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Attached please find our comments on the Proposed Part 37 Rule and draft guidance document.

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Docket ID NRC-2008-0120

Source Production and Equipment Co., Inc. would like to submit the following comments with regard to the proposed Part 37 rulemaking and guidance document.

§ 37.21(a)(3) By (**Insert date - 30 days - after the final rule is published in the *Federal Register***), each licensee that is authorized to possess a category 1 or category 2 quantity of radioactive material on (**insert the effective date of this rule**) shall submit information concerning the licensee's compliance with the requirements of this subpart to the appropriate NRC regional office specified in § 30.6.

The requirements for licensees that implemented the access controls under the Increased Controls (IC's) are not clear. The rule or the guidance should specifically state that licensees only need to confirm that they implemented the access authorization portion of the IC's in order to be "grandfathered" into the program.

Q2: What does unescorted access mean?
A2: Unescorted access is defined as solitary access to category 1 or category 2 quantities of radioactive material granted to an approved individual, and includes solitary access to sufficient quantities of radioactive material such that an individual could successfully accumulate lesser quantities of material into a category 1 or category 2 quantity.

This guidance implies that the accumulation could occur over time, without stating what that time period would be. A specific, presumably relatively short time period needs to be added or else this is open ended guidance subject to various interpretations by various inspectors and licensees.

§ 37.21(b)
General performance objective. The licensee's access authorization program must ensure that the individuals specified in paragraph (c)(1) of this section are trustworthy and reliable such that they do not constitute an unreasonable risk to public health and safety or the common defense and security.

Licensees are not in a position and do not have the knowledge and skill to ensure that personnel are trustworthy and reliable. All that licensees can be expected to do is to follow the NRC rule that was presumably written to provide licensees with methods to screen personnel.

§ 37.21(c)
Applicability.
(1) Licensees shall subject the following individuals to an access authorization

program:
(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material;
(ii) Vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material;
(iii) Movement control center personnel for shipments of category 1 quantities of radioactive material;
(iv) Any individual whose assigned duties provide access to shipment information that is considered to be Safeguards Information-Modified Handling related to category 1 quantities of radioactive material; and
(v) Reviewing officials.
(2) Licensees need not subject the categories of individuals listed in § 37.29(a) through (m) to the investigation elements of the access authorization program.
(3) Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

Licensees cannot implement the requirement of 37.21 (c)(1)(ii) and (iii) when carriers are used for shipments of category 1 quantities.

The requirements of 37.21(c)(3) conflicts with the requirements of (1)(ii), (1)(iii), (1)(iv), and (1)(v) as none of those personnel require unescorted access to radioactive material.

Q4: Our radioactive material is in a room where several people have unescorted access, even though they do not work directly with the radioactive material (.e.g. custodial staff), do these individuals need to be fingerprinted?
A4: Yes. Other personnel (both licensee and non-licensee) that have job duties that require unescorted access to the room where the materials are used or stored must be fingerprinted and undergo a background investigation.

If the radioactive material is in a secured area within a room, then a T&R determination shouldn't be required for personnel who need access to that room. This should be included in the guidance or the rule.

Q6: Would individuals transporting radioactive material be subject to the background investigation requirements?
A6: Individuals involved in the shipment, in particular those employed by carriers or other organizations handling shipments, may have unescorted access to the material during the shipment process. These persons may not be employees of the licensee and thus may not be under the licensee's direct control. Section 37.21(c) requires licensees subject certain classes of individuals to the access authorization program. Specifically, vehicle drivers and accompanying individuals for road shipments of category 1 quantities of radioactive material, movement control center personnel for shipments of category 1 quantities of radioactive material, and any individual whose assigned duties provide access to the SGI-M shipment information on category 1 quantities of radioactive material must be fingerprinted and undergo background investigations. Commercial drivers for category 2 quantities of radioactive material

are not subject to the access authorization program.

