

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 36

[Docket No. PRM-36-01]

#### American National Standards Institute N43.10 Committee; Denial of Petition for Rulemaking

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-36-01) submitted by the American National Standards Institute N43.10 Committee. The petitioner requested that the NRC amend its regulations to provide relief from the requirements to have an operator present onsite whenever an irradiator is operated using an automatic product conveyor system and whenever product is moved into or out of the radiation room when an irradiator is operated in a batch mode. In addition, the petitioner requested relief from the requirement to have a person who has received training, described in the regulations, on how to respond to alarms onsite at a panoramic irradiator where static irradiations (no movement of the product) are occurring.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and NRC's letter to the petitioner may be examined at NRC Public Document Room, Public File Area Room 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 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's Public Document Room Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to: [pdr@nrc.gov](mailto: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](mailto:tfy@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On September 15, 1998 (63 FR 49298), the NRC published a notice of receipt of a petition for rulemaking filed by the American National Standards Institute N43.10 Committee. The petitioner requested that NRC amend 10 CFR 36.65(a) and (b). *These regulations require that:*

(a) Both an irradiator operator and at least one other individual, who is trained on how to respond and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present onsite:

(1) Whenever the irradiator is operated using an automatic product conveyor system; and

(2) Whenever the product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

(b) At a panoramic irradiator at which static irradiations (no movement of the product) are occurring, a person who has received the training on how to respond to alarms described in § 36.51(g) must be onsite.

*The petitioner suggested revisions to require that:*

(1) The operator and at least one other trained individual would be present onsite whenever it is necessary to enter the radiation room;

(2) An individual trained to respond to alarms would be available and prepared to promptly attend to alarms, emergencies, or abnormal event conditions at any time the irradiator is operating;

(3) If the individual is not onsite, automatic means of communication would be provided from the irradiator control system to the individual and the irradiator control system would be secured from unauthorized access and the console key would be secured from

removal from the control console when the individual is not onsite;

(4) Inspection and maintenance for operability of the automatic communication system be completed; and

(5) A definition be provided in 10 CFR 36.2 for the term, "onsite."

Currently a licensee is required to maintain adequate coverage on all shifts of a continuously operating panoramic irradiator facility. However, the petitioner believes that based on domestic and international operating experience with panoramic irradiators, there is no significant benefit to safety from having the operator and an additional trained individual onsite as opposed to an individual being available to respond promptly from an offsite location. The petitioner believes the current cost for a licensee to employ individuals for continuous operation of the facility has a substantial impact on the expense associated with conducting business. The petitioner believes that revising the requirements as suggested above would result in cost containment without a reduction in safety.

The petitioner believes that recent improvements in communications technology support the design of automated alert systems to provide offsite warning to an individual who could then respond through technologies such as pagers, cell and land-line telephones, remote process control monitoring, etc. The petitioner believes that remote response to alarms could require only slightly longer response time than if the responder were onsite.

In its supporting information, the petitioner recognizes that during emergencies and abnormal events, human intervention is required to evaluate the situation and determine whether actions need to be taken and what specific action is required. The petitioner believes this evaluation can take place remotely, between the irradiator and an individual offsite. The petitioner also supports its position by stating that European irradiators of similar design and characteristics to those in the United States have had no incidents that can be traced to the practice of unattended operations.

#### Public Comments on the Petition

The notice of receipt of petition for rulemaking invited interested persons to submit comments. The NRC received

one comment letter from the Manager of Technical Services, State of Ohio's Bureau of Radiation Protection. The commenter was generally in favor of granting the petition. However, the commenter noted that the problem with remote communication systems is that they are likely to fail or become overloaded under extreme conditions, although the probability of having two remote incidents (irradiator and communication systems) occurring at one time is highly improbable for the unattended operation of a panoramic irradiator. In addition, the commenter suggested that an onsite security guard or other non-operator personnel could be trained to summon assistance as required without needing the operator. The comments were considered in the development of the NRC's decision on this petition.

### Reasons for Denial

*The NRC is denying the petition for the following two reasons:*

1. In February 1993, the NRC amended its regulations to add 10 CFR Part 36, "Licenses and Radiation Safety Requirements for Irradiators," to specify radiation safety requirements and licensing requirements for the use of licensed radioactive materials in irradiators. After the rule became effective, the NRC received numerous licensee event reports that described failures or non-functions of source mechanisms and related systems that needed intervention by personnel who had received training described in the regulations on how to respond to alarms. The information reported to the NRC from 1990 to 2006 about events at irradiator facilities indicates no reduction in the number of events or the nature of events. The NRC determined that the data on events do not support the petitioner's request or indicate that the requirements should be revised. Rather, the NRC continues to believe that there is a need for individuals to be onsite to evaluate and respond to such emergencies, as well as to ensure day-to-day radiation safety.

2. The NRC does not believe that reliance on an automated communication system to notify a remote human operator via an electronic mechanism provides the same level of safety as currently provided by an onsite operator and/or a second individual who is trained to respond to irradiator alarms. This issue was previously raised in comments on the proposed rule for 10 CFR Part 36. The Statements of Consideration (SOC) for the final rule (58 FR 7715; February 9, 1993) state that, for 10 CFR 36.65, "a considerable number of comments objected to the

proposed requirements as excessive." A commenter suggested that an irradiator with an automatic conveyor system should be able to operate with only an operator present and an automatic telephone dialing device for responding to alarms. Another commenter suggested that the irradiator should be able to operate unattended but with an automatic telephone dialing device. The SOC state that the NRC did not accept either suggestion because the NRC believed that automatic conveyor systems have enough malfunctions to require that an operator be present at the site. In addition, the NRC believed that the operator should have some backup in case of problems.

The petitioner has not provided a sufficient basis from which to conclude that this NRC judgement is no longer correct. Specifically, no new information has been provided by the petitioner that would warrant revising the existing regulations. The existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected.

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

Dated at Rockville, Maryland, this 4th day of August, 2006.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

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**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2006-25634; Directorate Identifier 2006-NM-143-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A300 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The proposed AD would require actions that are intended to

address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by September 18, 2006.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

- *DOT Docket Web site:* Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- *Government-wide rulemaking Web site:* Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.

- *Fax:* (202) 493-2251.

- *Hand delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in the proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

**FOR FURTHER INFORMATION CONTACT:** Tom Stafford, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1622; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. We are prototyping this process and specifically request your comments on its use. You can find more information in FAA draft Order 8040.2, "Airworthiness Directive Process for Mandatory Continuing Airworthiness Information," which is currently open for comments at [http://www.faa.gov/aircraft/draft\\_docs](http://www.faa.gov/aircraft/draft_docs). This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public.

This process continues to follow all existing AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to follow our technical decision-making processes in all aspects to meet our responsibilities to determine and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the