



NUREG-1556  
Volume 15, Rev. 1

# **Consolidated Guidance about Materials Licenses**

Guidance about Changes of Control and about  
Bankruptcy Involving Byproduct, Source, or  
Special Nuclear Materials Licenses

Draft Report for Comment

Office of Federal and State Materials and  
Environmental Management Programs

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Draft Report for Comment

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**Federal Rulemaking Website:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2014-0057**. Address questions about NRC dockets to Carol Gallagher at 301-287-3422 or by e-mail at [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: 3WFN-06-A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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## **ABSTRACT**

This technical report contains information intended to provide program-specific guidance and to assist applicants, licensees and others in preparing and reviewing requests involving materials license bankruptcy or changes of control. This report contains guidance describing the types of information needed from the applicant, licensee, and others to complete U.S. Nuclear Regulatory Commission (NRC) Form 313, "Application for Materials License," along with other supporting information necessary to process the application. This report should be used in preparing requests for licensing actions; however, the guidance it contains does not represent new or proposed regulatory requirements, and licensees will not be inspected against any portion of it.

### **Paperwork Reduction Act Statement**

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## FOREWORD

The U.S. Nuclear Regulatory Commission's (NRC's) NUREG-1556 technical report series provides a comprehensive source of reference information about various aspects of materials licensing and materials program implementation. These reports, where applicable, describe a risk-informed, performance-based approach to licensing consistent with the current regulations. The reports are intended for use by applicants, licensees, license reviewers, and other NRC personnel. The NUREG-1556 series currently includes the following volumes:

<b><i>Volume No.</i></b>	<b><i>Volume Title</i></b>
1	Program-Specific Guidance about Portable Gauge Licenses
2	Program-Specific Guidance about Industrial Radiography Licenses
3	Applications for Sealed Source and Device Evaluation and Registration
4	Program-Specific Guidance about Fixed Gauge Licenses
5	Program-Specific Guidance about Self-Shielded Irradiator Licenses
6	Program-Specific Guidance about 10 CFR Part 36 Irradiator Licenses
7	Program-Specific Guidance about Academic, Research and Development, and Other Licenses of Limited
8	Program-Specific Guidance about Exempt Distribution Licenses
9	Program-Specific Guidance about Medical Use Licenses
10	Program-Specific Guidance about Master Materials Licenses
11	Program-Specific Guidance about Licenses of Broad Scope
12	Program-Specific Guidance about Possession Licenses for Manufacturing and Distribution
13	Program-Specific Guidance about Commercial Radiopharmacy Licenses
14	Program-Specific Guidance about Well Logging, Tracer, and Field Flood Study Licenses
15	Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses
16	Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees

<b>Volume No.</b>	<b>Volume Title</b>
<b>17</b>	Program-Specific Guidance about Special Nuclear Material of Less Than Critical Mass Licenses
<b>18</b>	Program-Specific Guidance about Service Provider Licenses
<b>19</b>	Guidance for Agreement State Licensees about NRC Form 241 “Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters” and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)
<b>20</b>	Program-Specific Guidance about Administrative Licensing Procedures
<b>21</b>	Program-Specific Guidance about Possession Licenses for Production of Radioactive Materials Using an Accelerator
<b>22</b>	Reserved

The current document, NUREG-1556, Volume 15, Revision 1, “Consolidated Guidance about Materials Licenses: Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses,” is intended for use by applicants, licensees, license reviewers, and other NRC personnel. This revision provides a general update to the previous information contained in NUREG-1556, Volume 15, dated November 2000.

This report takes a risk-informed, performance-based approach to evaluating changes of control or bankruptcy involving byproduct, source, or special nuclear materials. A team composed of staff from NRC Headquarters and NRC regional offices prepared this document, drawing on their collective experience in radiation safety in general and as specifically applied to changes of control and bankruptcies.

NUREG-1556, Volume 15, Revision 1, is not a substitute for NRC regulations. The approaches and methods described in this report are provided for information only. Methods and solutions different from those described in this report may be acceptable if they include a basis for the staff to make the determinations needed to issue or continue a license.

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## ABBREVIATIONS

ADAMS	Agencywide Documents Access and Management System
AEA	Atomic Energy Act of 1954, as amended
ALARA	as low as is reasonably achievable
AUSA	Assistant United States Attorney
BRT	Bankruptcy Review Team
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	<i>Code of Federal Regulations</i>
DFP	Decommissioning Funding Plan
DOE	U.S. Department of Energy
DOJ	U.S. Department of Justice
DWMEP	Division of Waste Management and Environmental Protection
EPA	U.S. Environmental Protection Agency
F/A	Certification of Financial Assurance for Decommissioning
FSME	Office of Federal and State Materials and Environmental Management Programs
GPO	Government Printing Office
IMC	Inspection Manual Chapter
IN	Information Notice
MML	Master Materials License
NRC	U.S. Nuclear Regulatory Commission
OC	Office of the Controller
OCFO	Office of the Chief Financial Officer
OE	Office of Enforcement
OGC	Office of the General Counsel
OMB	Office of Management and Budget
P&GD	Policy and Guidance Directive
Q	quality factor
RSO	Radiation Safety Officer
SI	International System of Units (abbreviated SI from the French Le Système Internationale d'Unités)
Sv	sievert
TEDE	total effective dose equivalent
UMTRCA	Uranium Mill Tailings Radiation Control Act of 1978
U.S.C.	United States Code





# 1. PURPOSE OF REPORT

NUREG-1556, Volume 15, Revision 1, "Consolidated Guidance about Materials Licenses: Guidance about Change of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," is intended for use by license applicants, licensees, and the staff of the U.S. Nuclear Regulatory Commission (NRC), and it will also be available to Agreement States. This report provides important information to persons who own or manage activities that are licensed by the NRC. It contains guidance for licensees and, in some cases, license applicants to use in preparing a notification to the NRC of a change of control or bankruptcy. It also contains NRC criteria for evaluating such a notification and determining whether a new or amended license is needed. Appendix E to this report lists the recommended licensing action(s) that may need to be performed for each type of transaction. This report is organized into specific sections, discussing change of control (Chapter 5) and bankruptcy (Chapter 6). Chapters 7 through 12 provide specific information for licensees or applicants to use should it be necessary to apply for a new or amended license as the result of a change of control or bankruptcy. Chapter 13 provides information for properly protecting sensitive information such as financial data submitted to the NRC. Information about the specific requirements for particular uses of licensed materials may be found in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. For the purposes of this document, the NRC generally uses the term "change" rather than the statutory term "transfer" to describe the variety of events that could require prior notification to, and written consent of, the NRC.

Provisions of the Atomic Energy Act of 1954, as amended (AEA), and regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) require that NRC licensees notify the NRC of any changes of control or bankruptcy.

"Control over licensed activities" can be construed as the authority to decide when and how that license (licensed material or activities or both) will be used. A change of ownership may be an example of a change of control if authority over the license has transferred from one person to another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the authority over the license has changed.

The AEA, as well as NRC regulations in 10 CFR, further state that no NRC license nor any right under an NRC license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any NRC license to any person, unless the NRC has found, after securing full information, that the transfer is in accordance with the provisions of the AEA and has given its consent in writing.

Persons who are in the process of applying for an NRC license and who do not already hold one or more other NRC licenses are not subject to NRC regulations with regard to bankruptcy or changes of control. However, applicants must advise the NRC of any change of control or bankruptcy that result in changes to the information being reviewed by the NRC that would impact the basis on which the NRC would eventually issue the license.

The NRC is not only concerned with change of control as it occurs in private business, but also as it affects Government agencies. Chapter 5 addresses specific considerations for Government agencies.

The regulations are clear that control of licensed activities cannot be transferred without prior written consent from the NRC. It is not NRC's intent to interfere with the business decisions of licensees. However, it is necessary for licensees to notify the NRC with sufficient time before the actual change to allow the NRC to conduct appropriate review, whenever decisions are under consideration that involve changes of control. The NRC is focused on the health, safety, common defense, security and environmental protection aspects, not solely on the financial intricacies of the proposed transaction. The NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place. The NRC is required by law to ensure that the public's health and safety and the common defense and security are not compromised; therefore, the agency must be confident that when a licensee's program undergoes a change of control, all efforts are made to ensure that the radiation safety, security and environmental protection aspects of the program are adequately maintained.

Although the burden of notification is on the existing licensee, it may also be necessary for the transferee or the successor to provide supporting information or to independently coordinate the change of control with the appropriate NRC office.

In the case of bankruptcy, NRC regulations require that a licensee notify the NRC in writing immediately following the filing of a voluntary or involuntary petition under the Bankruptcy Code by or against the licensee, or an entity controlling the licensee or listing the license or licensee as property of the estate, or an affiliate of the licensee. This notification must indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

No changes of control or license terminations will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public, and waste disposal (such as releases to sewers, incineration, radioactive spills, and onsite burials) have been transferred to the new licensee, if licensed activities will continue at the same location, or to the NRC if the license is to be terminated.

This document is intended to be used for all NRC byproduct, source, and special nuclear materials licenses that are licensed in accordance with 10 CFR Parts 30, 31, 40, and 70. It does not address bankruptcy or change of control for licenses issued under 10 CFR Parts 61, 72, 76, or 110. This document provides important information, including citations of relevant case law regarding bankruptcy and the various forms of changes of control that may take place. It is important to understand that each instance of bankruptcy or change of control is unique and must be evaluated on a case-by-case basis. The NRC and licensee staffs involved in these matters are strongly encouraged to become familiar with the guidance in this document and to consult with qualified technical and legal experts when questions regarding a particular case are raised.

Changes in a licensee's program resulting from a change of control or bankruptcy may result in the need to amend the existing license. In some cases, the NRC may require the transferee or successor to apply for a new license. Appendix E to this report lists recommended licensing actions that may be needed depending on the nature of the transaction(s). The regulations in 10 CFR 30.32 and 10 CFR 40.31, both titled "Application for specific licenses," state, in part, that a person may file an application for a new specific license on NRC Form 313, "Application for Materials License" (see Appendix A to this report). 10 CFR 30.38, "Application for amendment of licenses," and 10 CFR 40.44, "Amendment of licenses at request of licensee,"

require, in part, that applications for amendment of a license be filed on Form NRC 313. The licensee must specify how the license is to be amended and the grounds for the amendment.

This report identifies general information that is needed to complete NRC Form 313 for amending, terminating, or issuing new licenses as the result of a change of control or bankruptcy. Licensees should also refer to program-specific guidance found either in the NUREG-1556 series or other appropriate regulatory documents for specific information that must be included in their application for a new or amended license. The information collection requirements in 10 CFR Parts 30, 31, 40, and 70 and NRC Form 313 have been approved under Office of Management and Budget Clearance Nos. 3150-0017, 3150-0016, 3150-0020, 3150-0009, and 3150-0120, respectively.

Applicants for, and holders of, licenses authorizing possession and use of special nuclear material should refer to 10 CFR 70.22, “Contents of applications,” and 10 CFR 70.34, “Amendment of licenses,” for the regulatory requirements for applying for a new or an amended special nuclear material license.

**Note:** The text of these and other NRC regulations may be found at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

Persons using certain generally licensed devices in accordance with 10 CFR Parts 31, 40, and 70 are required to notify and receive NRC written consent before implementing the change of control of licensed materials. Appendix B to this report provides additional information about these requirements.

The format within this document for each item of technical information is as follows:

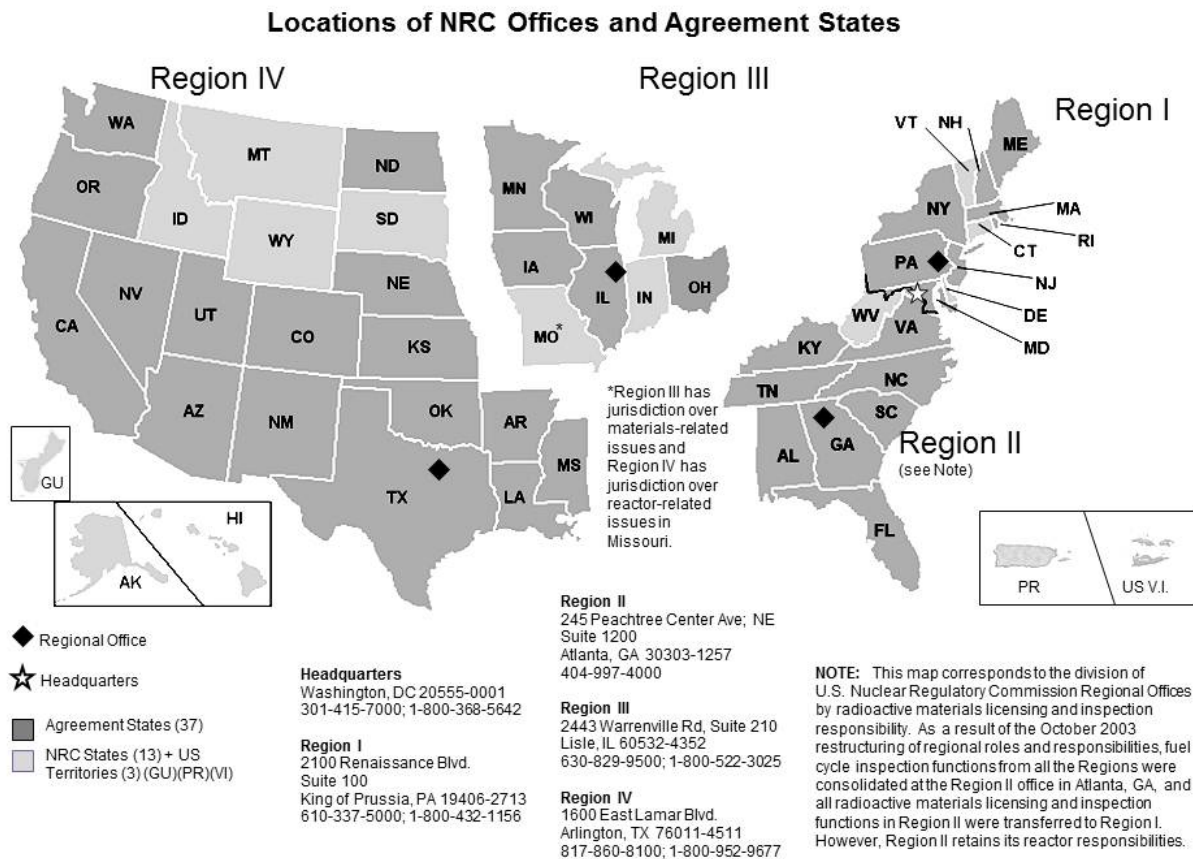
- Regulations—references the regulations applicable to the item.
- Criteria—outlines the criteria used to judge the adequacy of the applicant’s response.
- Discussion—provides additional information.
- Response from Applicant—provides suggested response or responses, offers the option of an alternative reply, or indicates that no response is needed on that topic during the licensing process

Notes and references are self-explanatory and may not be found for each item on NRC Form 313.



## 2. AGREEMENT STATES

Certain States, called Agreement States (see Figure 2.1), have entered into agreements with the NRC that give them the authority to license and inspect byproduct, source, and special nuclear materials, in quantities not sufficient to form a critical mass, which are used or possessed within their borders. Any applicant, other than a Federal entity, who wishes to possess or use licensed material in one of these Agreement States should contact the responsible officials in that State for guidance on preparing an application. These applications should be filed with State officials, and not with the NRC. In areas under exclusive federal jurisdiction within in Agreement State, NRC continues to be the regulatory authority.



**Figure 2.1 U.S. map: Locations of NRC offices and Agreement States**

In the special situation of work at Federally controlled sites in Agreement States, it is necessary to ascertain the jurisdictional status of the land to determine whether the NRC or the Agreement State has regulatory authority. These areas can also include tribal lands of Federally recognized Indian Tribes.<sup>1</sup>

<sup>1</sup> For the purposes of this guidance, an "Indian tribe" is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994. A list of Federally recognized tribes is available at [www.bia.gov](http://www.bia.gov).

The NRC has regulatory authority over land determined to be “exclusive Federal jurisdiction,” while the Agreement State has jurisdiction over nonexclusive Federal jurisdiction land. Applicants are responsible for determining in advance the jurisdictional status of the specific areas where they plan to conduct licensed operations. The NRC recommends that applicants contact their local office of the Federal agency controlling the site (e.g., contract officer, base environmental health officer, district office staff) for assistance in determining the jurisdictional status of the land and to provide the information in writing to ensure compliance with NRC or Agreement State regulatory requirements, as appropriate. Additional guidance on determining jurisdictional status is found in the Office of Federal and State Materials and Environmental Management Program’s (FSME) procedures in the State Agreement (SA) series, SA-500, “Jurisdiction Determination,” which is available at <http://nrc-stp.ornl.gov/>. Once on the Web site, use the link for “FSME Procedures” in the left hand column under “Resources & Tools.” The link will take you to another Web page where you can search for FSME Procedures.

Table 2.1 provides a quick way to check on whether the NRC or an Agreement State has regulatory authority.

**Table 2.1 Who Regulates the Activity?**

<b>Applicant and Proposed Location of Work</b>	<b>Regulatory Agency</b>
Federal agency regardless of location (except the U.S. Department of Energy and, under most circumstances, its prime contractors are exempt from licensing, in accordance with 10 CFR 30.12, “Persons using byproduct material under certain Department of Energy and Nuclear Regulatory contracts”)	NRC
Non-Federal entity in non-Agreement State, District of Columbia, U.S. territory or possession, or in offshore Federal waters	NRC
Federally recognized Indian Tribe or tribal member on Indian Tribal land	NRC
Non-federal entity on Federally recognized Indian Tribal land	NRC <sup>2</sup>
Federally recognized Indian Tribe or tribal member outside of Indian Tribal land in Agreement State.	Agreement State

<sup>2</sup> The NRC can exercise jurisdiction as the regulatory authority on tribal land of a Federally recognized Indian Tribe. Section 274b. Agreements do not give States the authority to regulate nuclear material in these areas. However, there are few States that exercise regulatory authority over these areas based on treaties or agreements with specific tribes. Companies owned or operated by Federally recognized Indian Tribe members or non-Indians that wish to possess or use licensed material on tribal lands should contact the appropriate NRC regional office to determine the jurisdictional status of the tribal lands and identify the appropriate regulatory agency for licensing and reciprocity.

