

133, Audits of States, Local Governments, and Non-profit Organizations. 29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15b (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs. 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

§ 2903.22 Confidential aspects of applications and awards.

When an application results in an award, it becomes a part of the record of USDA transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application. The original copy of an application that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 2903.23 Definitions.

For the purpose of this program, the following definitions are applicable:

Authorized departmental officer or ADO means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized organizational representative or AOR means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

Biodiesel means a monoalkyl ester that meets the requirements of an appropriate American Society for Testing and Materials Standard.

Budget period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or USDA means the United States Department of Agriculture.

Education activity means an act or process that imparts knowledge or skills through formal or informal training and outreach.

Grant means the award by the Secretary of funds to an eligible recipient for the purpose of conducting the identified project.

Grantee means the organization designated in the award document as the responsible legal entity to which a grant is awarded.

Institution of higher education, as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001), means an educational institution in any State that:

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

OEPNU means the Office of Energy Policy and New Uses.

Peer review is an evaluation of a proposed project performed by experts with the scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to the program are assessed.

Project director or PD means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project, also known as a principal investigator for research activities.

Prior approval means written approval evidencing prior consent by an

authorized departmental officer (as defined in this section).

Program means the Biodiesel Fuel Education Program as set forth in this part.

Project means the particular activity within the scope of the program supported by a grant award.

Project period means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

Roger Conway,

Director, Office of Energy Policy and New Uses.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM-34-5]

Amersham Corporation (Now Known as AEA Technology QSA, Inc.); Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-34-5) submitted by Amersham Corporation (now known as AEA Technology QSA, Inc.). The petitioner requested that the NRC amend its regulations that specify performance requirements for industrial radiography equipment by removing the reference to associated equipment, clarifying provisions in the current regulations that the petitioner believes are not clearly defined, and by requiring routine inspection and maintenance of associated equipment.

The NRC reviewed the petitioner's request and concluded that rulemaking is not necessary to achieve the intent of the petitioner's request to remove associated equipment from the sealed source and device (SSD) evaluation and registration process for manufacturers of industrial radiography equipment in 10 CFR 32.210, "Registration of product information." The NRC also explored rulemaking to amend its regulations for self-certification of associated equipment to authorize manufacturers

or industrial radiography licensees to complete the radiation safety evaluation of associated equipment. The NRC obtained risk information that did not clearly support self-certification of associated equipment. The NRC disagreed with the petitioner's point that NRC inappropriately uses American National Standards Institute (ANSI), N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (ANSI N432) as a regulatory checklist when the standard was originally intended to serve as guidance for good manufacturing practices. The NRC determined that its regulations are performance-based in this regard. Section 34.20 allows modification of associated equipment by a licensee or manufacturer unless the replacement component would compromise the design safety features of the system. Finally, § 34.31 requires routine inspection and maintenance of associated equipment. Therefore, additional rulemaking is not warranted.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at the NRC Public Document Room, Public File Area O1F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking Web site.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Thomas Young, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5795, e-mail tfy@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On June 18, 1996 (61 FR 30837), the NRC published a notice of receipt of a petition for rulemaking filed by the Amersham Corporation (now known as AEA Technology QSA, Inc.). The petitioner requested that the NRC amend its regulations in 10 CFR 34.20,

"Performance requirements for industrial radiography equipment," by removing the reference to "associated equipment" in § 34.20. The petitioner believes that associated equipment should not be subject to the SSD review process. The petitioner argued that the radiation safety evaluation and registration under § 32.210 apply specifically to SSDs and do not apply to other equipment. The petitioner asserted that, for industrial radiography equipment, the NRC expanded its interpretation of § 32.210 to include associated equipment and such an interpretation is not appropriate without rulemaking. The petitioner pointed out that NRC's interpretation, which requires licensees to ensure that associated equipment has been registered under § 32.210, has added unnecessary regulatory burden. Additionally, the petitioner wanted the American National Standards Institute (ANSI), N432-1980, "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (ANSI N432) which is incorporated by reference in § 34.20, to be used as guidance for good manufacturing practices and not as a regulatory approval checklist. The petitioner also requested that § 34.28 be amended to reflect appropriate inspection and maintenance requirements for all of the radiography equipment, including "associated equipment." Finally, the petitioner pointed out that the current version of § 34.20 only requires that the equipment meet the performance standards in ANSI N432 and does not state that this involves regulatory approvals.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on September 30, 1996. NRC received eight comment letters from industry, individuals, and an Agreement State. The majority of the commenters supported the petition. The main reasons cited by these commenters were related to excessive costs in replacing associated equipment that was already fit for use and would not need to be replaced for any other reason. The NRC's interpretation of the rule required licensees to replace unregistered equipment with equipment that had been registered under § 32.210 after prototype testing of the equipment demonstrated that the equipment met the performance requirements in ANSI N432, which is incorporated by reference in § 34.20.

