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Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material; Request for Comment

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Submitter Information3/14/2016
81 FR 13263**Name:** Angela Minden**General Comment**

Please see attached letter for comments regarding the clarity and effectiveness of 10 CFR Part 37 and associated guidance. Docket ID NRC-2015-0109.

Attachments

Comments Re clarity and effectiveness of Part 37 and guidance - May 2016

SUNSI Review Complete

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Governor Asa Hutchinson

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May 13, 2016

Cindy Bladey
Office of Administration
Mail Stop: OWFN-12-H08
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: Effectiveness and clarity of 10 CFR Part 37 and related guidance (Docket ID NRC-2015-0109)

Dear Ms. Bladey:

Thank you for the opportunity to comment regarding the effectiveness and clarity of 10 CFR Part 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," and NUREGs 2155 and 2166. Please consider the following comments:

Subpart A

1. Clarifying the definition of "security zone" is recommended to better reflect that these zones are established by the licensee for the physical protection of category 1 or 2 quantities *during use or storage* (§37.47(a)) and are *not* implemented/required in regards to category 1 or 2 shipments via a common carrier.
2. Clarifying the definition of "telemetric position monitoring system" is suggested to better reflect *what the requirement is or should be* concerning whether the transport vehicle, or package, or both should be monitored. §37.79(a)(1)(iii) says positive confirmation must be given for "the shipment," though the definition for telemetric position monitoring system says "transport vehicle or package." For category 1 common carrier shipments, being allowed to only monitor the vehicle and having no requirements for establishing security zones (and therefore no requirements for monitoring/detection/ assessment/response) or for maintaining constant control and/or surveillance and having the capability for immediate communication to summon immediate response could be seen as ineffective security measures for the protection of category 1 sources in transit. See comment #1 under "Subpart D" regarding §37.79(a).

3. Revision may need to occur in NUREG-2155 in several instances regarding the use of the term “transshipment,” in §37.3 regarding the scope of Part 37, in §37.5 regarding the addition of any definitions, in §110.1(b)(5) regarding the use of the term “in bond shipment”, and/or in §110.2 regarding the addition of any definitions, in order to clarify the meaning of “transshipment” versus that of “in bond shipment.” §110.2(b)(5) indicates that in bond shipments are “shipments which are only passing through the U.S.” From discussions with the NRC, transshipments are where a change of carrier is involved, and they are also a type of in bond shipment. Both types of shipments never enter commerce; therefore, neither is subject to Part 37. Would it be more appropriate to use the term “in bond shipment” in reference to Parts 37 and 110, or do the two terms need to be defined in the two Parts as to how they are being used in that Part (recognizing that “transshipment” would only need to be defined in Part 37 if clarification occurs in §37.3 which results in use of the term “transshipments”)?

Subpart B

1. §37.23(b)(2) should be revised to better indicate what items are to be provided/submitted to the Commission/Agreement States, by what methods they are to be provided/submitted, and when these items are to be provided/submitted (such as “upon inspection by the Commission/Agreement State” or “prior to the prospective Reviewing Official making any trustworthiness and reliability determinations”).
2. §37.43(d)(7) states that a licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access, when they are not in use. In order to be in agreement with §37.43(d)(1), the list of individuals that have been approved for unescorted access should be added as an item to be stored in a manner to prevent unauthorized access.

Subpart D

1. In the RAM QC Orders and the Increased Control Orders, both require using carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance. These Orders were issued for category 1 and category 2 common carrier shipments, respectively. This language is now only seen in Part 37 regarding category 2 common carrier shipments (§37.79(a)(2)). In looking at the “Part 37 Rule/Order Comparison,” Attachment 1 to Enclosure 2 to SECY-11-0170, there is a section at the end that provides reasoning why an Order Condition was not included in the rule; the requirement to maintain constant control and/or surveillance and have the capability for immediate communication to summon appropriate response is not listed there. Was this an intentional omission from the rule?

The above is concerning because §37.79(a)(1)(iv) stipulates there must be two individuals accompanying the shipment *when* the driving time period will be greater than the maximum number of allowable hours of service in a 24-hour duty day, and the provision does not state what these two individuals are to do regarding protection of the shipment. A8 on page 237 of NUREG-2155 says that “each individual *should* maintain constant visual surveillance of the surrounding environment during transport” – but this is only guidance.

