

MOTOR VEHICLE MANUFACTURERS ASSOCIATION
of the United States, Inc.
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BRYONNE McCORMICK, Chairman
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PROPOSED RULE PR-19, 30, 40, 50, 70, 71, 150 (45 FR 15184) May 6, 1980 (16)

Mr. John F. Ahearne, Chairman
Nuclear Regulatory Commission
c/o Secretary of the Commission
Attn: Docketing and Service Branch
Washington, D.C. 20555

Subject: "Protection of Employees Who Provide Information,"
45 FR 15184

Dear Mr. Ahearne:

The Motor Vehicle Manufacturers Association of the United States, Inc. (MVMA)* welcomes the opportunity to comment on the proposed Nuclear Regulatory Commission (NRC) rule, "Protection of Employees Who Provide Information," which appeared in the March 10, 1980, Federal Register, 45 FR 15184.

MVMA is a non-profit trade association whose member companies produce more than 99 percent of the domestic motor vehicles and employ more than 900,000 workers in the United States. MVMA members use low level radiation sources and would therefore be affected by the proposed rule.

MVMA's concerns with the proposed rule are:

1. The rule requires the posting of Form NRC-3, "Notice to Employees," over an unnecessarily large area of a licensed facility.
2. The requirement to post the Form NRC-3 not later than 30 days after the docketing of an application for a license is unnecessary.

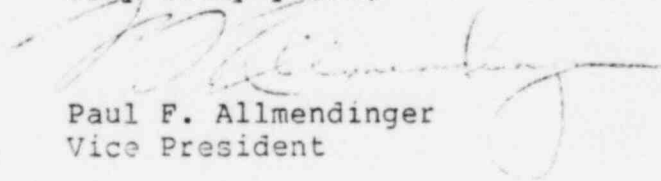
*MVMA members are: American Motors Corporation, Checker Motors Corporation, Chrysler Corporation, Ford Motor Company, Freightliner Corporation, General Motors Corporation, International Harvester Company, PACCAR Inc, The Nolan Company, Volkswagen of America, Inc., Walter Motor Truck Company and White Motor Corporation.

Acknowledged by card 5/9/80...mdv

MVMA believes that posting of the NRC-3 should be limited to restricted areas and that posting be required when a specific licensed material is first used in the workplace. The rationale for these views and suggested text for the proposed rule are contained in the attached comment.

We believe that the suggested changes will make a significant improvement in the proposed NRC rule. Your careful consideration of the suggestions will be appreciated.

Very truly yours,

A handwritten signature in cursive script, appearing to read "P. Allmendinger", is written over the typed name and title.

Paul F. Allmendinger
Vice President

Attachment

MVMA Comment on Proposed Rule of Nuclear Regulatory Commission
"Protection of Employees Who Provide Information"
Federal Register, March 10, 1980 (45 FR 15184)

Background

The proposed rule has been drafted pursuant to the Energy Reorganization Act of 1974. The purpose of the proposed rule is to offer "protection for employees who provide information to the Commission." Major provisions would do the following:

- * "Make employers aware that discrimination against employees who provide such information to the Commission is prohibited."
- * "Make the employee protection provisions applicable not only to licensees but also to permittees, applicants, and their contractors and subcontractors."
- * "Make employees aware that, if such discrimination is believed to have occurred, a recourse or remedy is available through the Department of Labor."

Concerns with Proposed Rule

MVMA's concerns with the proposed rule are the following:

1. The rule requires the posting of Form NRC-3, "Notice to Employees," over an unnecessarily large area of a licensed facility.
2. The requirement to post the Form NRC-3 not later than 30 days after the docketing of an application for a license is unnecessary.

Posting of Form NRC-3 Should Be Limited to Restricted Areas

The current posting requirement, 10 CFR 19.11(c), provides:

"Form NRC-3, 'Notice to the Employees' shall be posted by each licensee wherever individuals work in or frequent any portion of a restricted area."

10 CFR 19.11(c) is amended to read as follows:

"Form NRC-3, 'Notice to Employees', shall be posted by each licensee as required by Parts 30, 40, 50, 70 and 71."