Since the comment period closed, NRC has explored the concept of

licensee or manufacturer self-certification of associated equipment with members of industry and counterparts in the Agreement States. The NRC completed the generic assessment and special team inspections published in NUREG-1631, "Source Disconnects Resulting from Radiography Drive Cable Failures" (June 1998). An NRC contractor used performance criteria in § 34.20 to complete tests on portable industrial radiography systems described in NUREG/CR-6652, "Safety Testing of Industrial Radiography Devices," (January 2000). An NRC contractor provided a risk assessment to compare regulation of associated equipment under various regulatory approaches. The NRC developed a risk-informed and more performance-based approach for self-certification of associated equipment and asked the Agreement States to evaluate the approach. During the time since the comment period closed, NRC monitored the use of associated equipment via various sources of information, such as inspection reports, event notifications, and enforcement actions.

Reasons for Denial

Over the last several years, NRC has completed several analyses that indicated rulemaking is not necessary to achieve the intent of the petitioner's request; therefore, NRC is denying the petition for the following reasons.

1. Current NRC regulations do not require associated equipment to be registered and the regulations are sufficient to maintain safety. The NRC determined that the practice of registering associated equipment under § 32.210 was not only not required, but was also an unnecessary regulatory burden. Therefore, NRC has discontinued the practice of registering associated equipment and will align NRC's implementation by revising the appropriate guidance and inspection procedure and will issue a regulatory issue summary (RIS) to convey these changes to the regulated community.

2. Although § 34.20(a)(1) states that associated equipment must meet the performance requirements in ANSI N432, § 34.20(b)(3) allows a licensee to modify associated equipment, unless the design of any replacement component would compromise the design safety features of the system. The NRC has dealt with the issue of requiring performance criteria in 10 CFR Part 34 for several decades, as follows.

The Advance Notice of Proposed Rulemaking published March 27, 1978 (43 FR 12718) announced the NRC's intention to complete rulemaking to

improve safety by including radiography equipment performance requirements in the regulations. ANSI N432 was being developed at that time and was issued in 1981. In 1980, an ad hoc Radiography Steering Committee composed of NRC personnel and State officials representing the Conference of Radiation Control Program Directors, Inc., was formed to draft recommendations for improving radiation safety. The steering committee developed recommendations for radiography equipment design safety that were similar to the performance criteria in ANSI N432. Because it appeared that all manufacturers of radiography equipment were not using ANSI N432 nor uniformly or completely implementing the performance criteria, NRC concluded that rulemaking was necessary to ensure that manufacturers would implement ANSI N432 to improve radiation safety for workers. The NRC published the final rule on January 10, 1990; 55 FR 843 that incorporated by reference ANSI N432 into § 34.20. Incorporation by reference is the formal process that allows the NRC to refer to industry standards that are already published elsewhere and that need to be available to afford fairness and uniformity in the administrative process. Incorporation by reference substantially reduced the volume of material to be published in the rule. As referenced in § 34.20, ANSI N432 has the force of law and is treated as if it were published in full in the **Federal Register**.

To maintain safety, a licensee must ensure that prototype testing of all associated equipment (including customized associated equipment) meets the performance requirements of ANSI N432. This requirement prevents substandard associated equipment from being developed by a licensee. Alternatively, under § 34.20(a)(2), a licensee may submit an engineering analysis to NRC for review without repeating a prototype test for similar associated equipment. This performance-based approach is a key factor for denying the petitioner's request regarding the implementation of ANSI N432.

3. At the time of the petitioner's request to amend § 34.28 in 1996, NRC had already proposed rulemaking for routine inspection and maintenance of associated equipment. NRC published the overall revision of 10 CFR part 34 (May 28, 1997; 62 FR 28948) to incorporate § 34.31, "Inspection and maintenance of radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey

instruments," that contains performance-based requirements to ensure that associated equipment will function as designed. Currently, § 34.31 requires the licensee to perform visual and operability checks on associated equipment before use on each day that the equipment is to be used to ensure that the equipment is in good working condition. If equipment problems are found, the equipment must be removed from service until repaired. Section 34.31 also requires the licensee to have written procedures for inspection and routine maintenance of associated equipment at intervals not to exceed three months, or before the first use thereafter to ensure the proper functioning of components important to safety. If equipment problems are found, the equipment must be removed from service until repaired. Replacement components must meet design specifications.

NRC obtained risk information for the regulation of associated equipment under § 34.20 and applied the screening considerations in SECY-00-0213, "Risk-Informed Regulation Implementation Plan" (October 2000), to determine that the petitioner's request was amenable to a risk-informed approach. An NRC contractor provided risk information that concluded as long as associated equipment is manufactured to meet the performance requirements of a national standard (*i.e.*, ANSI N432), the regulation is sufficient to maintain safety as written.

