UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
SECRETARY

March 7, 2003

COMMISSION VOTING RECORD

DECISION ITEM: SECY-02-0221

TITLE: FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED ITS LICENSE TERMINATION PLAN

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of March 7, 2003.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

J. Schmidt Walk for
Annette L. Vietti-Cook
Secretary of the Commission

Attachments:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR

VOTING SUMMARY - SECY-02-0221

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. MESERVE	X				X	1/30/03
COMR. DICUS	X					2/7/03
COMR. DIAZ	X					1/8/03
COMR. McGAFFIGAN	X				X	2/24/03
COMR. MERRIFIELD	X				X	1/23/03

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and some provided additional comments. Subsequently, the Commission approved the final rule as noted in an Affirmation Session and reflected in the SRM issued on March 7, 2003.

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN MESERVE

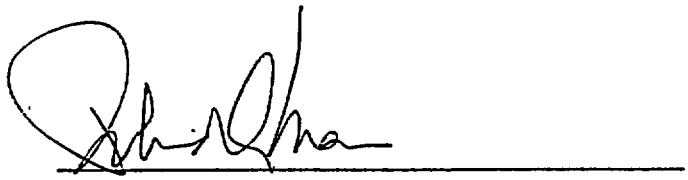
SUBJECT: **SECY-02-0221 - FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED I TS LICENSE TERMINATION PLAN**

Approved X/comment Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments.



SIGNATURE

January 30, 2003

DATE

Entered on "STARS" Yes X No ____

COMMENTS OF CHAIRMAN MESERVE ON SECY-02-0221

This rulemaking provides the process by which a power reactor licensee may seek the release of part of a site for unrestricted use before approval of its license termination plan. The rulemaking ensures that any such release provides full protection of public safety and should further the public interest by making land available for productive use.

I approve the publication of the rulemaking notice, subject to the attached modifications of the Federal Register notice. Most of the changes are minor, but perhaps one should be explained. The existing text at page 12 states that "the relevant site area to be considered in demonstrating compliance with 10 C.F.R. 20, Subpart E, is the current and historic licensed site . . . ." This language would impose a new constraint on Subpart E, as it would exclude consideration of the effects of contamination outside the licensed area in demonstrating compliance with the dose limits on the licensed site and, perhaps even more serious, might raise questions about the NRC's authority to require cleanup outside the licensed area. I propose simple edits that avoid the issue.

license termination radiation survey is required after the licensee completes its decontamination activities. These requirements were based on the NRC's anticipation that reactor licensees would permanently cease operations and then perform the decommissioning and license termination of the site as one project. However, in 1999, a licensee informed the staff that it intended to sell parts of its facility and site before it permanently ceased operations. As a result, the staff was faced with the need to evaluate the adequacy of the licensee's proposed action before the licensee was required to submit the information required by the license termination rule (LTR) and the final radiation survey.

In evaluating the staff's response to the proposed sale of parts of the licensee's facility and site, a number of actions specific to the case were taken to ensure that the property would meet the radiological release criteria for unrestricted use of 10 CFR Part 20, Subpart E.

However, the NRC recognized that the current regulations in 10 CFR Part 50 do not specifically address the release of part of a reactor facility or site for unrestricted use ~~or require a licensee to obtain NRC approval of a partial site release.~~ Thus, there is no specific ~~requirement to meet~~ guidance as to the release criteria under 10 CFR Part 20, Subpart E, for a partial site release.

The purpose of the License Termination Rule (LTR) [61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997] and 10 CFR 50.82 is to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, this rule provides that the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the licensed site, to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. This approach is consistent with the intent of the LTR to consider the whole site for application of the release criteria. The rule clarifies this intent and

does not establish new policies or standards. Although no further surveys of previously released areas are anticipated, the dose assessment in the LTP must account for possible dose contributions associated with previously released areas in order to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, (0.25 mSv/yr [25 mrem/yr] reduced to as low as reasonably achievable [ALARA]) at the time the license is terminated. The requirement that licensees maintain records of property line changes and the radiological conditions of partial site releases ensures that these potential dose contributions can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," was published for public comment on September 26, 2002. When finalized, this document will provide guidance that may assist licensees in identifying and accounting for these potential dose contributions.

The rule, therefore, provides adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources.

Discussion

~~The strategy for developing~~ This rulemaking ~~was to narrow its applicability~~ is limited to power reactor licensees in order to be responsive to current industry needs while also protecting the health and safety of the public. A separate rulemaking ~~would~~ will be needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning

perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release. The rule requires NRC approval for a partial site release for unrestricted use at a reactor site before NRC approval of the licensee's LTP. Partial releases for restricted use are not permitted prior to LTP approval. Partial releases following LTP approval would be governed by the LTP or changes thereto.

The approval process by which the property is released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as *non-impacted* and, therefore, having no reasonable potential for residual radioactivity, the licensee would be allowed to submit a letter request for approval of the release containing specific information for NRC approval. In these cases, ~~as~~ because there is no reasonable potential for residual radioactivity, NRC would approve the release of the property by letter upon determining that the licensee has otherwise met the criteria of the rule and provided that a change to a license or technical specifications description of the site is not necessary. Guidance for demonstrating that a proposed release area is *non-impacted* is contained in NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." NRC would generally not perform radiological surveys and sampling of a non-impacted area. NRC will, however, determine whether the licensee's classification of any release areas as non-impacted is adequately justified. ~~Should~~ If should NRC determine that confirmatory surveys and sampling are needed, such surveys and sampling would be done as part of NRC's inspection process.

Second, for areas classified as impacted and, therefore, having some reasonable potential for residual radioactivity, the licensee would submit the required information in the form of a license amendment for NRC approval. The license amendment application would also include the licensee's demonstration of compliance with the radiological criteria for

The NRC received 11 comment letters. Three were from States (Connecticut, Illinois, and Washington), seven from the industry including six power reactor licensees and the Nuclear Energy Institute (NEI), and one from the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup.

The Commission sought input from stakeholders on seven specific issues associated with partial site release. The stakeholder input and NRC responses to these issues are included below.

1. Support for the Proposed Rule

Comment: None of the commenters were opposed to the idea of a process for releasing part of a site or facility. Six of the 11 commenters provided specific comments in general support of the concept of the proposed rule. NEI, representing the industry, stated that recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to effectively use property which does not directly support plant operations. Industry supports this needed regulatory action.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the general support for this rulemaking.

