

31 & 32
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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150-AD82

Requirements Concerning the Accessible Air Gap
for Generally Licensed Devices

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the safe use of radioactive byproduct material in certain measuring, gauging, and controlling devices. The proposed rule would provide for additional regulatory control over devices with both an accessible air gap and radiation levels that exceed specified values. This action is intended to make it increasingly difficult for personnel to obtain access to the gauge's radiation beam, thereby reducing the frequency and likelihood of unnecessary exposure to plant personnel. This amendment applies both to persons who distribute these special measuring, gauging, and controlling devices under the NRC general license provisions and to persons who use the devices under the NRC's general license.

Per 11/27/92

DS10

3/29/93

DATES: The comment period expires [120 days following publication in the Federal Register]. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to: The Secretary, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on weekdays. Copies of the draft regulatory analysis, as well as copies of the comments received on the proposed rule, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3784.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the predecessor to the Nuclear Regulatory Commission (The Atomic Energy Commission) amended its regulations to establish a general license for the use of radioactive byproduct material contained in certain luminous, measuring, gauging, and controlling devices. The general license permitted the use of specially approved devices, designed

for safe use by persons not trained in radiation safety, for the purpose of: detecting, measuring, gauging, or controlling thickness, density, level, interface location, radiation, leakage, or chemical composition, or for producing light or an ionized atmosphere. Those permitted to use these devices in the conduct of their business under the general license included (1) commercial and industrial firms; (2) research, educational, and medical institutions; (3) individuals; and (4) Federal, State, or local government agencies. This simplified the licensing process so that a case-by-case determination of the adequacy of the licensee's training, experience, and radiation safety program by the regulatory authority was unnecessary.

The practice of using a device under a general license grew over the years. There are currently some 450,000 devices in use by about 35,000 general licensees in non-Agreement States where the NRC licenses and otherwise controls the use of these devices. In Agreement States, where State regulatory agencies control the use of the devices, there are about twice this number of generally licensed devices. In 1989, there were 54 vendors of generally licensed devices licensed by the NRC. There were 76 vendors licensed by Agreement States. The regulatory framework and process have changed little over the past three decades.

Studies conducted by the NRC in 1984, 1985, and 1986 revealed several areas of safety concern about the use of some sealed source devices under general license. Investigators observed that accountability for some devices was inadequate and that users were frequently unaware of regulations which applied to them. Furthermore, some devices could not be located and final disposition of some devices could not be determined by the user or the NRC.

A follow-up survey of a sample of general licensees possessing gauging devices, laboratory analytic devices, and tritium-activated exit lights containing radioactive byproduct material was completed in 1990. The survey was designed to obtain information about the respondents' knowledge of the regulatory requirements for general licensees, and their practices and procedures concerning maintenance, testing, and disposition of the generally licensed devices. Although a high proportion of the general licensees, particularly gauge licensees, displayed knowledge of the regulatory requirements and compliance with them, the survey indicated the possible need for further regulatory attention in some areas, most notably the possession and use of tritium-activated exit lights.

Based on the results of the earlier studies and the recent survey, the NRC concluded that the general license program should be continued, but with some modification. The possibilities considered included the following:

1. Quality assurance program for vendors;
2. Third-party testing of generally licensed devices;
3. Ultimate disposition of byproduct sources;
4. Upper bound on source size permitted under general license; and
5. Responsibilities and communications.

From these choices, a decision was made in 1990 to proceed by rulemaking with an NRC program for corresponding by mail with general licensees. This program of correspondence by mail is being developed to ensure that the general licensees are aware of and understand the requirements attendant to possession of these devices. This will be accomplished through (1) an initial verification by the NRC of the information regarding the identification of the device and people responsible for the device collected at the time at which

the general licensee takes possession of the device, and (2) periodic follow-up by the NRC to remind general licensees of their regulatory responsibilities and to verify the currency of the information on possession and use of these devices. This communication program will affect approximately 35,000 general licensees who possess an estimated 450,000 devices containing byproduct material. The Notice of Proposed Rulemaking to implement this program was published in the Federal Register on December 27, 1991 (56 FR 67011).

