Organization of Agreement States

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May 1, 2026

Anita Gray
Andrew Carrera
U.S. Nuclear Regulatory Commission
Washington, DC 20555–0001

Dear Ms. Gray and Mr. Carrera,

The OAS Executive Board (Board) appreciates the opportunity to comment on the draft regulation changes to 10 CFR Part 37 proposed by the U.S. Nuclear Regulatory Commission (NRC), published as Docket ID NRC-2025-1238 in the Federal Register dated April 9, 2026 (also communicated to Agreement States in STC-26-023 dated April 15, 2026). After reviewing the draft regulation changes to 10 CFR Part 37, and after receiving comments from our Agreement State partners, the Board has the following comments:

1. The Board supports the changes to 10 CFR 37.23(b)(2), removing the requirement to submit a certification to the NRC affirming that the designated reviewing official is deemed trustworthy and reliable.

2. The Board supports the changes to 10 CFR 37.25(b)(1), removing the regulation allowing individuals permitted access under Fingerprint Orders as that regulation is now outdated and obsolete.

3. The Board received comments both supporting and not supporting the changes to 10 CFR 37.25(c), removing the reinvestigation requirement for individuals deemed trustworthy and reliable. States that supported the changes noted that some licensees use methods for making a trustworthy and reliable determination that fall under 10 CFR 37.29 (relief from fingerprinting) so a reinvestigation requirement is unnecessary; that 10 years is a subjective timeframe for a reinvestigation of personnel; and that licensees have staff that commonly do not stay employed with the licensee for more than 10 years making the regulation unnecessary. States that did not support the changes noted that as discussed in NUREG-2155, Implementation Guidance for 10 CFR 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material, a reinvestigation is necessary because an individual's criminal history may change over time in a way that can adversely affect their trustworthy and reliable determination.

4. The Board received comments both supporting and not supporting the change to 10 CFR 37.43(c)(3), reducing the refresher training requirements to at least every three years and when significant changes have been made to the security program. Comments included that a three year refresher training requirement is not consistent with other NRC required refresher training; and that NRC guidance should define "significant changes" to match examples in SECY-25-0099. The Board suggests this regulation be changed to Compatibility C as there does not appear to be a cross-jurisdictional concern and would allow Agreement States to implement a more frequent refresher training requirement if needed.

5. The Board does not support the changes to 10 CFR 37.45(d), reducing the coordination with local law enforcement agencies to at least every three years. Three years is too long of a communication gap between licensees and local law enforcement agencies for radioactive materials that have the potential to cause serious harm to members of the public. Prior to implementing a potential regulation change, the Nuclear Regulatory Commission should reach out to affected stakeholders, particularly law enforcement agencies, to see if a reduction in communication is warranted or a welcome regulatory change. Agreement State experience is that local law enforcement agencies are very receptive to coordination with licensees as those law enforcement agencies understand the vital role they would play in an event response, and an annual coordination helps those local law enforcement agencies be prepared for possible events.

6. The Board does not support the changes to 10 CFR 37.49(a)(3)(ii), removing the requirement for licensees to perform weekly verification that Category 2 radioactive materials are present. As noted in the Federal Register notice, the original rational for requiring a weekly verification that Category 2 radioactive materials are present was to account for the potential of an insider threat scenario. If an insider threat scenario is no longer a concern, then that should be documented within the rationale for changing this regulation. Additionally, the rationale for removing this regulation includes that category 2 quantities of radioactive materials are routinely used daily. This assumption is not true for all licensees, and some licensees may go multiple weeks without using their radioactive materials based on decreased workloads. Also, the NRC could achieve the same regulatory outcome without removing the regulation by amending guidance stating that daily use logs would be adequate to comply with the regulation if use logs demonstrate that radioactive materials are used at least weekly and the presence of radioactive materials were verified.