2. Partial releases following NRC approval of the LTP

Comment: One reactor licensee and NEI disagreed with the statement in the proposed rule that, once an LTP has been approved, there is no longer any need for a separate regulatory mechanism for partial releases. They noted that a significant length of time may pass between approval of the LTP and license termination, and that licensees should retain the

changes to the site boundary pursuant to 10 CFR 50.59 and, when such property is acquired, it should not be required to be incorporated into the site boundary.

Response: The Commission disagrees with the commenter's suggestion that the definition of "site boundary" in 10 CFR 20.1003 must be changed, but agrees that clarification of this issue is needed. "Site boundary," as defined in 10 CFR 20.1003 is not the area to be considered in demonstrating compliance with the radiological release criteria for all licensees. As one commenter accurately pointed out, the definition of site boundary was incorporated into 10 CFR 20 to support the concept of a controlled area. The terms "site" and "site boundary" are used in a number of contexts by licensees and in the Commission's regulations. In the context of 10 CFR Part 50, the term site boundary is typically applied for emergency planning purposes to define the point at which offsite dose consequences are to be estimated for purposes of defining emergency action classes and making protective action measure recommendations. The site boundary is also often referred to in reactor plant technical specifications for the purpose of defining the point at which effluents must meet the dose and concentration limits of Part 20.

Because the radiological release criteria provided in 10 CFR 20, Subpart E, does not utilize the term "site boundary", the NRC does not believe the "site boundary" definition in § 20.1003 requires amending in order to describe the site area which must be considered in demonstrating compliance with the release criteria. Rather, for purposes of partial site release, ~~it is clarified that the relevant site area to be considered in demonstrating compliance with 10 CFR 20, Subpart E,~~ the focus is on the current and historic licensed site, meaning the site area as described in the original NRC license application, plus any acquisition of property outside the originally licensed site boundary added for the purpose of receiving, possessing, or using licensed material at any time during the term of the license.

the dose caused by residual material associated with a partial site release is to be considered in combination with the other public doses from fuel cycle facilities.

Response: The NRC disagrees with the commenters' assertion that the section-by-section discussion clarifying the relationship between 10 CFR Part 20, Subparts D and E, and EPA's requirements in 40 CFR Part 190 constitutes a new policy position and, therefore, requires a backfit analysis. As discussed in the Background section of these Statements of Consideration, the purpose of the LTR was to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the license, to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. This partial site release rule is consistent with the intent of the LTR and establishes no new policies or standards The dose contributions associated with ~~previously~~ previously released areas meet the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," when finalized, will provide guidance to licensees on how to identify and account for these potential dose contributors. The discussion in the section-by-section analysis represents the NRC's views on the application of existing requirements in 10 CFR Part 20 to the new circumstance of partial site releases. However, power reactor licensees should appreciate that they are subject to 40 CFR Part 190 requirements and that site boundaries may need to be reconsidered as a result of a partial site release for purposes of compliance with 40 CFR Part 190. In addition, NRC is reminding licensees that for the purposes of 40 CFR Part 190, they must consider all doses from the operating uranium fuel cycle and that doses from portions of sites released may have

arise from the voluntary action of the licensee to seek partial site release

come from radioactive material released ~~at the time~~ from an operating uranium fuel cycle facility. This partial site release rule does not amend or reinterpret 40 CR Part 190 or 10 CFR 20.1301(d) which requires certain licensees, including power reactor licensees, to comply with 40 CFR Part 190. The staff is developing guidance to implement 10 CFR 20.1301(d) for partial site releases, which will be incorporated into NUREG-1757, Volume II. Except for the information collection requirements in 10 CFR 50.75(g), which are not backfits, the requirements in this final rulemaking ~~are voluntary~~ and do not impose a backfit as defined in 10 CFR 50.109(a). Therefore, the NRC finds that the proposed rule discussion of the relationship between 10 CFR Part 20, Subparts D and E, and EPA's requirements in 40 CFR Part 190 does not constitute a backfit, and that a backfit analysis is not required.

Additionally, the NRC believes that its interpretation of the applicability of EPA's regulations in 40 CFR Part 190 is correct and consistent with past NRC regulatory concepts. Neither commenter demonstrated that the NRC's discussion was inconsistent with NRC regulatory concepts as articulated in the past, or inconsistent with past NRC practice with respect to license terminations in general. A review of the Statements of Consideration for the final 40 CFR Part 190 rule did not disclose any discussion that supports the commenters' contention (see 42 FR 2850, January 13, 1977). On the contrary, the NRC believes that its discussion is entirely consistent with the underlying objective of the EPA requirements in 40 CFR Part 190, *viz.*, that the dose to the relevant receptor be based upon the contribution of all radioactive materials/sources attributable to the nuclear fuel cycle operations, regardless of the licensing status of the radioactive materials or the land on which they are located.

The NRC also disagrees that a partially released area no longer meets the definition for "uranium fuel cycle operation," and therefore the dose contribution attributable to residual material on the partially released site is not required to be considered in determining

compliance with the standards of 40 CFR Part 190. It is true that, once a portion of the site is released, it is longer an active part of a uranium fuel cycle operation. However, as noted above, it is residual material resulting from previous operation of the facility, introduced into the general environment as a result of the licensee's action to release the property for unrestricted use, that contributes to the public exposures within the scope of EPA 40 CFR Part 190. With respect to the definition of "uranium fuel cycle," the Commission notes that neither the LTR, nor this rulemaking, redefine or limit the definition of uranium fuel cycle. Residual radioactivity does not lose its original pedigree by NRC's action to terminate a licence. The dose from this residual material must be considered in combination with other uranium fuel cycle exposures under 40 CFR Part 190. The commenters' position would be true only if the EPA regulation had a temporal component, i.e., it was intended to cover only current and/or future operations at the site. The regulation contains no temporal limitation and simply states that the dose equivalent must consider exposures "from uranium fuel cycle operations." Moreover, the definition of "uranium fuel cycle" in 40 CFR 190.02 covers activities which are sequential in time (i.e., for any given site they may not occur simultaneously). Nonetheless, pursuant to Section 190.10(a) the total contribution must be considered in determining compliance with the 40 CFR Part 190 dose standards when releasing radiologically impacted property for unrestricted use. Assuming that the criterion is intended to integrate the instantaneous dose attributable to radioactive materials whose genesis is directly attributable to uranium fuel cycle operations, it is irrelevant that the radioactive materials happen to be located on a site that is no longer used for uranium fuel cycle operations. For these reasons, the NRC continues to believe that its discussion of the applicability of 40 CFR Part 190 in the section-by-section analysis is correct.

