

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

March 7, 1989

NRC INFORMATION NOTICE NO. 89-25: UNAUTHORIZED TRANSFER OF OWNERSHIP OR
CONTROL OF LICENSED ACTIVITIES

Addressees:

All U.S. Nuclear Regulatory Commission (NRC) source, byproduct, and special nuclear material licensees.

Purpose:

This notice is to inform licensees of their responsibility to provide timely notification to NRC before the planned transfer of ownership or control of licensed activities, and to obtain prior written consent to such action from NRC, as specified in 10 CFR Sections 30.34(b), 40.46, and 70.36. In addition, this notice provides guidance on the type of information that should be submitted to NRC, before a change of ownership or control. It is expected that recipients will: review this notice for applicability to their licensed activities; distribute it to responsible licensee management and corporate staff, radiation protection staff, and authorized users, as appropriate; and maintain procedures to preclude problems from occurring as the result of the transfer of control of licensed activities. However, suggestions contained in this notice do not constitute any new NRC requirements, and no written response is required.

Discussion:

Sections 81 and 184 of the Atomic Energy Act of 1954, as amended, require that a license be possessed to conduct licensed activities, and 10 CFR Section 30.34(b) states that no NRC license nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing. Similar wording is found in Sections 40.46 and 70.36 of the regulations for source and special nuclear material.

Recently, NRC has noticed an increasing trend to transfer ownership of businesses that control the use of licensed materials. Such changes in ownership are usually the results of mergers, buy-outs, or majority stock transfers. These actions appear to be occurring at a greater frequency because of the present economic environment. Although it is not the intent

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of NRC to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to NRC whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. The purpose of such notification is to allow NRC to assure that: radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; materials are properly handled and secured; persons using such materials are capable, competent, and committed to implement appropriate radiological controls; and public health and safety are not compromised by the use of such materials.

In 1988, NRC identified several instances of businesses authorized to possess and use licensed materials that were transferred to other owners, with a consequent change in control, without any notification to the NRC. In such cases, NRC has usually become aware of the change either when conducting a routine inspection or when notified by the new controlling organization (transferee).

Transfer of company ownership often results in the assumption of licensed activities by a corporation not authorized to use or possess licensed materials, and whose competence and ability to establish, implement, and maintain radiological controls have not been previously evaluated by NRC. In such cases, NRC usually determines that the transferee violated NRC requirements on use and possession of radioactive materials (because of its unauthorized use and possession), and that the predecessor entity (transferor) failed to inform NRC of the planned transfer of ownership.

In specific cases, licensees have failed to inform NRC of changes in ownership and changes in locations of licensed material from those specified on the transferor's licenses. In one particular case, failure to notify NRC of a change in ownership may have contributed to the inadvertent loss of two nuclear weighing scales, containing several hundred millicuries of cesium-137. This type of situation could result in the exposure or contamination of individuals or the environment.

NRC licensees planning to transfer ownership, a change in corporate status, or control of licensed activities are required by 10 CFR to provide sufficient prior notice and full information about the change to NRC, in order to obtain written consent from the Commission before the transfer. Although the burden of adhering to this requirement is on the existing licensee, it will be necessary for the transferee to provide supporting information or to independently coordinate the change in ownership or control with the appropriate NRC Regional Office. Failure to comply with this requirement may adversely affect the public health and safety and interfere with NRC's ability to inspect activities. Therefore, NRC may consider that a violation of this requirement warrants escalated enforcement action, including civil penalties and orders, if indicated by the circumstances against one or both of the parties involved. Willful failure to obtain prior NRC approval of the transfer may result in referrals to the Department of Justice for consideration of criminal prosecution.

The following guidance is provided concerning notification of NRC of ownership or control changes:

1. Full information on change in ownership or control of licensed activities should be submitted to the appropriate NRC Regional Office as early as possible, preferably at least 90 days before the proposed action.
2. NRC approvals for change in ownership or control may be delayed or denied if the following information, where relevant, is not included in the submittal:
 - a. The name of the organization, if changed. Provide the new name of the licensed organization and if there is no change, so state.
 - b. Identification of any changes in personnel named in the license, including any required information on personnel qualifications.
 - c. An indication of whether the seller will remain in business without the license.
 - d. A complete, clear description of the transaction. The description should include any transfer of stocks or assets.
 - e. An indication of any planned changes in organization, location, facilities, equipment, procedures, or personnel. If such changes are to be made, they should be fully described.
 - f. An indication of any changes in the use, possession, or storage of the licensed materials. If such changes are to be made, they should be described.
 - g. An indication of whether all surveillance items and records, including radioactive material inventory and accountability requirements, will be current at the time of transfer. A description of the status of all surveillance requirements and records, e.g., calibrations, leak tests, surveys, etc. should be provided.
 - h. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?
 - i. A description of any decontamination plans, including financial assurance arrangements of the transferee, should be provided.

as specified in 10 CFR Sections 30.35, 40.36, and 70.25. This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.

- j. An indication of whether the transferor and transferee agree to the change in ownership or control of the licensed material and activity. If so, documentation stating this should be provided.
- k. A commitment by the transferee to abide by all constraints, conditions, requirements, representations, and commitments identified in the existing license. If not, the transferee must provide a description of its program to assure compliance with the license and regulations.

No specific action or written response is required by this information notice. Questions on this matter should be directed to the appropriate NRC Regional Office or to this office.

Richard E. Cunningham

Richard E. Cunningham, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material
Safety and Safeguards

Technical Contact: Scott Moore, NMSS
(301) 492-0514

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

LIST OF RECENTLY ISSUED
NMSS INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
89-13	Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites	02/08/89	All holders of NRC specific licenses
89-12	Dose Calibrator Quality Control	02/09/89	All NRC medical licensees
89-03	Potential Electrical Equipment Problems	01/11/89	All Fuel Cycle and major nuclear materials licensees
89-02	Criminal Prosecution of Licensee's Former President for Intentional Safety Violations	01/09/89	All holders of NRC specific license
88-100	Memorandum of Understanding Between NRC and OSHA Relating to NRC-Licensed Facilities (53 FR 43950, October 31, 1988)	12/23/88	All major nuclear materials licensees and utilities holding CPs and OLs.
88-93	Teletherapy Events	12/02/88	All NRC medical licensees
88-90	Unauthorized Removal of Industrial Nuclear Gauges	11/22/88	All NRC licensees authorized to possess, use, manufacture, or distribute industrial nuclear gauges
88-66	Industrial Radiography Inspection and Enforcement	08/22/88	All NRC industrial radiography licensees

OL = Operating License
CP = Construction Permit

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Information Notice No.	Subject	Date of Issuance	Issued to
89-24	Nuclear Criticality Safety	3/6/89	All fuel cycle licensees and other licensees possessing more than critical mass quantities of special nuclear material.
89-23	Environmental Qualification of Litton-Veam CIR Series Electrical Connectors	3/3/89	All holders of OLs or CPs for nuclear power reactors.
89-22	Questionable Certification of Fasteners	3/3/89	All holders of OLs or CPs for nuclear power reactors.
89-21	Changes in Performance Characteristics of Molded-Case Circuit Breakers	2/27/89	All holders of OLs or CPs for nuclear power reactors.
88-73, Supplement 1	Direction-Dependent Leak Characteristics of Containment Purge Valves	2/27/89	All holders of OLs or CPs for nuclear power reactors.
89-20	Weld Failures in a Pump of Byron-Jackson Design	2/24/89	All holders of OLs or CPs for nuclear power reactors.
89-19	Health Physics Network	2/23/89	All holders of OLs or CPs for nuclear power reactors, and the following fuel facilities: Nuclear Fuel Services of Erwin, General Atomic, UNC Montville, B&W LRC Lynchburg, and B&W Lynchburg.
89-18	Criminal Prosecution of Wrongdoing Committed by Suppliers of Nuclear Products or Services	2/22/89	All holders of OLs or CPs for nuclear power reactors.

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Also input from
LChandler, OGC
RWeisman, OGC

*Editor	*RI	*RII	*RIII	*RIV	*RV	*OE
EKraus	JJoyner	WCline	BMallett	WFisher	RThomas	JLieberman
2/08/89	2/07/89	2/13/89	2/14/89	2/13/89	2/08/89	2/23/89

*See previous concurrence

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OFC: *IMOB	:*IMOB	:*IMAB	:*IMSB	:*IMOB	*OGC	:IMNS	:*IMNS

NAME:SMoore/sm	:DCool	:JAustin	:LRouse	:JHickey	:RFonner	:GSjoblom	:RECunningham

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Handwritten notes:
 - Above RI: *fm*
 - Above RII: *C. Noseny (fm)*
 - Above RIII: *M. McCann (comments) fm for*
 - Above RIV: *C. Gain*
 - Above RV: *Also input from L. Chandler R. Weisman } OGC*
 - Above OE: *fm*

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