The answer to this question in the guidance does not contain adequate direction for implementation of the rule. It should specifically state that licensees are not expected to attempt to apply these rules to commercial carriers or to a carriers communication center. In addition, the description of "any individual whose assigned duties provide access to the SGI-M shipment information" fails to provide clarity or implementation guidance. In our operation, practically everyone knows at least something about expected shipments, so, is a T&R determination required for everyone within the operation.

§ 37.23(b)
Reviewing officials.
(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.

There is nothing in the rule or the guidance that explains why a reviewing official is required to have unescorted access to radioactive materials or safeguards information. T&R personnel are already required to be approved by NRC and have security training, but they may have no reason to ever have unescorted access to radioactive material. And, the guidance fails to provide any explanation for the requirements of the rule.

§ 37.23(d)
Personal history disclosure. Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. 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.

Specific guidance is needed with regard to the time frames for the background investigation, how far back should an individual's history be investigated? What means is a licensee required to use to investigate an individual's history, what information is available, and from what sources?

§ 37.23(e) *Determination basis.*
Q4: What criteria do I use to determine trustworthiness and reliability?
A4: It is the licensee's responsibility to make trustworthiness and reliability determinations for all employees granted unescorted access. The trustworthiness and reliability determination is designed to identify past actions to help verify one's character and reputation; these past actions can provide reasonable assurance of an individual's future reliability. Some indicators that licensees should consider for what may be trustworthiness and reliability concerns can be found in Annex B.

The guidance document fails to provide guidance on the amount of personal history information

that is required. There should be a prescriptive list of precisely which history is required. Without that, various inspectors and licensees will reach different conclusions as to the acceptability of the access authorization program. In addition, NRC should provide specific guidance on how an FBI record should be interpreted. In many cases it does not appear that there is any information on the disposition of the arrest, is there a specific process that must be followed to obtain additional information, and if so, from whom? Licensees do not have the expertise to analyze a this information with regard to whether it indicates that a person is T&R or not. Specific accept / reject criteria must be included in the regulation.

Q9: If a licensee has determined someone to be trustworthy and reliable, and the individual later takes the material for malevolent use, what actions are expected of the licensee? What liability does the licensee assume because of their determination?
A9: The licensee is required to provide reasonable assurance that persons granted access are trustworthy and reliable, and if the licensee fails to provide that assurance, the licensee would be in violation of the Part 37 requirements, and enforcement action will be considered. Providing assurance means that the licensee has taken reasonable efforts as required by Part 37 to ascertain trustworthiness and reliability and documented those actions. If there was nothing in the background investigation that would have caused the licensee to deny access and everything was properly documented, the licensee would not be in violation of the access authorization requirements. If an incident occurs, the licensee is expected to implement the other elements of their documented program required by Part 37.

The guidance fails to address the question posed. What liability does the licensee assume? Any determination could be second guessed in the light of a subsequent incident.

Q10: Does the denial of unescorted access create legal liability for the licensee?
A10:
A denial of unescorted access authorization is not a denial of employment. The applicant may still work in areas of the facility outside of security zones, or perform escorted work within the facility. A denial only prevents the employee from having unescorted access to Category 1 and Category 2 quantities of material.

This statement is not true, the failure to be deemed T&R could very well make someone unsuitable for many types of employment.

Q14: Are there any other sources of information that a licensee should check before making a final determination on an individual?
A14: The licensee should check the NRC's list of escalated enforcement actions issued to individuals. The list includes individuals that are prohibited from working with radioactive materials. This listing can be found on the NRC's website at: http://www.nrc.gov/readingrm/doc-collections/enforcement/actions/individuals/.

If this is a requirement, it should be in the regulation, not in the guidance document. It should be very clear that something in particular is required.

