

**Mendiola, Doris**

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**Subject:** FW:  
**Attachments:** doc20110118160037.pdf

-----Original Message-----

**From:** Roughan, Kate [mailto:Kate.Roughan@qsa-global.com]  
**Sent:** Tuesday, January 18, 2011 4:02 PM  
**To:** Rulemaking Comments  
**Subject:**

Comments on NRC 2008-0120

Thank you

Kate Roughan

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Call = P. Goldberg (Pfg)  
1 m. Herr (mlh4)



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January 17, 2011

Ms. Cindy K. Bladey  
Chief, Rules, Announcements, and Directives Branch  
Office of Administration  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Request for Public Comment on "Physical Protection of Byproduct Material; Proposed Rule"  
(75 FR 33902) and Draft Guidance Document (75 FR 40756); Docket Number NRC-2008-0120

QSA Global is a worldwide manufacturer and distributor of radioactive sealed sources and devices for use in industrial radiography, oil well logging, gauging and brachytherapy. We are currently operating under 5 different orders affecting category 1 and 2 sources and greatly appreciate the NRC's efforts in consolidating and putting these requirements into rulemaking.

This cover letter includes some overall comments and the attachment contains specific comments on the various paragraphs.

The document retention period should be for 3 years as in most other NRC regulations. This makes it easier for the licensee to comply and have a consistent document retention policy.

The proposed rule has many additional requirements that are not in the orders and these result in much more onerous administrative requirements. These requirements include many supporting procedures to be written, additional documentation to be kept, more training, and more assessments. With the implementation of the orders there has been a significant increase in control of Category at 1 and 2 sources. The controls and security currently in place under the orders is working. However there is no evidence that requiring more than what is covered under the current orders will significantly increase source security.

As the orders were written to specific types of licenses, the requirements made sense. The proposed rule is a one size fits all approach, and as a result is overly restrictive for some categories of licensees. We would recommend putting the generic requirements in the rule and then addressing the various sub sets of licenses in parts in the regulation. This could be covered in NUREG 1556 series – which already provides licensing guidance for the various types of licensees.

Most licensees do not have a large infrastructure to support the many programs, documents, and assessments that this rule would require. In most cases, it will result in a typical licensee having to hire more resources, at least one additional FTE. On top of implementing the existing orders, the NSTS and new changes in Part 110, these Part 37 additional requirements will add a significant burden to already strapped licensees and Agreement State programs with no measurable benefit.

When the orders first came out, industry did not have a chance to comment about the programs and economic impact. We have spent approximately \$250,000 on physical site upgrades alone and have recurring costs of \$50,000 annually for the alarm system just to support the existing orders. For the transportation of Cat 1 and 2

sources order, we spend approximately \$100,000 a year to meet the requirements of the order. The amount of employee resources to implement and support the orders has been approximately 400 man days initially and 75 man days annually to support the orders. Total costs to date for the existing orders is approximately \$ 1.5 million. This is well in excess of what the regulatory analysis estimated.

To implement the requirements in Part 37 that are over and above the existing orders we estimate will cost \$250,000 initially which includes 100 man days to set up all the programs and procedures. There will be an ongoing annual cost of \$100,000 -200,000 for hiring at least one to two FTE as a technical/ administrative resource to implement all the procedural and documentation requirements. Based on these estimates for just one licensee, we believe the costs assumed in the regulatory analysis (\$25,000 initially and \$27,000 annually) to be substantially underestimated.

To initially establish all the documented programs that are proposed in Part 37 will take a significant amount of valuable time away from key positions within the licensee's facility such as the RSO, Security Manager, Regulatory Affairs and Operations. The staff filling these positions are already have fully utilized with more critical responsibilities related to radiation safety. The added work burden proposed in Part 37 provides no valid justification of its value or worth relative to radioactive material security or safety and its support will cause reduction or removal of these same personnel from program aspects with a greater, demonstrable safety impact.

The NRC regulatory analysis itself states that implementing the new requirements will cost an additional \$500 million but without any quantifiable benefits – only potential qualitative benefits. It is going to be very difficult for a licensee to ask their management for additional money and resources when they can't demonstrate any quantifiable benefits.