Applicant and Proposed Location of Work	Regulatory Agency
Non-Federal entity in Agreement State	Agreement State <sup>3</sup>
Non-Federal entity in Agreement State at Federally controlled site <b>not</b> subject to exclusive Federal jurisdiction	Agreement State <sup>3</sup>
Non-Federal entity in Agreement State at Federally controlled site subject to exclusive Federal jurisdiction	NRC
Non-Federal entity in Agreement State using radioactive materials (except industrial radiography) directly connected with Part 50 or 52 reactor operations or needed during the construction and preoperational phases of a reactor.	NRC
Non-Federal entity in Agreement State using radioactive materials <b>not</b> directly connected with Part 50 or 52 reactor operations or needed during the construction and preoperational phases of a reactor.	Agreement State <sup>3</sup>

Reference: A current list of Agreement States (including names, addresses, and telephone numbers of responsible officials) is available at the Office of Federal and State Materials and Environmental Management Programs (FSME) public Web site, <http://nrc-stp.ornl.gov>. As an alternative, a request for the list can be made to an NRC regional office.

<sup>3</sup> Section 274m. of the AEA gives the NRC regulatory authority over radioactive materials covered under the Section 274b. Agreement when the activity can affect the Commission's authority to protect the common defense and security, to protect restricted data, or guard against the loss or diversion of special nuclear material at a site. (This is an uncommon situation which NRC usually evaluates on a case-by-case basis.) Companies that wish to possess or use licensed material at these sites should contact the licensee to determine the jurisdictional status for specific AEA radioactive materials they intend to possess or use at the site.





### 3. MANAGEMENT RESPONSIBILITY

The NRC recognizes that effective radiation safety program management is vital to achieving safe, secure, and compliant operations. Consistent compliance with NRC regulations provides reasonable assurance that licensed activities will be conducted safely and that effective management will result in increased safety, security, and compliance.

“Management” as used in this volume, refers to the processes for conduct and control of a radiation safety program and to the individuals who are responsible for those processes and who have *authority to provide necessary resources* to achieve regulatory compliance.

#### 3.1 Commitments and Responsibilities

It is the licensee’s obligation to keep the license current. Should a change of control or a bankruptcy action result in a change to the licensee’s program, the licensee must amend the license to reflect that change. If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date (see 10 CFR 2.109, “Effect of timely renewal application,” 10 CFR 30.36(a), 10 CFR 40.42(a), 10 CFR 70.38(a)). Appendix E to this report lists the licensing action type(s) recommended for the different transactions.

Persons applying for an initial license should update and modify their pending applications if they are undergoing a change of control or bankruptcy. NRC license reviewers should consult with appropriate technical, legal, and management staff in each of these cases.

Generally, licensee or applicant management has a responsibility for all aspects of the radiation safety program, including, but not limited to, the following:

- Radiation safety, security, and control of radioactive materials, and compliance with regulations;
- Completeness and accuracy of the radiation safety records and all information provided to the NRC (10 CFR 30.9, 10 CFR 40.9, 10 CFR 70.9, “Completeness and accuracy of information”);
- Knowledge about the contents of the license and application;
- Compliance with current NRC and U.S. Department of Transportation (DOT) regulations and the licensee’s operating and emergency procedures;
- Commitment to provide adequate resources (including space, equipment, personnel, time, and, if needed, contractors) to the radiation protection program to ensure that the public and workers are protected from radiation hazards and that meticulous compliance with regulations is maintained;
- Selection and assignment of a qualified individual to serve as the radiation safety officer (RSO) for licensed activities and confirmation that the RSO has independent authority to

stop unsafe operations and will be given sufficient time to fulfill radiation safety duties and responsibilities;

- Commitment to ensure that radiation workers have adequate training;
- Prevention of discrimination of employees engaged in protected activities (10 CFR 30.7, 10 CFR 40.7, 10 CFR 70.7, "Employee protection");
- Commitment to provide information to employees regarding the employee protection and deliberate misconduct provisions in 10 CFR 30.7, 10 CFR 40.7, or 10 CFR 70.7; and 10 CFR 30.10, 10 CFR 40.10, or 10 CFR 70.10, "Deliberate misconduct," respectively;
- Commitment to obtain NRC's prior written consent before transferring control of the license;
- Notification of the appropriate NRC regional administrator in writing, immediately following filing of petition for voluntary or involuntary bankruptcy [10 CFR 30.34(h) 40.31(f) and 70.32(a)(9)].

Licensee (and applicant) management is strongly cautioned that cases where change of control, such as change of ownership, occur without the NRC's prior written consent may be considered to be violations of the provisions of 10 CFR 30.34, "Terms and conditions of licenses" (or the similar provisions of 10 CFR 40.46 and 10 CFR 70.36, "Inalienability of licenses"). For information on the most recent version of NRC's enforcement documents see <http://www.nrc.gov/reading-rm/doc-collections/enforcement/>. The NRC's Enforcement Policy may be found online at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html> and the Enforcement Manual may be found online at <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>.

It is not the intent of NRC to interfere with the business decisions of licensees. NRC's focus is on the health, safety, common defense, security and environmental protection aspects, not solely on the financial intricacies of the proposed transaction. The NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place.

Subpart M, "Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," describes the requirements for making documents related to changes of control publicly available. The NRC recognizes that information regarding a proposed change of control may be extremely sensitive and that the public release of such information may have an adverse impact on the licensee, as well as on other persons potentially involved in the change of control. Licensees, or other persons wishing to protect sensitive information regarding proposed changes of control, should request that sensitive information be protected in accordance with 10 CFR 2.390, "Public inspections, exemptions, requests for withholding." This regulation specifies the procedures and requirements for the protection of sensitive information from disclosure. Chapter 13 of this report further describes how sensitive information may be protected from public disclosure.

For information on NRC inspection, investigation, enforcement, and other compliance programs, see the current version of the NRC's Enforcement Policy, Inspection Manual Chapter, and Inspection Procedures available in the NRC's online library at <http://www.nrc.gov/reading-rm.html>.

### **3.2 Safety Culture**

Individuals and organizations performing regulated activities are expected to establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This applies to all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority.

"Nuclear safety culture" is defined in the NRC's safety culture policy statement (76 FR 34773; June 14, 2011) as *the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment*. Individuals and organizations performing regulated activities bear the primary responsibility for safely handling and securing these materials. Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal conflict situations (e.g., production versus safety, schedule versus safety, and cost of the effort versus safety). Refer to Figure 3.1 for the traits of a positive safety culture from NRC's safety culture policy statement.

Organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve both safety and security in their activities. Safety and security activities are closely intertwined. While many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. It is important that consideration of these activities be integrated so as not to diminish or adversely affect either; thus, mechanisms should be established to identify and resolve these differences. A safety culture that accomplishes this would include all nuclear safety and security issues associated with NRC-regulated activities.

The NRC, as the regulatory agency with an independent oversight role, reviews the performance of individuals and organizations to determine compliance with requirements and commitments through its existing inspection and assessment processes. However, NRC's safety culture policy statement and traits are not incorporated into the regulations. Safety culture traits may be inherent to an organization's existing radiation safety practices and programs. The annual refresher training required for radiographers and radiographer assistants may correspond with the safety culture trait specified in Table 3.1 as "Continuous Learning" (opportunities to learn about ways to ensure safety are sought out and implemented). However, licensees should be aware that this is just an example, and should consider reviewing their radiation safety programs in order to develop and implement a safety culture commensurate with the nature and complexity of their organizations and functions. While NUREG-1556, Volume 15 is applicable to all changes of control and bankruptcies, involving byproduct, source, or special nuclear materials licenses, the requirement for annual training in the example above may not apply to licensee types other than industrial radiography licenses.

Refer to Appendix K, the NRC’s safety culture policy statement. More information on NRC activities relating to safety culture can be found at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/safety-culture.html>.

**Table 3.1 Traits of a Positive Safety Culture**

<b>Leadership Safety Values and Actions</b>	<b>Problem Identification and Resolution</b>	<b>Personal Accountability</b>
Leaders demonstrate a commitment to safety in their decisions and behaviors	Issues with a potential impact on safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance	All individuals take personal responsibility for safety
<b>Work Processes</b>	<b>Continuous Learning</b>	<b>Environment for Raising Concerns</b>
Employees adopt and follow a process of planning and controlling work activities that ensures safety is maintained	Opportunities to learn about ways to ensure safety are sought out and implemented	A safety-conscious work environment is maintained in which personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination
<b>Effective Safety Communications</b>	<b>Respectful Work Environment</b>	<b>Questioning Attitude</b>
Communications maintain a focus on safety	Trust and respect permeate the organization	Individuals avoid complacency and continuously challenge existing conditions and activities to identify discrepancies that might result in error or inappropriate action

## 4. APPLICABLE REGULATIONS

It is the applicant's, licensee's, or registrant's responsibility to obtain and have available up-to-date copies of applicable regulations, to read and understand the requirements of each of these regulations, and to comply with each applicable regulation. The following parts of Title 10 of the *Code of Federal Regulations* (10 CFR) contain regulations applicable to change of control and bankruptcy issues. Some of these parts are specific to one type of license, while others are general and will apply to many if not all licenses.

The current versions of these parts can be found under the "Basic References" link at the NRC's online library at <http://www.nrc.gov/reading-rm.html>; for viewing in a browser, the following list includes a direct link to the rules:

- [10 CFR Part 2](#), "Agency Rules of Practice and Procedure"
- [10 CFR Part 30](#), "Rules of General Applicability to Domestic Licensing of Byproduct Material"
- [10 CFR Part 31](#), "General Domestic Licenses for Byproduct Material"
- [10 CFR Part 40](#), "Domestic Licensing of Source Material"
- [10 CFR Part 70](#), "Domestic Licensing of Special Nuclear Material"
- [10 CFR Part 170](#), "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended"
- [10 CFR Part 171](#), "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC"

Copies of the above documents may be obtained by calling the Government Printing Office (GPO) order desk toll free at (866) 512-8600, or in Washington, DC, at (202) 512-1800, or online at <http://bookstore.gpo.gov>.

In addition, 10 CFR Parts 1 through 199 can be found on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/> under "Regulations (10 CFR)."

NRC regulations and amendments can also be accessed from the "NRC Library" link on the NRC's public Web site at <http://www.nrc.gov>. The NRC and all other Federal agencies publish amendments to their regulations in the *Federal Register*



## 5. CHANGE OF CONTROL

**Regulations:** 10 CFR Part 2, Subpart M; 10 CFR 30.34(b); 10 CFR 31.2; 10 CFR 40.46; 10 CFR 70.36

**Criteria:** The regulations require that “No license issued or granted pursuant to the regulations, 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.” Therefore, control of licenses cannot be transferred without the prior written consent of the Commission. These regulations apply to specific licensees, as well as certain general licensees.

This requires that licensees notify the Commission that they are undergoing a possible change of control. While this notification is not required within a certain time frame, NRC needs adequate time to review the response to ensure that the transfer is in accordance with the provisions of the AEA and the regulations in 10 CFR Part 2, Subpart M, which require that should there be a direct or indirect transfer of control, notice must be provided ). Once notified, NRC will ask that licensees submit the details of the transaction, as described in Sections 5.1 through 5.6. Following its review of the information provided by the licensee, the NRC will notify the licensee as to its determination and include an analysis describing the staff’s rationale for that determination including whether the licensee meets other regulatory requirements applicable to the activity subject to the license. This analysis must provide the basis for the staff’s determination, referencing relevant regulatory criteria and guidance documents where appropriate, include the potential impact of the transfer on public health and safety, and support the staff’s conclusion as to whether to consent to the transfer of control, including a finding that the transfer is in accordance with the AEA.

**Note:** In accordance with 10 CFR 2.1301, “Public notice of receipt of a license transfer application,” the NRC will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC website, [www.nrc.gov](http://www.nrc.gov). The NRC will also publish notice of receipt of an application for approval of license transfer for major fuel cycle facilities licensed under 10 CFR Part 70 in the *Federal Register*. In accordance with 10 CFR 2.1305, “Written comments,” persons may submit written comments regarding the license transfer application. The NRC will consider and, if appropriate, respond to comments. Comments should be submitted within 30 days after public notice of the receipt of the application. The NRC will not notify the licensee as to its determination whether the NRC approves of the change of control until after the 30 day comment period is closed. Licensees may not complete the change of control until the NRC has approved the application.

**Discussion:** Control over licensed activities can be construed as the authority to decide when and how that license (licensed material and/or activities) will be used. A change of ownership may be an example of a change of control, depending on whether the authority over the license has transferred from one person to another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the entity that has the right to exercise authority over the license has changed. Appendix D to this report provides examples of transactions that would and would not constitute changes of control.

In all cases, determining whether a change of control has taken place is the agency's responsibility and must be determined on a case-by-case basis. Whenever a change in ownership or control may occur, the licensee must inform the NRC.

It is not the intent of the NRC to interfere with the business decisions of licensees. The NRC's focus is on the health, safety, common defense, security, and environmental protection aspects, not solely on the financial intricacies of the proposed transaction. The NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place. The NRC is required by law to ensure that the public's health and safety and the common defense and security are not compromised; therefore the agency must be confident that when a licensee's program undergoes a change of control, all efforts are made to ensure that the radiation safety, security and environmental protection aspects of the program are not degraded.

**Response from the Licensee:**

[See Appendix F for information required for a request in change of control].

**5.1 Description of Transaction**

**Regulations:** 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

**Criteria:** Prior to approval of a change of control, the NRC requires a complete, clear description of the transaction.

**Discussion:** The required description includes, but is not limited to, any transfer of stocks or assets, or mergers. This description will enable the NRC staff to differentiate between name changes and changes of control, when necessary.

The licensee needs to include the new name of the licensed organization or state that the name has not changed. If applicable, the licensee should include the new licensee contact and telephone number(s) to facilitate communications. The licensee should also include a pre- and post-transaction organizational chart showing the corporate structure of the license holder and its parent companies, if any.

**Response from the Licensee:**

- Notification of a Change of Control
- Information described in Sections 5.1 through 5.6. (See also Appendices D, E and F)

**5.2 Changes of Personnel**

**Regulations:** 10 CFR 30.34(b); 10 CFR 37.23 (b) (2); 10 CFR 40.46; 10 CFR 70.36.

**Criteria:** Prior to approval of a change of control, the NRC requires that changes in personnel be documented, reviewed, and approved.

**Discussion:** Changes in personnel that need to be documented include those involving individuals who have control over licensed activities. These may include, in some cases, officers of a corporation or other management individuals who are listed on the license or are referred to in the supporting documentation. The licensee should also document any changes



in personnel such as the RSO, authorized users, reviewing official as described in 10 CFR 37.23(b)(2) or any other persons identified on the license or in the license application as having responsibility for radiation safety or as authorized to use licensed material. The phrase “changes of personnel,” as used in this report, does not include notifications of new authorized users made in accordance with 10 CFR 35.14, “Notifications.”

As with any change in personnel listed on a license, pertinent information with regard to training, experience and qualifications applicable to the type of use will be required. The licensee should include applicable information concerning the qualifications, training, and responsibilities of any new individuals not previously listed on the current license or who are referred to in the supporting documentation. Licensees can find the specific information required in the respective program-specific guidance for the type of operation in which a particular licensee is engaged, or by contacting the appropriate NRC Headquarters or regional license reviewer.

#### **Response from the Licensee:**

- training and experience of *new* individuals to be listed on the NRC license.

**Note:** Licensees or applicants should provide information about the training and experience of personnel relative to the licensed material requested in the application. Extraneous information, such as unrelated lists of publications, research grants, and committee and society memberships, should not be submitted. Licensees should also avoid providing personal identifiable information (PII) such as home addresses or telephone numbers, Social Security numbers, marital status, names of spouse and children, or age. Submittal of unrelated material serves only to slow the review process.

### **5.3 Changes of Location, Equipment, and Procedures**

**Regulations:** 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

**Criteria:** Prior to the approval of a change of control, the licensee must submit a complete description of any planned changes in location, facilities, equipment, or procedures.

**Discussion:** Provide a detailed description of any changes in the licensee’s location(s) of use, facility description, equipment, or procedures (i.e., changes in operating or emergency procedures) that would normally require a license amendment. Include any changes in organization that may not be identified in Section 5.2 above.

The location must be described if the licensee is adding a place of use. A description of the contaminated condition of the facility, if any, is required if the licensee is removing a place of use. Refer to Section 5.6 for a more detailed description of the information needed. Any changes in the facilities where licensed material will be used or stored must be described. If equipment used in licensed activities is required to be described by license condition or regulation, or if information regarding this equipment is requested by appropriate licensing guidance, a description of all equipment changes should be provided. Changes in procedures, including routine operating and emergency procedures must be reviewed to ensure that they are adequate for the types and uses described on the license. Changes in personnel that would require a license amendment, even without the change of ownership, must be submitted as requested in the appropriate licensing guidance.

**Response from the Licensee:**

- Describe changes in the organization that exercises control over the licensed program.
- Describe changes in place of use, including potentially affected adjacent areas, as required.
- Describe changes in facilities where licensed material is to be used or stored.
- Describe changes in equipment to be used in the licensed program.
- Submit relevant procedural changes.
- Describe changes in personnel, particularly those requiring a license amendment or notification regardless of the change of control.

**5.4 Surveillance Records**

**Regulations:** 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36.

**Criteria:** Prior to the approval of a change of control, licensees or applicants must submit a review of the status of all applicable surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer.

**Discussion:** Typical surveillance requirements include leak tests, physical inventories, ventilation measurements, and conductivity tests. Surveillance requirements specific to the types of use may be found in the license, the regulations, the appropriate volume in the NUREG-1556 series, or any other pertinent guidance published by the NRC. The licensee must review any and all pertinent surveillance records to determine if they are current and to ensure that the records will be current at the time of transfer, or include an explanation if this is not to be the case. The licensee may perform the surveillance as authorized by its license. The licensee may also choose to have surveillance items performed by another party such as a contractor or the transferee, as authorized by the license and if agreeable to both parties. It should be noted that the requirement for surveillance items in the regulations or the license is not waived due to a change of control.

**Response from the Licensee:**

- Submit a statement that all required surveillance has been performed, documented, and reviewed, including the results, if appropriate.
- If surveillance items are not or will not be completed, submit the reasons, any corrective actions, and/or the date these corrective actions will be completed to the NRC.

**5.5 Decommissioning and Related Records Transfers**

**Regulations:** 10 CFR 20.1401; 20.1402; 20.1501; 10 CFR 30.32(h),;30.34(b); 30.35(g); 30.51;10 CFR 40.36(f); 40.46; 10 CFR 70.25(g),and 70.36.

**Criteria:** Prior to the approval of a change of control, NRC regulations require that licensees arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. The NRC also requires a description of the status of the licensed facility with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC licensed activities. The parties must confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.

**Discussion:** Licensees are required to maintain certain records important to safe and effective decommissioning, including sealed source leak test results, evaluations concerning waste disposal by release as effluents (either air or water), release to sewers, incineration, disposal of liquid scintillation medium and animal tissue as if it were not radioactive, and disposal by methods specifically allowed through the license.

