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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 1, 2000

MEMORANDUM TO: Donald A. Cool, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: R. William Borchardt, Director *R.W. Borchardt*
Office of Enforcement

SUBJECT: COMMENTS ON FINAL RULEMAKING TO AMEND
10 CFR PARTS 30, 31, 32, 170, AND 171

Attached are the Office of Enforcement's comments on the subject rulemaking. If you or your staff would like to discuss the comments further, please contact John Lubinski of my staff at 415-2740. I understand that our staffs will continue to discuss implementation issues associated with enforcement of the registration program.

Attachment: As stated

Comments on Final Rulemaking to Amend 10 Parts 30, 31, 32, 170, and 171

1. Attachment 3 of the paper should be replaced with the attached draft Federal Register Notice (FRN). The attached FRN incorporates comments received from Regional Enforcement Coordinators, NMSS, and ADM.
2. The third sentence of the last paragraph on page 22 of the FRN is confusing. It is unclear which sections of the regulations are referred to as being the most important for general licensees to be aware of. If this sentence is referring to the sections listed in Section 31.2, it is unclear why we say that these are the most important. Specifically, Sections 31.2 and 31.5 contain all requirements or list the sections of all requirements that are applicable to general licensees. Saying these are the most important implies that others sections are applicable to general licensees.
3. The FRN should provide additional wording that defines "devices kept in standby for future use." It would appear from the current wording that as long as the licensee performs quarterly inventories and states that they plan to use the devices in the future that they are not subject to the 2 year limitation on storage.
4. The discussion at the top of page 68 of the FRN is unclear. Specifically, it says that a person receiving a portable gauge at its location in an Agreement State can use the gauge in a non-Agreement State without notifying NRC. It goes on to say that they would be considered an NRC general licensee under 10 CFR 31.5 but would be exempt from NRC registration requirements. It is unclear how the regulations allow for use of the material under the general license and also provide an exemption from registration. In addition, it is unclear whether this provision would apply to non-portable gauges, whether it is desirable to have general licensees for which NRC is not aware of their identity or location, and how NRC has assurance that the licensee is aware of the 10 CFR 31.5 requirements. Also, it is unclear if the converse of this requirement is true (i.e., an NRC general licensee doing work in an Agreement State) since most of 10 CFR 31.5 will be a compatibility B requirement for Agreement States.
5. In addition to providing a copy of 10 CFR 31.5 to general licensees, distributors are required to provide copies of 10 CFR 31.2, 30.51, 20.2201, and 20.2202 to general licensees. 10 CFR 31.5(c)(9)(i) should require that the same information (i.e., a copy of 10 CFR 31.2, 31.5, 30.51, 20.2201, and 20.2202) be provided to the new general licensees receiving devices through this type of transfer.
6. Section 31.5(c)(5) should be modified to clearly state that general licensees may only dispose of radioactive material not contained in a device (i.e., sealed or unsealed material) by transfer to a specific licensee authorized to receive such material or as approved by the Commission.
7. The FRN should be modified to clearly state that even though the responsibility individual assigned by the general licensee signs the registration the general licensee is responsible for meeting the requirements of 10 CFR 30.9 and 30.10. Specifically, the general licensee is responsible for providing complete and accurate information and not engaging in deliberate misconduct.

ATTACHMENT