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OFFICE OF
RULEMAKING
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission
Attn: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE 30, 31, 32 170+171
(64FR40295)

October 5, 1999

Subject: Comments to Proposed Rules and Regulations, Federal Register vol. 64, No 142

Dear Mr. Secretary,

I was pleased to have been able to represent Hewlett-Packard during the public workshop held at NRC headquarters on Friday, October 1 for General License Vendor Implementation, and wish to follow up with this written format of my comments. Our radioactive device has a ⁶³Ni source and is therefore exempt from the proposed registration and fee requirements but I wanted to provide my input about some of those proposed changes that will affect our operations as well as those of our customers.

Overall, I congratulate your organization for attempting to strengthen a very ailing program. I frequently converse with customers who are totally unaware of their responsibilities as ownership and job positions change frequently. We provide a suggested documented radiation safety program for our general licensees that would assist them in providing necessary regulatory information to succeeding end users and their company RSO's. As a note of interest, due to similar problems we have had internally, we implemented a transfer and tracking process for our in-house customers during the past two years that greatly mirrors the program you are working on.

My comments are as follows:

1. Personally, I would like to see ⁶³Ni added to the list of those radioactive elements targeted for registration and tracking. I say this because of the expected improvement in the NRC's ability to track our devices once they leave our control. I have been contacted by too many customers who have inherited their devices without receiving necessary regulatory information from the previous owners. These customers learn of those requirements only by chance or when a state regulatory agency representative shows up at the door. A \$420 annual fee is cheap compared to the panic these customers experience.

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2. From page 40301 of the proposed rule changes, third column "...The distributor would also be required to provide copies of additional applicable sections of the regulations..." This would be in addition to section 31.5 which will be required to be given to the customer prior to the product's transfer. I have a concern over the amount of paperwork thrown at a proposed customer. I believe Section 31.5 is critical for review prior to the sale but I think additional information could be provided with the product at time of delivery. If the intention is to communicate necessary information, we may be able to better accomplish this if we could indicate that further necessary regulatory requirements are specified with the delivery of the product and the end user is responsible for compliance with all regulatory information provided.

I would also recommend a validation form be sent along with section 31.5 to end users purchasing all general license devices, requiring the user to sign the form indicating they had received, read, understood, and would comply with the regulation(s) provided. People have a much greater tendency to read and comply with something if they must put their signature to it.

3. Continuing with the same paragraph on page 40301, the last sentence in the paragraph reads "In addition, the distributor would furnish the name, address, and phone number of the contact at the Agreement State regulatory agency from which additional information may be obtained." I question the value of indicating a person's name instead of the title "Director". At least one of the agreement states has asked me not to include the state director's name in my quarterly reports and I feel it should be the same for the information we provide our customers.
4. From page 40306, Part 30.34, Terms and conditions of licensees. The proposed rule identifies only those licensees who will be required to register to file a notification of bankruptcy with the NRC. The current rule requires that all licensees notify the NRC of such situations. I strongly believe the current provision, if properly communicated to customers at the time of the sale, prompts the customer in meeting other regulatory requirements identified in 31.5 for transfer of location or ownership. I would suggest leaving the rule in 30.34 as is and adding a reference to other requirements associated with transfer of ownership of regulated materials that may be affected by the bankruptcy of the general licensee's company.
5. From page 40307, first column (8)(ii) and (iii). Item (ii) describes a requirement for the general licensee to furnish a report to the NRC within 30 days after the transfer of a device to a specific licensee. Item (iii) tells the general licensee that they "Shall obtain written NRC approval before transferring the device to any *other* specific licensee. This is quite confusing to me. If item (iii) is referring to the specific licensee providing a replacement device in item (ii) then this should either be stated as such in (iii), or item (iii) should be included in point (ii) instead of standing on its own. Please clarify this point for our customers.

6. From page 40307, third column, point (14) "Shall report changes of address...". The requirement for reporting changes of addresses do not provide for the exemption from reporting if the device is transferred to the specific licensee in order to obtain a replacement device from the same specific licensee as previously described in point (8)(ii). Should the same provision be made in point 14 if a replacement is purchased from the same specific licensee?
7. Continuing on page 40307, point (15) " May not hold devices that are not in use for longer than 2 years". This, of course, may generate more business for us but I question the short time period of 2 years as the life expectancy of our devices is in the decades and different product life expectancies vary depending on equipment type and half-life of the radioactive materials in them. I would much prefer to see that customers be required to maintain the current wipe test frequency during storage. This keeps the customer knowledgeable of the device's ownership and location. If the agency does allow a 2 year exemption of testing during storage, then I would suggest building upon the proposal and require a wipe test be performed at the time of removal from storage by an authorized organization, forbidding installation or use of the device until acceptable results are obtained.
8. Page 40308, section 32.51a(a) "Conditions of licenses". I could not find the term "intermediate person" defined in any of the regulations I have accessed. During the October 1 workshop, I was informed that intermediate persons referred to general licensees who receive a radioactive device but are not the ultimate user. The term does not, from what I gathered, refer to holders of materials licenses to receive and redistribute general license devices. I request that the term be defined in section 32 for clarity.
9. Continuing with 32.51a(a), the last sentence of the paragraph reads, "The required information includes-" and then lists a copy of 31.2, 30.51 20.2201...in line (2). I wonder why the requirements in this section do not match the information general licensees are responsible for as defined in the proposed section 31.2 on page 40306?
10. Continuing with 32.51a(a). Line (3) of the required information to be provided to general licensees states "A list of the services that can only be performed by a specific licensee". Please explain what this means. If the section refers to sales of general license devices would it not be better to identify the restrictions of the general licensee as opposed to the allowances of the specific license? If not, who determines the list of services that can only be performed by a specific license? This pertains to point 32.51a(b)(2) as well, which is a copy of the same point.
11. I am very confused over the wording in the proposed change in 32.51a(b). The current requirement clearly allows for furnishing a copy of the general license contained in the Agreement State's regulation equivalent to 31.5, *or alternatively*, furnishing a copy of the NRC's 31.5 (along with other specific information) to persons in Agreement States. The proposed rule may *imply* in section 32.51a(b) and (b)(1) that this will continue but it is not clear. I believe the intention was to continue

making the alternative possible and, if so, I suggest proposed 32.51a(b)(1) be changed to state that the supplier may alternatively furnish a copy of the NRC's 31.5, as now provided for.

Once again, I appreciate being given the opportunity to submit these comments and to have participated in the October 1 workshop.

Regards,

A handwritten signature in black ink, appearing to read "David S. Bennett". The signature is fluid and cursive, with a prominent initial "D" and a long horizontal stroke.

David S. Bennett
Radiation Safety Officer