After the transfer, the new licensee will become responsible for maintaining these records until the license is terminated. If licensed activities will continue at the same location, the NRC requires confirmation that all the records of the evaluations mentioned above have been transferred to the new licensee. If the license will be terminated, these records must be forwarded to the appropriate NRC regional office.

No change of control or ownership or license termination will be authorized until all required records have been transferred to the new licensee or to the NRC, as appropriate.

These regulations require that before licenses are transferred or assigned, all records need to be transferred to the new licensee. The regulations require that all records of measurements and calculations used to evaluate the release of radioactive effluents to the environment and records of certain disposals be transferred to the new licensee before the license is transferred or assigned, unless the existing licensee was only authorized to possess and use unsealed material with a half-life of less than 120 days or material in a sealed source form with no history of source leakage.

The current licensee must document ambient radiation levels and the presence or absence of contamination. The documentation must include, as appropriate, the method and sensitivity of the evaluation. If contamination is present, the documentation should describe how and when decontamination will occur or indicate that the timing and means of decontamination and/or decommissioning have not yet been determined.

The current licensee must also discuss how the parties agree to assume responsibility for the decontamination and decommissioning of licensed facilities. Those licensees required under 10 CFR 30.35, 40.36, and/or 70.25 "Financial assurance and recordkeeping for decommissioning," to provide evidence of adequate resources to fund any required decommissioning must describe the effect that the change of control will have on financial assurance for decommissioning. As necessary, documents describing financial assurance must be amended to reflect the change in control. This documentation may refer to decontamination plans, including any required financial assurance arrangements of the transferor that were previously submitted in support of a decommissioning funding plan (DFP). If licensed activities will continue throughout the transfer process, the parties should agree as to whether a survey will be performed prior to the transfer to confirm the absence of contamination, or whether the transferee will agree to accept the facility "as is" on the date of transfer.

### **Response from the Licensee:**

- Describe the method and proposed timetable for the transfer of required records.
- Provide a commitment by the transferee to maintain the records received from the transferor.
- Provide a description of the facility with regard to contamination and ambient radiation levels.
- Describe any decontamination to prepare the facility for decommissioning prior to the change of control.
- If decommissioning will not occur until after the change of control, describe any contamination and confirm that the transferee is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements.
- Indication of whether operations will continue during the transfer process; if so, provide either an agreement to perform a survey confirming that the facility is free of contamination; OR agreement by the transferee to accept the facility “as is” on the date of transfer.

#### **Notes:**

- Licensees should contact NRC regional or Headquarters personnel to determine acceptable methods and criteria for decommissioning and releasing licensed facilities for unrestricted use. (See NUREG-1757, “Consolidated Decommissioning Guidance,” for guidance on decommissioning).
- The licensee or applicant should refer to Section 10.11 for a discussion of the records involved in the management and disposal of radioactive waste specific to their type of licensed program.

### **5.6 Transferee’s Commitment to Abide by the Transferor’s Commitments**

**Regulations:** 10 CFR 30.34(b); 30.39; 10 CFR 40.46; 10 CFR 70.36.

**Criteria:** The new licensee (transferee) must either: (1) commit to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license; or (2) provide a description of its own program to comply with the license and all applicable regulations.

**Discussion:** The transferee may agree to abide by all constraints, conditions, requirements, representations, and commitments previously made to the NRC by the transferor. This would include, but not be limited to, information submitted in support of license amendments (including documents itemized in the tie-down condition of the license) and the maintenance of decommissioning records required by 10 CFR Parts 30.35, 40.36 and 70.26. This would also include completion of corrective actions for open inspection items and enforcement actions and, if required, implementation of site decontamination and decommissioning activities.

Alternatively, the transferee may submit a description of its own program to ensure compliance with the license and regulations.

With regard to open inspection items and/or enforcement actions, the transferee should confirm, in writing, that it is knowledgeable of and accepts full responsibility for open inspection items and/or any resulting enforcement actions. Alternatively, the transferee may propose other measures for meeting these requirements, or the transferor may provide a commitment to close out all such actions with the NRC before license transfer.

**Information Required of the Licensee:**

- An agreement to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license (or) a description of the transferee's program to ensure compliance with the license and regulations;
- A description of action to be taken to resolve open inspection and enforcement issues.



## 6. BANKRUPTCY

**Regulations:** 10 CFR 30.34(h); 10 CFR 40.41(f); 10 CFR 70.32(a)(9).

**Criteria:** The licensee must notify the appropriate NRC Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by or against:

- A licensee;
- An entity controlling the licensee; or
- An affiliate of the licensee.

This notification must identify the bankruptcy court in which the petition was filed and the date of filing. Specific legal definitions of the terms “entity” and “affiliate” as used in this regulation appear in 11 U.S.C. 101(15) and in 11 U.S.C. 101(2), respectively.

**Discussion:** A licensee’s financial condition could affect its ability to control licensed material. Therefore, NRC must be notified so it can ensure that appropriate measures to protect the public health and safety have been or will be taken. These measures include the following:

- Maintaining security of licensed material and contaminated facilities;
- Ensuring that licensed material is transferred only to properly authorized NRC or Agreement State licensees;
- Ensuring that properly trained and experienced personnel are retained to implement appropriate radiation safety measures.

<p><b>Note:</b> Licensees who have filed for bankruptcy remain responsible for all regulatory requirements.</p>
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There are different types of bankruptcies described in Title 11 of the United States Code. Of these, the following two types most frequently involve the NRC:

- Chapter 7 is used primarily by individuals and by businesses who wish to free themselves from debt simply and inexpensively and involves liquidation. The debtor may enter Chapter 7 bankruptcy voluntarily, or be forced to enter it involuntarily by creditors. The creditors of a debtor, as well as the debtor, have the right under Chapter 11 to convert to a case under Chapter 7.
- Chapter 11 is generally used to reorganize a business; it allows the debtor to continue its business operations by a plan of reorganization in the hopes it can be returned to a viable state. As under Chapter 7, the debtor may enter Chapter 11 bankruptcy either voluntarily or involuntarily.

The filing of a petition in bankruptcy court triggers the automatic stay provision in Section 362(a) of the United States Bankruptcy Code. This provision stays legal actions against the debtor or against the property of the bankruptcy estate, except in certain limited circumstances that include public health, safety, and environmental obligations. (See *Midlantic National Bank v*

*New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) and *In re Chateaugay Corporation*, 944 F.2d 997 (2d Cir 1991).) Generally, once a petition for bankruptcy is filed, the assets of the debtor can be expended or distributed only with the supervision of the bankruptcy court and in accordance with statutory requirements and priorities.

Any owner of contaminated property transferred by the licensee before completion of decommissioning must comply with all applicable NRC requirements, including obtaining an NRC license and completing decommissioning. Additionally, a reorganized entity emerging from Chapter 11 bankruptcy is required to receive the written approval of the NRC prior to its assumption of control over licensed activities.

**Note:** NRC licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by the NRC.

- Appendix H to this report describes the NRC procedures for reviewing bankruptcy actions. These procedures ensure that bankruptcy cases are managed in a fully coordinated manner with all involved NRC staff.

**Response from Licensee or Applicant:** A licensee (or an entity controlling the licensee, or an affiliate of the licensee) must immediately notify the appropriate NRC Regional Administrator, in writing, of the following:

- Bankruptcy court in which the petition was filed;
- Date that the petition was filed.

Licensees are also requested to also provide the information described in Appendix G to this report, by fax, e-mail, or first class mail. If submitting information by e-mail, this should be a portable document format (pdf) file containing a formal document, such as a signed and dated company letter.

**Notes:**

- The requirements in these regulations apply to a bankruptcy proceeding for or against the licensee itself, an entity controlling the licensee, an entity listing the licensee as a property of the estate, or an affiliate of the licensee. For example, Company A owns Company B, and Company B is an NRC licensee. Company A files to reorganize under Chapter 11 of the bankruptcy law. Company B must notify the NRC immediately after such a filing.
- Licensees (or entities controlling a licensee, or affiliates of the licensee) may contact the appropriate NRC regional or Headquarters office for further information or guidance.
- Specific licensees and general licensees who registered pursuant to 10 CFR 31.5(c)(13)(i) should carefully review the change of control requirements described in Appendix B to this report. In some cases, the transfer of these generally licensed materials is subject to the requirement to obtain prior NRC approval to any change of control that may result from a bankruptcy proceeding.



## 7. HOW TO FILE

### 7.1 Paper Application

Licensees requesting amendment of a current license and persons applying for a new materials license as the result of a change of control or bankruptcy should do the following:

- Use the most recent guidance in preparing an application.
- Complete NRC Form 313 (Appendix A) Items 1 through 4, 12, and 13, on the form itself.
- Complete NRC Form 313, Items 5 through 11, on supplementary pages.
- Provide sufficient detail for the NRC to determine that equipment, facilities, training, experience, and the radiation safety program are adequate to protect health and safety and minimize danger to life and property.
- For each separate sheet other than NRC Form 313 submitted with the application, identify and key it to the item number on the application or the topic to which it refers.
- Submit all documents on 8-1/2x11-inch paper.
- Avoid submitting proprietary information and personally identifiable information.
- If submitted, proprietary information and other sensitive information (e.g., personal privacy and security related) should be clearly identified per 10 CFR 2.390, "Public inspections, exemptions, requests for withholding" (see Chapter 13, "Identifying and Protecting Sensitive Information").
- Submit an original, signed application.
- Retain one copy of the license application for future reference.

Applications must be signed by the applicant, licensee, or a person duly authorized as required by 10 CFR 30.32(c) (as well as similar provisions of 10 CFR Part 40 and 10 CFR Part 70); see Section 10.13 "Certification."
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Subparts C and M of 10 CFR Part 2 contains specific information about requests and procedures for conducting hearings on any application for the direct or indirect transfer of control of an NRC license that requires prior approval of the NRC under the Commission's regulations or governing statutes or pursuant to a license condition. These subparts provide the only mechanisms for requesting hearings on license transfer requests, unless the Commission issues case-specific orders to the contrary.

### 7.2 Transfer to Electronic Format

Paper applications received by the NRC are scanned through an optical character reader and converted to an electronic format. To ensure a smooth transfer to an electronic format, applicants should do the following:

- Submit printed or typewritten—not handwritten—text on smooth, crisp paper that will feed easily into the scanner.
- Choose typeface designs that are sans serif, such as Arial, Helvetica, or Futura (the text of this document is in the Arial font).
- Use 12-point or larger font.
- Avoid stylized characters, such as script or italics.
- Ensure that the print is clear and sharp.
- Ensure that there is high contrast between the ink and paper (black ink on white paper is best).

The NRC will provide additional instructions as the agency implements new mechanisms for electronic license application filing.

## 8. WHERE TO FILE

Licensees, applicants, or others applying for a new license or an amendment as a result of a change in control or bankruptcy within NRC jurisdiction must file an application with the NRC regional office for the locale in which the material will be possessed or used. (See Appendix E for a listing of recommended licensing actions for different transactions)

Figure 2.1 identifies the NRC's four regional offices, and their respective areas for licensing purposes, and the Agreement States. Note that all materials applications are submitted to Regions I, III, or IV. All applicants for materials licenses located in the Region II geographical area should send their applications to Region I.

In general, applicants wishing to possess or use licensed material in Agreement States must file an application with the Agreement State and not with the NRC. However, if work will be conducted at federally controlled sites or federally recognized Indian Tribal lands, in Agreement States, applicants must first determine the jurisdictional status of the land in order to determine whether the NRC or the Agreement State has regulatory authority. See Chapter 2 for additional information.



## 9. LICENSE FEES

The NRC does not impose fees for review of notification of change of control or of bankruptcy. However, the NRC will assess a fee if a new license is required based on a review of the information provided. Appendix E to this report lists the different transactions and resulting licensing actions that may be needed.

Each application for which a fee is specified must be accompanied by the appropriate fee. Refer to 10 CFR 170.31, "Schedules of fees for materials licenses and other regulatory services, including inspections, and import and export licenses," to determine the amount of the fee. The NRC will not issue a license until the fee is received. Consult 10 CFR 170.11, "Exemptions," for information on exemptions from these fees. Once the technical review has begun, no fees will be refunded; application fees will be charged regardless of the NRC's disposition of an application or the withdrawal of an application.

Most NRC licensees are also subject to annual fees; refer to 10 CFR 171.16, "Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC." Consult 10 CFR 171.11 for information on exemptions from annual fees and 10 CFR 171.16(c) on reduced annual fees for licensees that qualify as "small entities."

Direct all questions about the NRC's fees or completion of Item 12 of NRC Form 313 to the Office of the Chief Financial Officer at NRC Headquarters in Rockville, MD, (301) 415-7554. Information about fees may also be obtained by calling NRC's toll free number, (800) 368-5642, extension 415-7554. The e-mail address is [Fees.Resource@nrc.gov](mailto:Fees.Resource@nrc.gov).



## 10. CONTENTS OF AN APPLICATION

As noted elsewhere in this report, changes of control or bankruptcies that result in changes in the licensee's radiation safety program generally will require that the license be amended. The following comments apply to the indicated items on NRC Form 313 (Appendix A). Persons are required to use NRC Form 313 in applying for a new or amended license under 10 CFR Parts 30, 40 or 70. Not all amendment actions will require that each item on NRC Form 313 be addressed. Applications for amendment of current licenses should address only the changes necessary to reflect changes in control.

All information submitted to the NRC during the licensing process may be incorporated as part of the license and will be subject to review during inspection.

### 10.1 Item 1: License Action Type

For those situations where a change in control will result in the need to amend or apply for a new license, indicate whether the following: (Appendix E to this report lists recommended licensing actions for different transactions.)

This is an application for (check appropriate item):

Type of Action	License No.
<input type="checkbox"/> A. New License	Not Applicable
<input type="checkbox"/> B. Amendment	XX-XXXXXX-XX
<input type="checkbox"/> C. Renewal	XX-XXXXXX-XX

Check box A for a new license request. Note that a pre-licensing visit may be required prior to issuance of the license. Also note that an initial security inspection may be conducted in accordance with NRC Inspection Manual Chapter 2800, "Materials Inspection Program," before issuance of the license.

Check box B for an amendment to an existing license, and provide license number.

Check box C for a renewal of an existing license, and provide license number.

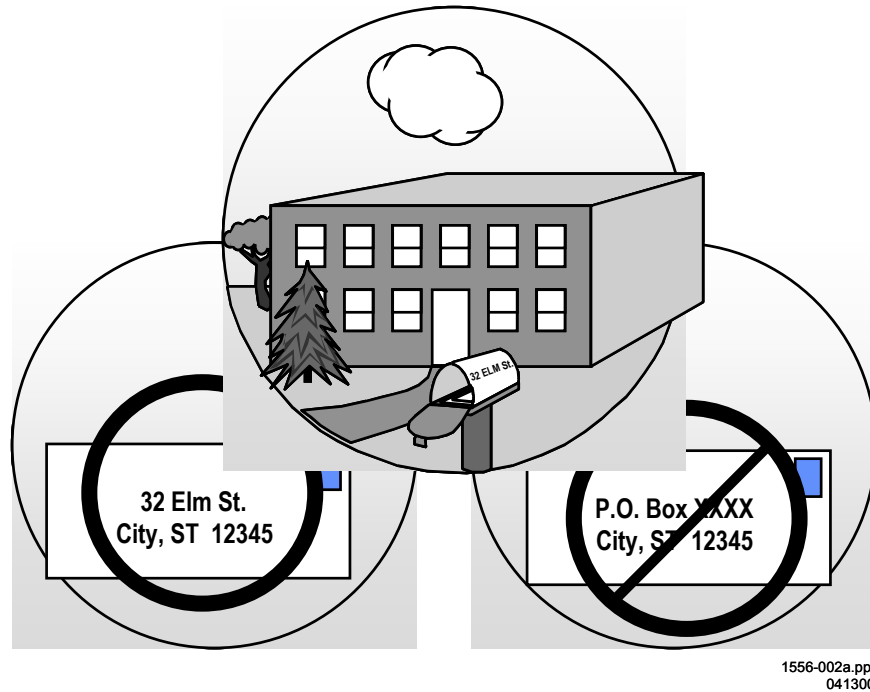
### 10.2 Item 2: Applicant's Name and Mailing Address

List the legal name of the applicant's corporation or other legal entity with direct control over the licensed activity; a division or department within a legal entity may generally not be a licensee. An individual may be designated as the applicant or licensee only if the individual is acting in a private capacity and the use of the radioactive material is not connected with employment in a corporation or other legal entity. Provide the mailing address where correspondence should be sent. A post office box number is an acceptable mailing address.

Notify the NRC of changes in mailing address; these changes do not require a fee.

### 10.3 Item 3: Address(es) Where Licensed Material Will Be Used or Possessed

Specify the street address, city, and State or other descriptive address (e.g., on Highway 10, 5 miles east of the intersection of Highway 10 and State Route 234, Anytown, State) for each facility. The descriptive address should be sufficient to allow an NRC inspector to find the facility location. A post office box address is not acceptable (see Figure 10.1). In addition, applicants are encouraged to provide global positioning system coordinates, as appropriate



**Figure 10.1 Location of use**

*An acceptable location of use specifies street address, city, State, and ZIP code and does not include a post office box number.*

An NRC license does not relieve a licensee from complying with other applicable Federal, State, or local regulations (e.g., local zoning requirements).

It should be noted that if a current licensee merges with another licensee and becomes a multi-site licensee or if a current multi-site licensee increases the number of authorized places of use on the subsequent license, consideration must be given to maintaining safe operations and providing adequate oversight.

**Notes:** As discussed in Section 5.5, "Decommissioning and Related Records Transfers." licensees must maintain permanent records describing where licensed material was used or stored while the license was in effect. This is important for making future determinations about the release of these locations for unrestricted use (e.g., before the license is terminated). Licensees who increase the authorized quantities of licensed materials possessed under a



license as the result of a change of control (such as merger, acquisition of assets, or bankruptcy-related reorganization) must evaluate, and modify if needed, the amount of funding needed to ensure the safe and effective decommissioning of licensed activities.

#### **10.4 Item 4: Person To Be Contacted About This Application**

Identify the individual who can answer questions about the application, and include a telephone number where the individual may be contacted. Also include business cell phone numbers and e-mail addresses. This individual, usually the RSO will serve as the point of contact during the review of the application. If this individual is not a full-time employee of the licensed entity, his or her position and relationship to the licensee should be specified. The NRC should be notified if the person assigned to this function changes or if his or her telephone number, cell phone number, or e-mail address changes. Notification of a contact change is only in order to provide information and would not be considered an application for license amendment, unless the notification involves a change in the contact person who is also the RSO.

