



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 21, 1998

The Honorable Newt Gingrich
Speaker of the United States
House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that amends the regulations concerning licenses for industrial radiography. The purpose of this final rule is to clarify several ambiguities in, and to make corrections to, the recently revised 10 CFR Part 34 regulations for industrial radiography.

Shortly after publication of the final radiography rule, the NRC was notified by numerous radiography licensees that certain ambiguities and minor errors existed in the published rule. The enclosed copy of the final rule that is being transmitted to the Office of the Federal Register for publication clarifies these ambiguities and corrects the minor errors. This final rule is scheduled to become effective on publication in the Federal Register.

We have determined that this rule is not a "major rule," as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis K. Rathbun", is written over a light-colored background.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 21, 1998

Mr. Robert P. Murphy
General Counsel
General Accounting Office
441 G. St., NW
Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that amends the regulations concerning licenses for industrial radiography. The purpose of this final rule is to clarify several ambiguities in, and to make corrections to, the recently revised 10 CFR Part 34 regulations for industrial radiography.

Shortly after publication of the final radiography rule, the NRC was notified by numerous radiography licensees that certain ambiguities and minor errors existed in the published rule. The enclosed copy of the final rule that is being transmitted to the Office of the Federal Register for publication clarifies these ambiguities and corrects the minor errors. This final rule is scheduled to become effective on publication in the Federal Register.

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Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 21, 1998

The Honorable Al Gore
President of the United
States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the Nuclear Regulatory Commission (NRC) is submitting a final rule that amends the regulations concerning licenses for industrial radiography. The purpose of this final rule is to clarify several ambiguities in, and to make corrections to, the recently revised 10 CFR Part 34 regulations for industrial radiography.

Shortly after publication of the final radiography rule, the NRC was notified by numerous radiography licensees that certain ambiguities and minor errors existed in the published rule. The enclosed copy of the final rule that is being transmitted to the Office of the Federal Register for publication clarifies these ambiguities and corrects the minor errors. This final rule is scheduled to become effective on publication in the Federal Register.

We have determined that this rule is not a "major rule," as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Sincerely,

A handwritten signature in cursive script, reading "Dennis K. Rathbun", is written over a horizontal line.

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150-AE07

Licenses for Industrial Radiography and Radiation Safety Requirements for Industrial
Radiographic Operations; Clarifying Amendments and Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Clarifying and corrective amendments.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to clarify several ambiguities and to make corrections to the recently revised regulations governing licenses for industrial radiography and radiation safety requirements for industrial radiographic operations. This final rule is necessary to clarify the text to resolve these ambiguities and to make changes to correct some of the compliance dates specified in the revised rule. This rulemaking will clarify the Commission's intent regarding the implementation date for certain requirements. In particular, the final rule specified several dates, intended to be one year or two years after the effective date of the rule. The date published in the May 28, 1997, Federal Register inadvertently used the May 28 publication date, rather than the June 27 effective date. Therefore, this final rule specifies June 27, 1998, or June 27, 1999, as the correct effective date for implementation of those specific provisions.

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EFFECTIVE DATE: Upon publication.

FOR FURTHER INFORMATION CONTACT: Donald O. Nellis, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6257, (e-mail address don@nrc.gov).

SUPPLEMENTARY INFORMATION:

On May 28, 1997 (62 FR 28948), the NRC published a final rule with an effective date of June 27, 1997 that revised 10 CFR Part 34, which applies to industrial radiography and its related safety requirements. Major changes in this revision included:

- 1) A requirement for two qualified individuals to be present whenever radiography is performed at a location other than a permanent radiographic installation, one of whom must be a qualified radiographer and the other must be at least a qualified radiographers' assistant;
- 2) A requirement for mandatory certification of radiographers;
- 3) Specification of the qualifications and duties of the Radiation Safety Officer;
- 4) Additional training requirements for radiographers' assistants; and
- 5) Clarification of the definition of a permanent radiographic installation.

After its publication, the NRC was notified by numerous radiography licensees that certain ambiguities and minor errors existed in the May 28, 1997, final rule. This action corrects errors in the Supplementary Information and codified text of the May 28, 1997, final rule and clarifies several provisions of the regulation to remove ambiguities.

1. In Supplementary Information, under Section II, Response to Public Comments on the Proposed Rule and Final Rule Provisions, the last paragraph in § 34.41, Conducting Industrial Radiographic Operations, discusses the addition of a requirement to have approved procedures before conducting specific types of radiographic operations and listed that requirement as § 34.41(d). This was an incorrect citation. The requirement was correctly added as § 34.41(c) in the regulation so that no change is needed and this discussion simply clarifies any confusion generated by the incorrect citation.