§ 37.25(a)
Initial Investigation. Before granting an individual unescorted access to

category 1 or category 2 quantities of radioactive material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 10 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

§ 37.25(a)(3)

Employment history evaluation. Licensees shall complete an employment history evaluation. Licensees shall verify the individual's employment with each previous employer for the most recent 10 years before the date of application;

§ 37.25(a)(4)

Verification of education. Licensees shall verify that the individual participated in the education process during the claimed period;

§ 37.25(a)(5)

Military history verification. Licensees shall verify that the individual was in the military during the claimed period;

The term "claimed period" is not defined in the proposed rule, however, from the guidance it appears that the "claimed period" is the same 10 years stated in 37.25(a)(3). If that is true, that should be stated in the rule. Introducing undefined terms leads to interpretation by different licensees and inspectors.

§ 37.25(a)(6)

Credit history evaluation. Licensees shall evaluate the full credit history of the individual who is applying for unescorted access authorization. A full credit history evaluation must include, but is not limited to, a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit history.

First, licensees do not have the expertise to analyze a credit history with regard to whether it indicates that a person is T&R or not. Specific accept / reject criteria must be included in the regulation.

Second, the guidance should specify exactly which credit agencies must be contacted, the method of contact, etc. The guidance should also state what the "other obligation in the FCRA" are so that licensees will be prepared and able to comply.

Also, the guidance should contain actual guidance outlining exactly who, or what agency, should be contacted to verify employment, education and military history. Previous employers many times will not verify employment. Schools often do not have long term records of education history. Most licensees would not know who to contact to verify military history. This is the specificity of guidance that would help licensees implement this rule.

§ 37.25(a)(7)

Criminal history review. Reviewing officials shall obtain from local criminal justice resources the criminal history records of the individual who is applying for

unescorted access authorization and evaluate the information to determine whether the individual has a record of local criminal activity that may adversely impact his or her trustworthiness and reliability. The scope of the applicant's local criminal history review must cover all residences of record for the 10-year period preceding the date of the application for unescorted access authorization;

The intent of this requirement is unclear. Which "local" resource should be contacted? For the last 10 years, most people would have multiple residences, and multiple locations that they frequent, locations that they worked, etc. Any of these localities might have arrest records, and it is not practicable to contact each and every potential local government. In addition, we have never been successful in obtaining arrest records directly from local governments.

§ 37.25(a)(8)
Character and reputation determination. Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this subpart must be limited to whether the individual has been and continues to be trustworthy and reliable;**§ 37.25(a)(9)**
The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual);

Licensees do not have the resources to locate people who may know the person in question, much less to conduct the actual reference checks. In addition, there is no way that a licensee might be expected to locate someone unless the original contact information was provided by the potential employee. If the guidance is going to be useful, it should provide in depth guidance on exactly how this might be accomplished, what questions are pertinent, and what the accept / reject criteria might be.

In several instances such as this, NRC states that licensees would only have to perform a T&R determination for their few personnel who require unrestricted access. But, licensees who are trying to fill a specific job position that requires unescorted access are forced to perform a complete background check before that person is hired. This could result in multiple expenditures of time and effort investigating multiple individuals for one eventual employee. It could also deter talented and knowledgeable professionals who object to the invasion of their privacy.

§ 37.25(a)(9), Q1: What type of information is considered independent information to corroborate that provided by the individual?
A1: Independent information may be obtained through interviews with anybody who knows or previously knew the individual—such as teachers, friends, coworkers, neighbors, and family members.

Licensees do not have the resources to locate these people, nor do they have the skills to conduct interviews with neighbors, etc. In addition, 37.25(a)(8) states that "Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household", so these two requirements seem to conflict with one another. It is not reasonable to expect licensees to have the resources or knowledge to perform this type of background check, and as long as this remains in the regulation and the guidance, there will of course be an expectation by NRC that they be implemented by licensees when it is not practical or reasonable to do so.