As indicated on NRC Form 313 (Appendix A), Items 5 through 11 should be submitted on separate sheets of paper. Applicants should note that using the suggested wording of responses and committing to use the model procedures in this report and in the various appropriate volumes in the NUREG-1556 series will facilitate the NRC's review.

#### **10.5 Item 5: Radioactive Material**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** The NRC will approve an application for a new or amended license authorizing the possession of byproduct, source and/or special nuclear material if the appropriate regulatory requirements are met.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted for the licensed materials to be possessed.

**Response from Applicant:** Licensees should submit the information on licensed materials to be possessed as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes in types, forms, and quantities of licensed materials to be possessed. It is also helpful to indicate what authorized materials will remain unchanged.

##### **10.5.1 Unsealed or Sealed Byproduct Material**

**Regulations:** 10 CFR 30.32(g) and (h); 10 CFR 30.33(a)(2), 30.35; 10 CFR 32.210, 10 CFR 34.13(k), 10 CFR 40.31(i); 10 CFR 40.36; 10 CFR 70.22(a)(9); 10 CFR 70.25.

**Criteria:** A licensee authorized to possess sufficient licensed material to require financial assurance in accordance with 10 CFR 30.35, 10 CFR 40.36, or 10 CFR 70.25 must submit a Decommissioning Funding Plan (DFP) and/or provide a certification of financial assurance for

decommissioning (F/A). Licensees must maintain records important to decommissioning of the facility in an identified location until the site, or any area, is released for unrestricted use. Licensees must transfer these records either to the new licensee when licensed activities are transferred or assigned, or to the appropriate NRC regional office when the license is terminated.

**Discussion:** Licensees who increase the authorized quantities of licensed materials possessed under a license as the result of a change of control (such as merger, acquisition of assets, or bankruptcy-related reorganization) must evaluate, and modify if needed, the amount of funding available to ensure the safe and effective decommissioning of licensed activities. Decommissioning should be carried out with minimum impact on public and occupational health and safety and the environment. There are two applicable sets of requirements: (1) financial assurance, which applies to some licensees, and (2) recordkeeping, which applies to all licensees.

NRC regulations requiring an F/A or a DFP are designed to provide reasonable assurance that the decommissioning of licensed facilities will be accomplished in a safe and timely manner and that licensees will provide adequate funds to cover all costs associated with decommissioning. These requirements, if applicable, specify that a licensee either set aside funds for decommissioning activities or provide a guarantee, through a third party, that funds will be available. Applicants are required to submit an F/A or a DFP when the authorization to possess radioactive material with half-lives ( $t_{1/2}$ ) greater than 120 days exceeds certain limits. Criteria for determining whether an applicant is required to submit a DFP or has an option of submitting either a DFP or an F/A appear in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25.

Criteria relating to the use of self-guarantees or parent company guarantees can be found in Appendices A, C, D, and E to 10 CFR Part 30.

Volume 3, "Financial Assurance, Recordkeeping, and Timeliness," of NUREG-1757, "Consolidated Decommissioning Guidance," provides guidance acceptable to the NRC staff on the information to be submitted for establishing financial assurance for decommissioning.

The requirements for maintaining records important to decommissioning, including the type of information required, appear in 10 CFR 30.35(g), 10 CFR 40.36(f), and 10 CFR 70.25(g). All licensees are required to maintain these records in an identified location until the site is released for unrestricted use. In the event that control over licensed activities is transferred to another person, these records shall be transferred to the new licensee upon the transfer of control. The new licensee is responsible for maintaining these records until the license is terminated. When the license is terminated, these records must be transferred to the NRC.

Careful recordkeeping of radionuclides used, including form, amount, and areas where used, will facilitate area release and license termination.

Section 5.5, " <u>Decommissioning and Related Records Transfers</u> ," contains additional information about keeping and transferring records that are important to safe and effective decommissioning.
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**Response from Licensees or Applicants:** State the following: "Pursuant to 10 CFR 30.35(g), we shall maintain drawings and records important to decommissioning and

transfer these records to an NRC or Agreement State licensee before licensed activities are transferred, or assign the records to the appropriate NRC regional office before the license is terminated.”

- State the following “Pursuant to 10 CFR 30.35, 10 CFR 40.36, or 10 CFR 70.25 we shall transfer records important to decommissioning to the new licensee before licensed activities are transferred or assigned. Furthermore, pursuant to 10 CFR 30.51(f), 10 CFR 40.61(f), or 10 CFR 70.51(a)(3) prior to license termination, we shall forward the records required by 10 CFR 30.35(g), 10 CFR 40.36(f), or 10 CFR 70.25(g) to the appropriate NRC regional office. ”

**AND**

- If financial assurance is required, submit evidence of financial assurance following the guidance of NUREG-1757, Volume 3.

### **10.6 Item 6: Purpose(s) for Which Licensed Material Will Be Used**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted concerning the authorized uses of licensed materials.

**Response from Applicant:** Licensees should submit the information on authorized uses of licensed materials specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to authorized use of licensed materials. It is also helpful to indicate what authorized uses will remain unchanged.

### **10.7 Item 7: Individual(s) Responsible for Radiation Safety Program and Their Training and Experience**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the individuals responsible for the radiation safety program and their training and experience.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted concerning the identity, as well

as the training and experience, of the individuals responsible for the radiation safety program. Generally, these individuals include the RSO and any authorized users who will be named on the license. It is NRC licensing policy to name an RSO on all NRC materials licenses.

**Response from Applicant:** Licensees should submit the information on the individuals responsible for the radiation safety program as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Licensees should particularly focus on whether a change of control or bankruptcy will result in changes in the personnel responsible for the radiation safety program. Licensees must specify who is to be named on the license as the RSO. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the personnel responsible for the radiation safety program. It is also helpful to indicate what personnel with radiation safety oversight components of the radiation safety program will remain unchanged.

### **10.8 Item 8: Training for Individuals Working in or Frequenting Restricted Areas (Instructions to Occupationally Exposed Workers and Ancillary Personnel)**

**Regulations:** 10 CFR Part 19; 10 CFR Part 20; 10 CFR Part 30; 10 CFR Part 33; 10 CFR Part 34; 10 CFR Part 35; 10 CFR Part 36; 10 CFR Part 39; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the training of individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted about the training for individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas.

**Response from Applicant:** Licensees should submit information on the training for individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas as specified in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety training program. It is also helpful to indicate what components of the radiation safety training program will remain unchanged.

### **10.9 Item 9: Facilities and Equipment**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee (or applicant) has facilities and equipment that are adequate to protect health and to minimize danger to life or property.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted concerning the facilities and equipment needed to ensure the safe storage and use of licensed materials.

**Response from Applicant:** Licensees should submit information demonstrating that adequate facilities and equipment are available for licensed activities as specified in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing facilities. It is also helpful to indicate what components of the existing facilities will remain unchanged.

### **10.10 Item 10: Radiation Safety Program**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee's (or applicant's) radiation safety program is adequate to protect health and minimize danger to life or property.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted on the specific aspects of the radiation safety program to demonstrate that the program will be adequate to ensure the safe receipt, storage, use, transfer, and disposal of licensed materials.

Generally, all licensees or applicants should include detailed descriptions of the following components of their radiation safety program. However, this list is generic, and some licensees may need to address additional aspects of their radiation safety program while others may not need to include information about all of the following items:

- A description of the audit program used to review at least annually the content and implementation of the radiation protection programs to ensure the following:
  - compliance with NRC regulations (as applicable) and the terms and conditions of the license;
  - that occupational doses and doses to members of the public are as low as reasonably achievable (ALARA) (10 CFR 20.1101, "Radiation protection programs"); and
  - that records of audits and other reviews of program content are maintained for 3 years
- A description of the radiation monitoring equipment available for making required surveys and the program to keep that equipment properly calibrated.
- A description of the procedures used to safely receive and maintain sufficient accountability of licensed materials.

- A description of the program for monitoring the radiation dose of individuals who are occupationally exposed as the result of licensed activities.
- A description of the program for ensuring that doses to members of the general public as the result of licensed activities do not exceed regulatory limits and are ALARA.
- A description of normal and emergency operating procedures.
- A description of the procedures for leak testing any sealed sources authorized on the license.
- A description of the procedures for maintaining equipment containing licensed materials and radiation safety-related equipment.
- A description of the procedures for safely packaging and transporting licensed materials.
- Descriptions of the facility design and procedures for operating to minimize contamination of the facility and the environment; to facilitate eventual decommissioning; and to minimize, to the extent practicable, the generation of radioactive waste.

**Response from Applicant:** Licensees should submit information describing a radiation safety program that is appropriate and adequate for the proposed licensed activities as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety program. It is also helpful to indicate what components of the radiation safety program will remain unchanged.

### **10.11 Item 11: Waste Management**

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** An application for a new or amended license authorizing the use of byproduct, source and/or special nuclear material will be approved if the appropriate regulatory requirements are met. The licensee (or applicant) must demonstrate that it has procedures and equipment to safely dispose of licensed materials in accordance with NRC requirements and to maintain appropriate records of these disposals.

**Discussion:** Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG-1556 series or other appropriate guidance documents to determine what information should be submitted concerning the facilities, equipment, and procedures needed for the safe disposal of licensed materials, or they should contact the appropriate NRC Headquarters or regional office for guidance or information. Licensees should ensure that any transfer of control or bankruptcy does not adversely impact the waste management program.

Applicants or licensees may request alternate methods not specifically described in the regulations for the disposal of radioactive waste generated at their facilities. Such requests must describe the waste containing licensed material, including the physical and chemical properties that may be important to assess risks associated with the waste, and the proposed

manner and conditions of waste disposal. Additionally, the applicant must submit its analysis and evaluation of pertinent information on the nature of the environment, nature and location of other affected facilities, and procedures to ensure that radiation doses are maintained ALARA and within regulatory limits.

**Response from Applicant:** Licensees or applicants should submit the information about their equipment and procedures (including the maintenance of required records) for the safe disposal of licensed materials as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to their existing radioactive waste management program. It is also helpful to indicate what components of the radioactive waste management program will remain unchanged.

The next two items on NRC Form 313 should be completed on the form itself.
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### **10.12 Item 12: Fees**

On NRC Form 313, enter the appropriate fee category from 10 CFR 170.31 and the amount of the fee enclosed with the application.

Direct all questions about the NRC's fees or the completion of Item 12 of NRC Form 313 to the Office of the Chief Financial Officer at NRC Headquarters in Rockville, MD, (301) 415-7554. Information about fees may also be obtained by calling the NRC's toll-free number, (800) 368-5642, extension 415-7554. The e-mail address for fees questions is [Fees.Resource@nrc.gov](mailto:Fees.Resource@nrc.gov).

### **10.13 Item 13: Certification**

A representative of the corporation or legal entity filing the application should sign and date NRC Form 313. The representative signing the application must be authorized to make binding commitments and to sign official documents on behalf of the applicant. As discussed previously in Chapter 3, "Management Responsibility," signing the application acknowledges management's commitment to and responsibility for the radiation protection program. The NRC will return all unsigned applications for proper signature.

#### **Notes:**

- It is a criminal offense to make a willful false statement or representation on an application or correspondence (18 U.S.C. 1001).
- When the application references commitments, those commitments become part of the license conditions and regulatory requirements.





## 11. APPLICATIONS FOR EXEMPTIONS

**Regulations:** 10 CFR 19.31, 10 CFR 20.2301, 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17

**Criteria:** Licensees may request exemptions to regulations. The licensee must demonstrate that the exemption is authorized by law; will not endanger life, property, or the common defense and security; and is otherwise in the public interest.

**Discussion:** Various sections of NRC's regulations address requests for exemptions (e.g., 10 CFR 19.31, "Application for exemptions"; 10 CFR 20.2301, "Applications for exemptions"; 10 CFR 30.11, "Specific exemptions", 10 CFR 40.14, "Specific exemptions," 10 CFR 70.17, "Specific exemptions"). These regulations state that the NRC may grant an exemption, acting on its own initiative or on an application from an interested person

Exemptions are not intended to revise regulations or to apply to large classes of licensees and are generally limited to unique situations. Exemption requests must be accompanied by descriptions of the following:

- Exemption requested, and justification for the requested exemption.
- Proposed compensatory safety measures intended to provide a level of health and safety equivalent to the regulation for which the exemption is being requested.
- Alternative methods for complying with the regulation and an explanation as to why compliance with the existing regulation is not feasible.

Until the NRC has granted an exemption in writing, licensees must comply with all applicable regulations.
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## 12. TERMINATION OF ACTIVITIES

**Regulations:** 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70.

**Criteria:** The licensee must do the following:

- Notify the NRC, in writing, within 60 days of the occurrence of any of the following:
  - Expiration of its license.
  - A decision to permanently cease licensed activities at the entire site.
  - For licensees subject to CFR 30.36, a decision to permanently cease licensed activities in any separate building or outdoor area that contains residual radioactivity such that the building or area is unsuitable for release in accordance with NRC requirements.
  - For licensees subject to 10 CFR 40.42 or 10 CFR 70.38, a decision to permanently cease licensed activities in any separate building or outdoor area.
  - No principal activities under the license have been conducted for a period of 24 months.
  - No principal activities having been conducted for a period of 24 months in any separate building or outdoor area, if it contains residual radioactivity making it unsuitable for release in accordance with NRC requirements.
- Submit a decommissioning plan, if required by 10 CFR 30.36(g) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70).
- Conduct decommissioning, as required by 10 CFR 30.36(h) and 10 CFR 30.36(j) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70).
- Submit, to the appropriate NRC regional office, completed NRC Form 314, “Certificate of Disposition of Materials” (or equivalent information), and a demonstration that the premises are suitable for release for unrestricted use (e.g., results of final survey).
- Before a license is terminated, send the records required by 10 CFR 30.51(f) to the appropriate NRC regional office. If licensed activities are transferred or assigned in accordance with 10 CFR 30.34(b) (or similar provisions of 10 CFR Part 40 and 10 CFR Part 70), transfer records important to decommissioning to the new licensee in accordance with 10 CFR 30.35(g).

**Discussion:** Before a licensee can decide whether it must notify the NRC under 10 CFR 30.36(d), the licensee must determine whether residual radioactivity is present and, if so, whether the levels make the building or outdoor area unsuitable for release, according to NRC requirements. A licensee’s determination that a facility is not contaminated is subject to verification by NRC inspection.

For guidance on the disposition of licensed material, see Section 10.11, “Waste Management.” For guidance on decommissioning records, see Section 5.5, “Decommissioning and Related”

Records Transfers.” For guidance on financial assurance records, see Section 10.5.1, “Unsealed or Sealed Byproduct Material.”

**Response from Applicant:** The applicant is not required to submit a response to the NRC during the initial application. The licensee’s obligations in this matter begin when the license expires or at the time the licensee ceases operations, whichever is earlier. These obligations are to undertake the necessary decommissioning activities, to submit NRC Form 314 or equivalent information, and to perform any other actions as summarized in the “Criteria” above.

**Reference:** NRC Form 314, “Certificate of Disposition of Materials,” is available at <http://www.nrc.gov/reading-rm/doc-collections/forms>.

### 13. IDENTIFYING AND PROTECTING SENSITIVE INFORMATION

All licensing applications, except for portions containing sensitive information, will be made available for review in the NRC's Public Document Room and electronically at the NRC Library. For more information on the NRC Library, visit <http://www.nrc.gov>.

The licensee should identify, mark, and protect sensitive information against unauthorized disclosure to the public. Licensing applications that contain sensitive information should be marked as indicated below in accordance with 10 CFR 2.390 before the information is submitted to the NRC. Key examples are as follows:

- **Proprietary Information and Trade Secrets:** If it is necessary to submit proprietary information or trade secrets, follow the procedure in 10 CFR 2.390(b). Failure to follow this procedure could result in disclosure of the proprietary information to the public or substantial delays in processing the application.
- **Personally Identifiable Information:** Personally identifiable information (PII) about employees or other individuals should not be submitted unless specifically requested by the NRC. Examples of PII are social security number, home address, home telephone number, date of birth, and radiation dose information. If PII is submitted, a cover letter should clearly state that the attached documents contain PII and the top of every page of a document that contains PII should be clearly marked as follows: "Privacy Act Information—Withhold Under 10 CFR 2.390." For further information, see Regulatory Issue Summary (RIS) 2007-04, "Personally Identifiable Information Submitted to the U.S. Nuclear Regulatory Commission," dated March 9, 2007, which can be found on the NRC's Generic Communications webpage under "Regulatory Issue Summaries": <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>.
- **Security-Related Information:** Following the events of September 11, 2001, the NRC changed its procedures to avoid release of information that terrorists could use to plan or execute an attack against facilities or citizens in the United States. As a result, certain types of information are no longer routinely released and are treated as sensitive unclassified information. For example, certain information about the quantities and locations of radioactive material at licensed facilities, and associated security measures, are no longer released to the public. Therefore, a cover letter should clearly state that the attached documents contain sensitive security-related information and the top of every page of a document that contains such information should be clearly marked: "Security Related Information—Withhold under 10 CFR 2.390." For the pages having security-related sensitive information, an additional marking should be included (e.g. an editorial note box) adjacent to that material. For further information, see RIS 2005-31, "Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material," dated December 22, 2005, which can be found on the NRC's Generic Communications webpage under "Regulatory Issue Summaries": <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>. Additional information on procedures and any updates is available at <http://www.nrc.gov/reading-rm/sensitive-info.html>.