The rulemaking presented in this Notice of Proposed Rulemaking, viz., to place an upper bound on the radioactive source size permitted under general license in a gauge device which has an accessible air gap between the source and detector of the device, is another action proceeding from the results of the above studies. The action is intended to make it increasingly difficult for personnel to obtain access to the gauge's radiation beam, thereby reducing the frequency and likelihood of unnecessary radiation exposure to plant personnel. The NRC estimates that there are some 3000 gauges which use a large enough radiation source to be a potential problem. The gauges are in the possession of about 750 general licensees. This action and the program of corresponding with licensees provide the minimum cost-effective improvements needed to respond to the problems identified in the general license program.

Discussion

The gauges identified as needing improved regulatory control are those which both have a somewhat higher radiation level and have been installed so that there is a sufficiently large air gap between the radioactive sealed source and the gauge detector such that an untrained or careless worker could

place his or her body directly in the radiation beam. Many gauges contain a small enough quantity of radioactive material so that even with a large air gap no significant radiation exposures would result. However, for those gauges that have both a large air gap and radiation levels that exceed a certain value, the NRC intends to prohibit further distribution under a general license and to convert existing general licenses to specific licenses. Notwithstanding, general licensees who currently possess such gauges would have the option of having the area around those gauges physically modified to eliminate the accessible air gap. General licensees who exercise this option would not be required to become specific licensees. The NRC estimates that the 3000 or so gauges that are the subject of this rulemaking (one-half percent of the general licensed devices) are used by approximately 750 general licensees (2 percent of the total number of general licensees). The NRC is not considering specifically licensing over 97% of the general licensees and over 99% of the devices. Further, the lower cost option to provide passive controls in lieu of specific licensing, where feasible, is also provided in this proposed rule.

The size of the air gap addressed by this proposed rule is a gap of 45 cm (18 in.) or greater between the radiation source and detector, shaped in such a way so as to allow insertion of a 30 cm (12 in.) diameter sphere into the radiation beam without the removal of any barrier. The proposed rule would define such a gap as an "accessible air gap." The specification is a reasonable limit to restrict access of a person's torso. An air gap which is 45 cm (18 in.) or greater between the source and detector but is enclosed by a wire mesh or other barrier would not be considered an "accessible air gap" under this proposed rule provided the barrier is configured so that a 30 cm

(12 in.) diameter sphere could not be placed in the radiation beam without the removal of the barrier.

The magnitude of the radiation level of concern which would be addressed by this rule change is 125 millirem per hour or greater at 45 cm (18 in.) from the radiation source with any shutter in the open position. This radiation level specification is based on the scenario of a worker receiving less than 1 hour of direct radiation exposure in a calendar quarter at a distance of 45 cm (18 in.) from the radiation source as a result of unlikely and careless practices. This would result in a quarterly exposure of less than 125 millirem, which is one-tenth the radiation exposure limit for occupationally exposed workers. This corresponds to the dose restriction for general licensees in NRC regulations (10 CFR 32.51 (a)(2)(ii)). The 45 cm (18 in.) specification corresponds to a guideline set forth for NRC inspectors that a radiation level must extend 45 cm (18 in.) into an accessible area for it to cause whole body radiation doses. While this guideline would allow part of an individual's body to be exposed to a higher radiation level than that specified while the body is within the 45 cm (18 in.) distance and closer to the source of the radiation, practical considerations dictate that a person would not be situated in the radiation beam next to the radiation source for long periods of time. An exception to this "practical consideration" statement is a situation where individuals enter for cleaning, maintenance, or any other reason, a vessel on which a radioactive gauge has been installed. If it is possible that the gauge shutter could be left open, exposing the individual who entered the tank, greater radiation exposures could result than are thought reasonable for generally licensed operations. General licensees are not generally trained or equipped to quickly discover a radiation problem

which is causing undue radiation exposure of plant workers. That is why the proposed rule in § 31.5 (b)(2) would prohibit the use of vessel gauges under general license.

