PROPOSED RULE PR 30,31,32 (64FR 40295) 170+171

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To: OWFN_DO.owf5_po(SECY)
Date: Fri, Oct 8, 1999 2:12 PM
Subject: Comments on Proposed Requirements for Certain GL Devices

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These are comments from the state of Washington, an Agreement State, pertaining to a proposed rule published at 64 FR 40295. This proposed rule would be a matter of compatibility for Agreement States. For the record, we are in general agreement with the need for this rule; however, we have several suggestions for improving the clarity and usefulness of the rule.

NRC has asked for comments on five specific questions:

1. Whether general licensees should register by a certain time (even if NRC has not requested it) -- It is already apparent from a reading of the public letters posted to the NRC rulemaking website that some general licensees, for whom this rule does not apply, have already been confused and assumed that it does apply. It is inappropriate to cause them to attempt to register unnecessarily. Registration should be a response to NRC or Agreement State directive based on agency assessment of the devices received. On the other hand, once notified that a registration is required by the agency, it would be appropriate to indicate how soon the process must be completed (or proof of prior disposal or transfer provided) before escalated enforcement begins. In simplest terms, no time limit should be placed on a general licensee that has not been notified that registration is required.

2. Whether general licensees should register new devices received in between annual re-registrations -- We believe annual "confirmation" of information initially provided to us in the manufacturer's "quarterly report" is adequate. Requiring additional "receipt" or "transfer" reports from the general licensee needs to tempered with two thoughts: keep it simple (how about requiring manufacturer's to include "warranty" type registration cards with the pre-typed model(s), and serial number(s) to mail off to the agency?) and verifiable (disposition of licensed sealed sources is verified by contacting the recipient, not by accepting the word of the transferor; in this case accepting the manufacturer's statement on a quarterly report that a certain source has been transferred back from a general licensee is what provides us assurance the source is not left sitting in the "bone yard"). In simplest terms, make sure the general licensee's responses on the annual re-registration make sense based on what the manufacturers tell you; follow-up if they don't.

3. Whether general licensees should assign a backup responsible individual -- since we normally do not require assistant radiation safety officers for specific licensees, it seems incongruous to do the equivalent for general licensees. In other words, "no".

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4. Whether certain wording conveys the intent of full disclosure -- We support use of the term "prior to purchase" as the clearest wording of the intent of the rule.

5. Whether a national database is warranted -- We have concerns about the cost effectiveness of centralizing existing resources. First, we would most likely continue to maintain our "local" database in support of our general license registration program, a compatibility requirement! Therefore, our data would be "duplicated" somewhere else, unnecessarily (and we certainly shouldn't have to pay for it). Second, electronic communication makes the search for serial number identification "fast", even among numerous agencies and manufacturers possessing the "pieces of the puzzle". Third, the need for a database search presupposes that a "serial number" has been identified. For this to happen, the device or source must have been interdicted and presumably safeguarded. There should be no need for urgency in identifying the responsible party. (The urgency should be in safeguarding the source which doesn't require knowing who to blame.) The serial number and the physical characteristics of the source or device should narrow it down to the manufacturer who can either identify the general licensee or pay for the source recovery themselves. The BIG concern, a smelted source, cannot be found by using a database. Finally, if a national database is established, who is going to pay for its maintenance, including assuring that data input is prompt, especially given the rarity of the events that it would facilitate?

In addition, Agreement States were asked to comment on the implementation date for compatibility. We believe an accelerated implementation date for Agreement States (one year instead of three) is an extra burden especially because the rule demands an infrastructure (a state registration program) which may not already exist. While our database and annual survey of general licensee is adequate for a start, other aspects of the registration program require we also institute a fee. Any fee based program receives extra (and lengthy) scrutiny in our state and while this is certainly an important new program, we may not be able to justify the haste in setting it up fully. We support the normal three year period for achieving compatibility. However, for our several manufacturers, we can apply appropriate license conditions to cause the necessary compliance if need be.

Several specific comments on the text of the rule include:

A. Proposed 31.5 (c)(5) -- this is a trivial point but the verb is "dispose" not "dispose of". The sentence in this section should read "The device may be disposed by transfer ... "

B. Proposed 31.5 (c)(8)(ii) -- the information requested should be "The identification of the device, source holder, and source by manufacturer's name, model number(s), and serial number(s), as appropriate." Each of

these items could be separated from the others when "discovered" and a search of the database would find only the number entered. If there are multiple numbers, all should be entered.

C. Proposed 32.52 (a)(1) and (b)(1) -- the required report should specify the type, model, and serial numbers of the device, source holder, and source, as appropriate. Many devices have multiple (different) serial numbers used to identify the various components. Any of these numbers could be reported by themselves at different times leading to mis-identification of transfers, returns, and deliveries. All numbers associated with a device should be reported.

D. Proposed 32.52 (a)(3) and (b)(3) -- rather than presuppose a source will be returned immediately (not always the case) the rule should require that returned sources be reported in the manufacturer's quarterly report when actually received (not in anticipation). As written, a source could be removed from the database, yet never be sent back. Reports should be precise; what was sent out, what was received. We are interested in knowing for what the general licensee is accountable. It doesn't matter if the source is the first of its kind, a "direct replacement", a "spare part", or the last of its kind (removal) at the facility. This subsection should read "If a device is returned by the general licensee, the report must ... "

We also had the opportunity to listen in sporadically via phone link during the public meeting on October 1. Several issues were raised by participants which deserve additional comment:

E. Portable and "mobile fixed" gauges allowed under general license. There are obvious transboundary implication to this practice and, as noted in the Federal Register notice, reciprocal recognition of the general license is not provided (and should NOT be). In our opinion, portable and "mobile fixed" gauges should be under specific license only.

F. Exempting "robust" sources. We oppose this idea. This rule is based on a history of smelted sources, among other concerns. So-called "robust" sources are not smelter-proof. If radioactivity is present, the risk is present and some enterprising soul will someday find a way, probably inadvertently, to defeat whatever safety barriers have been put in place.

G. The problem of distributors or "intermediates". Beyond the technicality that anyone possessing or storing the device before its final installation is also a general licensee, the focus needs to be on the end user. The use of a "registration card" similar to the common warranty card that comes with nearly every appliance should be instituted. The registration card should have the appropriate device, source holder, and source model and serial numbers pre-printed. The end user need only fill in the facility information and address it to the

appropriate agency. The manufacturer continues to report "distributions", the agency cross checks the distributions against end user cards, and follows up with the manufacturer or distributor if all devices leaving the manufacturer are not reported to be installed after some appropriate time.

H. Charge fees every four years to lessen the cost of collection. Sounds good except that the issue is "contact" with the general licensee. The annual fee collection is also the opportunity to jog the general licensee on "responsible individual", leak testing, inventory, storage limitation, etc. It is also easier on the budget to keep the fee relatively constant and "low".

I. Identifying the precise physical location. This is "nice to have"information if the agency intends to routinely inspect the facility. We believe the burden of locating the device should fall on the general license. If the general licensee cannot locate a device in a timely manner, it should be presumed "lost" and the appropriate fine would be in order!

Thank you for the opportunity to comment.

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