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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

November 15, 1994

IN RESPONSE, PLEASE
REFER TO: M941115

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Acting Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION AND VOTE, 10:30 A.M., TUESDAY, NOVEMBER 15, 1994, COMMISSIONERS' CONFERENCE ROOM, ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-94-261 - Final Amendments to 10 CFR Parts 30, 32, and 35: Preparation, Transfer for Commercial Distribution, and Use of Byproduct Material for Medical Use

The Commission, by a 3-0 vote[1], approved the final amendments to 10 CFR Parts 30, 32, and 35 subject to the attached changes. The final rule provides greater flexibility by allowing properly qualified nuclear pharmacists and authorized users who are physicians greater discretion to prepare radioactive drugs containing byproduct material for medical use. The final rule also allows medical use of radiolabeled biologics and contains other miscellaneous and conforming amendments necessary to clarify or update the current regulations.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.
(EDO) (SECY Suspense: 12/16/94)

Attachment:
As stated

[1] Commissioners Rogers and de Planque were absent and participated by telephone in accordance with approved Commission procedures.

cc: The Chairman
Commissioner Rogers
Commissioner de Planque
OGC
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance
DCS - P1-24

(3) Comment. The syringe label should not be limited to the clinical procedure. On the other hand, it is unnecessary to require that the label, or the leaflet or brochure that accompanies the radioactive drug, contain all of the statements specified in the proposed rule.

Response. The regulatory text in this section states: "In addition, the label for the syringe or syringe radiation shield must also contain the clinical procedure to be performed or the patient's or the human research subject's name." Thus, the clinical procedure is an additional item but not the only item on the label.

Regarding the statements that must be included in the leaflet or brochure, the Commission believes these statements are necessary because they serve as warnings to individuals who are not authorized to use the byproduct material. ~~Furthermore, these statements serve as reminders to users that other regulatory approvals may be required~~ However, the statement that "other regulatory approvals may be required" has been deleted because this concern is already covered by 10 CFR 35.7.

(4) Comment. It is unclear as to the legal origin of the statement that "NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA)."

Response. This comment quotes the last sentence of § 32.72(a)(4) of the proposed rule, stating that: "NRC's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA)." This comment appears to question the NRC's statutory authority for the quoted statement. As previously stated in response to comment 1 on § 32.72(a)(4), the NRC's statutory authority to impose requirements with respect to the labeling of radioactive drugs containing byproduct material derives from its authority under the Atomic Energy Act (primarily sections 81 and 161b) to regulate

(1) Comment. The proposed requirements for linearity and geometry tests are not consistent with methods of assaying alpha or beta emitters, such as liquid scintillation counting.

Response. The regulatory text includes the phrase "as appropriate for the use of the instrument." Therefore, if linearity or geometry tests are not appropriate for an instrument, the tests are not required.

(2) Comment. The regulation does not require medical use licensees to measure the activity of a unit dosage of an alpha- or a beta-emitting radionuclide. This provision should also apply to commercial nuclear pharmacies.

Response. Section 35.52(a) will exempt a medical use licensee from measuring the alpha- or beta-activity of a unit dosage, if the licensee obtains that unit dosage from a commercial nuclear pharmacy. This exemption is acceptable because § 32.72(c) will require the commercial nuclear pharmacy to measure that activity before dispensing the radioactive drug. ~~If the~~ commercial nuclear pharmacy ies would be required to ~~were also allowed not to~~ measure the alpha- or beta-activity of a unit dosage because, otherwise, it might not be measured by anyone. Therefore, this provision cannot be applied to commercial nuclear pharmacies.

Authorized nuclear pharmacist.

There were several comments concerning this definition. These comments and the NRC's responses are summarized below.

(1) Comment. This definition uses the phrase "a permit issued by a Commission or Agreement State specific licensee of broad scope." Is there a standard format for this permit?

to the fact that all radiation safety provisions of 10 CFR Part 35 would be made applicable to research involving human subjects. Several comments were received related to this topic. These comments and the NRC's responses are summarized below.

(1) Comment. Omit all regulation of human research with radioactive material because the FDA handles this very nicely.

Response. The Commission cannot omit all such regulation because it has the responsibility for ensuring adequate protection of public health and safety related to the use of byproduct material, including uses involving human research subjects.