Many of the Category 1 and 2 radioactive sources that would be affected by this rule are used for nondestructive testing (X-Ray) of new and existing pipeline welds. They are also used for quality testing in oil rig and power plant construction, in the petrochemical plants and refineries and in many other process industries. All of these inspections are vital for the support and safety of our nation's infrastructure. If a necessary inspection is not done on a pipeline due to licensees terminating their licenses as they cannot afford to implement all these requirements, it could result in a true safety issue with loss of life. There must be a balance between the real benefit of providing the services that the Cat 1 and 2 sources provide, against a hypothetical malevolent act that may involve one of these sources.

We strongly recommend that the existing orders go to rulemaking, but that no additional requirements be imposed at this time. Based on the probability of NRC receiving substantive comments on this proposed rule, we request that any changes should be published as another proposed rule for public comment with greater detail provided as to the actual safety and security benefits to be obtained from the costs of implementation of these additional requirements.

We greatly appreciate all the efforts the NRC has made in soliciting stakeholder input on this important rule and the many opportunities to provide comments. We would be happy to provide any additional information or clarification, please feel free to contact me at 781-505-8210 or [kate.roughan@qsa-global.com](mailto:kate.roughan@qsa-global.com).

Sincerely,



Cathleen Roughan  
Director, Regulatory Affairs/Quality Assurance

Cc: Meri Horn

## Specific Comments

### Sec. 37.5 Definitions.

Aggregated means accessible by the breach of a common physical barrier, whether the material made accessible is a single sealed source, multiple sealed sources, or multiple sources of bulk radioactive material.

#### Comment

Need more definition, it is not clear what is meant by "common physical barrier". This could be interpreted as a door, storage locker or package. Recommend the physical barrier is where the security zone has been established.

Lost or missing licensed material means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

#### Comment

In the absence of any suspicious or known mitigating factors, we have typically given the carrier 24 hours to trace within their transportation cycle, before the package is declared as lost or missing. This has proven to be the most effective time period. Anything less than the 24 hours does not allow sufficient time for the carrier to do a complete document and tracking search and/or a physical search at potential locations. To declare the package as lost or missing before that will result in many false positives, as 99.99% of the time the package is located within the 24 hour window. These false positives will result in significant resources of both the regulatory agencies and licensees involved, trying to get useful information that just isn't available. Many times the paperwork gets separated from the package itself and this is normally rectified within the 24 hours. A 24 hour window allows for the shipper/carrier actions and necessary communications to be conducted over the various time zones for both domestic and international shipments.

This needs to be linked to the no later than arrival time for consistency.

No-later-than arrival time means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 2 hours after the estimated arrival time for shipments of category 1 quantities of radioactive material. The no-later-than-arrival time may not be more than 4 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

#### Comment

These no later than arrival times are too restrictive and impractical to implement, it would require an individual to constantly monitor each shipment and assure its exact arrival time with the recipient. With multiple daily shipments in progress every day from an M&D licensee – this could be more than 50

shipments a day - this would require a dedicated person to just carry out this task. In addition with all the potential changes in shipments it is very common for the shipments to be delayed for legitimate reasons, resulting in requiring continuous status checks by the shipper. See additional specific comments on 37.75.

Safe haven means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

**Comment**

NRC needs to identify specific safe havens, the licensee cannot do this. One of the areas that was originally specifically recommended was military bases, but it was later learned that they will not allow commercial transport especially during escalated threat levels. Each state will have specific requirements for a safe haven and between NRC and the Agreement States there should be agreed safe havens.

**Subpart B—Background Investigations and Access Authorization Program**

**Sec. 37.21 Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material.**

(2) Each licensee shall establish, implement, and maintain its access authorization program in accordance with the requirements of this subpart.

(3) By (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 (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 Sec. 30.6.

**Comment**

This is an administrative burden on the licensee, licensees have already implemented the orders – what benefit is it to affirm that we will comply with the rule. It is implicit that as a licensee affected by Part 37 we will meet the requirements, there is no need for any additional work.

**Sec. 37.23 Access authorization program requirements.**

(a) Granting unescorted access authorization.