Comment: Section 50.83(a)(1)(i) requires that licensees seeking NRC approval of a partial site release evaluate the effect of releasing the property to ensure that the dose to

quantities and concentrations of radionuclides for materials. Such standards, which are fully protective of public health and safety and are in the public interest, can be created.

Response: Although the comments are not directly related to the partial site release rulemaking, the NRC is appreciative of the issues raised. The Commission ~~is currently re-examining its approach for~~ has directed the development of a proposed rule to address the control of solid materials, including whether it is appropriate to set a standard in this area that would apply to all licensees. The points raised in the comments will be considered as part of the Commission's review of alternative approaches.

8. Finality of Releases

Comment: A reactor licensee commented that, ~~once~~ after the Commission has released the property, its jurisdiction should end. The commenter recommended that, in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

Response: The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in 20.1401(c) by stating that ~~this criteria is~~ those provisions are an important ~~addition~~ in providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule [61 FR 39301; July

Sections 10 CFR 50.83(c)(2) and 10 CFR 50.83(d)(2) of the proposed rule stated that, after receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine whether the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas, however licensees may, at their own initiative, choose to survey these areas. The question of whether surveys of non-impacted areas should be performed is solely concerned with the adequacy of HSAs and the site characterization process in concluding that there is no reasonable potential for residual radioactivity.

11. Final Radiation Survey and Associated Documentation

Comment: Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and NEI commented that adding the phrase "including any parts released for use before approval of the license termination plan" as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase "released for use" should be changed to "released for unrestricted use." Additionally, a commenter stated that the

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DICUS

SUBJECT: **SECY-02-0221 - FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED I TS LICENSE TERMINATION PLAN**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

NONE.

Greta Joy Dicus
SIGNATURE

February 7, 2003
DATE

Entered on "STARS" Yes X No ____

DEC 02 9:4

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER DIAZ

SUBJECT: **SECY-02-0221 - FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED I TS LICENSE TERMINATION PLAN**

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

SIGNATURE

Jan 8, 03

DATE

Entered on "STARS" Yes X No ____

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: **SECY-02-0221 - FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED I TS LICENSE TERMINATION PLAN**

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached edits and comments on Federal Register Notice and Letters.

Edward McGaffigan

SIGNATURE

February 24, 2003

DATE

Entered on "STARS" Yes X No ____

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 20, and 50

RIN 3150 - AG56

Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to standardize the process for allowing a power reactor licensee to release part of its facility or site for unrestricted use before the NRC approves the license termination plan (LTP). This type of release is termed a "partial site release." The rule identifies the criteria and regulatory framework that a licensee would use to request NRC approval for a partial site release and provides additional assurance that residual radioactivity would meet the radiological criteria for license termination, even if parts of the site were released before license termination. The rule also clarifies that the radiological criteria for unrestricted use in 10 CFR 20 apply to a partial site release.

EFFECTIVE DATE: (Insert date 6 months (plus 30 days) after the date of publication), for § 50.75(g)(4). All remaining sections will be effective on **(Insert date 30 days after the date of publication).**

ADDRESSES: The final rule and any related documents are available on the NRC's rulemaking Web site (http://ruleforum.llnl.gov/). For information about the interactive

rulemaking Web site, contact Carol Gallagher, 301-415-5905 (electronic mail: *cag@nrc.gov*).

Copies of certain documents related to this rulemaking may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet (http://www.nrc.gov/reading-rm.html). From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS) that provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 301-415-4737 or toll-free at 1-800-397-4209, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001; telephone: 301-415-3092; or by e-mail to *hst@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Compliance with the decommissioning and license termination rules of 10 CFR Parts 20 and 50 ensures adequate protection to the public and the environment from any radioactivity remaining in the facility and site when the reactor license is terminated. The NRC staff makes its determination that the licensee has met the license termination criteria using information submitted by the licensee in its license termination plan (LTP) and final radiation survey. The LTP is required no later than 2 years before the anticipated date of license termination. The

license termination radiation survey is required after the licensee completes its decontamination activities. These requirements were based on the NRC's anticipation that reactor licensees would permanently cease operations and then perform the decommissioning and license termination of the site as one project. However, in 1999, a licensee informed the staff that it intended to sell parts of its facility and site before it permanently ceased operations. As a result, the staff was faced with the need to evaluate the adequacy of the licensee's proposed action before the licensee was required to submit the information required by the license termination rule (LTR) and the final radiation survey.

In evaluating the staff's response to the proposed sale of parts of the licensee's facility and site, a number of actions specific to the case were taken to ensure that the property would meet the radiological release criteria for unrestricted use of 10 CFR Part 20, Subpart E.

However, the NRC recognized that the current regulations in 10 CFR Part 50 do not specifically address the release of part of a reactor facility or site for unrestricted use, or require a licensee to obtain NRC approval of a partial site release. Thus, there is no specific requirement to meet the release criteria under 10 CFR Part 20, Subpart E, for a partial site release.

The purpose of the License Termination Rule (LTR) [61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997] and 10 CFR 50.82 is to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the licensed site, to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. This approach is consistent with the intent of the LTR to consider the whole site for application of the release criteria. The rule clarifies this intent and

does not establish new policies or standards. Although no further surveys of previously released areas are anticipated, the dose assessment in the LTP must account for possible dose contributions associated with previously released areas in order to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, (0.25 mSv/yr [25 mrem/yr] reduced to as low as reasonably achievable [ALARA]) at the time the license is terminated. The requirement that licensees maintain records of property line changes and the radiological conditions of partial site releases ensures that these potential dose contributions can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," was published for public comment on September 26, 2002. When finalized, this document will provide guidance that may assist licensees in identifying and accounting for these potential dose contributions.

The rule, therefore, provides adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources.

Discussion

The strategy for developing this rulemaking was to narrow its applicability to power reactor licensees to be responsive to current industry needs while also protecting the health and safety of the public. A separate rulemaking would be needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning

perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release. The rule requires NRC approval for a partial site release for unrestricted use at a reactor site before NRC approval of the licensee's LTP. Partial releases for restricted use are not permitted prior to LTP approval. Partial releases following LTP approval would be governed by the LTP or changes thereto.