§ 37.25(a)(10)

If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information . . . the licensee shall . . . obtain a confirmation of employment, educational enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

Licensees may not have the ability to accomplish this, in addition, it may be simply impossible or at the very least impracticable. In addition, licensees who are trying to fill a specific job position that requires unescorted access are forced to perform a complete background check before that person is hired. This could result in multiple expenditures of time and effort investigating multiple individuals for one eventual employee, or having to turn away a promising prospect simply because "further review" as suggested in answer A2 is not practical. It could also deter talented and knowledgeable professionals who object to the invasion of their privacy.

Annex B

Guidance for Evaluating an Individual's Trustworthiness and Reliability for Allowing Unescorted Access to Certain Radioactive Material

6. Has been convicted of a crime(s) which, in the reviewing official's opinion, indicate poor judgment, unreliability, or untrustworthiness.

This judgement is almost completely subjective. One person's opinion of what constitutes such a conviction may be completely different from another. One might consider every conviction as indicating poor judgement.

The additional criteria contained in the list on page 92 could pertain to many personnel that are T&R. Once again, this is much too subjective.

§ 37.45(b)

LLEA notification for temporary job sites.

(1) At least three business days prior to beginning work at temporary job sites where the licensee will use or store category 1 or category 2 quantities of radioactive material for more than seven consecutive calendar days, the licensee shall provide advance written notification to the appropriate LLEA.

I don't know whether radiographers would even know whether they will be at a temporary jobsite for 7 days. The rule is not clear on whether this means 24/7, or a site where they will come and go for 7 consecutive days. If the LLEA is intended to be the parish or county, there may be jobsites (such as pipelines) that span several different LLEA jurisdictions. The NRC should develop a standardized LLEA notification form to facilitate implementation of this rule. We believe that this should be handled through the 911 emergency response system.

§ 37.49(a)
Monitoring and detection.
(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.

What are NRC's expectations for continued implementation of these requirements in an emergency? This includes natural and manmade disaster, loss of power, loss of access, etc. What length of time are backup systems required to operate? How are licensees supposed to implement this requirement when there is no provision for them to even re-enter a disaster area?

§ 37.49(a)(3)
A licensee subject to this subpart shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:
(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.

A.2., page 100: The detection system must be capable of detecting all unauthorized access to the security zone, including breaches of barriers used to isolate and control access to the protected radioactive material. It must also be capable of detecting an unauthorized removal of protected material from security zones.

Q1: To meet the additional requirement of § 37.49(a)(3)(i) for immediate detection of an attempted removal of a category 1 quantity of material from a security zone, can a licensee rely only on its main site-wide intrusion detection system linked to a monitoring facility?
A1: No, this requirement is in addition to the requirement to detect, assess, and respond to access to the security zone. Methods that the licensee may use to meet this requirement include, but are not limited, to the following:
□ Alarming electronic tamper indicating device;
□ Alarming radiation detector; or
□ Visual surveillance by an approved individual.

Has the NRC identified equipment that would be capable of performing the required actions in a working environment such as a busy shipping area or a hot cell? It would have to be an alarm that sounded when there is radioactivity in the area, but radiation alarms could sound during the course of normal business, so this doesn't seem practicable. The alternative, some kind of sophisticated electronic tamper indicating device, is possibly not even available for use, and again, would have to be practical for use in a high volume work environment. Source manufacturing involves moving radioactive material constantly, in and out of hot cells, devices, etc. It's hard to envision an automatic alarming system that would be reliable in detecting removal of material in a working environment.

§ 37.71(b)
Notwithstanding the requirements of any other regulation in this chapter, any licensee transferring category 2 quantities of radioactive material to a licensee of the Commission or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. The transferor shall document the verification.

In the normal course of business, licensees obtain a copy of the potential customer's license prior to shipment. There is no need to add an additional requirement for a licensee to do the exact same thing, and to do it every single time a source is transferred.

