V Miller, GPA

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

APR 3 0 1991

MEMORANDUM FOR: Bruce Carrico, Medical and Commercial Use Safety Branch, NMSS

FROM: John A. Grobe, Chief, Nuclear Materials Safety Branch, Region III

SUBJECT: REVISION OF 10 CFR PART 34

References: Memoranda dated January 3, 1991 and April 6, 199'

In response to your request for Regional input regarding the proposed revision of 10 CFR Part 34, Region III offers the following two suggestions:

PERMANENT RADIOGRAPHIC INSTALLATIONS: Over the last 10 years there have been a number of interpretations of a permanent radiography facility as evidenced by the attached memorandum. Region III recommends that the rulemaking committee consider using some of the interpretations already established; however, eliminating nebulous terms such as "regular" use or "periodic" use. For example, a permanent radiographic installation would be described as a shielded room or cell designed for the purposes of radiographic operations (nuclear or X-ray); requiring no external surveillance; and is equipped with visual and audible warning signals to warn of the presence of radiation.

RADIOGRAPHER PERFORMANCE AUDITS: 10 CFR 34.11, SUBPART A - Specific Licensing Requirements, indicates in Section d.(1) and (2) of the part, that the license reviewer will require a commitment from the licensee to conduct performance audits every 3 months or prior to next operation. It has been our experience that this requirement would be more effective under SUBPART B - Radiation Safety Requirements. Currently, the failure to audit must be cited as a License Condition. By moving the audit function from a licensing issue to an inspectable regulation, the rulemaking could define and provide consistent basic requirements for a performance audit.

If you have any questions regarding our suggestions, please contact me at FTS 388-5612.

John A. Grobe, Chief
Nuclear Materials Safety Branch

Attachments:
1. Memo dtd 04/06/91, Bellamy to Grobe
2. Memo dtd 01/03/91, Bernero to Beckjord
3. Memo dtd 12/11/84, Interim Guidance/ Permanent Radiography Facilities

cc/attachments:
R. R. Bellamy, NMSS
M. M. Shanbaky, RI
W. E. Cline, RII
A. B. Beach, RIV
R. J. Pate, RV
V. L. Miller, GPA

Attachment 1

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 1 5 1991

MEMORANDUM FOR: Mohamed M. Shanbaky, Acting Chief
Nuclear Materials Safety Branch
Division of Radiation Safety and Safeguards, RI

William E. Cline, Chief
Nuclear Materials Safety and Safeguards Branch
Division of Radiation Safety and Safeguards, RII

John A. Grobe, Chief
Nuclear Materials Safety Branch
Division of Radiation Safety and Safeguards, RIII

A. Bill Beach, Director
Division of Radiation Safety and Safeguards, RIV

Robert J. Pate, Chief
Nuclear Materials and Fuel Fabrication Branch
Division of Radiation Safety and Safeguards, RV

Vandy L. Miller, Assistant Director
for State Agreements Programs
State Programs, GPA

FROM: Ronald R. Bellamy, Acting Chief
Medical, Academic, and Commercial
Use Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

SUBJECT: REVISION OF 10 CFR PART 34

In reviewing two recent enforcement actions involving industrial radiography licensees, the Commission raised question regarding the clarity of certain provisions of 10 CFR Part 34 which could confuse licensees and/or lead to inspections or enforcement problems for the staff. Following one case, the Commission requested that the Office of Nuclear Material Safety and Safeguards (NMSS) describe the intent of the regulation. In its response, NMSS informed the Commission that it had requested that the Office of Nuclear Regulatory Research (RES) initiate rulemaking to clarify the subject regulation or incorporate new provisions so that the regulation might be more consistent with current licensing and inspection policies, (see enclosed memorandum from R. M. Bernero to E. S. Beckjord dated January 3, 1991) and Suggested State Regulations.

Members of the NMSS and RES staff held a meeting to discuss the rulemaking request in March 1991. While several possible changes to the regulation were identified at the meeting, it was agreed that the regions and the Agreement States should be canvassed for additional suggestions.

9107160394 2 pp.

APR 15 1991

APR 0 - 1987

We would appreciate receiving your suggestions relating to clarification of the language in Part 34. In developing your suggestions, you may wish to consider any comments you have received from licensees during your licensing or inspection activities. We are particularly interested in specific regulatory language which you believe clearly states the requirements.

Suggestions should be sent to Bruce Carrico by the end of April. Once the suggestions are received, we plan to establish a working group to evaluate the suggestions. If you have any questions, you may contact me at FTS: 492-3418 or Bruce Carrico at FTS: 492-0634.