There are some general licensees who at present possess this type of gauge installed in such a way that unnecessary radiation exposure could occur if untrained or careless employees inadvertently placed their bodies in the gauges' radiation beams. General licensees who currently possess these gauges would be required to either obtain a specific license for the gauge and to establish a radiation safety program to restrict and control access to those gauges, or have the area around the gauges physically modified to eliminate the "accessible air gap," and hence not be required to obtain a specific license. Although this physical modification, as with all installation and servicing of the gauge, would need to be performed by a person with a specific license that authorizes him or her to perform this type of activity, the Commission views it as a lower cost alternative to obtaining a specific license.

The Commission intends to modify the Enforcement Policy, 10 CFR Part 2, Appendix C, at the time of the final rulemaking to address enforcement actions for failure to either obtain a specific license or to physically modify the devices to avoid the need to obtain a specific license. The possession of material without the required specific license is considered under Supplement VI of the Enforcement Policy to be a Severity Level III violation since it involves possession of unauthorized material. Consequently, a civil penalty will be considered for such violation. It is the Commission's intent to provide a separate assessment scheme for these violations should the proposed rule be finalized. It is expected that each source which is

possessed in violation of the rule would be subject to a separate assessment of \$600. Except for the identification factor in Section VI.B.2.(a) of 10 CFR Part 2, Appendix C, this penalty would be assessed without regard to the normal assessment factors in Section VI.B.2. The penalty would be assessed without normally holding an enforcement conference. The written response required by 10 CFR 2.201 and 2.205 should provide sufficient information for regulatory purposes for this type of violation. The purpose of this penalty process would be to deter violations by making noncompliance with this requirement more expensive than compliance.

Comments From Agreement States

A draft of this proposed rulemaking was provided to the Agreement States for their review and comment. Agreement States are those States which have entered into an agreement with the NRC or its predecessor Atomic Energy Commission to regulate persons within their States who have in their possession byproduct, source, and special nuclear material. This allows NRC to discontinue exercising most regulatory control over radioactive materials used in the State. However, NRC is required to assure that the State program is compatible with the NRC program and is adequate to protect the public health and safety. The Atomic Energy Act of 1954, as amended, authorizes and directs the NRC to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and NRC programs for protection against hazards of radiation will be coordinated and compatible.

Of the 23 Agreement States that acknowledged their receipt of the draft rule for comment, 17 offered specific comments. Those comments have all been considered. None of the States objected to the publication of the proposed rule. Nine of the States agreed that the draft rule treated at least part of the generally-licensed device problem and should be proposed. Five States asked what help would be available to them to identify the gauge installations which require corrective action. The NRC is prepared to share with them the information and search techniques to identify gauge installations in need of corrective action. On the issue of the period of time over which the corrective action on the gauges would be implemented, all the Agreement States commenting urged a shorter time period than the 3 years in the draft NRC notice. Because the time period proposed in the draft notice is based on the licensing/inspection resources available to the NRC for this project, no changes have been made in that schedule. The NRC plans to work with the States, encouraging them to provide advance notice to their licensees of this upcoming action, in order that the Agreement States implementation of compatible new rules restricting accessible air gaps on generally licensed devices could be completed at the same time as the NRC implementation of its rules.

While the comments of five States supported the criteria for defining "accessible air gap" in the draft rule, seven States commented that further consideration should be given to a more conservative approach in two areas. First, it was suggested that the rule eliminate large tanks with level gauges from the generally licensed device category. The NRC agrees that gauges on large tanks which are manually cleaned from the inside should be specifically licensed and has clarified that position. Second, the suggestion was made to

extend the rule to protect body extremities. Based on its decision to effect the minimum cost-effective improvements needed to respond to the problems identified with the general license program, the NRC believes this rule change should be limited to eliminating the potential for radiation exposure of major parts of the body, not extremities. As an example, even assuming a radiation dose rate inside an air gap of 250 mrem/hour, an individual would have to keep a hand in the beam more than 20 hours per year to exceed a dose to the extremities of 5000 mrem per year, one-tenth the dose limit now imposed by 10 CFR Part 20 for occupationally exposed individuals. Based on this consideration, the NRC demurs with regard to extending the rule to protect body extremities.