(1) Licensees shall implement the requirements of this subpart for granting initial or reinstated unescorted access authorization.

(2) Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by Sec. 37.43(c) before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(b) Reviewing officials.

**Comment:**

This is requiring that the licensee perform background checks and make an assessment that they want an individual to be the reviewing official without the FBI criminal results, this does not make sense. The licensee has to know all the information before they can know who they want to get approved as a reviewing official. This requirement only gives them some of the information before making that decision. In addition the regulatory authority only has access to half the information is also being asked to approve an individual with only some of the information needed to make that approval. The current system for reviewers of Cat 2 sources works – there is no reason to change it

In addition, this is putting the reviewing official in a potentially sensitive position on denying employment to an individual based on an arbitrary assessment as there are no guidelines for a pass or fail. If the NRC believes that the full background assessment must be made on an individual for access to Cat 1 and 2 sources – they should set up specific guidelines that everyone follows or the NRC reviews all personnel having access to Cat 1 and 2 sources. This could be modeled on the CDC or TWIC programs for background checks.

37.23 (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.

**Comment:**

This will eliminate the option of using HR personnel from being a reviewing official. Most companies have employee information processed and reviewed by the HR office and not the RSO or similar. This will create two different systems for handling employee background checks. There is no need why the reviewing official needs to have access to Cat 1 and 2 sources if it is not part of their normal job duties. This could result in licensees allowing access to the radioactive material on paper to the HR person but they don't really have physical access, ie they are not considered a radiation worker. If considered a radiation worker more training and qualification would have to be done to meet the safety program requirements just so they could act as a RO. In many cases the HR person is not trained in this technical information and may not be able to meet the radiation worker requirements. This creates an inconsistency between the safety program requirements and the security program that will be hard to support by the licensee.

37.23 (f) Procedures.

(3) The licensee shall retain the list of persons approved for unescorted access authorization and the list of those individuals that have been denied unescorted access authorization for 5 years after the list is superseded or replaced.

**Comment:**

The requirements for the access authorization program are overly prescriptive. The amount of required procedures and associated documentation is substantial. The licensee should determine what

level of detail of their program is appropriate depending on the size and complexity of their program. Most licensees have both a Quality Assurance program and Safety Program with descriptions and where needed supporting procedures. Any access authorization systems can be incorporated into these programs. There is no need for the level of detail as prescribed in this part.

Maintaining a list of persons is redundant as there are records indicating who has been approved. This list will most likely be an electronic spreadsheet and will change frequently for the larger licensees. There can be other methods to ensure it is clear who has access, ie by use of color coded badges which is currently used by several licensees and give a more immediate indication than a list which is not accessible to everyone. It should be up to the licensee how they control the access indication. Keeping old lists of who and who was denied access provides no useful information and will require effort to ensure these are kept.

**Sec. 37.25 Background Investigations.**

37.25(a) (1) Fingerprinting and an FBI identification and criminal history records check in accordance with Sec. 37.27 or part 73 of this chapter;

**Comment:**

Should ensure that FBI check also checks against known terrorists or denied entity list.

37.25(a) (2) Verification of true identity.

**Comment:**

Requirement is overly prescriptive. It is not clear if this must be done by the reviewing official or if the company HR personnel can perform this and certify that step was taken. Should only require a certification that review was done – there is no value in keeping all the referenced documents.

37.25(a) (6) Credit history evaluation.

**Comment:**

Credit history should not be required. There are many examples of this information being in error and the final review of this information still relies on the licensee to make an assessment of these results with no guidance as to what is acceptable. Many people may have a low credit score due to difficult economic times or life issues. These people can still be and are very trustworthy and reliable employees. There is also the possibility that it may be against the law to deny someone access due to a poor credit rating. There is no benefit to this as it is an arbitrary factor with no pass/fail criteria, so it doesn't really matter what the score is.

37.25(a) (7) Criminal history review requiring local criminal checks

**Comment:**

The FBI check should be adequate. It would be a large administrative burden on the licensee for them to find the local criminal records for all locations where the individual lived or visited in the past. Licensees would have to hire a company that performs these detailed local criminal checks and the actual

process of checking all the various jurisdictions the person lived could take substantial time. This would be a economic and time burden on the licensee.

