

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR
1/24/94
date initials

TO: SAMUEL J. CHILK, SECRETARY OF THE COMMISSION

FROM: THE CHAIRMAN

SUBJECT: SECY-93-317 - PROPOSED RULEMAKING - REVISION
TO PART 34, LICENSES FOR RADIOGRAPHY AND
RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC
OPERATIONS

APPROVED with comments DISAPPROVED _____ ABSTAIN _____

NOT PARTICIPATING _____ REQUEST DISCUSSION _____

COMMENTS: See attached.

9401310133 931222
PDR COMMS NRCC
CORRESPONDENCE PDR

270036



SIGNATURE

December 22, 1993

DATE

RELEASE VOTE

WITHHOLD VOTE

ENTERED ON "AS" YES No _____

RF02
0/11

CHAIRMAN'S COMMENTS ON SECY-93-317

I vote to approve publication of the proposed revision to Part 34 with the following modifications.

The discussion on the Agreement State Compatibility (page 34-35) is not clear and should be revised to reflect the language in insert 1.

In the definition of **Associated equipment**, the term **control** (page 45) is not defined, however the term **control cable** (for example, pages 45, 47, 53) is used in the proposed revision. It is not clear what the staff meant in this definition. If the staff intends the term **control**, then a definition for **control** should be added. If the term should be **control cable**, then the staff should clarify the definition of **associated equipment** and consider a definition for **control cable**.

In Section 34.91, Documents and records required at temporary jobsites and use or storage locations exceeding 180 days, there should be a requirement for the licensee to maintain a copy of the NRC license at the jobsites and temporary storage locations (page 80).

In Appendix A, item 12, "independent certifying organizations" should be changed to "Agreement States" (page 85). The independent certifying organizations will need to share information with the regulatory agencies, which are the Agreement States which regulate radiographers. Not all Agreement States will have their own program to certify radiographers. Also attached are several editorial changes.

I want to commend the staff effort on preparation and coordination of this revision for Commission consideration. This proposed revision is a well thought out, quality product.

INSERT 1

Agreement State Compatibility

The rule will be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. With regard to basic radiation equipment specifications, standards and definitions, identified as matters of Division 1 level of compatibility, the Agreement States will be expected to adopt, essentially verbatim, the proposed Part 34 standards and definitions into their equivalent regulations. However, the NRC also recognizes that certain terms, such as radiographer's assistant, may not be used in present Agreement State regulations. Continued use of alternative terms, such as "trainee" will be considered acceptable so long as the underlying requirements of the position are consistent with those proposed by the Commission. The remainder of the rule will be a Division 2 level of compatibility allowing the Agreement State regulators the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgments, and community values.

Appendix A of proposed 10 CFR Part 34, provides the requirements for certifying entities to be acceptable to NRC. The Commission reserves the right to make this determination and therefore this is a Division 4 item of compatibility. Because it concerns a regulatory function that will be reserved for the Commission pursuant to 10 CFR Part 150, the Agreement States will not need to implement this provision of the proposed rulemaking. A new section proposed for Part 150 would make clear the Commission's intent to reserve this function and also to reserve the right to set minimum radiographer certification standards.

Agreement States that wish to develop radiographer certification programs would be expected to implement Parts II and III of the proposed Appendix A. The definitions and the requirements for certification programs and written examinations contained in this rulemaking must be the same for all NRC and Agreement State licensees to maintain consistency. In practice, States that develop certification programs must develop regulatory language and regulations that implement Appendix A, Parts II and III criteria. States would be permitted to include additional administrative requirements (such as State-issued cards). States that do not develop certification programs would not be expected to implement Appendix A. NRC or an Agreement State must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or by an Agreement State certification program meeting the requirements of Appendix A, Parts II and III, of the proposed rule. Agreement States would be expected to submit their proposed program for NRC review and evaluation prior to implementing their certification program.

III. General Discussion of Proposed Rule Changes

The proposed amendments contain requirements which are intended to improve radiography safety. The first major change is a proposal to require, at a minimum, two qualified individuals (two radiographers or a radiographer and an individual who has met, at least, the requirements to be a radiographer's assistant) to be present any time radiographic operations occur outside of a permanent radiographic installation. This issue has already been addressed under Section II. Petition for Rulemaking.

On March 19, 1991 (56 FR 11504), the NRC published a final rule which provided for a voluntary third-party radiographer certification program through the ^{American Society for Nondestructive Testing} (ASNT), as discussed further in Section IV. ~~Experience with such a voluntary program could provide the basis for a mandatory certification program.~~ Several Agreement States have adopted mandatory radiographer state administered examination programs. The promulgation of these programs, as well as other changes in their radiography regulations, have contributed to an overall improvement in safety and a decrease in serious overexposures in these Agreement States.

The proposed rule would recognize other certifying organizations who meet the requirements outlined in Appendix A of the proposed rule. Independent certifying organizations would be required to meet all of the requirements listed in Appendix A, while Agreement States that wish to become certifying entities would only be required to meet the requirements listed in Part II and III of the Appendix. The NRC plans to publish annually in the Federal Register an updated list of certifying entities and to provide the

operating and emergency procedures, instrument calibration records, leak test results, inventory records, utilization logs, training and survey records. These records are those required for licensees to safely handle radioactive material, and are a subset of the records required at a licensee's normal place of business.