**APPENDIX A**

**U.S. NUCLEAR REGULATORY COMMISSION FORM 313**





**APPENDIX A U.S. NUCLEAR REGULATORY COMMISSION FORM 313**  
 Please use the most current version of this form, which may be found at:  
<http://www.nrc.gov/reading-rm/doc-collections/forms/>

NRC FORM 313 (03-2014) 10 CFR 30, 32, 33, 34 35, 36, 37, 39, and 40	U.S. NUCLEAR REGULATORY COMMISSION  <b>APPLICATION FOR MATERIALS LICENSE</b>	APPROVED BY OMB: NO. 3150-0120 EXPIRES: 05/31/2015 Estimated burden per response to comply with this mandatory collection request: 4.3 hours. Submittal of the application is necessary to determine that the applicant is qualified and that adequate procedures exist to protect the public health and safety. Send comments regarding burden estimate to the FOIA, Privacy, and Information Collections Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by internet e-mail to <a href="mailto:Infocollections.Resource@nrc.gov">Infocollections.Resource@nrc.gov</a> , and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0120), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.				
<b>INSTRUCTIONS: SEE THE APPROPRIATE LICENSE APPLICATION GUIDE FOR DETAILED INSTRUCTIONS FOR COMPLETING APPLICATION. SEND TWO COPIES OF THE ENTIRE COMPLETED APPLICATION TO THE NRC OFFICE SPECIFIED BELOW. *AMENDMENTS/RENEWALS THAT INCREASE THE SCOPE OF THE EXISTING LICENSE TO A NEW OR HIGHER FEE CATEGORY WILL REQUIRE A FEE.</b>						
APPLICATION FOR DISTRIBUTION OF EXEMPT PRODUCTS FILE APPLICATIONS WITH:  OFFICE OF FEDERAL & STATE MATERIALS AND ENVIRONMENTAL MANAGEMENT PROGRAMS DIVISION OF MATERIALS SAFETY AND STATE AGREEMENTS U.S. NUCLEAR REGULATORY COMMISSION WASHINGTON, DC 20555-0001  ALL OTHER PERSONS FILE APPLICATIONS AS FOLLOWS: IF YOU ARE LOCATED IN:  ALABAMA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, PENNSYLVANIA, PUERTO RICO, RHODE ISLAND, SOUTH CAROLINA, TENNESSEE, VERMONT, VIRGINIA, VIRGIN ISLANDS, OR WEST VIRGINIA,  SEND APPLICATIONS TO:  LICENSING ASSISTANCE TEAM DIVISION OF NUCLEAR MATERIALS SAFETY U.S. NUCLEAR REGULATORY COMMISSION, REGION I 2100 RENAISSANCE BOULEVARD, SUITE 100 KING OF PRUSSIA, PA 19406-2713	IF YOU ARE LOCATED IN:  ILLINOIS, INDIANA, IOWA, MICHIGAN, MINNESOTA, MISSOURI, OHIO, OR WISCONSIN, SEND APPLICATIONS TO:  MATERIALS LICENSING BRANCH U.S. NUCLEAR REGULATORY COMMISSION, REGION III 2443 WARRENVILLE ROAD, SUITE 210 LISLE, IL 60532-4352  ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, HAWAII, IDAHO, KANSAS, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, PACIFIC TRUST TERRITORIES, SOUTH DAKOTA, TEXAS, UTAH, WASHINGTON, OR WYOMING,  SEND APPLICATIONS TO:  NUCLEAR MATERIALS LICENSING BRANCH U.S. NUCLEAR REGULATORY COMMISSION, REGION IV 1600 E. LAMAR BOULEVARD ARLINGTON, TX 76011-4511					
<b>PERSONS LOCATED IN AGREEMENT STATES SEND APPLICATIONS TO THE U.S. NUCLEAR REGULATORY COMMISSION ONLY IF THEY WISH TO POSSESS AND USE LICENSED MATERIAL IN STATES SUBJECT TO U.S. NUCLEAR REGULATORY COMMISSION JURISDICTIONS.</b>						
1. THIS IS AN APPLICATION FOR (Check appropriate item)  <input type="checkbox"/> A. NEW LICENSE  <input type="checkbox"/> B. AMENDMENT TO LICENSE NUMBER _____  <input type="checkbox"/> C. RENEWAL OF LICENSE NUMBER _____	2. NAME AND MAILING ADDRESS OF APPLICANT (Include ZIP code)					
3. ADDRESS WHERE LICENSED MATERIAL WILL BE USED OR POSSESSED	4. NAME OF PERSON TO BE CONTACTED ABOUT THIS APPLICATION  <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%;">BUSINESS TELEPHONE NUMBER</td> <td style="width:50%;">BUSINESS CELLULAR TELEPHONE NUMBER</td> </tr> <tr> <td colspan="2">BUSINESS EMAIL ADDRESS</td> </tr> </table>		BUSINESS TELEPHONE NUMBER	BUSINESS CELLULAR TELEPHONE NUMBER	BUSINESS EMAIL ADDRESS	
BUSINESS TELEPHONE NUMBER	BUSINESS CELLULAR TELEPHONE NUMBER					
BUSINESS EMAIL ADDRESS						
SUBMIT ITEMS 5 THROUGH 11 ON 8-1/2 X 11" PAPER. THE TYPE AND SCOPE OF INFORMATION TO BE PROVIDED IS DESCRIBED IN THE LICENSE APPLICATION GUIDE.						
5. RADIOACTIVE MATERIAL a. Element and mass number; b. chemical and/or physical form; and c. maximum amount which will be possessed at any one time.	6. PURPOSE(S) FOR WHICH LICENSED MATERIAL WILL BE USED.					
8. TRAINING FOR INDIVIDUALS WORKING IN OR FREQUENTING RESTRICTED AREAS.	7. INDIVIDUAL(S) RESPONSIBLE FOR RADIATION SAFETY PROGRAM AND THEIR TRAINING EXPERIENCE.					
10. RADIATION SAFETY PROGRAM.	9. FACILITIES AND EQUIPMENT.					
12. LICENSE FEES (Fees required only for new applications, with few exceptions*) (See 10 CFR 170 and Section 170.31)	11. WASTE MANAGEMENT.					
FEE CATEGORY <input type="text"/> AMOUNT ENCLOSED \$ <input type="text"/>						
13. CERTIFICATION. (Must be completed by applicant) THE APPLICANT UNDERSTANDS THAT ALL STATEMENTS AND REPRESENTATIONS MADE IN THIS APPLICATION ARE BINDING UPON THE APPLICANT.  THE APPLICANT AND ANY OFFICIAL EXECUTING THIS CERTIFICATION ON BEHALF OF THE APPLICANT, NAMED IN ITEM 2, CERTIFY THAT THIS APPLICATION IS PREPARED IN CONFORMITY WITH TITLE 10, CODE OF FEDERAL REGULATIONS, PARTS 30, 32, 33, 34, 35, 36, 37, 39, AND 40, AND THAT ALL INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF. WARNING: 18 U.S.C. SECTION 1001 ACT OF JUNE 25, 1948 62 STAT. 749 MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION.						
CERTIFYING OFFICER -- TYPED/PRINTED NAME AND TITLE	SIGNATURE	DATE				
<b>FOR NRC USE ONLY</b>						
TYPE OF FEE	FEE LOG	FEE CATEGORY	AMOUNT RECEIVED	CHECK NUMBER	COMMENTS	
			\$			
APPROVED BY				DATE		



**APPENDIX B**

**CHANGE OF CONTROL OF CERTAIN GENERALLY LICENSED  
DEVICES**



## **APPENDIX B CHANGE OF CONTROL OF CERTAIN GENERALLY LICENSED DEVICES**

**Criteria:** Persons using generally licensed devices in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 31, 40, or 70 are, with certain exceptions described below, required to notify and receive the consent of the U.S. Nuclear Regulatory Commission (NRC) before the transfer of control of the license.

### **General Licenses for Byproduct Materials (10 CFR Parts 30 and 31)**

The regulations in 10 CFR Part 31 provide for the issuance of general licenses for certain devices containing byproduct materials and a general license for ownership of byproduct material. According to 10 CFR 31.2, "Terms and conditions," the general licenses provided in this part are subject to the general provisions of Part 30 of this chapter unless indicated otherwise in the specific provision of the general license.

According to 10 CFR 30.34(b), no 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 Atomic Energy Act of 1954, as amended (AEA), and shall give its consent in writing.

Each type of general license described in the NRC regulations is described below, by 10 CFR Part 31 section number.

#### **31.3 Certain Devices and Equipment**

10 CFR 31.3, "Certain devices and equipment," provides for a general license to "transfer, receive, acquire, own, possess, and use" byproduct material incorporated in static elimination devices and ion generating tubes. General licensees under this section are subject to the requirements of 10 CFR 30.34(b), and the NRC must give prior consent to any transfer of control of the license.

#### **31.5 Certain Measuring, Gauging, or Controlling Devices**

10 CFR 31.5, "Certain detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere," establishes the requirements for certain generally licensed detecting, measuring, gauging, or controlling devices and certain devices for producing light or an ionized atmosphere to certain entities. These generally licensed devices can be transferred in one of three ways:

- (1) The device may be transferred to any person holding a specific NRC or Agreement State license authorized to receive the device. Within 30 days after the transfer, the general licensee must furnish the NRC with a report that identifies the device by manufacturer's (or initial transferor's) name, model number and serial number, the name and address and license number of the person receiving the device, and the date of the transfer.

- (2) The device may be transferred to another general licensee if the device remains in use at a particular location, in which case the transferor shall give the transferee a copy of this section and certain NRC regulations and any safety documents identified in the label of the device. Within 30 days after the transfer, the general licensee must furnish the NRC with a report that identifies the device by manufacturer's (or initial transferor's) name and model number and serial number, the name and address of the transferee, and the name, title, and phone number of the individual identified by the transferee in accordance with the regulations in this section.
- (3) The device may be transferred to another general licensee if the device is held in storage by an intermediate person in the original shipping container at its intended location of use, prior to initial use by a general licensee.

General licensees holding devices meeting the criteria of section 31.5(c)(13)(i) must register these devices with the NRC. This can be done by submitting a completed NRC Form 664, "General Licensee Registration," or equivalent, and must be done within 30 days after the initial request for registration. Any general licensee under this section must respond to written requests from the NRC to provide information relating to the general license, including possible changes of control over the license, within 30 calendar days of the date of the request (or other time specified in the request). If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by submitting a letter to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with written justification as to why it cannot comply.

### **31.7 Luminous Safety Devices for Use in Aircraft**

10 CFR 31.7, "Luminous safety devices for use in aircraft," provides for a general license to "own, receive, acquire, possess, and use" certain licensed material contained in luminous safety devices for use in aircraft. The section does not expressly authorize transfer of these devices. The general licensee will at some point transfer these generally licensed devices at the end of their service lives to the manufacturer or other specifically licensed person for disposal. An aircraft equipped with one or more of these devices may be sold several times over the course of its useful life. Because 10 CFR 31.7 does not address change of control over the general license, general licensees under this section are subject to the requirements of 10 CFR 30.34(b). The NRC must give prior consent to any transfer of control of the general license.

### **31.8 Americium-241 and Radium-226 in the Form of Calibration or Reference Sources**

10 CFR 31.8, "Americium-241 and radium-226 in the form of calibration or reference sources," provides for a general license to "own, receive, acquire, possess, use, and transfer" americium-241 or radium-226 in the form of calibration or reference sources. The regulations state that the general licensee is expressly subject to the provisions of 10 CFR 30.34(b). The NRC must give prior consent to any transfer of control of the license.

### **31.9 General License to Own Byproduct Material**

10 CFR 31.9 provides, "General license to own byproduct material," provides for a general license to own byproduct material without regard to quantity. The regulations state that a

general licensee under this section is not authorized to transfer byproduct material, except as authorized in a specific license.

The regulations refer to the situation in which a company retains title to the byproduct material but does not possess or use it. A company, for example, may lease byproduct material to another for its use. In such a case, the lessor has a general license to own the material; the lessee must have either a specific license to possess and use the material, or a general license if it fits within one of the categories of general licenses in 10 CFR Part 31. The NRC has concluded that mere ownership, without a greater exercise of control over byproduct material, does not represent a regulatory concern. The general licensee is not required to notify the NRC prior to the transfer of ownership.

### **31.10 General License for Strontium-90 in Ice Detection Devices**

10 CFR 31.10, "General license for strontium 90 in ice detection devices," provides for a general license to "own, receive, acquire, possess, use, and transfer" strontium-90 in ice detection devices, in limited quantities. Because 10 CFR 31.10 does not address transfer of control of these general licenses, general licensees under this section are subject to the requirements of 10 CFR 30.34(b). The NRC must give prior consent to any transfer of control of the license.

### **31.11 General License for Use of Byproduct Material for Certain In Vitro Clinical or Laboratory Testing**

10 CFR 31.11, "General license for use of byproduct material for certain in vitro clinical or laboratory testing," provides for a general license for certain medical and veterinary personnel to receive, acquire, possess, transfer, or use, for a number of specified tests, limited quantities of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, selenium-75, mock iodine-125 (iodine-129 and americium-241), and cobalt 57. The regulation states that the general licensee shall not transfer the byproduct material except to a person authorized to receive it under an NRC or Agreement State general license. This regulation establishes a registration system. Under it, a general licensee cannot initially receive, acquire, possess, use, or transfer byproduct material unless he has filed NRC Form 483, with the NRC. The certificate need not be filed if the general licensee has a license that authorizes the medical use of byproduct material that was issued under 10 CFR Part 35. Pursuant to 10 CFR 31.11(e), if any of the information reported on the form changes, the general licensee must file a report within 30 days *after* the effective date of the change. Such a change would include transfers of control over the license. Since 10 CFR 31.11 does address the transfer of these generally licensed test kits, the general licensee is not required to notify the NRC prior to the transfer.

Persons holding general licenses described in 10 CFR 31.3, 31.7, 31.8, and 31.10 are required to notify and receive consent from the NRC before a change of control over the license. These general licensees should carefully review Chapter 5 of this report.
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### **General Licenses for Source Materials (10 CFR Part 40)**

The regulations in 10 CFR 40.21 through 10 CFR 40.26 provide for general licenses for certain byproduct material and source material. Under 10 CFR 40.27 and 10 CFR 40.28, the NRC issues general licenses for custody and long-term care of radioactive material under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

According to 10 CFR 40.46, "Inalienability of licenses," no license issued or granted pursuant to the regulations in 10 CFR Part 40 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 AEA and gives its consent in writing. Certain general licenses under 10 CFR Part 40 are subject to 10 CFR 40.46. Each type of general license issued under 10 CFR Part 40 is discussed below, by 10 CFR Part 40 section number.

#### **40.21 General License to Receive Title to Source or Byproduct Material**

10 CFR 40.21, "General license to receive title to source or byproduct material," provides for a general license authorizing the receipt of title to source or byproduct material without regard to quantity. This general license does not authorize any person who may hold title to source material to receive, possess, use, or transfer source material. This provision is similar to the general license for ownership of byproduct material located at 10 CFR 31.9. The NRC has concluded that mere ownership, without a greater exercise of control over source or byproduct material, does not represent a regulatory concern. The general licensee is not required to notify the NRC prior to a transfer of ownership.

#### **40.22 Small Quantities of Source Material**

10 CFR 40.22, "Small quantities of source material," provides for a general license to commercial and industrial firms; research, educational, and medical institutions; and certain government agencies to use and transfer not more than 15 pounds of source material at any one time for research, development, educational, commercial, or operational purposes. A person authorized to use or transfer source material pursuant to this general license may not receive more than a total of 150 pounds of source material in any one calendar year. Because 10 CFR 40.22 does not address change of control over these general licenses, general licensees under this section are subject to the requirements of 10 CFR 40.46.

#### **40.23 General License for Carriers of Transient Shipments of Natural Uranium Other Than in the Form of Ore or Ore Residue**

10 CFR 40.23, "General license for carriers of transient shipments of natural uranium other than in the form of ore or ore residue," provides for a general license to any person to possess a transient shipment of natural uranium, other than in the form of ore or ore residue, in amounts exceeding 500 kilograms. This section does not authorize the general licensee, generally a common carrier, to transfer the licensed material.

General licensees under this section are not subject to the requirements of 10 CFR 40.46. In general, common carriers are exempt from the requirements of 10 CFR Part 40, to the extent that they transport or store source material in the regular course of the carriage for another or storage incident to that carriage. Typically, this general license is issued to common carriers and applies only to ensure physical safeguards of the material.

#### **40.25 General License for Use of Certain Industrial Products or Devices**

10 CFR 40.25, "General license for use of certain industrial products or devices," provides for a general license to receive, acquire, possess, use, or transfer depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small



volume of the product or device. General licensees must file NRC Form 244, "Registration Certificate—Use of Depleted Uranium under General License," within 30 days after the initial receipt or acquisition of depleted uranium. Form 244 requires the following information:

- Name and address of the registrant;
- A statement that the registrant has developed and will maintain procedures designed to establish physical control over the depleted uranium, and designed to prevent transfer of such depleted uranium (in any form, including metal scrap) to persons not authorized to receive it; and
- Name and/or title, address, and telephone number of the individual authorized to act for and on behalf of the registrant in supervising the licensed material.

Within 30 days of the transfer, the transferor must report the transfer in writing to the NRC. This report shall include the name and address of the person receiving the source material pursuant to the transfer.

#### **40.26 General License for Possession and Storage of Byproduct Material as Defined in This Part**

10 CFR 40.26, "General license for possession and storage of byproduct material as defined in this part," provides for a general license to receive title to, own, or possess byproduct material as defined in 10 CFR Part 40 without regard to form or quantity. The license permits the specific licensee to temporarily possess byproduct material on site without violating its specific license. No authority is given in the general license to transfer this generally licensed byproduct material. The regulations state that the general licensee is expressly subject to the provisions of 10 CFR 40.46. The NRC must give prior consent to any transfer of control of the specific license. Such consent would also meet the requirement for prior NRC approval of transfer of control of the general license.

#### **40.27 General License for Custody and Long-Term Care of Residual Radioactive Material Disposal Sites**

10 CFR 40.27, "General license for custody and long-term care of residual radioactive material disposal sites," provides for a general license for the custody and long-term care of disposal sites under Title I of UMTRCA. The general license only applies to the U.S. Department of Energy (DOE) or another Federal agency designated by the President to provide long-term care. There is no termination of this general license.

#### **40.28 General License for Custody and Long-Term Care of Uranium or Thorium Byproduct Materials Disposal Sites**

10 CFR 40.28, "General license for custody and long-term care of uranium or thorium byproduct materials disposal sites," provides for a general license for the custody and long-term care of uranium or thorium mill tailings sites closed under Title II of UMTRCA. The licensee will be the DOE, another Federal agency designated by the President, or a State where the disposal site is located. There is no termination of this general license.

According to 10 CFR 40.28(f), if the NRC determines that the transfer of title of land used for the disposal of any byproduct materials to the United States or any appropriate State is not

necessary to protect public health, safety, or welfare or to minimize or eliminate danger to life or property, the NRC will consider specific modifications of the custodial agency's long-term surveillance plan's provisions on a case-by-case basis.

In conclusion, general licenses issued under 10 CFR 40.22 and 10 CFR 40.26 are subject to the transfer of control provisions of 10 CFR 40.46.

Persons possessing generally licensed devices described in 10 CFR 40.22 and 10 CFR 40.26 are required to notify and receive consent from the NRC before a change of control. These general licensees should carefully review Chapter 5 of this report.

### **General Licenses for Special Nuclear Materials (10 CFR Part 70)**

All persons controlling generally licensed devices and materials containing special nuclear materials are subject to the requirements of 10 CFR 70.36, "Inalienability of licenses." This regulation requires that general licensees notify the NRC prior to any change of control of licensed materials and that the NRC consent to the transfer in writing. The only exception would be in the case of a general license issued by the NRC or an Agreement State that specifically exempts the general licensee from the requirement to notify and receive the consent of the appropriate regulatory agency before any change of control.