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); and

**Comment:**

Further complicates an already existing process that works. How is the licensee supposed to identify and track down independent checks when the prospective individual hasn't provided the names, how will licensee know who to ask? Implementation guidance says you must document these attempts, this is excessive and time consuming.

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 within a time frame deemed appropriate by the licensee but at least after 10 business days of the request, the licensee shall:

- (i) Document the refusal, unwillingness, or inability in the record of investigation; and
- (ii) 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.

**Comment:**

Adds documentation that serves no purpose. How does the licensee find alternative sources?

There are many additional checks being required to be performed by the licensee that exceed what a commercially available background check does for companies. These additional checks are very time consuming and require substantial effort to find sources of information that is not readily available. In the end there is still no pass/fail criteria and the licensee uses best judgment to make a final decision. This judgment will vary widely from licensee to licensee. It is estimated that 2-3 man days would be required to perform all the different checks, military, education and document if the information if there is an unwillingness to provide the requested information. This is a huge amount of time to be spent on a very small amount of information, again with no consistent pass/fail criteria.

If the background check is so critical to determining a person's trustworthy and reliability it should be standardized and the NRC should have this performed much like the CDC program. This guarantees a consistent approach and individuals (reviewing officials) are not held liable.

37.25(a) (c) Reinvestigations.

**Comment:**

Ok to require another FBI check, but including a local criminal check and a credit check will not add anything useful to the review process. If the person has been at the same company for 10 years has a good history and there are no indicators that something has changed, this should be adequate. Typically

employees are evaluated by their employer at least annually and this provides ample opportunity for review the person to ensure there have been no negative changes which may affect security concerns.

Sec. 37.29 Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations or designated categories of individuals permitted unescorted access to certain radioactive materials or other property.

- (i) Emergency response personnel who are responding to an emergency;
- (j) Commercial vehicle drivers for road shipments of category 2 quantities of radioactive material;

**Comment:**

Agreed, as the licensee can not perform these background checks for a non employee. This should also be expanded to exempt handlers at the transportation facilities, ie the people that physically handle the package at the freight terminals such as moving the package from one location/vehicle to another.

Sec. 37.33 Access authorization program review.

- (a) Each licensee shall be responsible for the continuing effectiveness of the access authorization program.
- (b) The results of the reviews, along with any recommendations, must be documented.

**Comment:**

There is no benefit to performing a separate annual assessment of the program, licensees already have to perform an annual safety program review. One area to be looked at could include this program. This should just be a check off in that review that assures there is a program and it is being implemented. Most licensees do not have a large infrastructure to oversee, review and document this additional requirement. As long as licensees are vetting the personnel having access to Cat 1 and 2, that is sufficient, you should not need to relook at the program annually. This program is unlikely to substantially change over a year, so an annual assessment is too often and the review should be at a longer frequency, perhaps 3-5 years. Depending on the size of the program this could take 1-3 man days, typically there is one person that functions as RSO and security officer – this is just one more task that would have to be performed with no proven benefit.

**Subpart C—Physical Protection Requirements During Use**

Sec. 37.41 Security program.

(d) Information submittal and notification. By (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 the effective date of this regulation shall submit information concerning the licensee's compliance with the requirements of this subpart to the appropriate Regional Administrator.

**Comment:**

Redundant for existing licensees as already implemented under the orders. There should be an exemption for those licensees that already have security plan in place.

Sec. 37.43 General security program requirements.

- (a) Security plan.
- (b) Implementing procedures.
- (c) Training.

**Comment**

Requirements are overly prescriptive and go well above what is in the existing orders. Licensees' should assure that their current practices/plan that are in place under the order are documented. Most licensees have had at least one facility security inspection and it appears that the vast majority have ensured that there are adequate security programs and plans in place. There is no benefit to adding to these already accepted practices.

To implement these requirements as described will take substantial effort on the licensees' part when what is already in place has been found acceptable, and is appropriate for the orders the licensee is operating under. An industrial radiography facility's security plan is going to be substantially different than a large M&D. Keeping the existing requirements makes the security plan/program more effective for the particular type of licensee and unique facility.

