

A Study on Necessity and Implications of Atomic Energy Inspector Certificates

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1. Introduction

The KINAC/KINS regulations on the performance of entrusted duties stipulate that the person performing the inspection shall carry with him or her a certificate certifying that he or she is an inspector issued by the chairman of the NSSC(Nuclear Safety and Security Commission), and shall present it to the person concerned. So why is this necessary? In the case of a pass, it is often required to be patched so that it is visible to prevent unauthorized persons from entering or leaving. So, is it required to present an inspector certificate to prevent a person without inspection authority from conducting it? If the inspector presents this, what activities can be carried out? Is it possible to enter the facility, inquire and collect samples? This is also a matter related to the scope and nature of the inspection, and it should be reviewed if the law requires inspector certificate and its presentation

2. Articles on the inspector certificate

Let's take a look at the regulations that require the presentation of certificate during inspection. Article 44(reporting, inspection, etc.) of the APPRE(Act on Physical Protection and Radiological Emergency) has a regulation similar to the KINAC/KINS regulations. It stipulates that the NSSC may assign its subordinate officials to inspect the relevant places of business, documents, facilities and other necessary objects, make inquiries to interested persons, and collect samples in the minimum quantity necessary for inspection. And that article also writes that any person who conducts inspections and makes inquiries shall carry an identification card indicating his/her authority and present it to the concerned person. Article 98 of the Nuclear Safety Act and Article 24 of the Act on Protective Action Guidelines against Radiation in the Natural Environment have the same contents. In the below, we will look at the APPRE as the main focus.

The KINAC/KINS regulations on the performance of entrusted duties are probably modeled after this regulation. However, if the person conducting the inspection in Article 44 has to present the identification card, should the KINAC/KINS employee present the inspector certificate? Is the inspection performed by KINAC/KINS the same as the inspection in Article 44?

Article 45 of the provision on business entrustment does not include the inspection of Article 44 as

entrustable work. That is, KINAC/KINS can not carry out the inspection of Article 44.

While the inspections in article 12 and 38 of the APPRE are entrusted to KINAC/KINS, these articles do not refer to inspection certificate and the presentation of it. In the end, there is no legal requirement that the employee of KINAC/KINS should present the inspector certificate during inspection.

Let's look at the NSSC's directive as another basis to support this claim. Article 1 of the Regulations for the Management of Nuclear Inspection Certificate stipulates that the purpose of the regulations is to prescribe matters concerning the specification, issuance and other matters of the certificates of persons who conduct inspection in the provisions of APPRE article 44. This is because only Article 44 of the APPRE refers to an identification card, and there is no text on it in Articles 12 and 38 entrusted to KINAC/KINS.

However that directive has several problems. Article 2 of that directive stipulates that the regulations concerning the certificate are applied to employees of an institution entrusted by the government under Article 45 of the APPRE, but this has no legal basis for the same reason(Article 12 and 38 of the APPRE don't require that entrusted inspector carry the inspector certificates)

Having looked at that directive, I would like to suggest improvements. This directive is aimed at setting out matters concerning the certificates of inspection pursuant to Article 44 of the APPRE. But, there are no regulations concerning the inspection certificates issued to public officials performing the inspection of that article. It only stipulates matters concerning the issue of inspection certificates issued to employees of the entrusted agency. It requires not less than two years of experience in inspection, and education and evaluation for the issuance of a nuclear inspection certificate. However, as shown above, in the case of entrusted inspections, the certificate is not required. Defining qualifications is more necessary in the case of not entrusted inspection of Article 44, not entrusted inspections of Article 12, 38.

3. The purpose and meaning of the certificates representing authority

Although a certificate of inspection is necessary to ensure that only those with expertise perform the inspection, it is another matter of whether it should be shown to those involved.

Why does the inspection of Article 44 which is not entrusted require the presentation of the identification card, while in the case of inspections entrusted to KINAC/KINS it is not required to present it? This is because it constitutes an exception to the principle of warranties that any person cannot arrest, seize and search without court's permission. .

Article 44 of the APPRE requires that a person who conducts inspections and makes inquiries shall carry an identification card indicating his/her authority and present it to the concerned person. Under the principle of warranties, warrants are needed to enter facilities managed by others, ask questions and collect samples. However, an official who conducts the inspection of Article 44 can do such a thing without a warrant, and Article 49 stipulates that those who refuse, interfere with, avoid or declare falsehood are punished by criminal punishment.

On the other hand, in the case of the inspections in article 12 and 38 entrusted to KINAC/KINS, there is no mention of entry, inquiries and collection of samples. So, the KINAC/KINS employee must be approved separately for entry, and voluntary co-operation of the license holders or warrants must be provided to collect samples.

And we should examine whether the identification card referred to in Article 44 means inspector certificate. Let's take a look at other act cases. Article 272-2 of the Public Officials Election Act (the investigation of election crimes) states that if a member of the respective election management committee acknowledges that someone is suspected of having committed a crime, he or she may enter the place and ask the person concerned to submit the necessary data for questioning or other investigation, in which case he or she should present evidence of identification and clarify his or her name, and explain the purpose and reason. And the Supreme Court ruled as follows

In the light of the legislative intent and the contents of the above regulations, which stipulate that the members of the Election Commission have the right to enter the place suspected of election crimes, and criminal penalties are given to those who obstruct their entry, the members of the Election Commission must present the certificate or member's identification card or a public officer's card.

So, it can be concluded that identification card indicating authority does not necessarily mean inspection certificates.

4. Conclusions

The KINAC/KINS regulations on the performance of entrusted duties requires that inspector should show the certificate to the concerned person during the inspection. But there is no legal basis for inspector certificates. As an inspector certificate is merely a representation of expertise, not of authority, the requirement to present it is unnecessarily causing work constraints. And the identification card referred to in Article 44 of the APPRE that that regulation uses as a model means civil service certificates, not necessarily inspector certificates.

REFERENCES

- [1] J. Hong, 행정법특강 The 8th Edition, 박영사, 2009.
- [2] Ministry of Government Lsgislation, 법령입안중급과정, 2012.