#### **70.19 General License for Calibration or Reference Sources**

10 CFR 70.19, "General license for calibration or reference sources," provides for a general license to the following persons:

- Any person in a non-Agreement State who holds a specific license to receive, possess, use, and transfer byproduct, source, or special nuclear material;
- Any Government agency that holds a specific license that authorizes it to receive, possess, use, or transfer byproduct, source, or special nuclear material;
- Any person in an Agreement State who holds a specific license to receive, possess, use, and transfer special nuclear material.

Persons who receive title to, own, acquire, deliver, receive, possess, use, or transfer plutonium in the form of calibration or reference sources may not transfer, abandon, or dispose of the source except by transfer to a person authorized by a license from the NRC or an Agreement State to receive the source. Because 10 CFR 70.19 does not otherwise address the transfer of control of these general licenses, general licenses under this section are subject to the requirements of 10 CFR 70.36. The NRC must give prior consent to any transfer of control of these general licenses. For additional information, refer to RIS 2008-19, "Lessons-Learned from Recent 10 CFR Part 70 License-Transfer Application Reviews."

#### **70.20 General License to Own Special Nuclear Material**

10 CFR 70.20, "General license to own special nuclear material," provides a general license to receive title to and own special nuclear material without regard to quantity. A general licensee under this section is not authorized to transfer special nuclear material under this section, except as authorized in a specific license.

### **70.20a General License to Possess Special Nuclear Material for Transport**

10 CFR 70.20a, "General license to possess special nuclear material for transport," provides a general license to any person to possess formula quantities of certain strategic special nuclear material and irradiated reactor fuel in the regular course of carriage for another or storage incident. The regulations state that the carrier (the general licensee) under 10 CFR 70.20b is specifically exempt from the requirements of this section.

### **70.20b General License for Carriers of Transient Shipments of Formula Quantities of Strategic Special Nuclear Material, Special Nuclear Material of Moderate Strategic Significance, Special Nuclear Material of Low Strategic Significance, and Irradiated Reactor Fuel**

10 CFR 70.20b, "General license for carriers of transient shipments of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, special nuclear material of low strategic significance, and irradiated reactor fuel," provides a general license to any person to possess transient shipments of certain kinds and quantities of special nuclear material. The regulations state that the persons generally licensed under this section (the general licensee) are exempt from the requirements of 10 CFR 70.36.

Persons possessing generally licensed devices described in 10 CFR 70.19 are required to notify and receive consent from the NRC before a change of control. These general licensees should carefully review Chapter 5 of this report.
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### **Response from Applicant:**

Persons possessing generally licensed devices described in 10 CFR 31.3, 31.7, 31.8, 31.10, 40.22, 40.26, and 70.19 should provide the information described in Appendix F to this report about any proposed change of control.



## **APPENDIX C**

### **LEGAL DEFINITION OF TRANSFER OF CONTROL**



## APPENDIX C LEGAL DEFINITION OF TRANSFER OF CONTROL

### Transfer of Control – Materials Licenses

In general, no NRC license for materials may be transferred, assigned, or disposed of unless the NRC gives its prior consent in writing. Relevant statutory and regulatory provisions are as follows:

#### **Section 184 of the AEA states, in part, the following:**

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby 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 this Act, and shall give its consent in writing.

#### **10 CFR 30.34(b) states the following:**

No license issued or granted pursuant to the regulations in this part and parts 31 through 36 and 39 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 provisions are stated at 10 CFR 40.46 and 10 CFR 70.36, “Inalienability of licenses.”

The purpose of these regulations is to allow the NRC the opportunity to ensure that licensees provide notification whenever business decisions could involve changes in the corporate form(s) responsible for management oversight, control, or radiological safety of licensed materials.

Case law has not completely addressed the definition of “control,” in either the regulations or Section 184. However, in *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 (1990), the Atomic Safety and Licensing Appeal Board stated, “[C]ontrol of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.” *Id.* at n. 46. The Appeal Board went on to note, “In the instance of a corporate Part 30 or Part 50 licensee, that control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.” *Id.* at 367 (emphasis in original).

In 1995, an Atomic Safety and Licensing Board took a broader view of Section 184. In *Safety Light Corp.* (Bloomsburg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 451 (1995), a case involving the transfer of byproduct materials licenses, it stated, “On its face, Section 184 not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control over a license without the agency’s knowledge and express written consent.” However, not all business decisions of licensees or their parent entities require NRC consent. For example, internal changes that have no impact on the structure or funding of a licensee do not require notice to the NRC. On the other hand,

changes of ownership or control resulting from legal changes such as mergers, buyouts, or majority stock transfers do require prior consent. In some cases, internal management adjustments and actual changes of control may be difficult to distinguish. Therefore, it is imperative that licensees notify the Commission of not only actual, but also suspected, changes of control so that the agency may make a determination.

For example, the parent corporation of a wholly-owned licensee proposed to merge with another corporation. The licensee, a part-owner and operator of a facility, would, under the proposed merger, remain the holder of the license. Its personnel and operations would be unaffected. The parent corporation's indirect control of the license was eliminated (as opposed to transferred to another entity); the licensee indicated to the NRC that it foresaw no change in control. The licensee provided the NRC with full documentation of the proposed changes. The Commission was therefore able to fully review the transactions and agreed that there was no change of control.

If a transferee proposes to purchase a licensed operation, and the transferor continues in business as a separate entity without the license, the transferee must submit notification to the Commission that reflects both the change in identity of the licensee and any other pertinent changes in the operation. The transferee can always apply for a new license by providing a complete application, for which it may use the transferor's docketed documents as a basis. The transferor is also obligated to notify the NRC of the proposed change of control; furthermore, if the NRC issues a new license, the transferor must request termination of its license in a separate proceeding.

The NRC is not only concerned with change of control as it occurs in private business, but also as it affects Government agencies. For Government agencies, the lowest organizational level listed in Item 1 of the license is considered to be the licensee. Therefore, the NRC should be informed whenever a change in ownership or control at the lowest organizational level listed on the license occurs.

Some agencies possess a Master Materials License (MML), which authorizes a single organization within the agency to issue permits authorizing the use of licensed materials by individuals or organizations at multiple sites. The NRC does not review or approve new MML permit holders and/or locations before use. A change in authority over a permit within the scope of a single MML would not constitute a change of control requiring the prior written consent of the Commission. However, a change in control from the MML licensee to another organization would require the Commission's prior written consent. For example, change of control over a medical center from one Government agency to another agency would require the Commission's prior written consent.

In the area of materials licensing, there are no categorical foreign ownership, control, or domination limitations, except for those pertaining to the United States Enrichment Corporation (USEC) as provided in 10 CFR 40.38 and 70.40. However, under Sections 57c, 63b, and 82b of the AEA, the NRC must make a finding that issuance of the license for byproduct, source, or special nuclear material, would not be "inimical to the common defense and security, and would not constitute unreasonable risk to the health and safety of the public." The Commission must make the same finding when consenting to a change of control. As a part of that determination, the NRC will consider foreign ownership, control, and domination.



Although the NRC has never adopted any explicit criteria for determining whether a particular transaction will be “inimical to the common defense and security,” the Commission has historically focused on a relationship between a potential licensee and other entities involved in the transaction that could lead to the ultimate power of a foreign entity to direct the actions of the licensees with regard to licensed activities.

For materials licenses, indirect control by a foreign entity of 100 percent of the licensee may be permissible, provided insulation measures are taken to protect the national security. Such measures include, but are not limited to, management directives shielding directors or board members from decisions involving classified or secret information, or from the management or control of special nuclear material. For example, one materials licensee merged with a foreign-owned corporation, ultimately becoming a wholly-owned subsidiary of that foreign entity. Based upon the licensee’s commitments to maintaining its existing headquarters, management, corporate structure, key personnel, and licensed activities, the staff found that the change of control of the licenses was not inimical to the common defense and security, did not present an unreasonable risk to public health and safety, and was in accordance with the AEA.



## **APPENDIX D**

### **EXAMPLES OF CHANGE OF CONTROL**



## **APPENDIX D EXAMPLES OF CHANGE OF CONTROL**

The following examples describe what constitutes a change of control or ownership. These examples are based on previous cases reviewed by NRC.

### **Direct Change of Control**

The transfer of “management-related responsibilities” from one licensee to another constitutes a change of control. For example, the Acme Company filed an application to transfer control of its possession-only license for the ABC facility to XYZ, Inc., for all maintenance, characterization, decontamination, dismantling, decommissioning, and other management-related responsibilities, including the following:

- Responsibility for safely maintaining the containment vessel and performing characterization activities changed from the Acme Company to XYZ, Inc.
- XYZ, Inc., would take responsibility from the Acme Company for administration of all facility functions, for radiation safety activities, and for providing onsite management and continuing oversight of production activities.
- The appointment of members to the Acme Company Radiation Safety Committee and the reporting of the Committee would change from the Acme Company president to an XYZ, Inc., vice president.
- The president of XYZ, Inc., would have the authority to request audits and would receive audit reports instead of the president of the Acme Company.
- The responsibility for procedure development and implementation would change from the Acme Company to XYZ, Inc.
- The responsibility for records retention and reporting would change from the Acme Company to XYZ, Inc.
- The organization chart for the facility would be changed to reflect the addition of XYZ, Inc., as a licensee.

Under this arrangement, XYZ, Inc., would be added as a possession-only licensee for the ABC facility. Except for the management-related responsibilities listed above, the Acme Company’s duties as a licensee would not otherwise be affected. The NRC approved the transfer, concluding that XYZ, Inc., was qualified to be a joint holder of the facility license for the management-related functions, and that the transfer was otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC (subject to certain conditions).

### **Indirect Change of Control**

The following are examples of indirect changes of control:

- (1) A licensee was a wholly-owned subsidiary of its parent corporation. The licensee was engaged in business associated with byproduct material licenses issued under

10 CFR Part 30. The parent entity sold its entire interest in the licensee to the individuals serving as president and vice presidents of that subsidiary. This transaction, a sale of 100 percent of the stock of the NRC-licensed subsidiary, constituted a “transfer of control of any license” for the purposes of Section 184 of the AEA. Before the sale, those who possessed dominion over the full range of the operations of the parent entity had the authority, if they desired to exercise it, to determine the licensee’s activities under the licenses by reason of the licensee’s status as a wholly-owned subsidiary. Upon completion of the sale, the parent entity’s management necessarily relinquished all right to dictate how the licensed activities should be conducted. Rather, the full right to direct those activities—and thus to control the licenses themselves—became vested in the licensee’s new owners, subject to the requirement of conformity to the licenses. *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350, 363-65 (1990). Please note that a sale of a less than 50 percent control of stock in a licensee might still constitute a transfer of control if that less than 50 percent control of stock represents a majority share in the licensee.

- (2) A materials licensee, Licensee, merged with another company, Holding Co., which was the wholly-owned subsidiary of Buyer. This merger was accomplished in two steps: (1) Buyer was empowered to designate a majority of Licensee’s Board of Directors, and (2) Licensee was later merged into Holding Co. In sum, Licensee merged with another company to become a wholly-owned subsidiary of the parent. The NRC concluded that an indirect change of control had occurred.
- (3) A materials licensee was wholly owned by Parent Corporation. A holding company acquired 70 percent of Parent Corporation’s stock. The holding company was, in turn, wholly owned by Acquiring Corporation. Shortly after Parent Corporation notified the NRC of the transaction, Acquiring Corporation stated the following in a letter to the NRC:
  - The transaction would not result in any changes in Parent Corporation’s operations relating to the license.
  - The transaction would not result in any change to the license, its management, its personnel (including the radiation safety officer), or the licensee’s name.
  - Acquiring Company pledged to abide by the terms of the license.

NRC determined that this sale of a controlling interest of stock constituted a change of control under 10 CFR 30.34(b), 40.46, or 70.36, requiring prior notification to and consent of NRC. The Acquiring Corporation, through the Holding Company, now has ultimate authority over the conduct of licensed activities, even though there were no changes in the Parent Corporation’s operations relating to the licensee, the employees of the licensee control daily operations, and no changes occurred in personnel or facilities. The Acquiring Corporation is empowered to decide when and how the license will be used.”

- (4) Parent Corporation sold substantially all of the assets of its wholly-owned subsidiary, a materials licensee, to Buyer. Following the sale, the management of the licensee took the form of three bodies with discrete functions:

- Buyer's Board of Directors had ultimate decisionmaking power, control, and authority over the licensee's operations, including oversight of day-to-day
- operations and responsibility for the licensee's executives, management, and employees.
- A new governing board was established for the licensee. None of its members were affiliated with Buyer, but the board was subject to the ultimate decision and control of Buyer.
- Parent Corporation and Buyer established a committee to advise Buyer on various matters relating to the licensee, including strategic planning and approval of the licensee's Chief Executive Officer.

In addition, Parent Corporation and Buyer entered into an agreement, under which the parties intended the licensee to manage and supervise licensed activities, and maintain full control and authority over licensed materials for the purpose of avoiding a change of control under AEA Section 184. However, Buyer retained elements of control under this agreement, including the following:

- Buyer is liable for the site (Parent Corporation is to indemnify Buyer when the liability involves licensed materials).
- Buyer is to maintain adequate resources to fund decommissioning.
- Buyer agreed to accept full responsibility for open inspection items and/or any resulting enforcement actions that could have arisen within the licensed facilities prior to and following the sale.
- Buyer agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the NRC license.

Following the transaction, Parent Corporation and Buyer share some responsibilities, including paying all fees required to maintain the license and making required filings. Buyer agreed to pay Parent Corporation 50 percent of the amount required for decommissioning financial assurance.

The NRC determined that this sale of assets constituted a change of control under 10 CFR 30.34(b), 10 CFR 40.46, and 10 CFR 70.36, requiring prior notification to and consent of the NRC. Buyer now has ultimate authority over the conduct of the licensed activities, even though employees of the licensee control daily operations. Buyer is empowered to decide when and how the license will be used; the change of ownership, combined with Buyer's extensive managerial authority, allows Buyer to determine the policies of the licensee. In addition, Buyer took on responsibilities in the area of license maintenance and financial assurance for decommissioning.

- (5) A materials licensee (who was the transferor) sold its facility to Holding Company. Holding Company is wholly owned by Owner, which created Holding Company to control a number of its subsidiaries, including the licensee. Following the transaction, the licensee continued to operate the facility. The only changes were to the licensee's governing structure:
- The licensee changed its corporate status.
  - Holding Company was empowered to elect a majority of the licensee's directors.
  - The licensee's name was not changed, but it is now identified to the public as an affiliate of Holding Company.

The NRC determined that this sale constituted a change of control under 10 CFR 30.34(b), requiring prior notification to and consent of the NRC, because Owner, through Holding Company, now has ultimate authority over the conduct of licensed activities, even though no changes occurred in personnel or facilities. Owner is empowered to decide when and how the license will be used. The change of ownership, combined with Owner's managerial authority over the Board of Directors, results in control over the license by Owner.

- (6) A materials licensee exchanged stock with and merged into Buyer through Holding Company, a wholly-owned subsidiary of Buyer. Holding Company was then dissolved, leaving the licensee a wholly-owned subsidiary of Buyer. The license itself was not transferred to Buyer, and the licensee reported no change in staff responsible for radiation safety. The NRC found that this transaction constituted a change of control under 10 CFR 30.34(b) and issued a notice of violation (Severity Level IV) to the licensee, who failed to obtain the NRC's prior written consent to the transaction.

### **No Change of Control**

The following are examples of cases that did not constitute a change of control:

- (1) A licensee notified the NRC of a management services agreement with a contractor for the oversight of a plant, indicating that neither the agreement nor the specific changes in management would require prior NRC approval. The staff concurred with this assessment because the licensee unequivocally retained ultimate authority and control over, and responsibility for, safe plant operation and regulatory compliance. Provisions of the agreement that confirmed the licensee's control of plant operations included the following:
- The licensee retained ultimate responsibility and authority for budgetary controls, operating plans, policies and procedures, regulatory matters, and the management direction of the plant.
  - The licensee retained exclusive authority and responsibility to define the economic life of the plant, as well as to retire and decommission the plant.
  - The licensee retained the power and authority to modify or terminate the authority and scope of services to be provided by the contractor.



- Management personnel provided by the contractor were approved by the licensee and served at the licensee's pleasure.
- The licensee retained responsibility for compliance with NRC requirements.
- Licensed operators in the control room were solely the licensee's employees.
- The licensee retained the right to terminate the agreement with or without cause.

In all cases, determining whether a transfer of control has taken place is the Commission's responsibility. Whenever an actual or suspected change in ownership or control may occur, the licensee must inform the Commission in order to comply with the license provisions of 10 CFR 30.34 "Terms and conditions of licenses," (or similar provisions found in other sections of Title 10). This notification must include a complete, clear description of the transaction that will enable legal counsel to differentiate between name changes and actual changes of control. All notifications of change of control, as well as suspected changes, will be reviewed by the NRC. The NRC may request additional supplemental information so that each case may be properly evaluated.

(2) Substantially all the assets of four materials licensees were restructured, resulting in a change in corporate form. All four licensees were affiliated with the same parent, both before and after the transaction. In the case of each licensee, no changes were made to the following:

- Personnel having control over licensed activities (including the radiation safety officer);
- The use, possession, location, or storage of licensed materials;
- The licensee's organization;
- The licensee's facility;
- The licensee's equipment;
- The licensee's procedures.

Following the restructuring, each licensee did the following:

- Assumed full liability for facility decontamination.
- Agreed to abide by all commitments and representations previously made to the NRC by the licensee in its old corporate form.
- Agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the license.
- Accepted full liability and responsibility for the site.

Here, the entities and personnel remained the same, except for a change in corporate status. All four licensees were affiliates of the same parent entity prior to and following the transaction. No change of control occurred under 10 CFR 30.34(b); the licensees were not required to obtain the NRC's prior written consent to the transaction.

- (3) A materials licensee, wholly owned by Parent, sold one division of its operations to Buyer. The division that was sold did not involve licensed activities. Parent retained licensed activities under a different name. Following the sale, Licensee retained full control of and responsibility for licensed activity. However, Buyer owned the facility in which licensed activity took place and jointly occupied the facility with Licensee. Both Licensee and Buyer wished to conduct licensed activities at the facility, with Buyer's employees conducting licensed activities under the supervision and control of Licensee, until Buyer moved to a new facility and obtained its own license.

The NRC determined that this transaction, a change of ownership, did not constitute a change of control as to Parent and Licensee. The same licensee, under a different name, still controlled the licensed activity, and Licensee's parent did not change.