Recommend include language similar to 10 CFR 20.1101 for a radiation protection program.

"Each licensee shall develop, document, and implement a radiation protection program commensurate with the scope and extent of licensed activities and sufficient to ensure compliance with the provisions of this part." This allows the licensee the necessary flexibility in documenting their specific program but is not prescriptive.

- (d) Protection of information.

**Comment:**

Should not need another documented basis that person can have access to the security plan if already documented as trustworthy and reliable for access to Cat 1 and 2 sources. This is redundant and creates an additional administrative burden. There are already processes in place under SGI-M and or OUO to protect security information. This adds another process that is completely redundant.

Sec. 37.45 LLEA coordination and notification.

- (a) LLEA coordination.

(1) A licensee subject to this subpart shall provide information to and coordinate to the extent practicable with an LLEA for responding to threats to the licensee's facility, including any necessary armed response.

**Comment:**

Most of this section should be deleted – it is overly prescriptive and difficult for the licensee to implement. If there is such a concern that LLEA needs to be intimately involved with each Cat 1 and Cat 2

licensee, then NRC should take the lead on this issue and identify LLEA contacts and provide training on the LLEA's expected response. This could be done at time of license amendment and/or renewals.

The use of 911 is effective for all kinds of emergencies and should be used by all facilities.

It is unlikely that the LLEA would take the time to contact the licensee if the LLEA response time or capability might be compromised, in addition this would be divulging critical safety/security information at a sensitive time. LLEA have trained personnel to make the appropriate assessment to a threat response. The licensee cannot dictate this.

These requirements are completely outside the realm of the licensees' jurisdiction and control much like the requirements licensees had been required to impose on carriers under the orders. If it is felt that this level of involvement is truly necessary then the Federal, state and local agencies need to agree and implement.

#### 37.45(b) LLEA notification for temporary job sites.

**Comment:**

This should be deleted. With all the different jurisdictions it is impossible to know who the LLEA is and it would take substantial effort to try and identify. If there is a problem the licensee should just call 911, the 911 responders know what to do when an emergency call comes in. Many industrial radiography jobs are done at temporary job sites with little or no advance notice, it would be impossible to be able to notify the correct LLEA prior to arriving at the job site.

#### Sec. 37.49 Monitoring, detection, and assessment.

(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:

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

**Comment:**

For large manufacturing and distribution facilities there will be several security zones with significant quantities of Cat 2 sources in storage, potentially hundreds of sources. It would be impossible to perform an effective physical check on a weekly basis that each source is still present. Due to the transitory nature of these sources, ie they change on a daily basis due to sales and returns, the check would be meaningless from week to week. Also it is not consistent with the ALARA principle as the individual would receive excessive dose performing this physical check. Putting tamper indicators on each source/device would be cost prohibitive and require significant amount of time and personnel dose to install, monitor and then subsequently remove when the source is actually moved for a legitimate purpose, ie sale, disposal.

In addition sources are constantly transferred from one container to another in the course of manufacturing, storage, preparing for shipment and receiving, would the indicator have to be on the source itself or the device its stored in? It is not clear what "other means" would cover and/or be acceptable and it seems this becomes SGI-M information.

Currently under the orders we have an method approved by our Regulatory Authority to ensure the Cat 2 radioactive material is present, this process is considered SGI-M information. How would pre-existing compliance agreements be handled under the new rule?

If there are individual sources that are each less than Cat 2 but when they are co-located/aggregated the total quantity exceeds Cat 2, do the individual sources need to have this physical check performed? If these also need to be accounted for the quantity of sources affected at a large facility could be more than a thousand. This would affect many smaller facilities including medical institutions, universities and gauging.

This requirement has very significant implications and needs to be carefully considered so there are no unintended adverse consequences.

#### Sec. 37.51 Maintenance, testing, and calibration.

##### Comments –

Most security systems are not "calibrated", they are assured to be operational and checked periodically. Recommend remove the word calibration from this section.

