(18)

DOCKET NUMBER
PROPOSED RULE PR 30,31,32,170+171
(64FR46295)

'99 OCT 12 P3:30

October 8, 1999

Secretary
United States Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington D.C. 20555-0001

TN Technologies

Subject: Proposed Changes to 10 CFR Parts 30, 31, 32, 170, and 171 Requirements for Certain Generally Licensed Industrial Devices RIN 3150-AG03

Dear Sir or Madam:

TN Technologies is a manufacturer of industrial gauges used in process measurement equipment. Many products manufactured by TN contain sealed sources of radioactive material addressed in this proposed rule change. TN holds a radioactive material license in the state of Texas which allows, among other things, the distribution of generally licensed devices. Over the past years TN has provided numerous comments to NRC staff and management regarding both general license and exempt quantity distribution issues. They are once again provided in light of the renewed effort by the NRC to open and modify 10 CFR 31.

Accountability

With establishing 10 CFR 31.5c(13)(i) registration requirements of 10 mCi for Cs-137, 1.0 mCi for Co-60, 0.1 mCi for Sr-90 and 1.0 mCi of Am-241 or any other transuranics the NRC has left the issues of exempt quantity distribution unaccounted for.

Certain industrial gauge manufacturers have distributed gauges with exempt quantities of sources above the regulatory limits specified under 10 CFR 30.18 and 30.71, Schedule B (i.e., 10 μCi of Cs-137). In addition, distributions were being made without an exempt quantity distribution license. Apparently, approval had been granted that would allow distribution of gauges where 10 individual (and more) 10 μCi of Cs-137 sources are used. It is our understanding that the manufacturer sold the device to a customer (without the exempt quantity sources, which are purchased from a third party) thereby circumventing the exempt quantity license and the Sealed Source and Device (SSD) registry requirements. It remains unclear how certain manufacturers of industrial gauges use 10 CFR 30.15 (c)(9)(ii) as a basis for distributing gauges when this section clearly applies to "...measuring instruments containing, for the purposes of internal calibration or standardization...). The appropriate section should be as defined under 10 CFR 31.5 "...measuring, gauging or controlling devices." This is again brought to NRC's attention since we continue to have concerns with the "loop hole" in the regulations and that this "uncontrolled" distribution by certain manufacturers will increase the lack of accountability of radioactive material.

2555 North IH-35
P.O. Box 800
Round Rock, TX
78680

800-736-0801
512-388-9100
(fax) 512-388-9200

www.tn-technologies.com
sales@tn-technologies.com

DS10

The NRC's May 3, 1999, Generic Letter 99-01, addressed some of this issue; however, NRC and Agreement States have issued SSD registries that allow these devices to be relocated by the end user and are exempt from leak test requirements and potentially certain reporting requirements.

Over the past years we have attended numerous meetings and workshops in which the steel manufacturers association have complained that the NRC and manufacturer's of devices have not maintained adequate accountability of radioactive material. This exempt quantity distribution approach taken, by certain manufacturers, is not only inappropriate but will perpetuate the already existing concerns regarding the lack of accountability of licensed devices.

The NRC must continue to address those issues outlined in the "Final Report of NRC-Agreement State Working Group to Evaluate Control and Accountability of Licensed Devices" (NUREG-1551). The report clearly outlined and identified the need for regulatory agencies (both federal and state) to strive toward more effectively utilizing existing avenues in rule to address the entire issue of radioactive material accountability consistently.

The current rules remain open to interpretation with regard to exempt quantities and the proposed rule has become so extreme that some sections require more information of general licensees than from existing specific licensees. The NRC must establish some sense of consistency in order to meet the goals and objectives outlined in SECY-97-273 dated November 26, 1997. Some examples of inconsistency between general and specific are as follows:

General Licensee will be required to have:	Specific Licensee:
A responsible person and backup responsible person.	One contact person - the RSO
Model and Serial Numbers, Isotope, Activity and Quantity	Generic without this information
Report replacements, returns and disposals	Not required until termination

Compatibility

The NRC intends to classify 10 CFR 31.5 as Category C requirement for Agreement State compatibility. This is inappropriate and inconsistent in that this change will have significant direct trans-boundary implications. The Agreement State program element should be essentially identical to that of the NRC and thus should be a Category B requirement.

The state of New York has prohibited the distribution of generally licensed devices in their state. The states of Louisiana and California have requested (but have not implemented in rule) that general license devices distributed in their respective states obtain a specific license. I agree with accountability but I strongly disagree with inconsistent application among Agreement States and the voiding of generally licensed devices. Agreement States are in essence voiding other Agreement States SSD registry reviews and technical positions.

Other issues

10 CFR 31.5c(2) through c(5): The requirement for a six month physical inventory is implied but not stated. It should be clearly stated and the licensee must be required to verify, as a minimum, the name plate information (i.e., manufacturer, model and serial number, assay date, isotope, activity, location of device).

10 CFR 31.5c(8)(iii): How will written approval be obtained prior to transferring the device to a specific licensee?

10CFR c(15): Devices in storage should still be required to be subject to six month physical inventory requirements.

10 CFR 170.31(3)(Q): The NRC has always had in rule the requirement and ability to maintain accountability of general license devices via the manufacturer's required general license distribution reports. It is unclear as to the rationale of an annual $420 fee. It is suggested that this be an initial start up fee and that further evaluation for maintenance/inspection fees be conducted after the program has been in place for a few years.

Should you require any additional information or have any further questions, please advise. I can be contacted by telephone: 512-388-9287, fax: 512-388-9333 or email: rheyer@tn-technologies.com

Sincerely,

Ralph S. Heyer
Radiation Safety Officer
and Manager Regulatory Affairs