Of the seven States submitting specific comments on the proposed radiation level in an accessible air gap below which no action would be required, only two States supported the 125 mrem/hr at 45 cm (18 in.) in the draft rule. Several States questioned the NRC's estimate that persons exposed to radiation in an accessible air gap of a gauge would not be so exposed for as much as 1 hour per calendar quarter but provided no rationale for that contrary view. Nonetheless, in the NRC's view, all the characteristics of a gauge serve to limit the time a person could be exposed in an accessible air gap. During normal gauging, the material being gauged is flowing through the air gap, preventing the presence there of any individual. When not operating, the normal condition of the gauge is to have the source shutter closed, shielding any significant radiation from the air gap. Most generally, licensed gauges utilizing radioactive material are designed with a "fail-safe" shutter mechanism which automatically shields most of the radiation when the gauge is not being operated. If the shutter were left open (or if there were

no shutter), warnings from the operator and from the warning labels on the gauge would normally deter any individual from positioning his/her body so as to expose it to radiation. There is little reason to believe that even an untrained worker could easily find a way to expose his/her body to significant radiation levels (except perhaps in conducting normal maintenance inside a large tank) for any significant time.

Two States commented that the radiation level limits should be related to permitted exposures of members of the general public on the basis that individuals who are untrained in radiation safety, even though occupationally exposed, should be considered members of the general public. Other States suggested that the radiation level limits should be related to the definitions of "radiation area" (5 mrem/hr at 30 cm (12 in.)), or "high radiation area" (100 mrem/hr at 30 cm (12 in.)), or to other doses or dose rates which are lower than those proposed in the draft rule on the basis of making the gauge restriction equal to one of the many existing limits in the NRC's radiation safety standards in 10 CFR 20, "Standards for Protection Against Radiation." These suggestions relating to consistency with Part 20 standards were seriously considered by the NRC and thought to have merit. In the final analysis, however, the NRC has given greater weight to the following practical considerations in recommending that the accessible air gap rule be proposed using the original criterion of 125 mrem per hr at 45 cm (18 in.) from the radioactive source:

1. Based on discussions with manufacturers and users of these gauges, it is the NRC's understanding that most general licensees possess radiation profiles of their gauge environs, provided to them by the gauge installer, which characterizes the gauges in terms of radiation levels produced by the

gauge at 45 cm (18 in.). In the NRC's opinion, using a criterion related to the way in which a gauge is characterized is a practical means of distinguishing those gauges that should be specifically licensed from those that can remain generally licensed. If we were to change the distance at which the radiation level criterion is measured so that the relationship between the radiation profile and criteria of this rule is not readily discernable to the general licensee, the radiation profile would lose its value and the general licensee would become more dependent on outside expertise in deciding whether a particular gauge falls within the criteria of this rule.

2. The criterion of 125 mrem per hour at 45 cm (18 in.) from the gauge's radiation source was chosen as a reasonable specification related to a radiation exposure of 500 mrem in 1 year, and to actual gauges which have been distributed under general licenses. The NRC recognizes, however, that other radiation level and other radiation exposure standards could be chosen which are also acceptable. The NRC sees no substantial improvement in changing the criterion from 125 mrem per hour at 45 cm (18 in.) to 100 mrem per hour at 45 cm (18 in.) or to 100 mrem per hour at 30 cm (12 in.) as have been suggested, although these criteria would be acceptable. On the other hand, the other suggestions of radiation level criteria of 5 mrem per hour at 30 cm (12 in.), 2 mrem per hour, and radiation exposure criteria of 50 mrem per year are extremely low for purposes of this rulemaking. However, for the purpose of allowing Agreement States to impose more stringent criteria in their jurisdiction should they wish to do so, the NRC supports Compatibility Division II for this rule.

Invitation to Comment

Comments on the criteria defining the type of gauge requiring better NRC control and the implementation of the proposed amendments are encouraged.