The approval process by which the property is released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as *non-impacted* and, therefore, having no reasonable potential for residual radioactivity, the licensee would be allowed to submit a letter request for approval of the release containing specific information for NRC approval. In these cases, as there is no reasonable potential for residual radioactivity, NRC would approve the release of the property by letter upon determining that the licensee has otherwise met the criteria of the rule and provided that a change to a license or technical specifications description of the site is not necessary. Guidance for demonstrating that a proposed release area is *non-impacted* is contained in NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." NRC would generally not perform radiological surveys and sampling of a non-impacted area. NRC will, however, determine whether the licensee's classification of any release areas as non-impacted is adequately justified. Should NRC determine that confirmatory surveys and sampling are needed, such would be done as part of NRC's inspection process.

Second, for areas classified as impacted and, therefore, having some reasonable potential for residual radioactivity, the licensee would submit the required information in the form of a license amendment for NRC approval. The license amendment application would also include the licensee's demonstration of compliance with the radiological criteria for

unrestricted use specified in 10 CFR 20.1402. In both cases, public participation requirements and additional recordkeeping are addressed.

In contrast to the license termination process, the rule does not require a license amendment to release property for unrestricted use in all cases. The NRC believes this difference is justified for the following reasons. First, the license termination process was created to deal with the facility or site as a whole, which inevitably involves handling residual radioactivity, such as that found in plant systems. The rule preserves the license amendment approach for those cases in which the potential exists for residual radioactivity and requires that the area meets the radiological criteria for unrestricted use. Second, for cases in which the change does not adversely affect reactor safety and it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required to adequately protect the public health and safety. The rule with its clearly defined criteria would be sufficient for the NRC to confirm a licensee's compliance with the partial site release rule. The NRC's oversight role in these cases is to ensure that the licensee meets the relevant criteria.

The rule amends 10 CFR Part 2 to provide an opportunity for a Subpart L hearing if the release involves an amendment. The hearing, if conducted, must be completed before the property is released for use. However, as noted above, for cases where it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required by the rulemaking. A review of a licensee's proposed partial site release in such cases is essentially a compliance review to determine if the release would otherwise meet the defined criteria of the regulation. Assuming the partial site release does not result in a change to an existing license, the approval of the partial site release under these circumstances does not require a license amendment (see *Cleveland*

ALARA) for releases of property in which the area is classified as impacted and, therefore, some reasonable potential for residual radioactivity in the area to be released exists.

6. Revises the LTP requirements to account for previously released property in demonstrating compliance with the radiological release criteria.

7. Requires the NRC to hold a public meeting to inform the public of the partial site release request and receive public comments before acting on the request.

8. Incorporates into the recordkeeping important to decommissioning the records of property subject to the release criteria.

9. Adds supporting definitions of key terms.

The partial site release rule makes the following changes to 10 CFR Part 20:

1. Includes releasing part of a facility or site within the scope of the radiological criteria for license termination.

2. Includes releasing part of a facility or site for unrestricted use within the scope of the criteria by which the NRC may require additional cleanup on receiving new information following the release.

The partial site release rule makes the following change to 10 CFR Part 2:

1. Provides for informal hearings in accordance with Subpart L for amendments associated with partial site releases.

Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received 11 comment letters. Three were from States (Connecticut, Illinois, and Washington), seven from the industry including six power reactor licensees and the Nuclear Energy Institute (NEI), and one from the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup.

The Commission sought input from stakeholders on seven specific issues associated with partial site release. The stakeholder input and NRC responses to these issues are included below.

1. Support for the Proposed Rule

Comment: None of the commenters were opposed to the idea of a process for releasing part of a site or facility. Six of the 11 commenters provided specific comments in general support of the concept of the proposed rule. NEI, representing the industry, stated that recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to effectively use property that ~~which~~ does not directly support plant operations. Industry supports this needed regulatory action.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the general support for this rulemaking.

2. Partial releases following NRC approval of the LTP

Comment: One reactor licensee and NEI disagreed with the statement in the proposed rule that, once an LTP has been approved, there is no longer any need for a separate regulatory mechanism for partial releases. They noted that a significant length of time may pass between approval of the LTP and license termination, and that licensees should retain the

The above clarification will apply to the majority of release situations, including those at multi-unit sites. One commenter pointed out, however, that the clarification may complicate terminating the license in the case in which a part of the originally licensed site became part of the licensed site for another licensee at some time in the past, and the originally licensed site is no longer clearly delineated. The partial site release rule is not amended to address unique license termination issues such as this. A determination of what property must be considered in demonstrating compliance with the release criteria in such circumstances will necessarily be addressed on a case-by-case basis.

Sales or other dispositions of property from within the licensed site area by a power reactor licensee prior to NRC approval of the LTP requires NRC preapproval in accordance with the partial site release rule. Acquisitions, as well as subsequent dispositions, of property located outside of the licensed site area can be made pursuant to 10 CFR 50.59 and NRC pre-approval of these transactions is not required as long as a licensing action is not otherwise required as a result of any regulations impacted as a result of the acquisition or disposition. Depending on the specific site circumstances, acquired property may become part of the several site boundaries established by licensees such as the exclusion area, emergency planning zone, effluent release compliance boundary, restricted area, controlled area, etc, and are therefore subject to applicable regulatory requirements.

In clarifying the area subject to the radiological release criteria, the recordkeeping requirements in 10 CFR 50.75(g) have been revised to require that licensees maintain records of the current and historic licensed site area as well as records associated with partial releases from the licensed site made prior to license termination. By maintaining these records, potential dose contributions from residual radioactivity in the entire area, including any areas previously released, can be assessed in demonstrating compliance with the radiological release criteria

when performing a partial site release and when terminating the license. In order to prevent confusion with the site boundary definition in § 20.1003, the term "site boundary" has been changed to "licensed site" in the recordkeeping requirements added to 10 CFR 50.75(g) in the final rule.

4. Dose contribution of residual material to the Environmental Protection Agency's (EPA) environmental radiation standard

Comment: One reactor licensee and NEI commented that the language in the section-by-section analysis of the proposed rule clarifying the relationship between radiation exposure limits associated with 10 CFR Part 20 Subpart D, Subpart E, and the EPA's limits specified in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," establishes a new policy position as written and constitutes a backfit if incorporated into the final rule. The commenters believe that the exposures due to residual radioactivity associated with a terminated 10 CFR Part 50 license are outside the scope of the EPA's limits under 40 CFR 190, and that it is not necessary to reduce the 10 CFR Part 20, Subpart E, standard to account for additional exposures that originate from the operation of nearby uranium fuel cycle facilities. The commenters stated that if this interpretation were to hold it would have significant impact not only on licensees considering partial site release but also on licensees currently proceeding to terminate their Part 50 licenses with an onsite ISFSI.

