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October 19, 2015

Ryan Whited
Office of Nuclear Material Safety and Safeguards
U. S. Nuclear Regulatory Commission
Washington, DC 20555

RE: Opportunity to Comment on Nuclear Regulatory Commission Byproduct Material Financial Scoping Study (STC-15-065)

Dear Mr. Whited,

The Organization of Agreement States (OAS) Executive Board (Board) has reviewed the above document and respectfully submits the following information in response to the questions posed by the NRC.

General Comments:

1. The NRC should provide clearer guidance on financial planning for source disposal. This information could include specific examples of what Agreement States are doing that is more restrictive than the NRC.
2. Minimizing the transaction costs and review time of obtaining financial assurance would be particularly helpful for smaller scale operations with limited resources and expertise in this area.
3. The model language templates and other guidance provided in NUREG 1757, Vol. 3, Rev.1 should be reviewed and updated. At least one Agreement State licensee has indicated that the Standby Trust Agreement template provided by the NRC is outdated to current financial norms resulting in a time-consuming language revision and attorney review process with the trustee.

Specific Responses:

Question 1: What disposition pathways are available to various licensee types beyond the traditional disposal pathway and should be considered in any potential new financial planning requirements?

1. The possibility of resale is a disposition pathway for some types of devices. Portable nuclear gauges are in demand at all times and do not seem to be a risk in terms of being

left to the states to dispose of but rather would likely be able to be reused by another licensee. Radiography cameras and XRF devices are also in demand and may be shipped directly to licensees.

2. Acquiring the names of licensees may be achieved by contacting the regulatory authority or trade organizations such as the American Portable Nuclear Gauge Association (APNG) or the American Society of Nondestructive Testing (ASNT).
3. A website or forum discussion site where licensees would be able to discuss the sale/donation of devices would be beneficial in this process.
4. While reuse through donation/resale to another (licensed) facility could be considered as a possible alternate disposition pathway, a financial warranty for the entity originally purchasing the source would still be required. The possibility of donation is unlikely to be known at the time of source acquisition (or may change with use of source over time), and therefore a pre-licensing/pre-amendment financial surety would still be needed.

Question 2: What should be the primary considerations in establishing and imposing appropriate and equitable financial planning requirements on radioactive sealed sources?

1. Current comprehensive costs for disposal (including decontamination and or decommissioning of a facility, transportation, consulting fees, etc.) should be a primary consideration.
2. Funds for continued security monitoring pending final disposal should also be included in financial planning. A bankrupt licensee may unwilling or unable able to afford and uphold the necessary security requirements for Cat 1 and 2 sources.
3. There should be annual adjustments for inflation and a 5 year review or resubmittal by the licensee of valid cost estimates and vendor quotations that demonstrate validity of the current required surety amount.
4. Manufacturer/Distributors should provide periodic updates regarding costs for returning devices
5. Manufacturer/Distributors should be required to explain process and costs for returning sealed sources

Question 3: Should licensees be required to specifically declare disused sources? If so, how long after a source is disused must a licensee declare it as disused?

1. Licensees should be required to declare disused sources, and in particular Category 1, and 2 sources since they present a greater risk.
2. A prohibition for sources held in storage for more than 2 years similar to that found in 10 CFR 31.5(c)(15) for generally licensed sources should be applied to specific licensed sources.

3. Unless the declaration of a source as “disused” is tied to an obligation to have the source disposed of within a specified timeframe, having a licensee make such formal declaration would be of little benefit.

Question 4: How should source characteristics be factored into establishing equitable financial planning requirements for end-of-life management?

1. Full financial warranty amounts should be required when a source is at full activity and may be adjusted down during the 5 year review process, as mentioned above, as the source decays.
2. One element of financial planning should be whether the source is required to be transported in a Type B cask. This is the major contributor to disposal cost, and cost is the primary driver for how willing a licensee is to dispose a source.
3. While the half-life of a source should be considered in determining the applicability and amount of surety, it also must be recognized that even materials with relatively short half-lives (in the multi-month range) will need to be safely stored for some minimum time period before decaying below quantity of concern levels or to background levels. Such a time period could be many months (or longer).

Question 5: If NRC rulemaking is initiated as a result of this scoping study, how should NRC engage with and consider the impact on Agreement States? What would be the primary considerations in establishing compatibility levels for rule requirements?

1. As with other rulemakings, NRC should consider forming a working group to work with Agreement States in the development of proposed rule requirements.
2. The Board recommends that the NRC maintain compatibility C for financial assurance requirements. Financial planning is an area that States need to have the ability to innovate. There are existing “financial planning” programs in States (i.e., Illinois), and States need to maintain the ability to be more restrictive than the NRC on this issue.
3. In determining compatibility, the NRC should consider the impact to states in terms of review of financial assurance documents on an ongoing basis for a greatly increased number of licensees and the number of additional FTEs that it may require.
4. If the NRC sets hard dollar values based on isotopes and activities and expects the states to be compatible with those values at an A, B, or C level the NRC should commit within regulation to updating those values on a regular basis to account for inflation as well as changing conditions (availability of disposal sites, transportation packages, etc.)

Question 6: When necessary, what mechanism should be used to administer financial planning requirements on general licensees?

1. Sources of sufficient activity requiring financial planning requirements/surety should not be generally licensed. Sources in quantities of concern should be regulated as specifically licensed sources.

Question 7: What are the ideal characteristics and qualifications for an entity that will act as the custodian for any funds earmarked for long-term management of disused sealed sources? For instance, what characteristics and qualifications should be taken into consideration regarding the custodian's relationship to the licensee (e.g., the ability of the custodian to access the funds, or the custodian's independent financial viability)? In the event that there is a residual amount remaining in the fund following payment of disposition cost, what should be the fate of the residual funds?

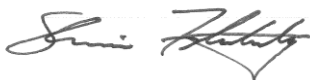
1. The characteristics and qualifications used for other financial warranty arrangements should be used for financial warranties for disused sources.
2. Residual funds should be returned to the licensee. In this way, there will be less incentive for licensees to want to underestimate cost estimates if they can be assured any residual funds will be returned.
3. Manufacturer/Distributors could be required to maintain the funds for disposal/return of the sealed sources. The funds could be included in the purchasing price of the source(s).

Question 8: What are the key characteristics of a tracking system for byproduct material (sealed sources) subject to financial planning requirements? Which of these characteristics are not available as part of the NSTS?

1. Key characteristics would be the model and serial number, current activity, and an indicator of disuse. While there is a place in NSTS for indicating long term storage of a source, an indicator of disuse is not currently available.
2. Manufacturers/Distributors have a list of sealed sources distributed to licensees and can assist in a tracking system.
3. This information should be in a separate system, not the NSTS.

We appreciate the chance to comment on this subject, and stand ready to answer any questions you may have.

Sincerely,



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