§ 37.73 Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit

As this rule is written / phrased, it is almost impossible to determine what the actual requirements are for the different types of transfers listed in (a) through (e) without developing a table of some sort, or other way of grouping the requirements. The rule needs to be rewritten in plain language.

§ 37.75(c)
Each licensee who receives a shipment of a category 1 or category 2 quantity of radioactive material shall notify the shipping licensee within 4 hours when the shipment arrives at its destination.

This is a redundant requirement. Licensees are already required to input data into the NSTS when shipping or receiving radioactive material. Licensees are already required to initiate an investigation if a shipment does not arrive. There is simply no reason to require that a licensee notify the shipper when the shipment occurs as it is schedule. This will require a tremendous amount of resources. This requirement would require many many additional man hours to licensees work load, and it's a requirement that is unnecessary. We are already required to notify the shipper if the shipment does not arrive.

§ 37.77
As specified in paragraphs (a) and (b) of this section, each licensee shall provide advance notification to the NRC and the governor of a State, or the governor's

designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the State, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC website at http://nrc-stp.ornl.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

It may not be possible to provide this information prior to the shipment. In the case of an import, a licensee may not have this information until the shipment is in progress, or even when it is received. If it may be assumed that this requirement is only applicable from the point of customs clearance, then it may be practicable. The regulation should specifically state that it is applicable to the portion of the movement of shipments after customs clearance.

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

Licensees do not have complete control over shipments until they clear customs in the US. This regulation can only be applicable to that portion of the shipment. Licensees cannot control the shipment of material from a foreign (or domestic!) entity. This is simply a fact, licensees cannot be held responsible for those things that are not under their control.

§ 37.77(b)
Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:
(4) The point of origin of the shipment and the estimated time and date that shipment will commence;
(5) The estimated time and date that the shipment is expected to enter each State along the route;
(6) The estimated time and date of arrival of the shipment at the destination;

This information is not available to most licensees, carriers are not willing, and may not be able, to provide this detailed information to licensees. Has NRC coordinated with DOT to determine

whether this is practicable? In our experience we have found that it is not. In addition, of course radionuclides decay. So, for that and other reasons, often times activity level is not available with much degree of accuracy, and often the curies are not measured until the shipment arrives.

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

For imports, it must be clear in the regulation that these requirements are only applicable from the point of customs clearance on, prior to that, licensees do not have control over the shipments.

NRC Questions and answers:
In question B.8. regarding background investigations, NRC specifically requests feed back on the following items that most affect licensees:
(1) "Is a local criminal history review necessary in light of the requirement for a FBI criminal history records check?" No. In our experience, the local check is only made with the local parish or county, so the only information that will be obtained is the history for that locality. This information is not complete enough to provide relevant information.
(2) "Does a credit history check provide valuable information for the determination of trustworthiness and reliability?" No. If the credit check remains a requirement, NRC must give specific guidance as to exactly how the information is to be evaluated. If a person is poor and owes money to various entities, are licensees expected to determine that they cannot have access to RAM? What if they have lots of money in the bank, then are we supposed to think that they might be well funded by a terrorist group? If they have a perfectly normal credit history, should licensees deduce that they have been undercover for years, making sure to hide their true circumstances?
(5) "Are the elements of the background investigation too subjective to be effective?" Yes. Without specific requirements or guidelines on how the information gathered should be interpreted, decisions made are not effective. Licensees are not experts in this field, nor should they be expected to be.
(6) "How much time does a licensee typically spend on conducting the background investigation?" In our experience, the investigations that we are already required to perform can require multiple inquiries to multiple sources of information, and some information is simply not available. We have spent many hours on conducting these investigations for each single employee, or potential employee when the job position requires unescorted access to radioactive material.

In question B.10. about what to do if an entity refuses to respond when contacted for background information, NRC states that the licensee would then need to obtain the information from "an alternate source that has not been previously used". There are many entities that cannot or will not provide background information, and licensees do not have the resources to obtain the information elsewhere. Licensees do not have the resources or the training that may be required to canvass a prospective employee's neighbors, etc.

