Ph.D., CHP**  
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From: "Nelson, Kevin L., Ph.D. [JA RAD]" <nelson.kevin2@mayo.edu>

To: <rulemaking.comments@nrc.gov>

CC: "Nelson, Kevin L., Ph.D. [JA RAD]" <nelson.kevin2@mayo.edu>

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