Additionally, a commenter stated that the existence of other sources of exposure to the critical group is already accounted for in the construction of the 0.25 mSv/yr (25 mrem/yr) radiological release criteria for unrestricted use in 10 CFR Part 20, Subpart E. The commenter also stated that, once a portion of the site is released, it no longer meets the definition of "uranium fuel cycle operation," and therefore takes exception to the statements in the proposed rule that

the dose caused by residual material associated with a partial site release is to be considered in combination with the other public doses from fuel cycle facilities.

Response: The NRC disagrees with the commenters' assertion that the section-by-section discussion clarifying the relationship between 10 CFR Part 20, Subparts D and E, and EPA's requirements in 40 CFR Part 190 constitutes a new policy position and, therefore, requires a backfit analysis. As discussed in the Background section of these Statements of Consideration the purpose of the LTR was to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the license, to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. This partial site release rule is consistent with the intent of the LTR and establishes no new policies or standards. The dose contributions associated with previously released areas meet the radiological release requirements of 10 CFR Part 20, Subpart E, at the time the license is terminated. Draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," when finalized, will provide guidance to licensees on how to identify and account for these potential dose contributors. The discussion in the section-by-section analysis represents the NRC's views on the application of existing requirements in 10 CFR Part 20 to the new circumstance of partial site releases. However, power reactor licensees should appreciate that they are subject to 40 CFR Part 190 requirements and that site boundaries may need to be reconsidered as a result of a partial site release for purposes of compliance with 40 CFR Part 190. In addition, NRC is reminding licensees that for the purposes of 40 CFR Part 190, they must consider all doses from the operating uranium fuel cycle and that doses from portions of sites released may have

come from radioactive material released at the time from an operating uranium fuel cycle facility. This partial site release rule does not amend or reinterpret 40 CFR Part 190 or 10 CFR 20.1301(d) which requires certain licensees, including power reactor licensees, to comply with 40 CFR Part 190. The staff is developing guidance to implement 10 CFR 20.1301(d) for partial site releases, which will be incorporated into NUREG-1757, Volume II. Except for the information collection requirements in 10 CFR 50.75(g), which are not backfits, the requirements in this final rulemaking are voluntary and do not impose a backfit as defined in 10 CFR 50.109(a). Therefore, the NRC finds that the proposed rule discussion of the relationship between 10 CFR Part 20, Subparts D and E, and EPA's requirements in 40 CFR Part 190 does not constitute a backfit, and that a backfit analysis is not required.

Additionally, the NRC believes that its interpretation of the applicability of EPA's regulations in 40 CFR Part 190 is correct and consistent with past NRC regulatory concepts. Neither commenter demonstrated that the NRC's discussion was inconsistent with NRC regulatory concepts as articulated in the past, or inconsistent with past NRC practice with respect to license terminations in general. A review of the Statements of Consideration for the final 40 CFR Part 190 rule did not disclose any discussion that supports the commenters' contention (see 42 FR 2850, January 13, 1977). On the contrary, the NRC believes that its discussion is entirely consistent with the underlying objective of the EPA requirements in 40 CFR Part 190, *viz.*, that the dose to the relevant receptor be based upon the contribution of all radioactive materials/sources attributable to the nuclear fuel cycle operations, regardless of the licensing status of the radioactive materials or the land on which they are located.

The NRC also disagrees that a partially released area no longer meets the definition for "uranium fuel cycle operation," and therefore the dose contribution attributable to residual material on the partially released site is not required to be considered in determining

compliance with the standards of 40 CFR Part 190. It is true that, once a portion of the site is released, it is longer an active part of a uranium fuel cycle operation. However, as noted above, it is residual material resulting from previous operation of the facility, introduced into the general environment as a result of the licensee's action to release the property for unrestricted use, that contributes to the public exposures within the scope of EPA 40 CFR Part 190. With respect to the definition of "uranium fuel cycle," the Commission notes that neither the LTR, nor this rulemaking, redefine or limit the definition of uranium fuel cycle. Residual radioactivity does not lose its original pedigree by NRC's action to terminate a licence. The dose from this residual material must be considered in combination with other uranium fuel cycle exposures under 40 CFR Part 190. The commenters' position would be true only if the EPA regulation had a temporal component, i.e., it was intended to cover only current and/or future operations at the site. The regulation contains no temporal limitation and simply states that the dose equivalent must consider exposures "from uranium fuel cycle operations." Moreover, the definition of "uranium fuel cycle" in 40 CFR 190.02 covers activities which are sequential in time (i.e., for any given site they may not occur simultaneously). Nonetheless, pursuant to Section 190.10(a) their contribution must be considered in determining compliance with the 40 CFR Part 190 dose standards when releasing radiologically impacted property for unrestricted use. Assuming that the criterion is intended to integrate the instantaneous dose attributable to radioactive materials whose genesis is directly attributable to uranium fuel cycle operations, it is irrelevant that the radioactive materials happen to be located on a site that is no longer used for uranium fuel cycle operations. For these reasons, the NRC continues to believe that its discussion of the applicability of 40 CFR Part 190 in the section-by-section analysis is correct.

Comment: Section 50.83(a)(1)(i) requires that licensees seeking NRC approval of a partial site release evaluate the effect of releasing the property to ensure that the dose to

individual members of the public from the portion of the facility or site remaining under the license does not exceed the limits of 10 CFR Part 20, Subpart D. One reactor licensee and NEI commented that the term "portion of the facility or site remaining under the license" be changed to "portion of the facility or site that has not been released for unrestricted use."

Response: As described above, when evaluating compliance with the public dose limits and standards, the dose from a proposed partial site release must be combined with the dose from other fuel cycle sources, which would include the portion of a site or facility remaining under the license as well as residual material from previously released impacted property. The proposed rule, however, inappropriately limited the dose to be considered to that associated with the portion of the site remaining under the license. Section 50.83(a)(1)(i) has therefore been changed in the final rule to require licensees to evaluate the effect of releasing the property to ensure all applicable doses are considered with regard to the limits and standards of 10 CFR Part 20, Subpart D. Such an evaluation would include consideration of all applicable exposure sources, including relevant fuel cycle sources pursuant to compliance with the EPA's environmental radiation standards incorporated at 10 CFR 20.1301(d). Consequently, rather than adopting the commenter's suggested language, the Commission has adopted broader, more accurate language in the final rule.

5. Use of distinguishability from background as a release criteria for impacted areas

Comment: The partial site release rulemaking, as originally envisioned, proposed that radiologically impacted but remediated areas could be released using the same approval process as a non-impacted area if it could be demonstrated that the radioactivity is not distinguishable from the background radioactivity. Prior to publishing the proposed rule, however, the NRC staff concluded that a technical basis for such a criteria has not been established, and the criteria was not incorporated.

