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DOCKETED  
USNRC

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

September 11, 2008 (3:30pm)

Attention: Rulemakings and Adjudication Staff

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

RE: Comments to Proposed Rule "Criminal Penalties;  
Unauthorized Introduction of Weapons" (RIN3150-AI31)

Dear Sir or Madam,

We are writing in response to the Federal Register proposed rule posting RIN 3150-AI31, "Criminal Penalties; Unauthorized Introduction of Weapons." On page 51379 of the Federal Register posting the Nuclear Regulatory Commission welcomed public comments on whether the proposal should be expanded to cover hospitals and other classes of facilities licensed to possess radioactive materials that are in the National Source Tracking System. For the reasons discussed below, we believe that the proposed regulations should not be expanded to cover medical and academic facilities possessing nationally tracked sources.

The proposed rule has two parts, one establishing criminal penalties (§73.81), and one required posting by the licensee (§73.75). Our objections to this rulemaking revolve around the posting requirements. We believe the posting requirements within this proposed rulemaking would be detrimental for hospital and/or academic facilities:

- Posting of areas where nationally tracked sources are present would attract attention. As a result of the requirement to implement the NRC's increased controls, most licensees have taken measures to downplay the presence of the sources to members of the public and to workers who do not require access to the rooms where these national tracked sources are used. Thus with the exception of a "Caution Radioactive Materials" sign posted on any lab that contains radioactive materials, signs on rooms where nationally tracked sources are kept do not indicate the presence of a high risk source. The proposed posting requirement would, in essence, advertise where the sources are used or stored.

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SECY-02

- The wording within the required posting contains language that may be frightening to patients who undergo treatments that utilize the nationally tracked sources. The posting statement discusses “dangerous weapons, explosives, or other dangerous instruments or materials likely to produce substantial injury or damage” that could be discomfoting to patients already in a vulncrable state. It is for these reasons that we are strongly against requiring the postings in patient treatment areas.
- The intent of the posting requirement, to notify personnel with access to the nationally tracked source of the federal criminal penalty, could be handled through additional training of those individuals. The NRC and Agreement State increased control orders required licensees to perform a variety of background checks and verifications on the individuals granted unescorted access to the nationally tracked source. As a result, most licensees trained their staff on the necessity of the various security checks. Appraising these individuals of the potential federal criminal penalties should they (or the people they escort) bring weapons into the facility would have the same effect as posting signage at the entry to the protected area.

Also, while current regulations only require the inclusion of IAEA Category 1 and 2 sources within the National Source Tracking System, the NRC has proposed including IAEA Category 3 sources and sources with activity greater than one-tenth of the Category 3 level within the nationally tracked sources. While only a small subset of NRC and Agreement State medical licensees possess IAEA Category 1 and 2 sources, a much larger number possess Category 3 and one-tenth of Category 3 sources. If the criminal penalty rule is expanded to medical and academic facilities and if the scope of nationally tracked sources is expanded, this rule could affect a much larger group of licensees, including those with high dose-rate remote after loader devices.

We thank you for considering our opinion on this proposed rulemaking and the potential to expand the rule to encompass areas where nationally tracked sources are stored. If you have any questions regarding our comments, please feel free to contact me or Jeffrey Brunette (507-255-3630).

Sincerely,



Richard J. Vetter, Ph.D.  
Radiation Safety Officer

cc: Radiation Safety