Ronald R. Bellamy

Ronald R. Bellamy, Acting Chief
Medical, Academic, and Commercial
Use Safety Branch
Division of Industrial and
Medical Nuclear Safety, NMSS

Enclosure: As stated

Attachment 2

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

JAN 03 1991

MEMORANDUM FOR: Eric S. Beckjord, Director
Office of Nuclear Regulatory Research

FROM: Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: REQUEST FOR RULE CHANGE TO 10 CFR PART 34

Recently, one of our regional offices proposed an enforcement action against a radiography licensee that, in part, involved the licensee conducting radiography operations within one of its facilities that regional personnel believed was a "permanent radiographic installation," as defined in 10 CFR Part 34, but which did not have entrance control warning devices installed, as is specified in 10 CFR 34.29(b). In an earlier inspection, the licensee was informed of the region's position that the facility constituted a permanent radiographic installation and, in a pending license renewal application, the licensee described appropriate entry control devices. Nevertheless, in the inspection that prompted the enforcement action, the region found that the licensee had continued to periodically conduct radiography in the facility without having the devices installed and operable.

In responding to the violation, the licensee argued it did not have to install and use the devices until its license was renewed, and that, in the interim, it was conducting its operations in the facility as a temporary field site, in accordance with procedures described in its license. The licensee also argued that it considered the facility a storage facility rather than an area designed for radiographic operations, and that it conducted radiography in the facility very infrequently. Several Nuclear Regulatory Commission (NRC) offices agreed that the definition for radiographic installations was vague and that enforcement action on this item should not be pursued. The Commission, by way of negative consent, did not object to the final Notice of Violation (which did not include the forementioned as a violation), but the Chairman requested that the staff clarify the regulations pertaining to permanent radiographic installations.

It has long been Nuclear Material Safety and Safeguards' (NMSS's) licensing policy and intent that licensees would identify and describe, in their license applications, any fixed radiography cells (permanent radiography installations) constructed and operated at their places of business, and that these cells would have the control devices specified in 10 CFR 34.29 in place and operable. Shielded cells at a radiographer's place of business would logically always be "designed or intended for radiography." The frequency with which the cell is used should not be the principal issue because there is no particular numerical value for frequency of use at which the safety of operations involving permanent versus temporary facilities could be differentiated. Instead, it should be more useful to have our requirements based on the physical characteristics of the cell and a determination that the cell is used repeatedly for radiography. We believe the control devices should be installed if the cell is used repeatedly for radiography.

9101100392 3pp.

We believe this position is in keeping with the most recent amendment to Part 34, which will require radiography personnel to wear alarm ratemeters when performing radiography operations. This provision implies that NRC's experience with "field site" radiography operations, where most overexposure incidents occur, is unacceptable, and that additional safety devices, which operate "independently" of the user, should be used whenever individuals perform industrial radiography.

We also recognize that there may be situations where a licensee is conducting its operations in a fixed radiography cell outside the licensee's place of business. For example, a licensee may be conducting extended operations at a customer's location (a temporary job site) such as a power plant, where the customer has requested that radiography be performed in a cell in order to minimize access control problems. In these situations, we should expect that alarm devices be installed and conform with regulatory requirements.

On the other hand, the licensee may sometimes find itself conducting radiography operations at a temporary job site, for a short period of time, within a shielded facility not intended for radiography, such as a hot cell or an irradiation facility. In these cases, we do not believe that it is necessary for the alarm devices to be installed. Although, we note the Statements of Consideration for the 1980 amendment to Part 34 that introduced the definition for "permanent radiographic installation" was silent on this point, we believe this was the reason for the language used in the definition. The Office of Nuclear Regulatory Research (RES) project manager for this rule change also indicated this to be the case.

In addition to the forementioned problem, there appear to be a number of other provisions in Part 34, where the requirements are frequently misinterpreted or misunderstood by licensees and NRC staff. Confusion about certain license conditions has also been a problem. For example, there have been continuing discussions on what should be considered a temporary job site, and when a location should be considered a "permanent" storage location. A licensee may be conducting radiography on a daily basis for years at a temporary job site, such as during construction of a power plant. In an enforcement action a few years ago, NRC found that the licensee was operating an office at a temporary job site and dispatching workers to other job sites. NMSS believes it is important that NRC be informed when a licensee sets up satellite offices of long duration. "Security," 10 CFR 34.41, is another provision we believe needs to be modified. We would like to see the regulations make it clear that licensees must maintain continuous direct surveillance of all access points to a restricted area boundary. As we indicated previously, there are a number of areas where we believe Part 34 can be modified to clarify regulatory requirements or better reflect licensing policies. We can discuss these additional areas more when we meet in the future.