7. The Board does not support the changes to 10 CFR 37.51, removing the requirement for licensees to have a maintenance and testing program to verify alarm systems are functional. The rationale that alarms are deactivated routinely, and therefore are testing the operability of an alarm system, is inappropriate as deactivating an alarm only tests that the alarm has the ability to be disarmed and not the ability to detect unauthorized entry. Similarly, activating an alarm does not indicate it is functioning normally or as intended to prevent unauthorized entry. Additionally, the enforcement experience from Agreement States has shown for the continued need for a regulatory maintenance and testing requirement. Agreement States have noted during routine inspections that licensee's alarms have been non-functional, or not functioning as expected or intended. These findings indicate that without a clear regulatory requirement, failures in security systems may go unnoticed for extended periods of time. Removing this regulation is an overall reduction in safety and removes one of the few proactive regulations that can be implemented towards protection of radioactive materials that could cause serious harm to members of the public.

8. The Board has concerns with the changes to 10 CFR 37.53, removing the restriction that licensees shall not rely on the removal of an ignition key to meet the vehicle disabling requirements for mobile devices. The rationale includes that modern vehicles now incorporate transponder keys or electronic fobs that automatically disable an ignition system when removed. These types of vehicle disabling methods are already approved in NUREG-2155, Implementation Guidance for 10 CFR 37 Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material. However, by removing this regulation, it provides less clarity to licensees that do not have an updated vehicle fleet or chose not to incorporate more costly technology when purchasing vehicles.

The Federal Register notice included Section V., Specific Request for Comment:

Question #1: What unintended consequences do you anticipate for removing the requirement for licensees to provide certifications to the NRC under § 37.23(b)(2) that a reviewing official is trustworthy and reliable. Licensees would continue to be required to designate reviewing officials under oath or affirmation as trustworthy and reliable but would no longer be required to transmit the certifications to the NRC. Provide a rationale for your response.

Board response: A possible unintended consequence for removing the requirement for licensees to provide certifications for a reviewing official is the NRC will lose a known contact that can receive unredacted information, such as a license after an amendment.

Question #2: What are the potential consequences of the NRC removing the requirement for the 10-year reinvestigations under § 37.25(c) of individuals with unescorted access to category 1 or category 2 quantities of radioactive material? Provide a rationale for your response.

Board response: Possible consequences of the NRC removing the requirement for reinvestigations are individuals who might develop issues that could be exploited by non-friendly entities could go undetected by licensees.

Question #3: What are the safety-related implications of changing the requirement in § 37.45(d) for licensees to coordinate with the LLEA from at least once every 12 months to once every 3 years? What should the required coordination frequency be? Please provide a rationale for your response.

Board response: Local law enforcement agencies should be contacted as critical stakeholders to determine if this regulation should change, and what the required coordination frequency should be.

The Federal Register notice included Section V., Specific Request for Comment:

1. The NRC is proposing an effective date that will be 30 days after the date of publication of a final rule. Does this provide sufficient time to implement the proposed requirements? Please provide a rationale for your response.

   Board response: The Board emphasizes that Agreement States should be afforded the standard three-year compatibility period to adopt and implement the requirements. Less than three years may not provide adequate time for effective and consistent implementation within state regulatory administrative processes.

2. Are there unintended consequences related to this rulemaking and how should they be addressed? Please provide a rationale for your response.

   Board response: the Board has no additional comments for this item.

3. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports this proposed rule.

Board response: it appears that some of the assumptions used in the cost and benefits artificially inflate the potential cost savings for licensees. For example, the potential cost savings described in the removal of a 10-year reinvestigation accounts for licensees having to perform a reinvestigation for all staff. In reality, most facilities do not have staff that remain employed with the same employer for over 10 years, making this cost savings be much less than claimed. Other assumptions, such as managers needing an hour to conduct a weekly verification of category 2 quantities of radioactive material or two hours to conduct alarm testing, seem to be overly lengthy for the required task. Additional assumptions, such as savings on reducing training or not performing certain tasks, implies that a licensee pays directly for those items. There might be an indirect savings as a licensee's staff might have time to conduct other activities, but there are no direct savings as a licensee does not need to hire additional staff to conduct the activities that are proposed to be removed from 10 CFR Part 37.

Once again, the Board appreciates this opportunity to comment. We are available should you have any questions or need clarifications to our responses.

Sincerely,

Sarah Sanderlin

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