

STEEL MANUFACTURERS ASSOCIATION

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HAND DELIVERED

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PROPOSED RULE PR 30,31,32 170F/11
(64FR40295)

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

ATTN: Rulemaking and Adjudications Staff

RE: Requirements for Certain Generally Licensed Industrial Devices
Containing Byproduct Material, 64 Fed. Reg. 40,295 (July 26, 1999)

Dear Sir or Madam:

On behalf of the Steel Manufacturers Association ("SMA"), we submit the following
comments regarding the United States Nuclear Regulatory Commission ("NRC") proposal to amend
its regulations governing the use of by-product material in certain measuring, gauging, or controlling
devices. 64 Fed. Reg. 40,295 (1999). NRC must implement a solution that addresses the problems
of inadequate control and accountability upstream of the user, by regulating distributors and general
licensees, rather than downstream, after the sources have been improperly discarded. Accordingly,
we generally support NRC's proposal and wish to submit the following comments:

I. The Steel Manufacturers Association

The SMA is the largest steel trade association, by number of members, in North America, and
the primary trade association of electric arc furnace ("EAF") steel producers that make steel from a
feedstock of virtually one-hundred percent scrap. Several SMA members operate basic oxygen
furnaces in which they make steel from both scrap and iron ore. The fifty United States member
companies of the SMA are geographically dispersed across the country and account for almost half
of total domestic steel production. Last year, the EAF steel industry recycled over 45 million tons of
iron and steel scrap which would have otherwise been landfilled or littered the countryside. Steel is
the nation's most recycled material, and SMA members comprise the largest recycling industry in the
U.S. A list of SMA member companies is attached to this statement.

We believe that NRC's current regulatory regime, contained in 10 C.F.R. parts 30, 31, 32, 170
and 171, does not provide adequate regulatory control over generally licensed devices. Licensees can

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obtain certain devices easily and are not held accountable for the proper disposition of the sources they have purchased.

## **II. Consequences of Orphan Devices for SMA Members**

On several occasions, generally licensed industrial devices have been improperly discarded in shipments of scrap destined for U.S. steel mills. The presence of spent radioactive sources in the ferrous scrap supply has produced significant, unanticipated economic consequences and health and safety risks to steel workers and the general public. We have noted the consequences and risks associated with orphan sources in several communications to NRC over the past eight years.

### **A. Steel Company Costs**

SMA member companies have taken the initiative to keep radioactivity out of their mills, and have become the "second net" to catch improperly discarded sources that escape NRC's inadequate regulatory regime. Steel companies perform this function at considerable cost, as they must finance installation, use, and maintenance of detection equipment, production delays, and worker time for training and detection.

The steel industry has responded to the inadequate control of licensed devices by installing sophisticated detection systems to monitor all incoming shipments of scrap. Many SMA members have also installed additional detectors at the charge bucket to improve detection. While steel mills usually detect the sources, no system is completely effective in detecting sources buried in the middle of a truck load of scrap. If a steel mill inadvertently melts a radioactive source, it can incur \$10 - 24 million in unanticipated costs for decontamination, disposal of contaminated materials, and lost production time. The cost could bankrupt a minimill.

### **B. Public Health and Safety Risks**

The impact of radioactive sources is not only economic. The health and safety risks are evident from the several documented incidents that have occurred in the United States and worldwide where lost sources have been stolen by petty thieves, abandoned in shuttered factories, or hidden under fences and in private homes. Radioactive sources in the scrap supply also present a risk to workers, if a source is accidentally breached in a scrap shredding operation, or melted down in a steel making furnace. Fortunately, radioactive sources have not brought serious consequences for worker health and safety, so far. There is clearly a public policy interest in holding general licensees accountable for the sources they use.

## **III. NRC's Current Program for Control and Accountability of Licensed Devices**

Under NRC's current regulatory regime for control and accountability of licensed devices, there is little economic incentive to discard generally licensed radioactive sources properly. The

regulations enable members of the public to obtain a general license automatically and without filing an application.<sup>1</sup>

This licensing regime renders it difficult for NRC to collect information directly from holders of certain radioactive sources. Consequently, NRC does not have sufficient control over generally licensed sources, and licensees have minimal accountability. The result is that sealed sources are often improperly discarded in shipments of ferrous scrap destined for steel mills.