**APPENDIX E**

**RECOMMENDED LICENSING ACTIONS FOR DIFFERENT  
TRANSACTIONS**



## APPENDIX E RECOMMENDED LICENSING ACTIONS FOR DIFFERENT TRANSACTIONS

Action by Licensee	Licensing Action Recommended
Is the licensee ceasing all operations or continuing operations as a non-licensed entity? Does the new entity need a license?	Terminate existing license and issue a new license, if needed, as the new entity is a new institution.
Is the licensee selling off a portion of its licensed activities to a non-licensee?	Amend the transferor's license accordingly and issue a new license to the transferee.
Is the licensee selling off a portion of its licensed activities to a licensee?	Amend both licenses accordingly.
Is the licensee becoming part of a non-licensed entity with no changes in the license?	Treat as a notification and possible transfer of control.
Is the licensee becoming part of a licensed entity, but the license is to be retained with changes?	Amend the license as specified by the licensee.
Is the licensee becoming part of a licensed entity, and one of the licenses is to be terminated?	Terminate the requested license and amend the continuing license for any activities that are to be continued and any other changes as appropriate.
Is the licensee changing its name with no other changes to items on license and no change in control or ownership is occurring?	Amend the license to change the name of the licensee.
Is the licensee's ownership changing but all items on the license are to remain the same?	Terminate existing license and issue a new license as the new entity is a new institution.



**APPENDIX F**

**INFORMATION NEEDED FOR TRANSFER OF CONTROL  
APPLICATION**





## APPENDIX F INFORMATION NEEDED FOR TRANSFER OF CONTROL APPLICATION

Include a contact name and either NRC regional office or Headquarters telephone numbers for follow-up information, as required.

**NRC Region:** \_\_\_\_\_ **Contact:** \_\_\_\_\_  
**Telephone:** ( ) - \_\_\_\_\_ **Fax:** ( ) - \_\_\_\_\_

### Information Needed for Transfer of Control

#### Definitions:

**Control:** Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.

**Transferee:** A transferee is an entity that proposes to purchase or otherwise gain control of an NRC-licensed operation.

**Transferor:** A transferor is an NRC licensee selling or otherwise giving up control of a licensed operation.

Licensees must provide full information and obtain the NRC's *prior written consent* before transferring control of the license. Provide the following information concerning changes of control by the applicant (transferor and/or transferee, as appropriate). If any items are not applicable, so state.

1. Describe any planned changes in the organization, including, but not limited to transfer of stocks or assets and mergers, change in members on Board of Directors, etc.). Provide the new licensee name, mailing address, and contact information, including phone numbers. Clearly identify when the amendment request is due to a name change only.
2. Describe any changes in personnel or duties that relate to the licensed program. Include training and experience for new personnel, and any changes in the training program.
3. Describe any changes in the location, facilities, equipment, radiation safety program, use, possession, and waste management, or other procedures that relate to the licensed program.
4. Describe the status of the licensee's facilities, equipment, and radiation safety program, including any known contamination and whether decontamination will occur prior to transfer. Include the status of calibrations, leak tests, area surveys, wipe tests, training, quality control and related records.
5. Attach any revisions to the licensee's decommissioning funding plan and supporting financial assurance documents. All financial assurance instruments must be held in the licensee's name before the license is transferred.

6. Confirm that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to the NRC, as appropriate. These records include documentation of surveys of ambient radiation levels and fixed and/or removable contamination, including methods and sensitivity.
7. Confirm that both transferor and transferee agree to transferring control of the licensed material and activity, and the conditions of transfer, and that the transferee has been made aware of any open inspection items and its responsibility for possible resulting enforcement actions.
8. Confirm that the transferee will abide by all constraints, conditions, requirements, representations, and commitments of the transferor or that the transferee will submit a complete description of the proposed licensed program.

**APPENDIX G**

**SUGGESTED FORMAT FOR REQUESTS FOR ADDITIONAL  
INFORMATION REGARDING BANKRUPTCY**



## APPENDIX G SUGGESTED FORMAT FOR REQUESTS FOR ADDITIONAL INFORMATION REGARDING BANKRUPTCY

The following pages contain a sample NRC letter to be sent (faxed) to companies declaring or about to declare bankruptcy and, if applicable, to the parent company or legally responsible representative.

(Licensee contact)  
(Title of licensee contact)  
(Address of licensee contact)

SUBJECT: POSSIBLE BANKRUPTCY NOTIFICATION INFORMATION

Dear (licensee contact):

It has come to our attention that (name of licensee) possessing NRC License No(s) \_\_\_\_\_ may have filed (or is considering filing) for bankruptcy. Please note that the U.S. Nuclear Regulatory Commission (NRC) has requirements for licensees that are the subject of a bankruptcy filing to immediately notify, in writing, the appropriate NRC Regional Administrator of this action.

NRC requirements for licensees that are the subject of a bankruptcy filing can be found in Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(h), 40.41(f), and 70.32(a)(9). **(Reviewer Note: Include all that apply.)** The purpose of the regulations is to ensure that public health and safety is adequately protected and that radioactive material is properly controlled.

Specifically, any licensee who is involved in a bankruptcy proceeding, either voluntarily or involuntarily, under any chapter of the bankruptcy law must notify the appropriate NRC Regional Administrator in writing immediately after the filing.

The requirements in these regulations apply to a bankruptcy proceeding, for or against the licensee itself, an entity controlling the licensee, an entity listing the licensee as a property of the estate, or an affiliate of the licensee.

The regulations state that the notification must include the identity of the bankruptcy court in which the petition was filed and the date the petition was filed.

Because the regulations cited above require each licensee to provide the required notification, we request your assistance in providing to us the names, addresses, and telephone numbers of any other entities who may be affected by the bankruptcy (i.e., other daughter companies of a bankrupt parent company, where the daughter has an NRC or Agreement State license).

In addition, please provide the following information:

- (1) List any radionuclides and /or nuclear gauges currently possessed by your company. Include any generally licensed material.
- (2) Indicate if you plan to dispose of/ or transfer any of your radionuclides and /or nuclear gauges during bankruptcy proceedings.

- (3) For each of the radionuclides and /or nuclear gauge(s) identified above, specify whether the radionuclide(s) and/or device(s) are in use or in secured storage.
- (4) Indicate whether any changes have taken place in terms of the radiation safety officer or authorized user(s) for the radionuclides and /or nuclear gauges.
- (5) Specify the type of bankruptcy filed, such as Chapter 7, 11, 12, or 13.
- (6) Describe any changes that are planned for the company operations and use/storage/disposition of the radionuclides and /or nuclear gauges during the bankruptcy proceedings.
- (7) Indicate the anticipated date when the bankruptcy will end.
- (8) Specify any other affiliated companies that may also have radionuclides and /or nuclear gauges that require an NRC license. If so, specify what radionuclides and /or nuclear gauges they possess, and specify the license number and location of the company.
- (9) Specify a contact person and the frequency at which he or she will update the NRC about any changes in the status of the radionuclides and /or nuclear gauge(s), or of the bankruptcy proceedings. Immediately contact the NRC of any change in the status of the use, security and/or storage of the radionuclides and /or nuclear gauges and any change in the individual(s) responsible for the radionuclides and /or nuclear gauge(s).
- (10) For medical licensees, indicate the same information regarding PET radionuclides and the length of time the licensee has been in operation.
- (11) Indicate whether the licensee had decommissioning financial assurance requirements such as a financial "instrument."

Please note that even though a licensee may be involved in bankruptcy proceedings, NRC regulations and license conditions remain in full effect. Also, NRC licenses remain in full effect even beyond their stated expiration date, until terminated in writing by the NRC. If the licensee no longer exists as an entity, the person with legal control of contaminated equipment or property transferred by the licensee is obligated to control all licensed materials and to decontaminate and decommission any facilities or equipment and to comply with applicable NRC requirements.

If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building.

If you need to lay off the radiation safety officer, you must first properly secure, dispose of, or transfer all licensed material, and you must inform the NRC of this situation.

We will call you soon to verify the current status of your situation and to confirm the disposition of licensed material. We may also conduct an inspection to aid us in our evaluation of your situation. We will continue to monitor your activities to ensure that either the facility is cleaned up and licensed material properly disposed of, or the company is able to exit bankruptcy and operate normally.

If you have any questions, we encourage you to contact (name of lead individual) at (toll-free telephone number).

Sincerely,

Chief, Materials Licensing Branch

License No.  
Docket No.

Attachment: Information to Notify the NRC of Bankruptcy  
Enclosures: (1) 10 CFR Part 30  
(2) 10 CFR Part 40  
(3) 10 CFR Part 70

Attachment  
INFORMATION TO NOTIFY THE NRC OF BANKRUPTCY

1. Name of bankruptcy court where petition was filed. \_\_\_\_\_
2. Date bankruptcy petition was filed. \_\_\_\_\_

Your assistance is requested in identifying any other entities that may have U.S. Nuclear Regulatory Commission or Agreement State licenses that may be affected by the bankruptcy.

<u>Company Name</u>	<u>Address</u>	<u>Telephone Number</u>
_____	_____	_____
_____	_____	_____





## **APPENDIX H**

### **NRC PROCEDURES FOR PROCESSING BANKRUPTCY ACTIONS**



## APPENDIX H NRC PROCEDURES FOR PROCESSING BANKRUPTCY ACTIONS

NRC will establish a Bankruptcy Review Team (BRT) to review and act on bankruptcy notifications. The BRT brings together various NRC offices and typically includes members of the regional offices, the Office of the General Counsel (OGC), the Office of the Chief Financial Officer (OCFO), the Office of Enforcement (OE), the Office of Federal and State Materials and Environmental Management Programs (FSME) Division of Materials Safety and State Agreements (MSSA) and Division of Waste Management and Environmental Protection (DWMEP), and the Office of Nuclear Security and Incident Response (NSIR).

- In general, the roles of the representatives on the BRT are as follows:
  - OGC: legal assistance and coordination with DOJ;
  - FSME: coordinate appropriate actions with regional offices and ensure that the licensee maintains enhanced security measures for licensed material during bankruptcy proceedings. (If the licensee is no longer a viable entity and enhanced security measures cannot be maintained, the NRC should implement Manual Chapter 1301 or 1303.)
  - Low-Level Waste Branch, DWMEP: coordination of financial viability and decommissioning financial assurance issues;
  - OE: review any potential enforcement matters
  - MSSA: coordinate emergency response and generic materials licensee policy issues;
  - Regional staff: coordinate regional inspection/licensing issues, as applicable.
  - OFCO: determine whether there are outstanding financial obligations on the part of the licensee.
  - NSIR: keep management informed of bankruptcy activities related to licenses with risk-significant sources and any cases involving the potential for loss of security materials, and to help the BRT assess the current public health and safety (and security) situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations.

The procedures described in this appendix should ensure that bankruptcy cases are managed in a fully coordinated manner with headquarters and regional offices and divisions.

- Licensees are required under 10 CFR 30.34(h), 10 CFR 40.41(f), and 10 CFR 70.32(a)(9) to provide notification to the appropriate NRC Regional Administrator, in writing, immediately after the filing of a voluntary or involuntary petition for bankruptcy by or against them. However, the NRC staff may learn of a bankruptcy by any means, including notification by the Department of Justice (DOJ), a letter from the licensee, a telephone call, or a newspaper report. If the NRC regional or Headquarters staff hears rumors, discovers information during an inspection, or comes across any information indicative of financial trouble, the staff should report the

information to NRC management. The NRC staff needs to contact licensee personnel to verify any bankruptcy information that is obtained and to ensure that the licensee submits the required written notification.

- The following procedures apply primarily to specific licensees. However, there are certain requirements with regard to general licensees as well, including the requirement to notify the NRC of bankruptcy. Note that the NRC's regulations at 10 CFR 31.5 contain various recordkeeping and inspection requirements, as well as transfer limitations and NRC's general license regulations permit the Debtor to export, transfer, assign or dispose of its NRC-licensed materials under certain specified conditions.
- After receiving a report that a licensee has filed for bankruptcy or that an involuntary petition has been filed against it, the NRC staff must verify that all licensed material possessed by the licensee is being adequately controlled. The staff should immediately contact the licensee to verify the status of licensed material. A special inspection should be conducted, if necessary. Inspection Manual Chapter (IMC)-1301, "Radioactive Material Incidents That Do Not Require Activation of the NRC Incident Response Plan," and IMC-1303, "Requesting Emergency Acceptance of Radioactive Material by the Department of Energy," provide procedures for responding to inadequately controlled radioactive material.

If there is an immediate threat to public health and safety, the staff can request emergency assistance from other Federal agencies in accordance with IMC-1301. If a bankrupt licensee is controlling its licensed material, but the situation has the potential to cause a significant health and safety risk, requesting U.S. Department of Energy (DOE) emergency acceptance of the material may be an option. This procedure is intended for discrete sources confined to a single location. However, the need for emergency acceptance of other materials will be evaluated on a case-by-case basis.

- Timely reporting by license reviewers and inspectors of licensee bankruptcies to NRC management will ensure early and thorough attention by FSME, the regions, OCFO, and OGC staff to changes in the financial condition or corporate restructuring of licensees. The branch chief should, within 24 hours of receipt of a formal or informal bankruptcy notification, alert management and the appropriate headquarters or regional representative on the BRT.
- Depending upon the type of license involved and which office has issued the license, either Headquarters or regional staff should promptly inform (by telephone or fax) the licensee or the trustee, if one has been appointed, that bankruptcy will not relieve the licensee of its obligations to comply with NRC requirements, including the license, and that inspections and other NRC regulatory actions are not terminated upon filing of the petition for bankruptcy.

After this initial contact, the NRC licensing staff should, with the assistance of the OGC representative to the BRT, do the following:

- Provide the licensee, any trustee or receiver in bankruptcy, or owner of property contaminated by licensee activities with written notification of the licensee's obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license. This

appendix includes a sample letter to be sent to a licensee discussing bankruptcy-related issues.

- If the licensee no longer exists as an entity, provide any trustee, receiver, or owner of contaminated property transferred by the licensee with written notification of his or her obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license.
- The BRT will assess the current public health and safety situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations. The NRC will make safety assessment of the extent of the contamination and health risks posed by any contamination present. This assessment will be used to determine whether prompt action is necessary to secure the site or to take any other action required under the AEA.
- The BRT will recommend whether the support of a technical contractor is needed to analyze the licensee's financial condition and coordinate the technical support through DWMEP. The BRT will make recommendations as to the need to draw on financial assurance instruments that the licensee may have submitted. Appendix I to this report contains detailed procedures for drawing on financial assurance instruments.
- The BRT will consider the need for additional action by the NRC that would require the debtor to decontaminate and decommission the site. The BRT should also determine whether there are other issues that may affect NRC's interest in the bankruptcy proceeding.
- The BRT will keep the OGC representative informed of any pertinent developments regarding the licensee, including the disposition of the license and licensed material.
- The OCFO representative on the BRT will ascertain whether there are outstanding financial obligations on the part of the licensee and notify the OGC representative. The OFCO representative will take all necessary steps to ensure that Suggestions of Interest or Proofs of Claim are filed with the Bankruptcy Court, for such matters as licensing fees or civil penalties that may be due to the NRC, or for actions to maintain control of radioactive materials or to conduct site decommissioning. Regional enforcement staff should assist the OE representative to the BRT to determine whether any civil penalties are outstanding.
- The OGC representative to the BRT will determine whether the United States is represented in the bankruptcy proceeding and contact DOJ and secure DOJ representation of the NRC's interests in the proceeding. DOJ will notify the OGC representative of the DOJ attorney or Assistant United States Attorney (AUSA) who will be assigned to the case. With regard to specific licensees that are in bankruptcy, OGC will notify DOJ and/or the relevant AUSA that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including public health, safety, and environmental obligations and obligations under NRC regulations and license conditions. The OGC representative will inform DOJ and/or the AUSA of the licensee's obligations to control the site and to decontaminate and decommission the site and comply with applicable NRC requirements and conditions of the license; that approval of the

Commission is necessary for any license transfer; and that licensed material must be properly transferred. The OGC representative will request that DOJ or the AUSA inform the Bankruptcy Court of the debtor licensee's obligations. In addition, the OGC representative will inform DOJ as to whether there are outstanding financial obligations on the part of the licensee.

- The OGC representative will also advise DOJ if the debtor is a general licensee, request that the NRC be advised of any reorganization or sale involving these licensees, and request that DOJ or the AUSA inform the Bankruptcy Court of the general licensee's responsibility to ascertain the regulations applicable to its license and comply with any regulations specific to its situation.
- Following notification by DOJ of the attorney that has been assigned to the case, the OGC representative will continue to coordinate with DOJ and/or the AUSA as warranted and advise the appropriate representative on the BRT and Regional Counsel of all pertinent filings or developments in the bankruptcy proceeding. This appendix includes a sample electronic communication to DOJ or the appropriate AUSA.
- The BRT should assess the current public health and safety situation at the licensee's facility and any impacts the bankruptcy could have on licensed operations. This should include a safety assessment of the extent of contamination and health risk posed by that contamination. This assessment would be based on the best information that is currently available to determine if prompt action is necessary to secure the site or to take any other action required under the AEA. Such an assessment could provide important information to DOJ in its representation of the NRC in bankruptcy proceedings and so should also be made available to DOJ. Additionally, any steps to secure the site should be taken only after consultation with OGC, to ensure that the NRC's rights to compel the debtor to satisfy its public health, safety, and environmental obligations, or to pursue any claim against the assets of the bankruptcy estate, would not be unnecessarily prejudiced. The OGC representative on the BRT may ask DOJ to provide copies of any pertinent filings as warranted.
- The BRT should decide if additional information is required from the licensee and provide a list of issues to be addressed. The OE representatives to the BRT should help prepare any Demands for Information, Orders, Notices of Violation, or other enforcement actions regarding the licensee, the trustee, or the receiver in bankruptcy if these are warranted. The OGC representative to the BRT should be informed of any such actions and will coordinate with and assist the appropriate attorney in OGC in developing such actions as warranted.
- The BRT should recommend if technical assistance contractor support is needed to analyze licensee financial information. If contract support is needed, the bankruptcy lead should coordinate the support through the DWMEP representative to the BRT.
- The BRT should make recommendations on the need to draw on financial assurance instruments that the licensee may have submitted. Appendix I to this report contains a detailed procedure for drawing on financial assurance instruments. The DWMEP representative to the BRT will assist the BRT by advising on the appropriate actions, information needs, and when and how to draw on the decommissioning financial

assurance instrument. Management Directive 8.12, "Decommissioning Financial Assurance Instrument Security Program," discusses the applicable procedures for safeguarding decommissioning financial assurance instruments and discusses the signature authority for drawing on the instruments.

- The BRT should also consider the need to prepare additional legal papers, to be filed on behalf of the NRC with the bankruptcy court, to preserve the NRC's rights to require the debtor to expend available resources to decommission and decontaminate the site. The OGC representative to the BRT should determine whether there are other NRC administrative proceedings or litigation pending or anticipated (i.e., civil penalties, fee collection) that may affect NRC staff actions in the bankruptcy proceeding.

