

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555

June 25, 1999

NRC INFORMATION NOTICE 99-22: 10 CFR 34.43(a)(1); EFFECTIVE DATE FOR
RADIOGRAPHER CERTIFICATION AND PLANS FOR
ENFORCEMENT DISCRETION

Addressees:

Industrial Radiography Licensees

Purpose:

The U. S. Nuclear Regulatory Commission (NRC) is issuing this information notice (IN) to: (1) remind addressees of the effective date of implementing a provision of the regulations in 10 CFR 34.43(a)(1); (2) respond to industry concerns about not being able to meet the pending deadline; and (3) advise recipients of the Commission's plans for enforcement action to address failures to meet 10 CFR 34.43(a)(1). It is expected that recipients will review the information for applicability to their facilities and consider appropriate actions. However, this IN does not contain any new requirements; therefore, no specific action nor written response is required.

Background:

The regulations in 10 CFR 34.43(a)(1) provides, in part, that licensees may not permit an individual to act as a radiographer until the individual has been certified through a radiographer certification program by a certifying entity. Certifying entities are defined in 10 CFR 34.3 as being either an Independent Certifying Organization or an Agreement State whose programs comply with the appropriate criteria in 10 CFR Part 34, Appendix A. Section 34.43(a)(1) and other changes to Part 34 were published in the Federal Register (62 FR 28948) as a final rule on May 28, 1997. Section V, "Implementation," states, "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)." However, paragraph 34.43(a)(2) of the final rule indicated that licensees could allow individuals who had not met the certification provision of paragraph 34.43(a)(1), but had otherwise qualified, to act as radiographers until May 28, 1999. This date was corrected to June 27, 1999, in a Federal Register notice (63 FR 37059) published July 9, 1998. A separate Federal Register notice (62 FR 28974) published the same day as the final rule (May 28, 1997) provided notice that failure to implement the certification requirement by the required date would normally be considered a Severity Level III Violation and therefore subject to consideration for civil penalty assessments.

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After publication of the final rule, NRC transmitted copies of the notice to each of its radiography licensees. Copies of the notices were also provided to each of the Agreement States so that they might share the information with their radiography licensees. A cover notice attached to the final rule identified significant rule changes and explained the effective dates of the various provisions.

Discussion:

The NRC reminds industrial radiography licensees that after June 27, 1999, all individuals acting as radiographers, in addition to meeting other training and experience qualifications, must be certified through a radiographer certification program by a certifying entity. Certifying entities are defined in 10 CFR 34.3 as being either an Independent Certifying Organization or an Agreement State whose programs comply with the appropriate criteria in 10 CFR Part 34, Appendix A. Agreement State licensees working in areas of NRC's jurisdiction under reciprocity (10 CFR 150.20) are also subject to these requirements. The American Society for Nondestructive Testing (ASNT) is the only Independent Certifying Organization. Georgia, Illinois, Iowa, Louisiana, Nevada, North Dakota, and Texas are Agreement States that currently have programs for certifying radiographers.

Allowing an individual, who does not comply with the certification requirement of 10 CFR 34.43(a)(1), to act as a radiographer after June 27, 1999, is a violation of Commission requirements. In accordance with example C.4 of Supplement VI of the Commission's Enforcement Policy, such violations are considered significant and would normally be categorized as Severity Level III and subject to civil penalties. Pursuant to Section VI.B of the Enforcement Policy, a civil penalty of \$5500 – the base amount for a Severity Level III violation - may be assessed for each individual, who does not meet the certification requirement of 10 CFR 34.43(a)(1), whom a licensee allows to act as a radiographer after June 27, 1999. If, during an inspection, the NRC finds that a licensee is not meeting the regulation, the licensee will need to immediately suspend any operation with uncertified individuals. Failure to do so may be considered a deliberate violation and may subject the licensee to significant civil action, including license revocation. Individuals responsible for such violations may be subject to criminal or civil sanctions for violating 10 CFR 30.10, "Deliberate Misconduct."