We support recent NRC rulemakings in response to directives in the Staff Requirements Memorandum<sup>2</sup> on orphan sources, because they will improve NRC's control over the sources it licenses. On August 4, 1999, NRC amended its regulations to require a limited number of general licensees (5,100 out of a total of 45,000) respond to requests from NRC to provide information concerning the devices they own.<sup>3</sup> On March 9, 1999, NRC announced in a direct final rule that it is revising its enforcement policy to provide amnesty to licensees who are out of compliance but report their violations and undertake corrective action.<sup>4</sup> We encourage NRC to act in an expeditious manner in implementing these final rules, and in completing the rulemaking process for those pending or not yet proposed.

#### **IV. NRC's Obligation to Improve Control and Accountability of Licensed Devices**

NRC has a statutory obligation to protect public health and safety.<sup>5</sup> NRC has been aware of the lack of accountability and control in its general license program at least since 1983, when the first known inadvertent melting of a radioactive source in a steel mill occurred. It is clearly within NRC's authority to amend its licensing regime to minimize the threat that radioactive sources pose to human health and safety, the environment, and to the economic viability of steel companies.

#### **V. Comments on the Staff Draft Proposed Rule**

On July 26, 1999, NRC proposed a fee-based annual registration program and clarified the requirements applicable to general licensees.

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<sup>1</sup>Final Report of the NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices, NUREG-1551, 10 (1996) (hereinafter "Working Group Report").

<sup>2</sup>Staff Requirements Memorandum from Annette L. Vietti-Cook, Acting Secretary, NRC (April 13, 1998).

<sup>3</sup>64 Fed. Reg. 42,269 (1999).

<sup>4</sup>64 Fed. Reg. 11,508 (1999).

<sup>5</sup>42 U.S.C. § 2011(b).

The member companies of the SMA have an interest in NRC's proposal not only because they are the unwilling recipients of improperly discarded sources, but also because they are general licensees and would therefore be held to many of the proposed new requirements. The additional burdens, including paperwork, reporting, and licensing fees, associated with NRC's proposals, comprise a modest insurance premium against the serious economic consequences, and the threat to public health and safety, that improperly discarded sources pose.

**A. All General Licensees Should Be Registered**

The proposed rule would require all general licensees to register. This requirement will help NRC ensure that all licensees are held accountable for their sources. A system that holds only a portion of licensees accountable could create an incentive for some licensees to try to opt out of the regulatory net by arguing that the registration system does not apply to them.

**B. The Proposed Registration Fee is Reasonable**

NRC proposes a registration fee of \$420 per licensee to cover NRC's costs of the registration program. The SMA believes this to be a modest and reasonable fee for all licensees, including small businesses.

The current regulatory regime has shifted the costs of lax accountability and control onto steel makers, insurers, and the taxpayers. General licensees do not pay directly for their licenses. The cost has instead fallen on steel producers to detect the sources, on the steel producers and taxpayers to arrange for proper disposal, and on steel producers and their insurers to pay the cost when a source is inadvertently melted. The cost has also fallen on the general public, in the form of increased risk to health and safety from unanticipated exposure to dangerous levels of radioactivity. General licensees, who benefit economically from the manufacture, sale and/or use of radioactive devices, should be required to shoulder their fair share to protect the public. Accordingly, an annual fee in the neighborhood of \$420 is not only equitable, but entirely reasonable.

**C. Registration and Reporting Should Be Simplified**

We support any registration format that simplifies licensees' reporting requirements while maintaining the quality of the data being reported, because it will encourage more licensees to report. We agree with NRC's proposal to send registration request forms to licensees to verify, correct and/or add to the information provided, similar to automobile registration renewals. We also support allowing licensees to report the required information to NRC without a form, assuming that the information is properly recorded and preserved.