The posting requirement under each of the numbered parts is essentially the same. Proposed 10 CFR 30.7(d), which is from Part 30 and which would apply to MVMA members, provides for:

"Form NRC-3 'Notice to Employees' shall be posted on the premises of each licensee and each applicant to inform employees ... Posting shall be at locations sufficient to permit employees to observe a copy on the way to or from their place of work. Premises shall be posted not later than 30 days after an application is docketed and shall remain posted while the application is before the Commission and while licensed activities are being conducted."

"Licensee" is changed to contractor, subcontractor, permittee, and applicant in the other Parts as appropriate.

MVMA member companies often use low level radiation sources which are within radiation levels of 10 CFR 20.105, Permissible Levels of Radiation in Unrestricted Areas, and 10 CFR 20.204, Caution Signs, Labels, Signals and Controls--Exceptions. Examples include such low level, specific license, sealed sources as Ni⁵³ and H³, which are used in gas chromatographs, and industrial, shielded, source holders used for density level measurement. For such sources posting of the NRC-3 does not provide improved safety for employees. At the same time, posting may alarm employees, causing needless concern.

Since the proposed rule is likely to cause unnecessary concern and provides little or no employee protection, MVMA feels it is unduly burdensome. The Atomic Energy Commission (AEC), the predecessor agency to the NRC, discussed this issue when it amended the posting requirements of the equivalent to the NRC-3. The comments were a part of a "Statement of Concern" which explained the amendments in 10 CFR 20. It appeared in the Federal Register on November 17, 1960, 25 FR 10914.

"Section 20.206(c) requires Form AEC-3, (Notice to Employees), to be posted in every establishment where licensed activities are carried on regardless of whether any restricted areas which require radiation protection control measures exist in such an establishment. Some licensees have pointed out that this requirement is unduly burdensome since posting of a Notice in unrestricted areas will result in many employees not working in restricted areas, nor even engaged in work with licensed materials, becoming needlessly concerned as to the applicability of the poster to their activities. Since the purpose of the Notice is solely to assure that an employee working in or frequenting restricted areas (sic) would be made aware of the information contained in the poster, Section 20.206(c) is amended that employees working or frequenting restricted areas will observe the Notice on the way to or from work."

It is clear from the Statement of Concern that posting of the NRC-3 in locations sufficient to permit observation by all employees of an establishment conducting restricted activities is unnecessary. It was for this reason that the AEC amended its more extensive posting rule to one requiring posting only in restricted areas. MVMA urges that the past problems not be recreated.

The proposed broader posting requirements may prompt persons who do not work in or frequent restricted areas to request a NRC inspection. Since such persons are less likely to know proper handling techniques for radioactive sources, there is a greater likelihood of frivolous complaints. This could be burdensome both to the NRC and the licensee without providing improved employee safety.

Posting of NRC-3 Should be Required
Only When Licensed Activities are Conducted

As indicated above, the proposed 10 CFR 30.7(d) requires posting of the NRC-3 not later than 30 days after an application is docketed with the Commission. There are similar requirements in Parts 30, 40, 50, 70, and 71. Applying for an application for the use of a radioactive source provides no assurance that the application will be granted. Should an application be granted, delays are encountered before the source is obtained and in use. Posting provides no safety benefit until the source is in use at the place of employment. In addition, once the application is granted, ample time is available to obtain and post the NRC-3 prior to licensed, authorized use.

To avoid unnecessary employee concern, posting should not be required until the source arrives at the place of employment. The logic of this approach is particularly apparent if the application should be denied. It also provides adequate employee safety.

Recommendation

In light of the foregoing, MVMA recommends that proposed 10 CFR 30.7(d) be amended to delete the last two sentences of the section, and the text changed as follows:

"Form NRC-3 'Notice to Employees' shall be posted by each licensee wherever individuals work in or frequent any portion of a restricted area to inform employees ..."

Alternatively, an exemption to 10 CFR 30.7(d) could be provided to users of low level, sealed sources. A similar exemption is provided to general licenses in 10 CFR 30.7(e), 40.7(e), and 70.7(e).