2. In Supplementary Information, under Section V, Implementation (62 FR 28962), the third paragraph states that licensees will have 1 year to comply with the new training requirements in § 34.43 (a) and (b). This citation is incorrect. Paragraphs (a)(1) and (a)(2) refer to the requirements for radiographer certification. The new training requirements for radiographers are in § 34.43(b) and the new training requirements for radiographers' assistants are in § 34.43(c). Section 34.43(h) correctly identifies the additional training requirements. The purpose of this discussion is to alleviate any confusion that may have resulted from the incorrect citation.

3. Section 34.27, Leak testing and replacement of sealed sources, included a new requirement for the leak testing of devices containing depleted uranium (DU) shielding. Two discrepancies have been noted. First, the condition for removing the exposure device from use for an evaluation of S-tube was incorrectly stated, and second, the implementation date for this requirement was not specified. This subject was addressed in the Supplementary Information under Section II, Public Comments, where it was pointed out that the purpose of the test was to detect wear in the guide tube that could cause control cable binding and inability to retract the source. Because the comments also pointed out that annual testing for DU was required and

that testing services were readily available, the NRC believed that one year from the effective date of the final rule would be an acceptable date for compliance with this requirement. To remedy the text defining the condition for removing the exposure device from use, the third sentence of paragraph (e) is amended by using text similar to that in the first sentence of paragraph (d) to read:

Should this testing reveal the presence of 185 Bq (0.005 microcuries) or more of removable DU contamination, the exposure device must be removed from use until an evaluation of the wear of the S-tube has been made.

In addition, to clarify that the implementation date for DU testing was one year from the effective date of the rule June 27, 1997 and not the publication date, May 28, 1997, § 34.27(e) is amended by adding a new sentence at the end of this paragraph to read:

Licensees will have until June 27, 1998, to comply with the DU leak testing requirements of this paragraph.

4. Section 34.41, Conducting industrial radiographic operations, specifies that at least two qualified individuals must be present whenever radiography is performed outside of a permanent radiographic installation. Numerous inquiries were received concerning the implementation date for this requirement. The intent of the Commission was that licensees would have an implementation period of 1 year from the effective date of the rule to meet this requirement. (On May 28, 1997 (62 FR 28948), the NRC published a final rule with an effective date of June 27, 1997 that revised 10 CFR Part 34, which applies to industrial radiography and its related safety requirements.) This implementation period was selected to allow time to train new individuals as specified in § 34.43(h). To avoid confusion as to what was intended in the original Federal Register notice, a new paragraph (d) is added to § 34.41 to read:

(d) Licensees will have until June 27, 1998, to meet the requirements for having two qualified individuals present at locations other than a permanent radiographic installation as specified in paragraph (a) of this section.

5. Under Subpart D—Radiation Safety Requirements; § 34.42, Radiation Safety Officer for Industrial Radiography, paragraph (d) contains an incorrect date. The Supplementary Information Subsection V. Implementation; of the final rule, specifies that all current RSOs will have two years to implement the additional RSO training requirements specified in § 34.42(a) and to comply with the mandatory certification requirements in § 34.43(a)(2), 62 FR 28962. All extended times for implementation were from the effective date of the rule, June 27, 1997, and not from the publication date, May 28, 1997. The paragraph is revised to read:

(d) Licensees will have until June 27, 1999, to meet the requirements of paragraphs (a) or (b) of this section.

6. Under Subpart D— Radiation Safety Requirements § 34.43(a)(2) contains an incorrect date, May 28, 1999, two years from the publication date rather than the correct date, June 27, 1999, two years from the effective date. The paragraph is revised to read:

(2) The licensee may, until June 27, 1999, allow an individual who has not met the requirements of paragraph (a)(1) of this section, to act as a radiographer after the individual has received training in the subjects outlined in paragraph (g) of this section and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the Commission.

7. Under Subpart D—Radiation Safety Requirements, § 34.43, Training, paragraph (h) contains an incorrect date. The Supplementary Information Subsection V. Implementation; of the

final rule, specifies that licensees will have 1 year from the effective date of the rule to comply with the additional training requirements specified in § 34.43(a) and (b). 62 FR 28962. As stated in paragraph 2 above, the additional training requirements as set forth in § 34.43(b) refer to the training requirements for radiographers while the additional training requirements as set forth in § 34.43(c) refer to the training requirements for radiographers assistants. Also, as noted above, the effective date of the final rule was June 27, 1997, not May 28, 1997. The paragraph is revised to read:

(h) Licensees will have until June 27, 1998, to comply with the additional training requirements specified in paragraphs (b)(1) and (c)(1) of this section.