## Sample Electronic Communication to the U.S. Department of Justice for Specific Licensees in Bankruptcy

The U.S. Nuclear Regulatory Commission (NRC) has been recently made aware of the date of filing, bankruptcy filing of [licensee name], with the United States Bankruptcy Court for the [court's identity]. [licensee name] filed under Chapter [correct chapter number]. It possesses NRC License No. \_\_\_\_\_, which authorizes it to use [brief description of authorized licensed activities]. The NRC requests that your office represent the Commission in the above referenced bankruptcy proceeding.

The primary concern of the Commission is the safe control of the nuclear material in the possession of [licensee name]. To this end, the Atomic Energy Act of 1954, as amended, mandates that a license may not be transferred, even involuntarily, absent Commission approval. In addition, licensed material may only be transferred to authorized recipients in accordance with the Atomic Energy Act and the Commission's regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) 30.41, "Transfer of byproduct material."

The NRC would appreciate if you would inform the Bankruptcy Court, [licensee name]'s attorney, and the United States Trustee of the NRC's interest in this case and of the requirements that (1) approval of the Commission is necessary for any license transfer and (2) radioactive material licensed under the above license[s] must be properly transferred.

Attached for your use is a draft Order that could be filed with the Court to set forth the NRC's interest in this case. However, you may choose to notify the Court by other means. I will fax you a copy of the licensee's license and the NRC's notification to the licensee referenced in this draft as Exhibit 1 and Exhibit 2.

Thank you in advance for your assistance in this matter. If you have any questions on this matter, please contact me at (\_\_\_\_) \_\_\_\_-\_\_\_\_ or \_\_\_\_@nrc.gov.



**ATTACHMENT TO ELECTRONIC COMMUNICATION**

DRAFT

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF [ ]**

In Re:

[LICENSEE NAME]

Debtor

Bankruptcy Case No. [ ]  
Chapter 11

1. On [DATE], [LICENSEE NAME] (“Debtor”) filed a voluntary petition for relief in this Court under Chapter 11 of Title 11 of the Bankruptcy Code in the U.S. Bankruptcy Court in this District. The Debtor continues to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the U.S. Bankruptcy Code.
2. [LICENSEE NAME] currently holds a license from the U.S. Nuclear Regulatory Commission (NRC) to use, possess, and store certain radioactive materials (NRC License No. [ ]) (attached as Exhibit 1) as specified in its license.
3. [LICENSEE’S NAME]’s license remains and will continue to remain in effect, pursuant to sections 81, 161, and 183 of the Atomic Energy Act of 1954, as amended (42 U.S.C. sections 2111, 2201, and 2233) and the NRC’s regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34, “Terms and conditions of licenses,” with respect to the possession, transfer, and storage of licensed radioactive material remaining in Debtor’s possession, as contamination or in other forms, until the NRC notifies Debtor in writing that the license is terminated.
4. Although in bankruptcy, Debtor remains responsible for all regulatory requirements under its NRC license, including those relating to the security and control of licensed radioactive material, decontamination and decommissioning of contaminated facilities, and retention of personnel required by the license conditions.
5. The NRC’s regulations at 10 CFR 30.34 do not permit Debtor to transfer, assign, or dispose of its NRC license or the licensed radioactive material, either voluntarily or involuntarily, directly or indirectly, through a transfer of control of the license or any of the licensed radioactive material, to any person or entity, without prior written approval of the NRC.
6. The NRC notified the Debtor of its continuing obligations, as described above, in a letter dated [DATE] (attached as Exhibit 2).

7. The NRC understands that the automatic stay provision in section 362(a) of the U.S. Bankruptcy Code stays legal actions against the Debtor, except in certain limited circumstances that include public health, safety, and environmental obligations. See *Midlantic National Bank v. New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986); *Pacific Gas and Electric Company v. California ex rel. California Department of Toxic Substances Control*, 350 F. 3d 932 (9<sup>th</sup> Cir. 2003), *cert. denied*, *Pacific Gas and Electric Company v. California Public Utilities Commission*, 543 U.S. 956 (2004); *In re Chateaugay Corporation*, 944 F. 2d 997 (2d Cir. 1991).
8. The NRC requests that the Court prohibit Debtor from transferring or disposing of its NRC license or any of the licensed radioactive material without prior NRC approval.

WHEREFORE, the NRC requests that the Court issue an order consistent with the NRC's request herein.

Respectfully submitted,

[DOJ OR AUSA]

## **Sample Electronic Communication to the U.S. Department of Justice for General Licensees in Bankruptcy**

The U.S. Nuclear Regulatory Commission (NRC) has been recently made aware of the [date of filing], bankruptcy filing of [licensee name], with the United States Bankruptcy Court for the [court's identity]. [licensee name] filed under Chapter [correct chapter number]

[Licensee name] is a general licensee of the NRC under [regulation] for [type of device] the NRC maintains a database of the location of generally licensed devices. As such we would ask to be advised of any reorganization or sale involving these licensees so that we can keep our database current. In addition, although general licensees are not subject to the same requirements as specific licensees, there are still requirements for a general licensee, including certain notification requirements, depending upon the type of licensed material involved and the purpose for which this material will be used, and requirements that prohibit certain transfers and provide that the licensee must apply for an export license in certain situations (see e.g., 10 CFR 110.20 and 110.23). We would very much appreciate your notifying the court that we require a general licensee to ascertain the regulations that are applicable to its license and comply with any regulations specific to its situation.

## Sample Letter to Licensee Acknowledging Bankruptcy Notification

[Name]  
[Address]

SUBJECT: ACKNOWLEDGMENT OF \_\_\_\_\_ BANKRUPTCY NOTIFICATION

Dear \_\_\_\_\_:

This acknowledges your letter dated \_\_\_\_\_, informing the U.S. Nuclear Regulatory Commission (NRC) that \_\_\_\_\_ filed for bankruptcy under Chapter \_\_\_\_\_ in Federal Bankruptcy Court on \_\_\_\_\_ Date.

Please be informed that the bankruptcy filing does not relieve \_\_\_\_\_ of its obligations to comply with NRC requirements, including those relating to the security and control of licensed material, decontamination and decommissioning of contaminated facilities, and the retention of personnel required by NRC requirements (e.g., the radiation safety officer (RSO), authorized users). Additionally, the NRC will continue to conduct inspections of your activities.

If the RSO leaves your employ, you must first properly secure, dispose of, or transfer all licensed material, and you must inform the NRC of this situation. If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building. NRC licenses remain in full effect even beyond their stated expiration date, until terminated in writing by the NRC.

You may not (1) transfer control of your license without prior written NRC approval or (2) transfer licensed material except as authorized by NRC regulations. You should ensure that your attorney and any trustee involved in the bankruptcy proceeding are aware of these obligations. Any person who takes control of licensed activities or possession of the licensed material, including any contaminated equipment or property transferred by the licensee, must first obtain an NRC license.

Please notify us immediately if you are unable to meet any of these conditions. Also, please notify us when the bankruptcy proceeding is completed.

Thank you for your cooperation in this matter. You may contact \_\_\_\_\_ at (\_\_\_\_) \_\_\_\_-\_\_\_\_ if you have any questions or information concerning the status of your license or activities.

Sincerely,

(HQ/Regional Branch Chief or above)

## **APPENDIX I**

### **PROCEDURES FOR DRAWING ON FINANCIAL ASSURANCE INSTRUMENTS**



## **APPENDIX I PROCEDURES FOR DRAWING ON FINANCIAL ASSURANCE INSTRUMENTS**

### **Letter of Credit**

Before drawing on a letter of credit, the U.S. Nuclear Regulatory Commission (NRC) licensing office should contact the individual at the issuing bank who signed the letter of credit to determine the specific bank procedures to be followed to draw on the instrument. In these discussions, the following details should be resolved:

- where the transaction is to take place
- whether the transaction needs to take place in person
- what documents need to be presented (e.g., if the originals are needed)
- if there are deadlines for drawing on the instrument
- if there are deadlines before which the instrument cannot be drawn on
- the form of the sight draft (a bill of exchange or draft payable when presented)

In consultation with the licensing office, the Office of the Chief Financial Officer (OCFO), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Division of Waste Management and Environmental Protection (DWMEP), the Office of the General Counsel (OGC) should prepare the sight draft and the sight draft certification with the exact wording referenced in the letter of credit and in accordance with other letter of credit conditions and bank instructions. The sight draft must reference the letter of credit number.

The Office Director, Deputy Office Director, or the applicable Regional or Deputy Regional Administrator should sign the sight draft and certify the sight draft certification. The certification should be notarized.

The appropriate individual should present the sight draft, sight draft certification, and other required documents at the bank in accordance with bank instructions.

During initial discussions with the bank, OGC, OCFO, DWMEP, and licensing office staff should contact the trustee named in the standby trust agreement. The licensing office, OGC, OCFO, and DWMEP, in consultation with the trustee, should determine the method the trustee desires for transfer of the letter of credit funds. Arrangements for direct transfer of the funds to the trustee account must be made so that the NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the bank to make any instrument payable to the NRC or to the licensee.

If the licensee is capable of directing the remediation and has a decommissioning plan approved by the NRC, it must give the NRC 30 days' notice if it intends to withdraw funds from the trust. The licensee also must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of the NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have a decommissioning plan approved by the NRC, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of the NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of the NRC's approval

of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation) licensing office staff, in consultation with OGC, OCFO, and DWMEP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

The NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

### **Surety Bond**

OGC, OCFO, DWMEP, and the licensing office staff should review the conditions in the bond before contacting the surety company.

Licensing office staff, in consultation with OGC, OCFO, and DWMEP, should prepare an Order to the licensee to fund the standby trust in the amount identified for the facility or to provide an alternative financial assurance instrument, and to prepare any other documents specified in the surety bond conditions.

If the licensee cannot meet these specified conditions in the surety bond, the NRC staff should request that the licensee state such.

Licensing office staff, in consultation with OGC, OCFO, and DWMEP, should contact the surety bond company to determine the specific procedures to draw on the instrument in terms of the following:

- where the transaction is to take place
- whether the transaction needs to take place in person
- what documents need to be presented
- what form of the notification by the NRC is desired

OGC, OCFO, DWMEP, and the licensing office staff should determine if the conditions for drawing on the bond have been met as stated in the surety bond. If so, the NRC licensing office staff, in consultation with OGC, OCFO, and DWMEP, should prepare a notification of default, with the applicable supporting documents.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the notification documents and have the certification notarized. These documents and other required documents should then be presented to the surety bond company in accordance with surety bond company instructions.

During initial discussions with the surety company, the licensing office staff, in consultation with OGC, OCFO, and DWMEP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DWMEP should determine the method the trustee desires for transfer of the bond funds. Arrangements for



direct transfer of the funds to the trustee account must be made so that the NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the bank to make any instrument payable to the NRC or to the licensee.

If the licensee is capable of directing the remediation and has a decommissioning plan approved by the NRC, it must give the NRC 30 days' notice if it intends to withdraw funds from the standby trust. The licensee also must complete, as specified in the trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning. If the licensee is capable of directing the remediation but does not have a decommissioning plan approved by the NRC, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of the NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of the NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust fund (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DWMEP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

The NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

### **Trust Agreement**

Licensing office staff, in consultation with OGC, OCFO, and DWMEP, should contact the trustee named in the trust agreement to determine the specific procedures to draw on the instrument in terms of the following:

- where the transaction is to take place
- whether the transaction needs to take place in person
- what documents need to be presented
- the form of any additional documents needed from the NRC

### **Parent Company Guarantee**

After consultation with OGC, OCFO, and DWMEP, the licensing office staff should contact the parent company to notify it that the licensee has defaulted or is unwilling or unable to complete decommissioning. The licensing office staff, in consultation with OGC, OCFO, and DWMEP, and the parent company should determine any specific procedures the parent company needs for requesting funding.

In consultation with OGC, OCFO, and DWMEP, the licensing office should prepare a document formally notifying the parent company that the licensee has defaulted or is unwilling or unable to complete decommissioning.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the letter and ensure that the certification is notarized.

A parent guarantee mechanism must be used with a standby trust agreement. During initial discussions with the parent company, the licensing office staff, together with OGC, OCFO, and DWMEP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DWMEP should determine the method the trustee desires for transfer of the parent company funds. Arrangements for direct transfer of the funds to the trust account must be made so that the NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the parent company to make any instrument payable to the NRC or to the licensee.

If the licensee is capable of directing the remediation and has a decommissioning plan approved by the NRC, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of the NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have a decommissioning plan approved by the NRC, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of the NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of the NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DWMEP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

The NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

### **Self-Guarantee**

In consultation with OGC, OCFO, OE, and DWMEP, the licensing office staff should prepare an order formally notifying the licensee that, under the self-guarantee, the licensee is required to fund the standby trust fund in the amount of the self-guarantee for the decommissioning of any contaminated facilities.

During initial discussions with the licensee, the licensing office staff, together with OGC, OCFO, and DWMEP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DWMEP should determine the method the trustee desires for transfer of the self-guarantee funds. Arrangements for direct transfer of the funds to the trust account must be made so that the NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the licensee to make any instrument payable to the NRC or to the licensee.

If a management trustee is appointed to handle decommissioning and is capable of directing the remediation, and the NRC has approved a decommissioning plan for the site, the management trustee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete, as specified in the trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of the NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the management trustee is capable of directing the remediation but does not have a decommissioning plan approved by the NRC, the management trustee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of the NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of the NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the management trustee should ensure that these modifications are acceptable to the financial trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DWMEP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

The NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The FSME Office Director, FSME Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.



## **APPENDIX J**

### **DOCUMENTS CONSIDERED IN THE PREPARATION OF THIS REPORT**



## APPENDIX J DOCUMENTS CONSIDERED IN THE PREPARATION OF THIS REPORT

This report incorporates and updates the guidance previously found in Policy and Guidance Directives (P&GDs) and Information Notices (INs) listed below. Other U.S. Nuclear Regulatory Commission documents, such as Manual Chapters (MCs), Inspection Procedures (IPs), and Memoranda of Understanding (MOU) were also consulted during the preparation of this report. *The documents marked with an asterisk (\*) are considered superseded and should not be used.*

**Table J.1 List of NUREG Reports, Regulatory Guides, and Policy and Guidance Directives**

Document Identification	Title	Date
IN 89-25, Rev. 1	Unauthorized Transfer of Ownership or Control of Licensed Activities	12/07/1994
IN 93-100	Reporting Requirements for Bankruptcy	12/22/1993
IN 97-30	Control of Licensed Material during Reorganizations, Employee-Management Disagreements and Financial Crises	06/03/1997
IP 87103	Inspection of Material Licensees Involved in an Incident or Bankruptcy Filing	11/03/2000
IP 87103, App. B	Guidance for Inspection of Materials Licensees Who Have Filed for Bankruptcy	11/03/2000





**APPENDIX K**

**SAFETY CULTURE STATEMENT OF POLICY**



## APPENDIX K SAFETY CULTURE STATEMENT OF POLICY

The safety culture policy statement was published in the *Federal Register* (76 FR 34773) on June 14, 2011 and can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14656.pdf>. It is also posted in the U.S. Nuclear Regulatory Commission's (NRC's) Agencywide Documents Access and Management System (ADAMS) Accession No. ML11146A047.

### Safety Culture Policy Statement

The purpose of this Statement of Policy is to set forth the Commission's expectation that individuals and organizations establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This includes all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority. The Commission encourages the Agreement States, Agreement State licensees and other organizations interested in nuclear safety to support the development and maintenance of a positive safety culture, as articulated in this Statement of Policy.

Nuclear Safety Culture is defined as *the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment*. Individuals and organizations performing regulated activities bear the primary responsibility for safety and security. The performance of individuals and organizations can be monitored and trended and, therefore, may be used to determine compliance with requirements and commitments and may serve as an indicator of possible problem areas in an organization's safety culture. The NRC will not monitor or trend values. These will be the organization's responsibility as part of its safety culture program.

Organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve both safety and security in their activities. Safety and security activities are closely intertwined. While many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. It is important that consideration of these activities be integrated so as not to diminish or adversely affect either; thus, mechanisms should be established to identify and resolve these differences. A safety culture that accomplishes this would include all nuclear safety and security issues associated with NRC-regulated activities.

Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal conflict situations (e.g., production, schedule, and the cost of the effort versus safety). It should be noted that although the term "security" is not expressly included in the following traits, safety and security are the primary pillars of the NRC's regulatory mission. Consequently, consideration of both safety and security issues, commensurate with their significance, is an underlying principle of this Statement of Policy.

The following are traits of a positive safety culture:

- (1) *Leadership Safety Values and Actions*—Leaders demonstrate a commitment to safety in their decisions and behaviors,
- (2) *Problem Identification and Resolution*—Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance,
- (3) *Personal Accountability*—All individuals take personal responsibility for safety,
- (4) *Work Processes*—The process of planning and controlling work activities is implemented so that safety is maintained,
- (5) *Continuous Learning*—Opportunities to learn about ways to ensure safety are sought out and implemented,
- (6) *Environment for Raising Concerns*—A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination,
- (7) *Effective Safety Communication*—Communications maintain a focus on safety,
- (8) *Respectful Work Environment*—Trust and respect permeate the organization, and
- (9) *Questioning Attitude*—Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.

There may be traits not included in this Statement of Policy that are also important in a positive safety culture. It should be noted that these traits were not developed to be used for inspection purposes.

It is the Commission's expectation that all individuals and organizations, performing or overseeing regulated activities involving nuclear materials, should take the necessary steps to promote a positive safety culture by fostering these traits as they apply to their organizational environments. The Commission recognizes the diversity of these organizations and acknowledges that some organizations have already spent significant time and resources in the development of a positive safety culture. The Commission will take this into consideration as the regulated community addresses the Statement of Policy.

**BIBLIOGRAPHIC DATA SHEET**

(See instructions on the reverse)

1. REPORT NUMBER  
(Assigned by NRC, Add Vol., Supp., Rev.,  
and Addendum Numbers, if any.)  
NUREG-1556, Volume 15,  
Revision 1  
DRAFT

2. TITLE AND SUBTITLE

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11. ABSTRACT (200 words or less)

This technical report contains information intended to provide program-specific guidance and to assist applicants, licensees and others in preparing and reviewing requests involving materials license bankruptcy or changes of control. This report contains guidance describing the types of information needed from the applicant, licensee, and others to complete U.S. Nuclear Regulatory Commission (NRC) Form 313, "Application for Materials License," along with other supporting information necessary to process the application. This report should be used in preparing requests for licensing actions; however, the guidance it contains does not represent new or proposed regulatory requirements, and licensees will not be inspected against any portion of it.

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