One reactor licensee stated that the rulemaking should preserve, as an alternative, the ability to release an impacted area if it can be demonstrated that there is no residual radioactivity distinguishable from the background present. The release process should then follow the same process as that for a non-impacted area; that is approval via letter as opposed to a license amendment. Additionally, the commenter stated that the burden in this alternative is to develop and present strong reference background radiation data to support and defend the validity of its use, that the appropriate criteria for indistinguishability from background does exist, and that potential criteria corresponding to the current free release criteria could be used by licensees.

Additionally, a State commenter suggested that the rule incorporate the MARSSIM approach wherein a comparison of statistical distributions (survey vs. background) is used to determine whether radiation levels in the area surveyed are indistinguishable from background.

Response: A distinguishability-from-background release criteria cannot be incorporated into the regulations even as an alternative. In order to demonstrate that a given level of radiation is distinguishable from background, the statistical process for determining the radiation dose or concentration would require the specification of exactly "how hard to look" in order to "see" a difference from the background dose or concentration. Specifying how hard to look would, in effect, be the same as specifying an allowable difference from background that is not statistically important to detect. This would amount to specifying an allowable increment above background. As stated in the proposed rule, no such increment has been endorsed and the criteria cannot be incorporated into the Commission's regulations.

Comment: A State commenter expressed disagreement with the NRC's reasoning for deletion of distinguishability-from-background as a release criteria because, for an unrestricted

release, the ALARA requirements of 10 CFR 20.1402 may dictate clean up to levels indistinguishable from natural background.

The commenter also stated that, although it is recognized that proper definition of background is problematic because it is not a single value but rather a statistical distribution of values that varies widely with geographic location and other factors, it is a statistical entity [mean +/- (sd x n)] that can be empirically determined on a case-by-case basis. As a result, the "minimum value above mean background against which to compare survey results," which the NRC has stated is a value which is not endorsed, can be established by setting a reasonable value for "n" in the foregoing expression.

Response: The Commission disagrees with this comment. There is no connection between ALARA requirements associated with the cleanup of an impacted area and the Commission's decision to delete distinguishability-from-background as a release criteria. The ALARA requirements dictate clean up to levels which are as low as reasonably achievable. There are no requirements to cleanup an area to "levels indistinguishable from natural background."

Although measurement of background radioactivity is related to the statistical entity referred to by the commenter, the process of setting a reasonable value for "n" would present the same issue as choosing an increment above background for use in establishing a distinguishability criteria. Such a "reasonable value" would have to be established and has no current endorsement as a release criteria.

6. Recordkeeping

Comment: NEI recommended that the rule be clarified to acknowledge that reactor licensees may maintain the records associated with acquisition and disposition of property along with the other records required under 10 CFR 50.75(g) in a distributed fashion. Records

Therefore, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified to provide a 6-month implementation period.

7. Lack of Clearance Standards

Comment: One reactor licensee commented that, for either partial site release without a license termination plan or license termination for the entire site under existing rules, residual radioactivity may remain as long as the exposure criterion of 10 CFR Part 20, Subpart E, is satisfied. However, prior to license termination, this same residual radioactivity is treated as licensed material - regardless of how little the amount, concentration, or dose significance - and can only be disposed of by transport to a licensed radwaste disposal facility. The commenter stated that this double standard poses an incentive to retain radioactive material onsite to be later abandoned in order to avoid potentially excessive costs for radwaste disposal, while creating a longer term risk for additional site cleanup required by other regulatory authority or a court of law. The commenter further noted that the NRC is seeking to resolve this discrepancy through a study by the National Academy of Sciences and further agency deliberation, a process that may take several years. Prolonged delay contributes to the erosion in public understanding and confidence in government policy as well as the lack of finality for licensees. Public policy is needed to define the quantitative dose and radionuclide characteristics that have no discernible public health consequences.

The commenter stated that the NRC should recognize that post-license termination requirements imposed by other federal, state or local agencies can prevent the actual release of a site for unrestricted use - in contravention to the purposes of the LTR. NRC should, therefore, act to assert its authority in matters of radiation protection and management of radioactive materials. This will require definitive clearance standards that establish allowable

quantities and concentrations of radionuclides for materials. Such standards, which are fully protective of public health and safety and are in the public interest, can be created.

Response: Although the comments are not directly related to the partial site release rulemaking, the NRC is appreciative of the issues raised. The Commission is currently re-examining its approach for control of solid materials, including whether it is appropriate to set a standard in this area that would apply to all licensees. The points raised in the comments will be considered as part of the Commission's review of alternative approaches.

8. Finality of Releases

Comment: A reactor licensee commented that, once the Commission has released the property, its jurisdiction should end. The commenter recommended that, in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

Response: The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in 20.1401(c) by stating that this criteria is an important addition providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule [61 FR 39301; July

29, 1996, as amended at 62 FR 39091; July 21, 1997] points out that, under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the dose criterion. Because of the surveys performed by the licensee and confirmatory surveys routinely performed by NRC, the chances of discovering previously unidentified contamination exceeding the dose criteria would be very small.

9. State Regulatory Agency Participation

Comment: A State commenter noted that the proposed rule is silent with regard to participation by state regulatory agencies. While there are general provisions for stakeholder input and public participation, notification, meetings and hearings, there is no explicit provision for "hands-on" involvement by state regulators. The commenter suggested the rule be amended to include explicit provisions for State participation. The commenter also stated that, in their experience, the role of the state in federally regulated site clearance processes has historically been that of "independent verification." This role assures that the site release process is in compliance with applicable state regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the state is also important in the event that portions of the property to be released would be transferred to state ownership and/or control. For these reasons, amending the rule to provide for independent verification by state regulators makes good sense.

Response: The Commission has published the policy statement "Cooperation With States at Commercial Nuclear Production or Utilization Facilities" [54 FR 7530; February 22, 1989, as amended at 57 FR 6462; February 25, 1992] which the NRC believes provides an adequate mechanism for State regulatory agencies to participate in the release process. The

policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials of host and adjacent states to accompany NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which could allow States to directly participate in NRC inspection activities at operating facilities as well as at those undergoing decommissioning.