In question B.14., licensees are required to investigate current personnel allowed access every 10 years. This includes the credit check and criminal history. It specifically does not include the

character and reputation determination, but does include making a determination of trustworthiness and reliability. These requirement do not make sense. There is insufficient information on whether the criminal history will really be the criminal history, or just an arrest record like we are currently receiving.

In question C.9., NRC states that for category 1 material, a licensee would need to immediately detect any attempted unauthorized removal through the use of electronic sensors linked to an alarm. Specifically, what is NRC's expectation for implementation of this requirement. Are the electronic sensors to be mounted to the actual source? To the hot cell? To the storage area? Is there a practicable means to implement this requirement? NRC needs to keep in mind that there are numerous ways to shield radioactive material, so, the method has to be able to detect an unauthorized removal of a shielded container, and using a building or area alarm is specifically not allowed.

In question C.10., how long must the continuous (primary or alternative) communication capability continue to be operable? What arrangements need to be made to maintain the capability in any emergency, and for how long? Is there a practicable means to implement this requirement? In the wake of Katrina no communications systems worked reliably for many hours or days. There was no power available, nor were personnel allowed in the area to start a generator.

In the reply to question C.11. about a response to detection of a security zone intrusion, NRC states that the response is required without delay. Are licensees expected to respond instantaneously? How is this accomplished when using an alarm monitoring service like Brinks?

In question C.17., NRC seems to use and define the terms "mobile" and portable devices differently than they are defined elsewhere in the regulations and in standards incorporated into regulations. Either the terminology should be changed or the requirements changed to be applicable to (already defined) mobile and portable devices.

Later in question C.17., NRC states that the vehicle or trailer with devices be disabled using some other method than removing the ignition key. Further guidance is needed to define "disable". Presumably this would be a temporary "disabling".

There was a request to exempt oil and gas vehicles for safety reasons, but the disabling of a vehicle in many more circumstances than just oil and gas facilities could inhibit a person's ability to evacuate a hazardous area, depending on the extent of the vehicle disabling that is required.

In the response to question C.18., NRC requires that monitoring equipment be inspected and tested quarterly. This may present an undue burden on licensees depending on the monitoring system that they have in place and the conditions required to trigger the equipment.

In question D.2., NRC states that the proposed rule apply only to the domestic portion of the transportation for imports and exports. This needs to be specifically defined in the regulation, at least for imports, as that portion of the transportation that takes place after clearance at customs.

Licensees have very little, if any, control over shipments up to that point, and guidance is simply guidance, and does not have the same authority as the regulation. There should also be specific guidance on how the security rules apply when working with freight forwarders.

In question D.4., there is a discussion about verifying the license of a domestic Category 1 recipient prior to transferring material. Would this be applicable to exports? How would this work for temporary job sites? Will there be somebody in each state that coordinates all of that? Also, the link does not appear to work, http://nrc.stp.ornl.gov.asdirectory.html. There is already a source tracking website, couldn't the information be available there instead of creating a new system? In the second part of the question NRC states that they are considering adding this requirement for Category 2 transfers. The license issuing authority would not be aware of temporary job sites would they? If NRC simply maintained a current list of current licensees and shipping addresses this information could be accessed by other licensees. Would any of these requirements replace any of the NSTS requirements?

Recently NRC stated that they planned to use the same software developers for online license access as was used for the NSTS. Considering the multiple continuing problems in NSTS, NRC may wish to reconsider this choice.

In D.5., NRC states that the licensee would be required to discuss the State's intention to provide escorts for Category 1 shipments. Normally, these notifications take place by email, there is no "discussion" unless the State initiates one in response to the licensee's notification. There is a big difference between Category 1 quantities and HRQ quantities, there shouldn't be any additional requirements for Category 1 quantities that might serve to dilute the attention paid to HRQ.