NRC discontinued the practice of registering associated equipment under § 32.210 to reduce, what NRC determined to be, unnecessary regulatory burden. The NRC will revise the appropriate guidance and inspection procedure and will issue a RIS to replace the existing information notice to align NRC's implementation of § 34.20(a)(1) as follows:

1. As a matter of convenience for manufacturers and their customers, a manufacturer may register associated equipment under the § 32.210 process, but is not required to do so. For example, if a manufacturer's application to register a device also designates the model numbers for associated equipment to be used with the device, then NRC will also indicate the model numbers for the associated equipment in the registration certificate for the device so that the customer understands which model of associated equipment is compatible with the device. For the radiation safety evaluation of a sealed source and device combination under § 32.210(c), all the components of an industrial radiography system must be evaluated together to ensure that there

is no interference with the sealed source or the device or degradation of safety for the system over the expected life cycle of the system. A manufacturer may register an entire system comprised of compatible components (including associated equipment) or various sealed source and device combinations (excluding associated equipment). The NRC does not intend to revise current registrations for industrial radiographic equipment to remove references to associated equipment.

2. NRC will revise NUREG-1556, Volume 2, "Consolidated Guidance about Materials Licensees—Program-Specific Guidance about Industrial Radiography Licenses," (Final Report, August 1998) to remove statements that indicate that associated equipment must be specifically approved or registered by NRC or an Agreement State. Instead, the guidance will state that manufacturers or distributors of industrial radiography equipment may voluntarily include items of associated equipment that are compatible with their sealed sources and devices when they are registered. Appendix F contains Information Notice 96-20, "Demonstration of Associated Equipment Compliance with 10 CFR 34.20," (IN-96-20) that will be replaced by a RIS.

3. NRC will revise Inspection Procedure 87121, "Industrial Radiography Programs" (December 31, 2002). Currently, the procedure appropriately directs an inspector to examine available associated equipment, interview the workers about inspection and maintenance procedures and awareness that associated equipment needs to comply with § 34.20, and observe work in progress that involves use of associated equipment. An additional statement is needed to prompt an inspector to consider the licensee's equipment modification process to confirm that the design safety features of the system were not compromised by a replacement component of associated equipment that was modified by the licensee (*i.e.*, either the licensee or manufacturer completed prototype testing that demonstrated the component met the performance criteria in ANSI N432 or NRC or an Agreement State has reviewed an engineering analysis of the modification).

4. NRC will issue a RIS to replace IN-96-20 and emphasize a more performance-based approach to make it clear that:

- Manufacturers of industrial radiography equipment may, but are not required to, designate compatible components (including associated equipment) for use with their sealed

sources and devices that are registered under the § 32.210 process;

- Under § 34.20(b)(3), a licensee is allowed to modify associated equipment unless the design of any replacement component would compromise the design safety features of the system;

- A licensee's modification process must account for prototype testing or engineering analysis of a replacement component against the performance criteria required in § 34.20 for any component that was modified for use in licensed activities;

- To comply with § 34.20, a licensee should demonstrate that modifications to associated equipment: (1) Will not create material incompatibility that may degrade a source or device over their expected useful life times; (2) will not diminish the performance of associated equipment in expected use environments over the expected life time of the associated equipment; (3) will not allow a source to inadvertently exit the system; and (4) will not compromise expected safe use of the system; and

- Enforcement action would be considered for a licensee who completes modification of associated equipment that compromises the design safety features of the system. The NRC Enforcement Policy (NUREG-1600) includes an example involving possession or use of unauthorized equipment which degrades safety in the conduct of licensee activities.

The NRC has determined that alignment of the NRC implementation to the existing NRC requirements maintains the same level of compatibility between the Agreement State regulations and the existing NRC requirements. Also, use of revised NRC guidance rather than rulemaking to achieve the petitioner's intent provides Agreement States the flexibility to revise their policy and guidance to meet unique situations and local conditions.

In conclusion, no new information has been provided by the petitioner that calls into question the requirements. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected; therefore, rulemaking does not appear to be warranted.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 9th day of July, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

[FR Doc. 03-17846 Filed 7-14-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-CE-26-AD]

RIN 2120-AA64

Airworthiness Directives; GROB-WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all GROB-WERKE (GROB) Model G120A airplanes. This proposed AD would require you to modify the flight control system operating levers. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this proposed AD are intended to prevent failure of a ball bearing in flight control system operating levers. Such failure could lead to reduced control or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before August 18, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-CE-26-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-CE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2003-CE-26-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from GROB Luft-und Raumfahrt, Lettenbachstrasse 9, D-86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200; email: productssupport@grob-aerospace.de. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329-4146; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003-CE-26-AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB Model G120A airplanes. The LBA reports that a damaged ball bearing in a flight control system operating lever was found. The damage was found during regular maintenance. The damage is believed to be caused by incorrect installation.