Section 34.91, Documents and records required at temporary jobsites and use or storage locations exceeding 180 days, would be added to list documents and records required at temporary jobsites and locations where radioactive material will be in use or storage for more than 180 days. This section is necessary to ensure that licensees have available sufficient records to demonstrate compliance with NRC regulations and those records necessary to maintain safe operations. The records listed are a smaller subset of the records required for a field station or permanent installation. These records include copies of pertinent regulations, evidence of latest instrument calibrations, latest survey records, shipping papers, and ^{NRC license or} Agreement State license if operating under reciprocity. These records are those required for licensees to safely handle radioactive material.

Subpart F - Notifications

This subpart is basically unchanged from § 34.30 with the exception of an additional requirement. Section 34.101(c) would require licensees to notify the appropriate NRC regional office in writing before using or storing radioactive material in one location for more than 180 days. This notification would be required within 30 days of exceeding the 180-day timeframe. This provision would be added to provide the NRC with information

or her employer's operating or emergency procedures, or the Commission's Agreement State's regulations.

For the written examination, NRC is proposing that it be: (1) designed to test knowledge and understanding of the subjects listed in § 34.43(f); (2) written for a ninth-grade reading comprehension level; and (3) scientifically analyzed to ensure that the questions are not biased or misleading.

Agreement State Compatibility

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For Agreement States that wish to develop radiographer certification programs, Parts II and III of the proposed Appendix A would also be Division 1 items of compatibility. The definitions and the requirements for certification programs and written examinations contained in this rulemaking must be the same for all NRC and Agreement State licensees to maintain

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istency. In practice, States that develop certification programs must develop regulatory language and regulations that implement Appendix A, Parts II and III criteria. States would be permitted to include additional administrative requirements (such as State-issued cards). States that do not develop certification programs would not be expected to implement Appendix A. NRC or an Agreement State must reciprocally recognize valid radiographer certifications issued by either an independent certifying entity approved by the NRC or by an Agreement State certification program meeting the requirements of Appendix A, Parts II and III, of the proposed rule.

Part I of Appendix A of proposed 10 CFR Part 34, provides the requirements for independent certifying organizations to be acceptable to NRC. The Commission reserves the right to make this determination and therefore this is a Division 4 item of compatibility. Because it concerns a regulatory function that will be reserved for the Commission pursuant to 10 CFR Part 150, the Agreement States will not need to adopt this provision of the proposed rulemaking. A new section proposed for Part 150 would make clear the Commission's intent to reserve this function and also to reserve the right to set minimum radiographer certification standards.

The remainder of the rule will be a Division 2 level of compatibility allowing the Agreement State regulators the flexibility to adopt similar or more stringent requirements based on their radiation protection experience, professional judgments, and community values.

which is

certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555.

(3) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10; in the applicable sections of Parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR Part 71, in the NRC license(s) under which the radiographer will perform radiography, and the licensee's operating and emergency procedures;

(4) Has demonstrated understanding of NRC regulations, the licensee's license, and the licensee's operating and emergency procedures by successful completion of a written examination.

(5) Has demonstrated competence in the use of the licensee's radiographic (SPACE) exposure devices, sealed sources, related handling tools, and survey instruments; and

(6) Has demonstrated understanding of the instructions in paragraph (a)(3) and (a)(5) of this section by successful completion of a field examination.

(b) The licensee may not permit any individual to act as a radiographer's assistant until the individual --

(1) Has received copies of and instruction in the requirements described in NRC regulations contained in this part; in §§ 30.7, 30.9, and 30.10; in the applicable sections of Parts 19, 20, and 71 of this chapter, in applicable DOT regulations as referenced in 10 CFR Part 71, in the NRC license(s) under

radiographer's assistant will perform radiography, and the

operating and emergency procedures;

(2) Has demonstrated competence to use, under the personal supervision of the radiographer, the radiographic exposure devices, sealed sources, related handling tools, and radiation survey instruments that the assistant will use; and

(3) Has demonstrated understanding of the instructions ^{provided under (b)(1)} ~~in this paragraph~~ ~~(b)~~ of this section by successfully completing a written test and a field examination on the subjects covered.

(c) The licensee shall provide annual safety reviews for radiographers and radiographer's assistants at least once during each calendar year.

(d) The licensee shall conduct an annual inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the Commission's regulations, license requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

(1) Include observation of the performance of each radiographer and radiographer's assistant during an actual radiographic operation at intervals not to exceed 12 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in a radiographic operation for more than 6 months since the last inspection, the individual's performance must be observed and recorded when the individual next participates in a radiographic operation.

(e) The licensee shall maintain records of the above training to include certification documents, written and field examinations, annual safety reviews and annual inspections of job performance in accordance with § 34.79.

(ii) Section 206 of the Energy Reorganization Act;
(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section.

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section ^b188 of the Atomic Energy Act of 1954, as amended.

51. Section 34.123 is added to read as follows:

§ 34.123 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1952, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under one or more of sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in Part 34 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in Part 34 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: § 34.1, § 34.3, § 34.5, § 34.8, § 34.11, § 34.13, § 34.111, § 34.121, § 34.123.