Comments are especially solicited on:

1. The proposed use of both the 45 cm (18 in.) dimension and allowing insertion of a 30 cm (12 in.) diameter sphere into the radiation beam as criteria for defining the maximum size of the accessible air gap;

2. The proposed use of 125 millirem per hour at 45 cm (18 in.) from the source as the level of radiation to which a worker could be exposed as the threshold triggering the restrictions of this proposed rule;

3. The need for a grace period between the effective date of the final rule and the date on which particular portions of the rule become effective. It is unclear how long it will take for present users of that type of gauge to react to the restrictions and take some kind of action, either to have the device physically modified to eliminate the accessible air gap, or to apply for and obtain a specific license;

4. The costs that might result from physically modifying the areas around the devices or obtaining specific licenses; and

5. The specification of Compatibility Division II for Agreement State compatibility, which will allow States to set different, more restrictive limits for this rule when it is finalized and subsequently adopted in State regulations. NRC is particularly interested in comments from manufacturers and distributors on the impacts associated with this level of Agreement State compatibility, and whether this involves matters of interstate commerce.

Finding of No Significant Environmental Impact: Availability

The proposed amendment, if adopted, would not result in any activity that significantly affects the environment. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The proposed amendments, if adopted by the NRC and as implemented by licensees, would likely result in a potential gain in radiation protection by reducing the frequency and likelihood of unnecessary radiation exposures. It is expected there would be no additional radiation exposure to individuals or the environment from any physical modification of gauges to satisfy the requirements of this proposed rule. The environmental impact assessment forming the basis for this determination is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Paperwork Reduction Act Statement

The proposed rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs (3150-0120, 3150-0028 and 3150-0017), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis for this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Donald R. Hopkins, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-3784.

Regulatory Flexibility Certification

Based on information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as one whose gross annual receipts do not exceed \$3.5 million. The proposed rule affects

about 750 persons using 3000 gauges under this general license. Many of the users would be classified as small entities. If these users were to adopt the regulatory alternative of obtaining a specific license authorizing use of their presently held gauges, the costs, as discussed in the draft regulatory analysis, "Proposed Regulations Concerning Certain Generally Licensed Devices," would be as follows:

1. Application preparation \$1200 (first year only).
2. Renewal application preparation \$400 (every 5 years thereafter).
3. Licensing fee \$500 (first year and every 5 years thereafter).
4. Inspection fee \$1200 (first year and every 5 years thereafter).
5. Annual fee \$1500 (every year, includes \$100 surcharge).
6. Establishing radiation safety program \$7500 (first year only).
7. Maintaining radiation safety program \$2500 (every subsequent year).

Total of \$11,900 for first year; \$6,100 every subsequent fifth year; and \$4,000 for all other years, for an average annual cost over a 15-year period of \$4,807. The 225 licensees who are estimated to already possess a specific license (even though using gauges under a general license) would have a one-time additional cost of \$780 to add the generally-licensed gauges to their specific license. The average cost to these licensees over a 15-year period would be \$52 per year.

While the nearly \$5000 per year average costs would be significant for some small entities who decide to obtain a specific license, the NRC believes that the economic impact of the proposed requirements would not be significant for a substantial number of small entities because of the alternative available other than becoming a specific licensee. If a person makes the air gap of the gauge inaccessible by any number of means, such as building a

barrier around the air gap, locking the area where the air gap exists, or by interlocks where no one can enter the area while the radiation source is in the exposed position, that person would not be required to obtain a specific license. Although this alternative may be impractical in some cases because of the nature of the gauging process, the NRC believes it will be a practical alternative in most cases. The NRC believes that this would subject affected persons to the one-time additional barrier construction costs estimated at \$1700 per facility. Over the 15-year period this would average \$113 per year. The potential gain in radiation protection by reducing the frequency and likelihood of unnecessary radiation exposure significantly outweighs the economic impact on small general licensees.

However, the NRC does not have information indicating how many of the potential 525 general licensees may be prevented from adopting the less costly alternatives for technical reasons. Because of this uncertainty, the NRC is seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions under the Regulatory Flexibility Act) as to how the regulations will affect them and how the regulations may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Those small entities which offer comments on how the regulations could be modified to take into account the differing needs of small entities should specifically discuss the following:

(a) The size of their business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community. Commenters should provide specific information concerning physical barrier construction costs.

Commenters should also indicate specific reasons why the physical protection alternative may not be appropriate for them.

(b) How the proposed regulations could be modified to take into account the differing needs or capabilities of small entities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the commenter.

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups.

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

Backfit Analysis

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

List of Subjects in 10 CFR Parts 31 and 32

10 CFR Part 31 - Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

10 CFR Part 32 - Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

For the 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 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 31 and 32:

Part 31 - GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for Part 31 continues to read as follows:

AUTHORITY: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 is also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5(b) and (c) (1)-(3) and (5)-(9), 31.8(c), 31.10(b), and 31.11(b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 31.5(c) (4), and (5), and (8), and 31.11(b) and (e) are issued under sec. 161c, 68 Stat. 950, as amended (42 U.S.C. 2201(c)).

2. In § 31.5, paragraph (b) is revised and paragraph (e) is added to read as follows:

§ 31.5 Certain measuring, gauging or controlling devices.

* * * * *

(b) The general license in paragraph (a) of this section:

(1) Applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to § 32.51 of this chapter or in accordance with the specifications contained in a specific license issued by an Agreement State which authorizes distribution of the devices to persons generally licensed by the Agreement State;

(2) Applies after (3 years after the effective date of this rule) only to byproduct material contained in a device which has been manufactured and installed (1) so that the air gap between the radiation source and detector of the device is less than 45 cm (18 in.), (2) so that the air gap of the device would not allow insertion of a 30 cm (12 in.) diameter sphere into the radiation beam of the device without removal of a barrier, or (3) so that the radiation dose rate in the radiation beam of the device at 45 cm (18 in.) from the radiation source with the device shutters, if any, in the open position does not exceed 125 millirem per hour; and

(3) In the case of byproduct material in a device which has been installed on a vessel such as a pipe or a tank, applies after (3 years after the effective date of this rule) only if the inside of the vessel does not need to be entered under any foreseeable circumstance by one or more individuals and a casual entry to the vessel is prohibited, or if the air gap

between the radiation source and detector of the device is less than 45 cm (18 in.).

* * * * *

(e) Any person who, under a general license, possesses byproduct material in a device which does not qualify after (3 years after the effective date of this rule) under paragraphs (b)(2) and (b)(3) of this section:

(1) Shall submit an application to the Nuclear Regulatory Commission, as prescribed in § 30.6(b)(2) of this chapter, by (3 years after the effective date of this rule), for a specific license authorizing possession of that device, and other activities as appropriate; and

(2) Shall, if an application is submitted not later than (30 days prior to 3 years from the effective date of this rule) in proper form for a specific license or amendment to a specific license, retain his or her general license until a final determination on the application has been reached by the Commission.

3. In § 31.6, paragraph (d) is added to read as follows:

§ 31.6 General li ense to install devices generally licensed in § 31.5.

* * * * *

(d) The byproduct material is contained in a device which qualifies after (3 years after the effective date of this rule) under paragraphs (b)(2) and (b)(3) of § 31.5.

PART 32 - SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER
CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for Part 32 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).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 32.13, 32.15(a), (c), and (d), 32.19, 32.25(a) and (b), 32.29(a) and (b), 32.54, 32.55(a), (b), and (d), 32.58, 32.59, 32.62, and 32.210 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.51a, 32.52, 32.56, and 32.210 are issued under sec. 161o, 68 stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 32.51a, paragraph (c) is added to read as follows:

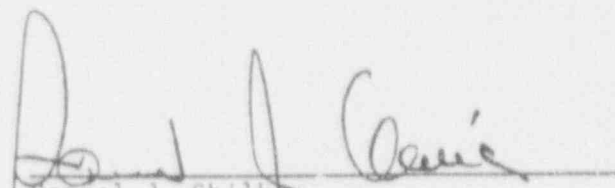
§ 32.51a Same: Conditions of licenses.

* * * * *

(c) Transfer a device containing byproduct material to a person generally licensed under § 31.5 of this chapter only if that device qualifies after (3 years after the effective date of this rule) under paragraphs (b)(2) and (b)(3) of § 31.5 of this chapter.

Dated at Rockville, Maryland this 20th day of November 1992.

For the Nuclear Regulatory Commission.


Samuel J. Chalk
Secretary of the Commission.