



Arkansas Department of Health and Human Services

Division of Health



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February 3, 2006

Merri L. Horn
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
11555 Rockville Pike
Rockville, Maryland 20852

Dear Ms. Horn:

The Arkansas Radioactive Materials Program is submitting the following comments regarding the proposed *Final Rule: National Source Tracking System*. Arkansas understands and appreciates the intent of the proposed rulemaking. It is a positive step in providing additional accountability for high-risk sources that could be used for malicious terrorist activities. We strongly disagree with the possible designation of "common defense and security" for all sections of this rulemaking, instead of a "health and safety" designation. Designation as "common defense and security" will result in dual regulation of Agreement State licenses, which is particularly burdensome and troubling for these licensees.

The following are comments related to this rulemaking:

- **Common Defense and Security** -- With this designation, the total enforcement of this rulemaking rests with the NRC. Agreement States routinely conduct health and safety inspections and have established working relationships with these licensees. There appears to be an unclear enforcement method to ensure compliance with the rulemaking. It has been indicated that the NRC may contract with the states for inspection and enforcement, something similar to the 274i agreements. Past experience has indicated that the states have not been willing to follow this approach when dealing with common defense and security matters.

There has to be concern about the number of NRC staff available to conduct inspection of these licensees for compliance with this rulemaking. Without Agreement State assistance, the database for the sources would probably not be completed in a timely manner. Enforcement and inspections should begin as quickly as possible. Delays because of a staffing issue will have a possible adverse affect on the accuracy of the data and the effectiveness of the tracking system. It would be safe to say that the Agreement States would be available to inspect and ensure and assist in the accuracy of the system.

It has been recommended that states be allowed, after implementation of this rule, to adopt the NRC regulations relating to documentation requirements for the tracking system. While the NRC would continue to maintain the computer database, the Agreement States would assume responsibility for enforcement regarding documentation requirements. The Agreement State role in security has both a health and safety and common defense and security aspect. The database is a "common defense and security" matter. The enforcement of the rulemaking could simply be "health and safety". Agreement States have recently issued legally binding documents in matters related to security of Category 1-4 sources.

How will the Agreement State licensee be instructed to maintain paper relating to Category 1 and 2 sources? It would appear that this documentation would need to be classified as Safeguard Material Information.

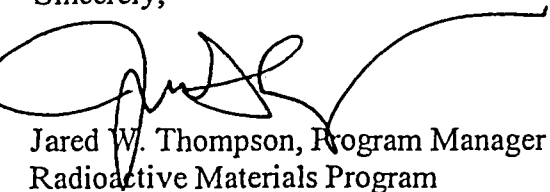
The ability of the NRC to monitor and enforce this rulemaking should be evaluated.

- The Arkansas Radioactive Materials Program does not support the inclusion of the Category 3 sources. While this rulemaking does not currently address this, the inclusion of these sources will be overly burdensome to the licensees. Sources are routinely transferred between working locations and exchanged for new sources frequently. This will have a negative impact on the accuracy and effectiveness of this rulemaking in the future.
- The Arkansas Radioactive Materials Program supports and agrees with the inclusion of Radium-226 sources that are classified as Category 1 or 2.

For this rulemaking to be effective, accurate and consistent, the Agreement States must have a defined role. Arkansas is able and willing to assume the enforcement aspects of this rulemaking.

We would like to thank the NRC for the opportunity to comment on this important rulemaking. If you have any questions, or should need additional information, please contact me at 501-661-2173.

Sincerely,



Jared W. Thompson, Program Manager
Radioactive Materials Program

cc: Janet R. Schlueter, Director
NRC, Office of State and Tribal Programs

Bernard Bevill, Section Chief
Radiation Control Section