To resolve these problems, we request that a rulemaking be initiated to revise 10 CFR Part 34. We recommend that RES consider revising Part 34 to be more compatible, as appropriate, with Part E of the Conference of Radiation Control Program Directors, Inc., "Suggested State Regulations for Control of Radiation," and Part 31 of the Texas radiation regulations. Copies of these documents are enclosed. (Please note that the copy of Texas' Part 31 may not be the most recent version.) Those sections in Part E and Texas' Part 31 addressing "two-man crews" and requirements for an agency-administered examination, should not be included in the revision. This revision would also help to ensure that similarly worded regulations for industrial radiography are in use throughout the United States.

For "permanent radiographic installations," we suggest a new definition be developed along the lines of the definition for "shielded-room radiography" in Part E. However, the definition should be based on use of the room or cell for controlling access to the radiography area, rather than the radiation levels outside the cell. The regulations should also explicitly state that the control alarms must be installed and used. An exception could be provided when conducting operations at temporary job sites, provided the cell is normally used for other purposes.

My staff is available to meet with yours to discuss our request. Please contact Bruce Carrico (X20634) to make arrangements for a meeting.

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures: As stated

Attachment 3

MEMORANDUM FOR: Leonard I. Cobb, Chief
Safeguards and Materials Programs Branch, IE

FROM: Vandy L. Miller, Chief
Material Licensing Branch
Division of Fuel Cycle and Material Safety, NMSS

SUBJECT: PERMANENT RADIOGRAPHY FACILITIES

As requested in your note dated December 4, 1984, we have reviewed your draft memorandum to Region III regarding permanent radiography facilities. Our comments are as follows:

1. We question the ELD interpretation which appears to state that any shielded facility used for radiography is automatically "intended" for radiography. Our understanding of the regulation has been that licensees would be allowed some flexibility as to whether an existing shielded structure must be designated "permanent" and have alarms installed, or whether "temporary job site" procedures may be followed. However, we accept the ELD interpretation because it makes licensing and inspection straightforward.

2. We agree that a definition of "regular performance" of radiography is desirable. However, we do not believe that a single "procedure-per-year" definition as suggested by ELD would be adequate. Other factors are also relevant; for example: whether the facility is controlled by the licensee or his customer, whether it is at a construction site, whether jobs are performed for a single customer or several customers, and whether 100 per cent of the licensee's work is done inside the facility.

3. Once a facility is established as a permanent facility, a licensee should not be allowed to let the alarms fall into disrepair merely because the facility is no longer used "regularly".

4. We suggest the following interim guidance for the Regions: (a) any facility which is shielded such that the exterior is an unrestricted area should be considered a permanent facility and must have alarms, (b) use of a facility at least once per month constitutes "regular use", (c) any case involving less frequent use, where there is a question as to whether radiography is "regularly performed", should be referred to IE Headquarters for resolution, and (d) inspectors should always review license applications for any information concerning designation of permanent facilities.

DEC 18 1984

2 pp.

8501020456 OFFICIAL RECORD COPY

b. NRS should be given specific suggestions regarding a rule change. We suggest the following: (a) a permanent facility is one designed for radiography, with shielding such that the exterior is an unrestricted area, (b) direct surveillance must be provided for all radiography operations other that those in a permanent facility, (c) Section 34.41(b), which allows a temporary facility to be locked in lieu of direct surveillance, should be deleted, (d) the definition of a permanent facility should not involve whether the facility is "intended" for radiography or "regularly used", and (e) once a permanent facility is established, it cannot be converted to a "temporary" facility without a license amendment.

If you have further questions, please call me or John Hickey (427-4093).

Original Signed By
VANDY L. MILLER
Vandy L. Miller, Chief
Material Licensing Branch
Division of Fuel Cycle and
Material Safety

DISTRIBUTION:
JLieberman
[redacted]
WAxelson/Mallett
JGlenn/JJoyner
JKinneman
NBassin
SMcGuire
NMSS r/f
FC Central File
FCML r/f
JHickey
VLMiller
BSinger

FCML JHickey:mt 12/ /87 | FCML VLMiller 12/11/87 | FCML BSinger 12/11/87

OFFICIAL RECORD COPY