The interest of the States with regard to the scope of the partial site release rule is expected to be primarily concerned with licensee demonstrations of compliance with the radiological release criteria for unrestricted use. In addition to any direct or independent participation agreed to between the State and NRC, or between the State and the licensee, it is anticipated that the States will continue to participate in the public meetings held prior to NRC approval of partial site releases, and will continue to coordinate with licensees and NRC in evaluating proposed partial site releases with regard to the release criteria. Therefore, explicit provisions for direct State participation are not being incorporated into the partial site release rulemaking.

10. Radiological Surveys of Non-Impacted Sites

Comment: A State commenter stated that, rather than require the performance of radiological surveys for non-impacted areas, the rule defers to the guidance contained in MARSSIM for demonstrating that a proposed release area is non-impacted. The MARSSIM guidance calls for the performance of a historical site assessment (HSA). The HSA is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information. The assessment results in a classification of areas according to

their potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas, and no surveys are required. The commenter feels that relying on a historical site assessment without the benefit of an up-to-date-radiation survey leads to results which are less reliable and more difficult to defend, and is contrary to the rule's stated purposes related to the assurance of meeting the radiological release criteria and of increasing public confidence.

Additionally, the commenter stated that the NRC supports its position that the rule should not require surveys for non-impacted areas by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. The commenter also states that NRC has further supported this position in the Statements of Consideration by stating that, since it has not established a minimum value above mean background to compare survey results, surveying such areas is not feasible.

Response: The NRC believes that the rule should not specifically require the performance of radiological surveys for non-impacted areas. The rule does not, however, preclude the collection and use of such surveys by the licensee. The MARSSIM provides adequate guidance acceptable to the NRC for determining when additional surveys are appropriate, and for demonstrating that a proposed release area is non-impacted. The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions which may have led to residual contamination be used in combination with historical analytical information such as survey data. MARSSIM Section 3.6, "Evaluation of Historical Site Assessment Data" states that if process knowledge suggests that no residual contamination should be present and the historical analytical data also suggests that no residual contamination is present, the process knowledge provides an

additional level of confidence and supports classifying the area as non-impacted. MARSSIM specifically cautions however, that existing radiation data must be examined carefully because previous survey and sampling efforts may not be compatible with the objectives of the HSA, may not be extensive enough to sufficiently characterize the facility or site, and because conditions may have changed since the site was last sampled.

NRC Regulatory Issue Summary 2002-02, "Lessons Learned Related to Recently Submitted Decommissioning Plans And License Termination Plans," states that old records may be inadequate or inaccurate for the purpose of developing either the HSA or site characterization, and suggests that these records not be relied on as the sole source of information for the HSA or site characterization. Interviews with current and former staff and contractors play an essential role in formulating the HSA, but may ~~be as in~~adequate or inaccurate as old records. Experience has shown that old records and results of operational surveys and post-shutdown scoping surveys have been submitted as substitutes for characterization surveys. For example, the results of operational surveys may represent radiological status, describing conditions over a limited time span, or may have been conducted to address specific events (i.e., post-spill cleanup assessment). In a few instances, the results of personnel interviews and information, which can only be considered as anecdotal, have been presented in the HSA. It could not be determined whether this information, in fact, was part of an unbroken chronological history of the site or contained time gaps for which operational milestones or occurrences were missing. Although NRC encourages licensees to review old records and conduct personnel interviews (past and current employees and key contractors), there is a need to present ~~this~~ information in its proper context and qualify its usefulness and how it might be supplemented by additional data searches or characterization surveys.

Sections 10 CFR 50.83(c)(2) and 10 CFR 50.83(d)(2) of the proposed rule stated that, after receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine whether the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas, however, licensees may, at their own initiative, choose to survey these areas. The question of whether surveys of non-impacted areas should be performed is solely concerned with the ~~adequacy of~~ HSAs and the site characterization process ~~in concluding~~ that there is no reasonable potential for residual radioactivity.

11. Final Radiation Survey and Associated Documentation

Comment: Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and NEI commented that adding the phrase "including any parts released for use before approval of the license termination plan" as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase "released for use" should be changed to "released for unrestricted use." Additionally, a commenter stated that the

phrase "are suitable for release" with regard to the property being released should more appropriately be changed to indicate that the release meets the applicable release criteria.

Response: As stated in the proposed rule, the NRC does not anticipate further surveys of a previously released area, but rather is seeking to account for, in the radiation survey and associated documentation demonstrating compliance with the release criteria, potential dose contributions associated with previously released areas. The language at 10 CFR 50.82(a)(11)(ii) in the final rule has therefore been modified to indicate that the final radiation survey and associated documentation is to include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria. The term "released for use" is retained because the intent is that the documentation assess dose contributions from previously released parts of the facility or site whether they were released for restricted or unrestricted use. Additionally, the phrase "are suitable for release" is changed to "have met the applicable criteria."

12. Question from the "Issues for Public Comment" section of the Proposed Rule: Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

Comment: NEI and one reactor licensee commented that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners, and that this option should be included in the proposed rule.

Response: The Commission disagrees with this comment. There is no need to provide this option because the staff has determined that this approval is not an amendment to a

Finally, the statement in the MARSSIM glossary definition that non-impacted areas are typically located off-site and may be used as background reference areas is irrelevant to the determination of whether an area is non-impacted and is therefore inappropriate for incorporation into the definition.

Comment: One reactor licensee and NEI recommended that the definitions for Historical Site Assessment, Impacted areas, and Non-impacted areas be incorporated into 10 CFR 50.2 and be changed to specify that the residual material or radioactivity is that from licensed activities.

Response: The radioactivity referred to in the definition of Historical Site Assessment cannot be limited to that resulting from licensed activities and the definition is not revised. Residual radioactivity is a defined term in 10 CFR 20.1003 referring to radioactivity at a site resulting from any activities under the licensee's control, and includes radioactivity from both licensed and unlicensed sources.

14. Question from the "Issues for Public Comment" section of the Proposed Rule: Is public involvement adequately considered?

Comment: NEI commented that the rulemaking adequately considers public involvement. A State commenter stated, however, that there is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the "non-impacted designation" by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to tell stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

Response: The Commission disagrees with this comment and believes that the public will have ample opportunity to be involved with partial site release issues. The partial site release rulemaking provides for public participation through review and comment on a licensee's proposed release plans and through participation in a public meeting whether or not an amendment is involved. This process enables the public to collect information, to comment on and question the actions at the site with regard to the proposed release, and to discuss relevant issues among stakeholders. The NRC will consider any information or concerns brought forward by members of the public during the public review and comment period or during the public meeting.

