



Arkansas Department of Health

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Fay W. Boozman, MD, MPH, Director

Mike Huckabee, Governor

September 3, 2004

Paul H. Lohaus, Director
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Dear Mr. Lohaus:

The Arkansas Department of Health has the following comments regarding the "Opportunity To Comment: Final Rule 10 CFR 30.34i – Security Requirements for Portable Gauges (STP-04-062)", dated August 23, 2004 for enhancing physical security for radioactive materials licensees. We recognize that there are possible concerns regarding physical security of radioactive materials. As an Agreement State, we routinely address security issues during the licensing process and make further assessments during compliance inspections. Security of radioactive materials has been a priority of the Program since the early '90's with the increase in the theft or loss of radiography cameras and portable gauges. This is an integral part of any licensee's radiation safety program. So security of radioactive material is not a new issue of the Department.

As an Agreement State, we support the issuance of guidance to licensees regarding improvement of security for radioactive materials. We feel strongly that we can implement, inspect and enforce any necessary changes. The NRC role and involvement should be in development of applicable guidance and regulations for Agreement States. The NRC has control of source materials for national security for obvious reasons.

The State of Arkansas agrees that loss of control of portable gauges is a serious concern, with potential risk to public health if not controlled to the greatest extent possible. We also agree with several Comments submitted during the Comment period ending October 15, 2003. Specifically that the NRC proposed rule does not effectively address the root cause of these thefts, and also that current regulations are adequate. Our experience has been that unauthorized removal of these gauges is the result of carelessness of the licensee in maintaining control. No regulation will overcome a careless attitude.

We feel that removing the visibility of the gauge would be the most effective deterrent to theft and unauthorized removal. However, NRC has previously responded that covering the transportation case would be inconsistent with USDOT regulations. This may not always be the case. For example, nuclear pharmacy delivery vehicles are pick-up trucks in many instances. These trucks have an unlabeled, enclosed rear bed for transporting the radioactive material, and this effectively covers the transportation labels on the transport cases (ammo boxes).

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We believe the Final Rule, as it is written, will mislead our licensees. As previous discussions and comments have indicated, the primary concern among those who commented has been the intent of this rule as it relates to security during transportation. Our licensees will interpret the portion of the rule which states "...*whenever portable gauges are not under the control and constant surveillance of the licensee.*" as pertaining only to storage. They will correctly contend that during transportation and field use, the gauge is always under their control and surveillance, except for carelessness, and therefore the rule will not be applicable during transportation. Therefore, the burden of educating licensees as to the true intent, and enforceability of this new rule falls on State programs, requiring an interpretation document and costly mass mailing to our licensees.

We feel the visibility of the gauges during transportation should be re-addressed, and that the rule as written does not adequately confer the intent related to security.

There does not appear to be a necessity for the increased regulatory requirements. What would be a meaningful reduction in risk with the current rate of stolen gauges at less than one percent a year?

The tighter security requirement for portable gauges being formulated based on health and safety considerations does not appear to be based on potential hazard. The history of stolen gauges does not include evidence for harm to an individual.

The total impact cost for portable gauge licensees is of concern. There are already industries and manufacturers bombarding the gauge licensees with the latest and greatest devices that meet regulatory requirements. The licensee's lack of confidence in their ability to interpret regulations increases their vulnerability to these vendors.

It appears that the final rule will be implemented. The rule as written does not appear to be too prescriptive. The portable gauge licensees will have options to choose the physical controls that best fit their specific program needs and resources.

Sincerely,



Gary N. Bortz, R.R.P.T., Health Physicist
Arkansas Department of Health
Radioactive Materials Programs

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cc: Jared Thompson, Program Leader

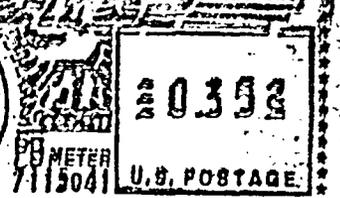


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