#### Sec. 37.55 Security program review.

##### Comment

Recommend the same language as used in 10 CFR 20.1101 "The licensee shall periodically (at least annually) review the radiation protection program content and implementation". The regulation as written in 37.55 is very prescriptive. Having similar language gives consistency among the NRC regulations.

#### Sec. 37.57 Reporting of events.

##### Comment

Agree, however the term "suspicious activity" will be dependent on the licensee's judgment based on their specific security plan, current operating conditions etc. It would be difficult to quantify what suspicious activity is ahead of time and the licensee should not be second guessed on whether or not they made this type of notification. In many cases there are very minor issues a licensee will check on just to be proactive, ie an unknown car parked for a long time in the facility parking lot but these shouldn't need to be reported to the NRC.

Subpart D--Physical Protection in Transit

Sec. 37.71 Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.

(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.

**Comment:**

It is unlikely that the LVS will be implemented and validated when the new rule is published, so a different method would need to be used.

For the larger manufacturers, requiring this license verification by calling the regulatory authority before each shipment will result in significant delays and/or stopped shipments. This is due to many factors:

- some states can't answer the phone due to limited resources and mandated furloughs.
- It is not routine to get hold of an authorized person at the regulatory agency right away that can answer- typically you leave a voice mail and/or you get an aide that has to transfer the call or take message
- it will take some time for the regulator to locate the correct license and for the licensee to communicate the contents of the sales order that needs to be reviewed so that the RA can say yes, or no
- for reciprocity you would need to call both the regulatory agency holding the license and the regulatory agency approving the reciprocity.

We estimate a half a day to process 30 orders a day using this system. This is more than 4 times the amount of time we spend under our current practice. We have developed an internal software system that automatically checks the customer order against the customer license on file. This has been validated and has proven to be very effective and results in a minimal amount of work on our part.

To address the concern that the most recent license is being checked, the regulatory agency could send a copy of an amended license to the manufacturers listed on the license whenever a license is amended. We currently rely on the customers to do this, but getting a copy direct from the regulator ensures up to date and valid copies are on file. This would take significantly less time than all the various NRC regions and Agreements states answering the phone for each individual source order and or transfer.

It is unclear why additional work over and above the current requirements in 10 CFR 30.41 would need to be done, if a licensee is authorized to handle Cat 1 and 2 quantities they are certainly capable of complying with existing regulations.

There is no need to document that a check has been done, it can be covered under a procedure that the licensee has in place for license checks, having additional documentation just adds time and effort that doesn't add value.

Sec. 37.75 Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

**Comment:**

This would be impossible to implement for Category 2 sources for the facilities that make numerous shipments a day. It would require a dedicated individual to constantly communicate with customers and carriers throughout the day for the 40-60 shipments and receipts that occur during the day. The customer is told of the shipment date and method of shipment. The current preplanning system takes advantage of the already understood arrival times if using FedEx or similar, customer expects the shipment by the usual Fed ex delivery time. The shipper can review the FedEx confirmed deliveries each day (one central location) which verifies receipt by the customer. This has been working very effectively, so there is no reason to change to a much more burdensome method when the current system is just as effective. This process has been accepted as being compliant with the current order, so why make it much more resource intensive when the current system is effective and accepted?

Sec. 37.81 Reporting of events.

(b) The shipping licensee shall notify the NRC Operations Center ((301) 816-5100) within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the NRC Operations Center.

**Comment**

In the absence of any suspicious or known mitigating factors, we have typically given the carrier 24 hours to trace within their transportation cycle, before the package is declared as lost or missing. This has proven to be the most effective time period. Anything less than the 24 hours does not allow sufficient time for the carrier to do a complete document and tracking search and/or a physical search at potential locations. To declare the package as lost or missing before that will result in many false positives, as 99.99% of the time the package is located within the 24 hour window. These false positives will result in significant resources of both the regulatory agencies and licensees involved, trying to get useful information that just isn't available. Many times the paperwork gets separated from the package itself and this is normally rectified within the 24 hours. The 24 hour window allows for the shipper/carrier actions and necessary communications to be conducted over the various time zones for both domestic and international shipments.

(d) The shipping licensee shall notify the NRC Operations Center ((301) 816-5100), as soon as possible, upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

**Comment**

Need to define suspicious activity.