8. Under Subpart D—Radiation Safety Requirements, § 34.43 Training, does not specify a compliance date for radiographer certification in § 34.43(a)(1). The Supplementary Information Subsection V, Implementation, of the final rule, specifies that licensees will have 2 years from the effective date of the rule to affirm that all radiographers have met the certification requirements of § 34.43(a)(1). Records of radiographer certification maintained in accordance with § 34.79(a) will provide adequate evidence of compliance with the need to affirm radiographers have met the certification requirements of § 34.43(a)(1). A new paragraph (i) is added to this section to read:

(i) Licensees will have until June 27, 1999, to comply with the certification requirements specified in paragraph (a)(1) of this section. Records of radiographer certification maintained in accordance with § 34.79(a) provide appropriate affirmation of certification requirements specified in paragraph (a)(1) of this section.

Administrative Procedure Act:

Because these amendments make minor corrective and clarifying changes to an existing regulation, the NRC has determined that good cause exists to dispense with the notice and

comment provisions of the Administrative Procedure Act (APA) pursuant to 5 U.S.C. 553(b)(B). For the same reason, the NRC has determined that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)(3)). See also: 10 CFR 2.807.

Agreement State Compatibility

Although 10 CFR Part 34 is subject to various degrees of compatibility with regard to the Agreement States, these amendments make only minor corrective or clarifying changes in an existing regulation and are not expected to affect the compatibility of the Agreement State program.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0007.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This final rule does not impose any new requirements or additional costs to licensees because its purpose is solely administrative in that it simply corrects and clarifies the text of an existing regulation and does not result in any essential change. This constitutes the regulatory analysis for this final rule.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule, and therefore, that a backfit analysis is not required for this rulemaking since these amendments do not involve any provision that would impose backfits as defined in 10 CFR 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is "not a major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 34

Criminal penalties, Packaging and containers, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 34.

PART 34 – LICENSES FOR INDUSTRIAL RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

1. The authority citation for Part 34 continues to read as follows:

AUTHORITY: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).
Section 34.45 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

2. Section 34.27, paragraph (e) is revised to read as follows:

§ 34.27 Leak testing and replacement of sealed sources

* * * * *

(e) Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the

Commission or an Agreement State to perform the analysis. Should such testing reveal the presence of 185 Bq (0.005 microcuries) or more of removable DU contamination, the exposure device must be removed from use until an evaluation of the wear on the S-tube has been made. Should the evaluation reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device however, the device must be tested for DU contamination if the interval of storage exceeded 12 months. A record of the DU leak-test must be made in accordance with § 34.67. Licensees will have until June 27, 1998, to comply with the DU leak-testing requirements of this paragraph.

3. In § 34.41, a new paragraph (d) is added to read as follows:

§ 34.41 Conducting industrial radiographic operations.

* * * * *

(d) Licensees will have until June 27, 1998, to meet the requirements for having two qualified individuals present at locations other than a permanent radiographic installation as specified in paragraph (a) of this section.

4. In § 34.42, paragraph (d) is revised to read as follows:

§ 34.42 Radiation Safety Officer for industrial radiography.

* * * * *

(d) Licensees will have until June 27, 1999, to meet the requirements of paragraph (a) or (b) of this section.

5. In § 34.43, paragraphs (a)(2) and (h) are revised, and paragraph (i) is added to read as follows:

§34.43 Training

(a) * * *

(2) The licensee may, until June 27, 1999, allow an individual who has not met the requirements of paragraph (a)(1) of this section, to act as a radiographer after the individual has received training in the subjects outlined in paragraph (g) of this section and demonstrated an understanding of these subjects by successful completion of a written examination that was previously submitted to and approved by the Commission.

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~~§ 34.43 Training~~

* * * * *

(h) Licensees will have until June 27, 1998, to comply with the additional training requirements specified in paragraphs (b)(1) and (c)(1) of this section.

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~~7. In § 34.43, a new paragraph (i) is added to read as follows:~~

~~§ 34.43 Training~~

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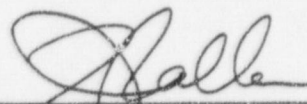
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(i) Licensees will have until June 27, 1999 to comply with the certification requirements specified in paragraph (a)(1) of this section. Records of radiographer certification maintained in accordance with § 34.79(a) provide appropriate affirmation of certification requirements specified in paragraph (a)(1) of this section.

Dated at Rockville, Maryland, this 24th day of June, 1998.

For the Nuclear Regulatory Commission.



L. Joseph Callan,
Executive Director for Operations.

This check list is to be submitted with each document (or group of Qs/As) sent for processing into the CCS.

- COMMENTS: