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September 13, 2024

Ryan Whited
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Whited,

The OAS Executive Board (Board) appreciates the opportunity to comment on RCPD-24-007, Regulatory Basis Document for Financial Assurance Requirements for Disposition of Category 1 – 3 Byproduct Material Radioactive Sealed Sources. After reviewing the Regulatory Basis Document, and after receiving comments from our Agreement State partners, the Board has the following comments:

1. The Board agrees with the need to have a rule, or amending the current rule, to include the disposition of Category 1 – 3 byproduct material sealed sources. The Board also supports having a defined Category 3 quantity of radioactive materials defined by regulation.
2. As the rule is being developed, the NRC should take into consideration a pathway, either by rule or by guidance, allowing for small entities or new licensees to use alternative methods to meet financial assurance requirements. One method could be to allow for a legal binding agreement for return of devices to manufacturers or distributors, similar to the germanium-68/gallium-68 generator licensing guidance.
3. Additional clarification is needed on which group of licensees would be affected by alternative 6b, specifically for licensees that are licensed for amounts that could exceed Category 2 quantities but have taken additional physical controls to prevent aggregation of those materials while in use or in storage. For example, in the first paragraph of the Discussion (pages 1-2 of the cover letter), it appears that those licensees would be required to implement financial assurance requirements as they could, in aggregate, exceed a Category 2 quantity of radioactive materials. However, in Section 4.6 (page 22 of the regulatory basis document, first full paragraph), it appears that only licensees required to implement 10 CFR Part 37 would be required to implement financial assurance requirements.
4. Financial assurance requirements should apply based on license possession limits, not on aggregation potential. For example, a small radiography company with one industrial radiography device may be subject to 10 CFR Part 37 when obtaining a new source, but may have a period of time when they are not subject to 10 CFR Part 37 based on the decay of the source. The financial assurance requirements should not oscillate in a similar manner.
5. When developing the rule, clarification will be needed if the financial assurance requirements only affect licensees required to implement 10 CFR Part 37 subparts B and C, licensees only required to implement 10 CFR Part 37 subpart D, or both groups of licensees.

Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

6. For licensees that do not use the values in table 6 (or cannot because the type of device is not listed) and prepare a decommissioning funding plan, the proposed rule will need to provide information whether the decommissioning funding plan is only required for the device containing Category 1, 2, or 3 quantities of radioactive materials, or for all radioactive materials authorized on a license.
7. Table 6 comments:
 - a. Table 6 proposes a fixed amount of \$20,000 for portable gamma cameras not requiring rental of Type B shipping container. This may not be easily applied to radiography licensees who are licensed for high activities and multiple camera types. Often, licensees are authorized for possession limits which can accommodate more cameras than are typically needed. Considering this, and the fact that camera inventories can change often, how would radiography licensees be expected to use the prescribed DFA amounts in Table 6?
 - b. It is not clear why a calibrator would have a separate line and higher decommissioning fund value when compared to the other Category 2 sources on the two subsequent rows.
 - c. It is not clear why Category 2 sources requiring rental of a Type B container have a specified decommissioning funding amount, but Category 3 sources requiring rental of a Type B container are required to provide a decommissioning funding plan.
 - d. Portable gauges are listed as a device type that contain Category 3 sources. The devices commonly referred to a 'portable gauges' do not have Category 3 quantities of radioactive materials.
 - e. Clarification is needed on 'portable gamma camera'. Industrial radiography devices containing cobalt-60 are often not portable, but are mobile devices and do exceed Category 2 quantities of radioactive materials. Limiting the requirements to portable devices may inadvertently exclude materials that should be included.

Once again, the Board appreciates this opportunity to comment. We are available should you have any questions or need clarifications to our responses.

Sincerely,

Beth Shelton, Chair
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Cc: Adelaide Giantelli, Chief, NRC