As well as not being subject to the requirements in §37.79(a)(2) as discussed above, there is also no requirement for the establishment of security zones for common carrier category 1 shipments (and therefore no requirements to monitor/detect/assess/respond). It is understood that common carriers are exempt from licensing. Security measures for the protection of category 1 sources in transit become even more of a concern for States that are not able to require escorts. Perhaps we are to depend on U.S. Department of Transportation security plans to ensure the invulnerability of these sources. Also, see comments under “Subpart A” regarding the definition for “telemetric position monitoring system” where the vehicle alone, and not the package, is allowed to be “tracked.”

2. §37.79(b)(1)(i) states that the communications center shall implement preplanned procedures in response to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment (by rail). Is there a reason “loss” was not included as with road shipments (§37.79(a)(1)(iii))? “Loss” should be added to the provision in order to be in agreement with paragraph (c) of that section, “Investigations,” that applies to both road shipments in paragraph (a) and rail shipments in paragraph (b) and to be in agreement with §37.81(a) regarding reporting of category 1 shipments as lost or missing. NUREG-2155 in A1 on page 250, A2 on page 252, and possibly other locations do associate a lost or missing category 1 shipment with rail transport.
3. §37.81(g) states that a written report is required for notifications detailed in paragraphs (a) through (d) except regarding suspicious activities, but then the report contents only reference actual loss and actual theft. It appears that the contents to be included in the report were taken from Part 20 language. The required contents of a written report should be revised to include language that will capture “lost or missing” and “actual *or* attempted theft or diversion” so as to not cause confusion as to what types of events require a written report.

NUREG-2155

1. It appears that some of the language in NUREG-2155 - Revision 1 was changed to reflect the revision to §37.29(a)(10) regarding relief from background investigation elements for drivers of category 1 (and 2) material, and some of the language was not. Pages 42, 93, and 142 should also reflect this change, possibly others.
2. Q3 on page 142 of NUREG-2155 asks how a licensee should prepare, identify, mark, and transmit documents or correspondence containing the licensee’s security program information. The response appears to only discusses how to mark a transmittal’s first page that in itself does not contain security related information and not how the attached “security program information” would be marked. The guidance should be revised as to how to mark the entire transmittal, by detailing the requirements found in §2.390(b) and referencing Attachment 1 to RIS 2005-31 (if it agrees with §2.390(b)) or other more appropriate guidance.
3. A2 on page 188 of NUREG-2155 gives “Examples of three independent physical controls...” This paragraph should be revised to say “Examples of *two* independent physical controls...” instead.

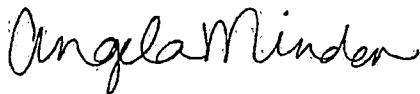
4. A5 on page 246 of NUREG-2155 states that the licensee's shipment contract with a highway carrier or railroad should require its movement control or communications center to notify the licensee immediately if a call from its transport crew is delayed by more than half of the prearranged reporting interval. The requirement is apparent in §37.79(b)(1)(ii) for licensees shipping by rail to ensure that periodic reports are made but not so apparent in regards to a road shipment. If this requirement is desired for road shipments, then §37.79 (a)(1)(v) or other provision should undergo clarification. A2 on page 252 of NUREG-2155 also implies that transport crews for a road shipment must check in at required frequencies.
5. A2 on page 252 of NUREG-2155 states that §37.79(a) and §37.79(b) require the licensee to ensure that shipments are "continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system that reports to a movement control center for road shipments or a railroad communication center," though paragraph (b) regarding rail transport does not use the terms "continuously and actively monitored" and the system does not only have to report to a railroad communication center but can instead report to the licensee or third party. A2 also states that paragraphs (a) and (b) require the licensee to ensure that both types of centers provide positive confirmation of the location, status, and control over the shipment, though paragraph (b) does not include "control over the shipment." A2 should be clarified to reflect actual language found in the regulations.

NUREG-2166

The same issues detailed above concerning NUREG-2155 may also be present in NUREG-2166 due to the fact that much of the language in the two guidance documents is duplicated.

Thanks again for the opportunity to comment on regulations and guidance pertaining to 10 CFR Part 37. If you have any questions, please contact me at angela.minden@arkansas.gov or (501) 661-2301.

Sincerely,



Angela Minden, BS, CNMT
Technical Activities Health Physicist
Radiation Control Section