Several times in the discussion of prior notifications, the term "time" is used in addition to or instead of the word "date". The time that something is going to happen is not available for material that is transported by common carrier. A shipper like FedEx simply verifies that a shipment will arrive on a certain date, and often the only notice that it will be late is that it doesn't arrive by the end of the business day. That makes the requirements for a "no later than" time impracticable.

The requirement to confirm receipt of a shipment with the shipper in D.8. adds yet another onerous step to the shipping and tracking process. It is also redundant to current requirements in the national source tracking system. If a notification must be made if a shipment does NOT arrive, it doesn't make sense to also require that a notification be made when and if it does arrive. This simply adds another step that is not useful.

Miscellaneous questions and comments:
Has there been coordination between DOT and NRC regarding security during transport, particularly in light of HM232F?

Does the requirement for continuous and active monitoring by licensees only apply to shipments carried by the licensee? While carriers may continuously and actively monitor shipments, real

time information when an outside carrier is used is not available to licensees.

Is FedEx's tracking system considered to be proven and reliable? They are the primary carrier of radioactive material.

Why is spent fuel not addressed in Part 37?

Why are transuranic shipments not addressed in Part 37, do they fall under other security program requirements? If not, it doesn't make sense to impose additional security requirements on licensees.

IX. Paperwork Reduction Act Statement says that "Prospective employees for jobs that require unescorted access will also need to have the full screening process." We are a small business of less than 25 employees. We have been required to add one additional employee to meet the requirements implemented since 9/11. These regulations will add yet another regulatory burden.

How must these requirements be implemented when using a freight forwarder?

In the proposed definition of "movement control center", various functions are combined that may be accomplished by separate departments or personnel. There is no value in requiring that they all be accomplished by one entity.

37.21 (c)(1)(iv) Precisely what shipping information requires an access authorization program?

What are the implementation requirements for companies that already comply with the increased controls for current employees, etc.?

Is verification of education required for personnel who have been employed for 10 years? If so, for how long? (37.25(a)(4)) What precisely is meant by "claimed period"? That term is not defined.

It is not practical to require a criminal history review from local sources considering the multitude of overlapping jurisdictions, and it is unclear which jurisdiction would be considered local, the facility location or an employee's home. (37.25(a)(4))

Licensees do not have the resources to conduct reference checks with unknown people if a person's family is excluded. They do not have the resources to locate independent information and references. Wording like "to the extent possible" does not belong in a rule, it is too subjective, and will be interpreted in various ways by various licensees and inspectors.

What should a licensee do if it is not practicable to independently confirm the information in a person's history?

In 37.41 (b), the words "without delay" need to be defined, particularly with regard to the assessment of an access incident.

In 37.43 (a)(3)(i), there is a requirement for security plan revisions to be reviewed and approved by "licensee management". There may be times that "licensee management" does not have a need to know about details of the security plan. This also contradicts the requirement to limit access to the security plan.

In 37.43 (d)(3)(ii), it appears that NRC is prohibiting licensees from fingerprinting and performing criminal history checks for any employee not requiring unescorted access, is that the intent?

In 37.75 (a)(2)(iii), all shippers and import receivers of Category 1 RAM are required to arrange for positional information sharing when requested. Has NRC determined that carriers are willing to share this information "real time"?

In 37.75 (c), is NRC requiring licensees to contact international shippers of RAM within 4 hours of receipt? And for domestic shipments, isn't using the NSTS sufficient? If so, that is accomplished within 24 hours of receipt.

In 37.77, the times that a shipment will commence, cross state lines, and arrive are not generally available. Also, it is common that the shipper or receiver does not know of schedule changes ahead of time.

37.79 (c)(2) states that licensees that make arrangements for Category 1 shipments shall ensure that certain personnel are trained. When using an outside carrier / common carrier, the licensee can audit the carrier for compliance, but that does not ensure that personnel are trained as required.

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