

STATE OF ILLINOIS  
**DEPARTMENT OF NUCLEAR SAFETY**

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George H. Ryan  
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Thomas W. Ortiger  
Director

ADJ

September 24, 1999

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

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

Re: Proposed Rule, "Requirements for Certain Generally Licensed Industrial Devices  
Containing Byproduct Material." (RIN 3150-AG03)

Sir or Madam:

The Illinois Department of Nuclear Safety (IDNS) hereby submits the following comments on the above-identified proposed rulemaking. The department agrees with NRC that the proposed changes would increase accountability and control over generally licensed radioactive devices. In general, the changes appear to be reasonable and practicable.

The purpose of this rulemaking is to enable regulatory agencies to better monitor certain general licensees and the devices they possess. If adopted, the rule would increase licensee awareness of the regulations that apply to possession of generally licensed devices. It is also intended to increase the likelihood that licensees would be able to account for devices in their possession.

Transboundary Activities.

The Department of Nuclear Safety recommends that NRC clarify how the proposed rulemaking would apply to transboundary activities. It appears that NRC intends to apply 10 CFR 31.5(b)(2) to use of portable devices by agreement state general licensees at temporary job sites in NRC jurisdiction. If so, 10 CFR 31.5(b)(2) would require agreement state licensees to seek assistance from distributors to transfer devices from agreement states to NRC jurisdiction. We recommend that supplementary information for the final rulemaking explicitly describe the conditions under which an agreement state licensee would be allowed to use a portable generally licensed device in an area of NRC jurisdiction.

*Template = Secy 067*



Approved by card

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*Secy 02*

Tracking of General Licensees and Devices in Agreement States.

The supplementary information for the proposed rulemaking is unclear on how general licensees in agreement states must demonstrate that they can account for devices and are knowledgeable of the applicable requirements. Specifically, the supplementary information does not say if NRC intends to request that agreement states track general licensees and individual devices. Since establishing a tracking system is a significant undertaking, we recommend that NRC clarify its expectations of the agreement states in this regard.

National Database of General Licensees and Devices.

The Department of Nuclear Safety supports in principle the concept of a national database of general licensees and devices. As alluded to above, the concept would be especially useful if NRC does not intend to request that agreement states track general licensees and individual devices. IDNS is willing to provide data for a national database when NRC has addressed the access and security questions raised at 64 FR 40303. In our opinion, a national database would be implemented most effectively if each agency maintained its own data.

We are concerned, however, about the cost of a national database. NRC describes a lack of funds for startup of an expanded general license program at the federal level (64 FR 40297). Since Illinois general licensees already pay registration fees, we cannot ask them to contribute additional money for startup of a national database.

We also believe a new database may or may not be effective during the first five years of operation. Our experience has revealed difficulties with our database that have been overcome only with time and experience. We are, therefore, reluctant to exchange our existing database for one introduced by NRC until the new national database has been proven effective over several years at no additional cost to our regulated community.

New Devices Acquired by Existing Registered General Licensees.

In our experience, it is sufficient to reconcile the Department of Nuclear Safety's device inventory records with general licensees annually. We believe that more frequent regulatory contact with general licensees is time-consuming and unnecessary. We reconcile the records as part of a "self-inspection" (mail survey), which is similar to NRC's proposed "reregistration" (64 FR 40304).

Choice of Serial Numbers.

The proposed requirements at 10 CFR 32.51(a)(4) and (5) appear to clarify what NRC expects of manufacturers regarding labeling of devices. We recommend the same clarification be extended to material transfer reports required by 10 CFR 32.52(a)(1) and (b)(1). Specifically, we recommend that material transfer reports provide the model and serial number of the item of primary regulatory interest (for example the device or a separable source housing). This would provide more specific guidance than is now proposed at 10 CFR 32.52(a)(1)(iv) and (b)(1)(iv). IDNS believes that more specific instructions for reporting serial numbers would increase the likelihood that a serial number on file with a regulatory agency matches one on a corresponding label.

Information to be Provided to Prospective Customers.

IDNS recommends that NRC require distributors to include information about NRC fees and the likelihood of agreement state fees in the information provided to prospective customers pursuant to 10 CFR 32.51a(a) and (b). We have experienced situations where licensees became resentful when learning after buying expensive equipment that they were also subject to regulatory fees. The department believes that advance notice of the possible existence of fees would lead to better cooperation and reduce the potential for unauthorized transfer of devices.

Prior Disclosure of Licensee Responsibilities.

IDNS agrees with NRC's intent to require distributors to disclose full information about usage limitations and regulatory responsibilities to prospective customers. Furthermore, we agree with NRC that this should be done well in advance of transfer. We recommend that NRC require distributors to provide the information prescribed at 10 CFR 32.51a(a) and (b) at the time that purchase or other acquisition arrangements are under negotiation (64 FR 40301). This would allow a prospective customer to back out of a deal if regulatory requirements were felt to be onerous.

We recommend that NRC amend 10 CFR 32.51a(a) and (b) to require that described information be provided "at the time that purchase or other acquisition arrangements are made." We believe that this language would convey NRC's intent regarding early provision of information more clearly than the proposed and more general requirement "before the device may be transferred."

Backup Responsible Individual.

IDNS believes that appointment of a backup responsible individual is overly complicated and unnecessary for this class of byproduct material. As noted in the supplementary information (64 FR 40299), a general licensee would be required to replace the responsible individual to maintain compliance with proposed 10 CFR 31.5(c)(12).

We recommend that NRC adopt the rulemaking with no provision requiring identification of a backup responsible individual. If NRC determines after a few years of experience that a problem exists, the provision may be added then.

Adoption of a Requirement for Augmented Material Transfer Reports.

NRC is considering an accelerated implementation date for requiring distributors to provide additional information in material transfer reports (10 CFR 32.52(a) and (b)). NRC states in the supplementary information that it may ask agreement states to require distributors to begin providing the information in 10 CFR 32.52(a) and (b) coincident with the effective date of the adopted rule (64 FR 40304 and 40305).

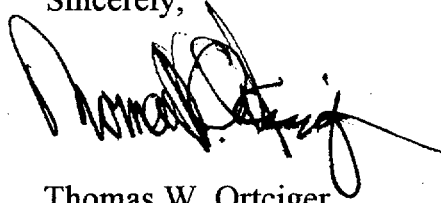
The Illinois Department of Nuclear Safety does not agree that such accelerated implementation is vital to establishing a nationally expanded general license program. We have administered a registration program for several years that is similar to the one now proposed by NRC. This experience shows that while the additional information proposed for 10 CFR 32.52(a) and (b) is desirable, it is not absolutely necessary.

In practice, the information currently provided by distributors is marginally adequate for a registration program. Although we agree with NRC that transfer reports should contain the additional information proposed, we recommend that the requirement be phased in by the agreement states over the normal three-year adoption period. We believe this is adequate to accomplish NRC's goal of providing increased oversight.

Secretary  
September 23, 1999  
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Thank you for the opportunity to comment on this proposed rulemaking. If you have questions, please contact Joe Klinger at 217-785-9930.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Ortziger", with a long, sweeping horizontal line extending to the right.

Thomas W. Ortziger  
Director

cc: James Lynch, State Agreements Officer