In a letter dated March 2, 1999, ASNT requested that NRC consider a deadline extension because it believes the current deadline presents hardships to both ASNT and certification applicants. In addition, the Non-Destructive Testing Management Association, contacted NRC expressing its support for an extension of the deadline, because of problems with examination availability. The NRC staff has also received several calls from licensees concerned that there would not be adequate time for radiography personnel to take the examination and complete the certification process before the deadline.

In view of these circumstances, the Commission intends to exercise enforcement discretion regarding licensees that have made good-faith effort to comply with the certification provision of 10 CFR 34.43(a)(1). In addition, in view of the date of this Information Notice, the Commission also intends to exercise its enforcement discretion to extend the deadline to July 27, 1999. Therefore, a licensee that allows an individual to act as a radiographer after July 27, 1999, will

not be subject to enforcement action for such violations if the radiographer has met all other training and experience criteria set forth in 10 CFR 34.43 and has applied for certification on or before July 27, 1999. This enforcement discretion will also apply to licensees whose radiographers may have taken and failed the examination, but had not otherwise been denied certification, prior to July 27, 1999, provided these radiographers have been appropriately retrained and have reapplied for certification on or before July 27, 1999. This discretion will not apply to licensees whose radiographers have taken and failed the certification examination or has otherwise been denied certification after July 27, 1999. These individuals will not be allowed to continue to act as radiographers because of certification's safety significance, the Commission's decision to impose certification in view of this safety significance, and because an individual's failure to obtain certification may indicate a potential public health and safety concern. It should be noted that Agreement State licensees conducting radiography under reciprocity in NRC jurisdiction will be subject to this regulatory requirement and enforcement policy. The period of time for the enforcement discretion is expected to be approximately six months or until the ASNT or Certifying States process all applications received by July 27, 1999, administer the certification examinations, and issue the certifications. The staff will maintain communications with the certifying entities to monitor the entities progress to ensure completion in a reasonably expedient manner. Exemptions from the certification requirement in 10 CFR 34.43(a)(1) may be considered pursuant to 10 CFR 34.111; however, even though licensees would be expected to make an extraordinary showing of providing for compensatory safety measures, it is unlikely that an exemption would be granted in view of the safety significance of certification and the Commissions' decision to proceed with the requirement.

This information notice requires no specific action nor written response. If you have any questions about the information in this notice, please contact the technical personnel listed below, or the appropriate regional office.



Donald A. Cool, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material Safety
and Safeguards

Attachments:

1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRC Information Notices

Contact: J. Bruce Carrico, NMSS
301-415-7826
E-mail: jbc@nrc.gov

Nader Mamish, OE
301-415-2740
E-mail: nlm@nrc.gov

*Attachments Filed in
Jacket*

LIST OF RECENTLY ISSUED
NMSS INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
99-20	Contingency Planning for the Year 2000 Computer Problem	6/25/99	All material and fuel cycle licensees and certificate holders
99-18	Update on NRC's Year 2000 Activities for Materials Licensees and Fuel Cycle Licensees and Certificate Holders	6/14/99	All material and fuel cycle licensees and certificate holders
99-16	Federal Bureau of Investigation's Nuclear Site Security Program	5/28/99	All U.S. Nuclear Regulatory Commission fuel cycle, power reactor, and non-power reactor licensees
99-11	Incident Involving the Use of Radioactive Iodine-131	4/16/99	All medical use licensees
99-09	Problems Encountered When Manually Editing treatment Data on the Nucletron Microselectron-HDR (New) Model 105-999	3/24/99	All medical licensees authorized to conduct high-dose-rate (HDR) remote after loading brachytherapy treatments
99-06	1998 Enforcement Sanctions as a Result of Deliberate Violations of NRC Employee Protection Requirements	3/19/99	All U. S. Nuclear Regulatory Commission licensees.
99-05	Inadvertent Discharge of Carbon Dioxide Fire Protection System and Gas Migration	3/8/99	All holders of licenses for nuclear power, research, and test reactor, and fuel cycle facilities
99-04	Unplanned Radiation Exposures to Radiographers, Resulting from failures to follow Proper Radiation Safety Procedures	3/8/99	All radiography licensees
99-03	Exothermic Reactions Involving Dried Uranium Oxide Powder (Yellowcake)	1/29/99	All operating uranium recovery facilities that produce oxide powder (U ₃ O ₈) (yellowcake)

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Information Notice No.	Subject	Date of Issuance	Issued to
99-21	Recent Plant Events Caused By Human Performance Errors	6/25/99	All holders of licenses for nuclear power, test, and research reactors
99-20	Contingency Planning for the Year 200 Computer Problem	6/25/99	All material and fuel cycle licensees and certificate holders
99-19	Rupture of the Shell Side of a Feedwater Heater at the Point Beach Nuclear Plant	6/23/99	All holders of operating licenses or construction permits for nuclear power reactors
99-18	Update on NRC's Year 2000 Activities for Materials Licensees and Fuel Cycle Licensees and Certificate Holders	6/14/99	All material and fuel cycle licensees and certificate holders
99-17	Problems Associated with Post-Fire Safe-Shutdown Circuit Analyses	6/3/99	All holders of OL for nuclear power reactors, except those who have permanently ceased operations and have certified that the fuel has been permanently removed from the reactor
99-16	Federal Bureau of Investigation's Nuclear Site Security Program	5/28/99	All U.S. Nuclear Regulatory Commission fuel cycle, power reactor, and non-power reactor licensees
99-15	Misapplication of 10 CFR Part 71 Transportation Shipping Cask Licensing Basis to 10 CFR Part 50 Design Basis	5/27/99	All holders of operating licenses or construction permits for nuclear power reactors
99-14	Unanticipated Reactor Water Drindown at Quad Cities Unit 2, Arkansas Nuclear One Unit 2 and Fitzpatrick	5/5/99	All holders of licenses for nuclear power, test, and research reactors

OL = Operating License
CP = Construction Permit

not be subject to enforcement action for such violations if the radiographer has met all other training and experience criteria set forth in 10 CFR 34.43 and has applied for certification on or before July 27, 1999. This enforcement discretion will also apply to licensees whose radiographers may have taken and failed the examination, but had not otherwise been denied certification, prior to July 27, 1999, provided these radiographers have been appropriately retrained and have reapplied for certification on or before July 27, 1999. This discretion will not apply to licensees whose radiographers have taken and failed the certification examination or has otherwise been denied certification after July 27, 1999. These individuals will not be allowed to continue to act as radiographers because of certification's safety significance, the Commission's decision to impose certification in view of this safety significance, and because an individual's failure to obtain certification may indicate a potential public health and safety concern. It should be noted that Agreement State licensees conducting radiography under reciprocity in NRC jurisdiction will be subject to this regulatory requirement and enforcement policy. The period of time for the enforcement discretion is expected to be approximately six months or until the ASNT or Certifying States process all applications received by July 27, 1999, administer the certification examinations, and issue the certifications. The staff will maintain communications with the certifying entities to monitor the entities progress to ensure completion in a reasonably expedient manner. Exemptions from the certification requirement in 10 CFR 34.43(a)(1) may be considered pursuant to 10 CFR 34.111; however, even though licensees would be expected to make an extraordinary showing of providing for compensatory safety measures, it is unlikely that an exemption would be granted in view of the safety significance of certification and the Commissions' decision to proceed with the requirement.

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(Orig. signed by)
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File name: g(i)(a):\Carrico\certin.wpd *See previous concurrence

OFC	MSIB*		Editor		MSIB*		MSIB*		OE*	
NAME	BCarrico/lucy		EKraus		FSturz		LCamper		NMamish forJLieberman	
DATE	4/ 14 /99		4/13/99		4/21/99		4/21/99		4/29/99	
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NAME	DCool		CPaperiello							
DATE	6/22/99		5/7/99							

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NAME	<i>[Signature]</i>	<i>[Signature]</i>			
OFC	4/29/99	BMG			

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