**D. Licensees Must Be Required To Register Even If NRC Fails to Contact Them**

NRC must make it absolutely clear to all licensees that they are not excused from reporting requirements if NRC fails to contact them. New licensees should be required to register before receiving their sources. The registration requirement should include a provision that requires all general licensees to complete registration before twelve months after the date of the previous

registration certificate, or within twelve months of the receipt of a device subject to registration, whichever came first.

**E. Licensees Should Designate a Responsible Individual and a Backup**

The SMA supports the proposed requirement of designating a responsible individual ("RI") for ensuring compliance with NRC regulations, in instances where the licensee is a firm or organization. Licensees should also be required to designate a backup responsible individual ("BRI") to take over responsibilities of the RI if he or she leaves the company. This is a routine operational practice at SMA member companies, and it would significantly enhance licensee accountability if required and enforced at all licensee facilities. Furthermore, any limitations on operational flexibility imposed by designating an RI and BRI would be negligible compared to the risk to the licensee company from lost sources.

NRC should require general licensees who take over facilities containing devices to provide the name of the new RI and BRI. NRC should also require that the responsible individual RI and BRI have knowledge of the device, general license, and relevant regulations.

**F. Time in Storage Should Be Limited**

We support the proposed requirement to limit the period during which a device may be stored and unused to two years. We agree that when a device is not used for a prolonged period of time, it is susceptible to neglect and improper disposal. In fact, some licensees store sources as a way of avoiding the costs of proper disposal. This provision would compel licensees to decide whether to use, return, or properly dispose of their sources, and would hold licensees accountable for their decisions.

**G. NRC Should Require Bankruptcy Notification**

Bankruptcy notification would bring to NRC's attention facilities in which there is an increased likelihood of lost or improperly discarded sources. The requirement imposes little additional burden on licensees, and the possibility that they could lose their sources is heightened following bankruptcy. Therefore, it would not be unreasonable to require all licensees to comply with this requirement.

**H. Recordkeeping Should Be Extended**

The SMA supports the extension of the time period throughout which licensees must retain records on final disposition of devices, from three to five years after the expected useful life of the device or final disposition. We do not believe it is appropriate to include the phrase "if known," because licensees should be assumed to have knowledge of the useful lives of the devices in their possession and their final disposition.

**I. Permanent Labelling Improves Traceability**

The SMA supports the requirement of additional labelling on source housing. Steel companies have received on several occasions improperly discarded sources and source housings on which the label has been removed. A marking of the serial number on the source housing would alert NRC and the public to the existence of the missing source.

The SMA also supports the requirement that labels be embossed, etched, stamped, or engraved on the devices, for the reasons NRC listed in its proposal. Permanent labeling would help alleviate the problem of removed labels. It would also help prove criminally improper disposal, as the effort and deliberation required to remove such labelling would indicate the willfulness of the offense.

**J. NRC Should Require Notification Prior to Purchase**

Prospective licensees should be notified of general license requirements before purchase of devices. By providing notice of the regulations and potential cost of proper disposal, the prospective general licensee can make an informed decision before purchase.

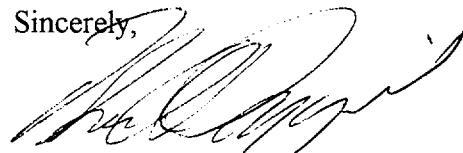
**K. The SMA Supports Establishment of a National Database**

In its July 26, 1999 proposal, NRC stated that it is exploring the possibility of establishing a national database of generally licensed sources. Such a database could assist steel companies, the States, and others in finding the licensees of lost sources. The SMA supports this database and offers to work with the agency in its implementation. NRC should make as much data publicly available on a Web site, as possible, so that members of the public can trace the ownership of sources they find. If there is information in NRC's files that cannot be released to the public, for business proprietary or national security reasons, then NRC should have control over the information, but be required to assist in finding the owners of "lost" sources when there is an emergency notification.

**VI. Conclusion**

We support this proposal and urge swift implementation. We appreciate the NRC staff's efforts in drafting this proposal and look forward to working with the Commissioners and staff on the issues that we have raised.