In view of the fact that this final rule would specifically permit, in certain circumstances, NRC licensees to use radioactive drugs containing byproduct material for research involving human subjects, the Commission has the responsibility to address the protection of the rights of those human subjects. At a minimum, this final rule requires NRC licensees who conduct such research to obtain the informed consent of the human research subjects and the prior review and approval of an IRB, within the meaning of the Federal Policy for the Protection of Human Subjects. ~~This~~ these requirements apply ~~applies~~ whether or not the research is conducted, funded, supported, or regulated by another federal agency which has implemented this Federal Policy or is approved by the amendment of an NRC license. However, NRC licensees whose human research is covered by the Federal Policy as adopted by another federal agency, may conduct such research without prior NRC approval. In this way, the provisions of this rule are designed to avoid duplication of the regulations of other federal agencies which have adopted the Federal Policy, including the FDA.

For radioactive drugs with a half life greater than 100 days the time of assay may be omitted.

and time of assay. In addition, the label for the syringe or syringe radiation shield must also contain the clinical procedure to be performed or the patient's or the human research subject's name. Furthermore, the label, or the leaflet or brochure that accompanies the radioactive drug, must contain a statement that the U.S. Nuclear Regulatory Commission has approved distribution of the byproduct material to persons licensed to use byproduct material pursuant to 10 CFR 35.100, 35.200, or 35.300, as appropriate, and to persons who hold an equivalent license issued by an Agreement State. ~~The label, or the leaflet or brochure must also note that other regulatory approvals may be required.~~ The Commission's labeling requirements are independent of requirements of the U.S. Food and Drug Administration (FDA); one label is acceptable to NRC provided that it contains all of the information which NRC requires.

(b) A licensee described by paragraph (a)(2)(iii) or (iv) of this section:

(1) May prepare radioactive drugs for medical use, as defined in 10 CFR 35.2, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in paragraph (b)(2) and (b)(3) of this section, or an individual under the supervision of an authorized nuclear pharmacist as specified in 10 CFR 35.25.

(2) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in 10 CFR 35.2,

(ii) This individual meets the requirements specified in 10 CFR 35.980(b) and 35.972 and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist, or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with paragraph (b)(3) of this section.

(3) The actions authorized in paragraphs (b)(1) and (b)(2) of this section are permitted in spite of more restrictive language in license conditions.

(4) May designate a pharmacist (as defined in 10 CFR 35.2) as an authorized nuclear pharmacist if the individual is identified as of (the date of publication in the Federal Register) as an "authorized user" on a nuclear pharmacy license issued by the Commission under this part.

(5) Shall provide to the Commission a copy of each individual's certification by the Board of Pharmaceutical Specialties, the Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to paragraphs (b)(2)(i) and (b)(2)(iii) of this section, the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(1) Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(2) Check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

§ 32.73 [Removed]

8. Section 32.73 is removed.

9. In § 32.303, paragraph (b) is revised to read as follows:

§ 32.303 Criminal penalties.

* * * * *

(b) The regulations in Part 32 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 32.1, 32.2, 32.8, 32.11, 32.14, 32.17, 32.18, 32.22, 32.23, 32.24, 32.26, 32.27, 32.28, 32.51, 32.53, 32.57, 32.61, 32.71, 32.72, 32.74, 32.301, and 32.303.

compound) radioactive drugs containing byproduct material. Also, the final rule will allow physician authorized users greater discretion to prepare and use radioactive drugs containing byproduct material, the use of byproduct material in research involving human subjects, and the use of radiolabeled biologics containing byproduct material.

In addition, the final rule also contains other miscellaneous and conforming amendments necessary to update or clarify the current regulations.

3. ALTERNATIVES

Two alternatives have been considered for the petition: maintain the status quo or grant the petition.

The first alternative would continue to restrict physicians and pharmacists in the medical use of byproduct material. This alternative would continue to require NRC medical use licensees to meet the current prescriptive regulations which restrict the activities of nuclear physicians in the preparation and use of radioactive drugs. In addition, this alternative would continue to restrict the activities of nuclear pharmacists in the preparation of radioactive drugs. Therefore, this alternative was not further considered.

The second alternative, promulgation of a final rule to grant the petition, will provide greater flexibility for physician authorized users to use byproduct material in the practice of medicine. The final amendments will also incorporate into the regulations the concept of authorized nuclear pharmacists to allow properly qualified pharmacists to prepare (including compound) radioactive drugs containing byproduct material. The Commission believes that granting this petition will eliminate certain restrictions regarding the medical use of byproduct material without compromising the level of protection of public health and safety against radiological hazards.

4. Brief Descriptions of the Final Amendments

In response to the petition for rulemaking, the Commission is amending its regulations to: