

May 28, 1998

FOR: The Commissioners

FROM: L. Joseph Callan /s/  
Executive Director for Operations

SUBJECT: ENFORCEMENT DISCRETION FOR LOUISIANA LICENSEES

## PURPOSE:

To inform the Commission of the staff's intent to exercise enforcement discretion, pursuant to Section VII.B.6 of the NRC Enforcement Policy, for past violations by Louisiana licensees conducting operations in offshore waters where NRC has jurisdiction.

## BACKGROUND:

At the time Louisiana became an Agreement State in 1967, the Atomic Energy Commission also entered into a separate Agreement ([Attachment 1](#)) with Louisiana pursuant to Section 274i of the Atomic Energy Act that authorized the State to perform inspections, for and on behalf of the Commission, of Commission licensees in and seaward of the area of submerged land which at the time of the Agreement was the subject of pending litigation. Subsequently, a Supreme Court decision resolved the pending litigation and Federal jurisdiction was clearly established beyond three miles of the Louisiana coast. Part 150 was then revised in 1981 to define "offshore waters" as that area of land and water, beyond Agreement States' Submerged Lands Act jurisdiction, on or above the U. S. Outer Continental Shelf and to specify in 150.20(c) and (d) that Louisiana licensees can provide three-day advanced reciprocity notification to the State of Louisiana for planned work offshore, in lieu of notifying the Region IV Administrator. Sections 150.20(c) and (d) were also revised to specify that Louisiana has entered into an Agreement to perform offshore inspections for the Commission.

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## DISCUSSION:

Subsequent to receipt of an allegation in 1997, Region IV confirmed that certain Louisiana licensees were not notifying either the Region IV Administrator or the State of Louisiana prior to conducting operations in offshore waters where NRC has jurisdiction. Staff discussions with Louisiana officials revealed that neither the State of Louisiana, nor Louisiana licensees, understood the Federal versus State jurisdictional distinctions when working at sea, did not understand the need to provide reciprocity notifications pursuant to 10 CFR 150.20 when working in Federal offshore waters, and did not understand that as general licensees of the NRC when working in offshore waters, such general licensees must obtain an NRC exemption from a requirement in 10 CFR 34.20.

NRC staff and Louisiana officials met to discuss these issues on April 21 and 22, 1998. In addition to agreement on the need to revise the 1967 AEA Section 274i Agreement, Louisiana committed to issue a letter ([Attachment 2](#)) to Louisiana licensees notifying them of the jurisdictional issues, the need to file reciprocity notices prior to working in offshore waters, and the need to receive an exemption from the requirements in 10 CFR 34.20 that apply to pipeliner (non-crankout) type radiography cameras. Because of the lack of understanding by Louisiana licensees, NRC staff proposes, with support from the State of Louisiana, that enforcement discretion be exercised for past violations of the reciprocity notification requirements and for past Louisiana licensee failures to receive NRC exemptions to 10 CFR 34.20 requirements applicable to pipeliner-type radiography cameras used offshore. These licensees have received appropriate exemptions from the State of Louisiana for use of pipeliner-type radiography cameras where Louisiana has jurisdiction.

## CONCLUSION:

Given the misunderstanding of current requirements by Louisiana licensees, issuance of the attached letter to Louisiana licensees is warranted. This paper provides notification of the staff's intent to reflect in the attached letter to Louisiana licensees the use of enforcement discretion by NRC, pursuant to Section VII.B.6 of the NRC Enforcement Policy, for previous offshore violations. The letter further notes that future violations of reciprocity reporting requirements will be cited and that, except for licensees that file a request for exemption from the 10 CFR 34.20 requirements applicable to pipeliner-type radiography cameras within 30 days from the date of the letter, future violations for failure to use radiography equipment that satisfies 10 CFR 34.20 will also be cited. Staff notes that a complete analysis of the Louisiana offshore issues, including the need to revise the 1967 Section 274i Agreement, will be addressed in another SECY paper that is currently under preparation.

L. Joseph Callan  
Executive Director for Operations

[Attachments](#): As stated

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ATTACHMENT 2

[to all Louisiana Industrial Radiography licensees]

SUBJECT: PERFORMING LICENSED ACTIVITIES IN AREAS OF NRC JURISDICTION, INCLUDING NON-AGREEMENT STATES, FEDERAL FACILITIES, AND OFFSHORE WATERS

The Nuclear Regulatory Commission (NRC) has informed the Radiation Protection Division that Louisiana licensees intending to perform licensed activities under reciprocity in areas under NRC jurisdiction are responsible for satisfying the requirements in 10 CFR 150.20 (Enclosure 1). This requirement has been in effect since February 14, 1962. Louisiana licensees may accomplish this objective by either of the following methods:

1. Filing with NRC a "Report of Proposed Activities in Non-Agreement States" (reference 10 CFR 150.20(b)(1)) to operate under an NRC General License.

Louisiana licensees shall, at least 3 days prior to engaging in any activities for the first time in the calendar year, file a submittal containing four copies of NRC Form-241 (revised), "Report of Proposed Activities in Non-Agreement States," and four copies of its Louisiana specific license with the NRC's Region IV Administrator. In addition, the licensee must submit the fee specified in fee Category 16, 10 CFR 170.31 (Enclosure 2).

NRC must receive this filing at least 3 days before the licensee engages in activities permitted under the general license established by 10 CFR 150.20, unless the three-day requirement is waived by the Regional Administrator, as provided by 10 CFR 150.20(b)(1). This general license authorizes persons holding a specific license from an Agreement State to conduct the same activity in areas of exclusive Federal jurisdiction, in non-Agreement States, or in offshore waters, if the specific license issued by the Agreement State does not limit the authorized activity to a specific installation or location. "Offshore waters" is defined in 10 CFR 150.3 as "that area of land and water, beyond Agreement States' Submerged Lands Act jurisdiction, on or above the U.S. Outer Continental Shelf."

2. Louisiana licensees intending to engage in activities in offshore waters and beyond the three mile limit, off the coast of Louisiana and under the NRC general license may, in lieu of notifying the NRC as described above, notify the Radiation Protection Division, State of Louisiana, about the activities at least 3 days before engaging in such activities (reference 10 CFR 150.20(c)).

Notification to the State of Louisiana shall include the following:

- a description of the activity,
- the location,
- the dates scheduled,
- a list of the sealed sources, or devices containing sealed sources, which will be possessed, used, installed, serviced, or tested,
- a description of the type and quantity of radioactive material contained in each sealed source or device,
- name of a licensee contact and how that person may be reached.

Note that only reciprocity activities conducted in offshore waters are not subject to the 180-day limitation normally associated with licensed activities conducted under reciprocity in other NRC jurisdictions. Notwithstanding any provisions to the contrary in any specific license issued by the State of Louisiana, licensees engaging in activities in NRC jurisdiction are required to comply with all applicable NRC regulations.

For Louisiana licensees performing radiography operations in areas under NRC jurisdiction, the licensee must ensure that the radiography equipment being used meets the requirements of 10 CFR Part 34.20, regardless of any exemption granted by the State of Louisiana.

10 CFR 34.20 requires that all radiography equipment meet specific design requirements. Licensees may only use equipment that meets these requirements when performing licensed activities in areas under NRC jurisdiction. It should be noted that several different models of pipeliner-type devices do not meet the requirements of 10 CFR 34.20.

If a licensee intends to use equipment that does not meet the requirements of 10 CFR 34.20, then that licensee must file with NRC, in accordance with 10 CFR 34.111 (previously 34.51), a request for an exemption to use the equipment, and receive NRC approval before commencing use of a device not approved by NRC in offshore waters under NRC jurisdiction.

The NRC requires licensees to request such exemptions, even if an exemption for use of the equipment in Louisiana jurisdiction has been granted by the State. However, in order not to disrupt ongoing, or planned near-term, offshore operations, NRC will not take enforcement action against licensees for performing activities with such equipment, provided that (1) the licensee has already received an exemption from the State of Louisiana, and (2) the licensee submits a request to the NRC for exemption, within 30 days of the date of this letter, which includes documentation of the Louisiana exemption approval. The NRC will continue to refrain from taking enforcement action regarding the use of the equipment until NRC makes a final determination on the exemption request. To facilitate the NRC review in these cases, a licensee should include a copy of the exemption request and supporting information that was submitted to Louisiana, and a copy of the subsequent licensing action issued by Louisiana. Licensees should note that Louisiana's approval of the exemption request does not guarantee that a similar exemption will be granted by NRC and that economic benefit to the licensee will not alone suffice as justification for an exemption. The licensee must demonstrate that the engineered safety features, use limitations, and procedures would compensate for not meeting the regulatory requirements and afford similar or increased radiation safety protection. Any denial of an exemption request by NRC will be coordinated with the State of Louisiana.

Requests for exemption should be submitted to:

U.S. Nuclear Regulatory Commission  
Region IV  
611 Plaza Drive, Suite 400  
Arlington, TX 76011-8064  
ATTN: Regional Administrator

Licensees should note that failure to meet reciprocity requirements and performance of radiography with equipment that does not meet 10 CFR 34.20 in areas under NRC jurisdiction are violations of NRC regulations. However, based on apparent confusion regarding reciprocity requirements over the 31 years of Louisiana's Agreement with the NRC and more recent equipment requirements for Louisiana licensees performing work in offshore waters under NRC jurisdiction, the NRC is exercising enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy and will not consider enforcement actions for violations for offshore activities occurring prior to the date of this letter. Furthermore, as detailed above, NRC will not take enforcement action regarding the performance of radiography with equipment that does not meet 10 CFR 34.20 provided that certain conditions are met.

For activities occurring in offshore waters (where NRC has jurisdiction) after the date of this letter, NRC has informed the State that it intends to take enforcement action for failure to meet reciprocity regulations and for failure to use equipment which complies with 10 CFR 34.20, if the exemption process described above is not met or the exemption has been denied. Noncompliance with regulatory requirements may result in NRC exercising its civil enforcement authority which could include the assessment of civil penalties or the issuance of orders for the revocation or suspension of a license. Willful violations may result in civil or criminal sanctions to both licensees and their employees.

If you have any questions concerning this letter, please contact Dr. James Sanford or Mr. Michael Henry, program managers, at (504) 765-0160.

Very truly yours,  
William H. Spell, Administrator  
Radiation Protection Division

Enclosures: As stated