Sincerely,



Thomas A. Danjczek

**STEEL MANUFACTURERS ASSOCIATION**  
**59 MEMBER COMPANIES**

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A.B. Steel Mill, Inc.  
AmeriSteel  
Arkansas Steel Associates  
Auburn Steel Company, Inc.  
Bayou Steel Corporation  
Beta Steel Corporation  
Bethlehem Lukens Plate  
Birmingham Steel Corporation  
Border Steel, Inc.  
Calumet Steel Company  
Cascade Steel Rolling Mills, Inc.  
Charter Manufacturing Company, Inc.  
Chicago Heights Steel  
CitiSteel USA Inc.  
Commercial Metals Steel Group  
Compañía Siderurgica de Guadalajara, S.A. de C.V.  
Connecticut Steel Corporation  
Co-Steel LASCO  
CSC, Ltd.  
Deacero, S.A. de C.V.  
FirstMiss Steel, Inc.  
Franklin Industries  
Gallatin Steel  
Geneva Steel Corporation  
Gerdau Courtice Steel Inc.  
GS Industries  
Hylsa, S.A. de C.V.  
IPSCO Saskatchewan Inc.  
IPSCO Steel Inc.  
Ispat Inland Bar Products  
Ispat Sidbec Inc.  
J & L Structural, Inc.  
Jersey Shore Steel Company  
Kentucky Electric Steel Inc.  
Keystone Steel and Wire Company  
Koppel Steel Corporation  
Laclede Steel Company  
Lone Star Steel Company  
Marion Steel Company  
McDonald Steel Corporation  
North Star BHP Steel Ltd.  
North Star Steel Company  
Northwestern Steel and Wire Company  
Nucor Corporation  
Oregon Steel Mills, Inc.  
Pennsylvania Steel Technologies Inc.  
Qualitech Steel Corporation  
Republic Technologies International  
Roanoke Electric Steel Corporation  
Sheffield Steel Corporation  
Slater Steel, Inc.  
Steel Dynamics, Inc.  
Stelco Group of Businesses  
Sydney Steel Corporation  
TAMCO  
Tuscaloosa Steel Corporation  
TXI (Chaparral Steel Company)  
W. Silver, Inc.  
Wheeling-Pittsburgh Steel Corporation  
Cincinnati, Ohio  
Tampa, Florida  
Newport, Arkansas  
Auburn, New York  
LaPlace, Louisiana  
Portage, Indiana  
Coatesville, Pennsylvania  
Birmingham, Alabama  
El Paso, Texas  
Chicago Heights, Illinois  
McMinnville, Oregon  
Mequon, Wisconsin  
Chicago Heights, Illinois  
Claymont, Delaware  
Seguin, Texas  
Guadalajara, Jalisco, México  
Wallingford, Connecticut  
Whitby, Ontario, Canada  
Warren, Ohio  
Monterrey, N.L., México  
Hollisopple, Pennsylvania  
Franklin, Pennsylvania  
Ghent, Kentucky  
Provo, Utah  
Cambridge, Ontario, Canada  
Charlotte, North Carolina  
San Nicolas de los Garza, N.L., México  
Regina, Saskatchewan, Canada  
Muscatine, Iowa  
East Chicago, Indiana  
Montreal, Québec, Canada  
Aliquippa, Pennsylvania  
Jersey Shore, Pennsylvania  
Ashland, Kentucky  
Peoria, Illinois  
Beaver Falls, Pennsylvania  
St. Louis, Missouri  
Lone Star, Texas  
Marion, Ohio  
McDonald, Ohio  
Delta, Ohio  
Minneapolis, Minnesota  
Sterling, Illinois  
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Portland, Oregon  
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Cleveland, Ohio  
Johnstown, Pennsylvania  
Roanoke, Virginia  
Sand Springs, Oklahoma  
Hamilton, Ontario, Canada  
Butler, Indiana  
Alberta and Québec, Canada  
Sydney, Nova Scotia, Canada  
Rancho Cucamonga, California  
Tuscaloosa, Alabama  
Midlothian, Texas  
El Paso, Texas  
Wheeling, West Virginia