The NRC has issued a policy statement, "Policy on Enhancing Public Participation in NRC Meetings" [67 FR 36920, May 28, 2002]. This policy statement ~~provides a~~ articulates the NRC's revised policy ~~that the NRC will follow in~~ concerning opening meetings to public observation and participation. It defines three categories of public meeting, each with an increasing level of public participation. The public meeting required by the partial site release rule will be classified as a Category 3 meeting with the highest level of public participation. In these meetings, public participation is actively sought. The meetings are specifically tailored for the public to discuss relevant issues with the NRC and other stakeholders, to make comments, and ask questions throughout the meeting. Questions or concerns that cannot be resolved at the meeting will be assigned to a designated NRC staff person for action.

Although there is no mandatory public hearing provided for in this rule, there are ways in which the public may participate in hearings on partial site release issues. First, in the event that a license amendment associated with a partial site release is challenged, there will be the opportunity for a hearing on the license amendment. And second, NRC regulations in 10 CFR 2.206, "Requests for Action under this Subpart," allow any member of the public to

raise potential health and safety concerns and petition the NRC to take specific actions to resolve a dispute identified in the petition. The NRC believes that a mandatory hearing is not warranted in light of the many opportunities for public participation, and consequently, no change has been made to the final rule in response to this comment.

15. Question from the "Issues for Public Comment" section of the Proposed Rule: Should the license amendment process be required for all partial site release approvals, regardless of whether the site has been classified as non-impacted?

Comment: NEI commented that requiring the license amendment process for NRC approval of partial site releases of non-impacted lands is not justified. The comment states, however, that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands, and recommends that this approach be offered as an option.

Response: The NRC agrees that requiring its approval for the release of a non-impacted area should not require a license amendment where an amendment is not otherwise required as a result of any regulations impacted as a result of the change.

16. Question from the "Issues for Public Comment" section of the Proposed Rule: Does the proposed rule make it adequately clear that when performing partial site releases and when releasing the entire site at license termination, licensees must consider potential dose contributions from previous partial releases in demonstrating compliance with the radiological release criteria?

Comment: NEI stated that the rule makes this issue adequately clear and also stated that the guidance promised in the proposed rule for assessing potential dose contributions will help identify how consideration of potential dose contributions can best be accomplished. The comment further stated that the guidance is needed before the final rule is issued to ensure that

the partial site release process and the ultimate license termination can be accomplished practically as envisioned.

Response: The NRC agrees that the rule makes this issue adequately clear. The NRC recognizes that licensees seeking partial site releases will require guidance as to how to account for dose contributions from previous releases. In order to provide this guidance, on September 26, 2002, the NRC published a notice of availability of draft NUREG-1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," in the Federal Register for public comment and expects to publish it as a final document upon resolution of the public comments.

Comment: A State commenter questioned how the partial site release rulemaking addresses issues where, following release, contamination is found in an area classified and released as non-impacted, or where contamination is found to be in excess of the criteria established in the LTP, or, in the above conditions, where the property was transferred to another entity. Additionally, the commenter questioned what rights a potential purchaser would have against the licensee if contamination is found following the release.

Response: Although the partial release removes the property from the license and activities conducted on the property are no longer under the jurisdiction of the NRC, the rule amends 10 CFR 20.1401(c) to bring partial site releases within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release. As stated in 10 CFR 20.1401(c), additional cleanup would only be required if the new information reveals that the radiological release requirements of 10 CFR Part 20, Subpart E, were not met and there continues to be a significant threat to public health and safety from residual radioactivity. The rule does not address any other matters of a commercial nature which may be associated with released property, including issues related to

contamination found on released property, the magnitude of which falls short of the additional cleanup criteria in 10 CFR 20.1401(c).

17. Question from the "Issues for Public Comment" section of the Proposed Rule: Is there reason to limit the size or number of partial site releases?

Comment: NEI and a reactor licensee stated that there is no reason to limit the size or number of partial site releases. They stated that, as long as the final license termination addresses the entire site, the intent of the license termination rule is met.

Response: The NRC agrees that there is no reason to limit the size or number of partial site releases. Partial releases performed prior to license termination require, in each case, a demonstration of compliance with the radiological release criteria of 10 CFR Part 20, Subpart E, as well as a demonstration of compliance with other regulatory requirements which may be impacted as a result of changing site boundaries. Additionally, the dose contributions from residual radioactivity in previously released impacted areas are considered with respect to the release criteria when performing subsequent partial releases and when releasing the entire site at license termination.

18. Question from the "Issues for Public Comment" section of the Proposed Rule: Are there other potential impacts on continued operation or decommissioning activities as a result of partial site releases that should specifically be considered in the rule?

Comment: A State commenter stated that the impact of future operation or use of the area released under a partial site release must be considered with regard to potential threats to the storage of spent nuclear fuel or operation of the nuclear power plant prior to allowing control of the released area to be transferred to a non-licensee. The commenter referred to a situation in which a licensee proposes a partial site release with the intent to sell the released property for development of a gas fired electrical generating plant in close proximity to spent fuel stored

on the remainder of the site. If no safety analysis is performed in advance of the release, future threats to the nuclear fuel will not be addressed. The commenter states that placing requirements on an existing licensee only after threats are identified as a result of future activities on a released area is not an acceptable mechanism of protecting public health and safety.

Response: The NRC believes that consideration of the potential hazards associated with the future or end use of property proposed for partial site release should not be incorporated into the partial site release rulemaking. Future use of property as an approval criteria based on expectations existing at the time of the release request holds little practical value since the actual future use of property released for unrestricted use cannot be anticipated and could, in any event, change following the release.

As part of its application for a construction permit and operating license for a power reactor facility, the licensee is required to perform an analysis of the effects the reactor facility will have on the environment, including the effects from nearby industrial facilities and transportation in accordance with the siting criteria of 10 CFR Part 100. The partial site release rulemaking specifically requires licensees requesting a partial site release to evaluate their continued compliance with these siting criteria.

Additionally, the licensee must continue to ensure that its bases and conclusions as presented in the Final Safety Analysis Report, ~~that~~ which form part of the basis for its operating license, remain valid in accordance with 10 CFR 50.71. Therefore, the licensee must ensure that the licensed facility is adequately protected and that operations can be conducted with an acceptable degree of safety with respect to offsite activities as they are identified. The NRC would review any necessary changes to the nuclear plant license, or changes to the plant licensing basis, that evolve from the licensee's evaluation. To the extent that the future use of

the property to be released is known, these reviews and evaluations would be performed as part of the licensee's overall assessment of the viability of requesting NRC approval for a partial site release.

The NRC recognizes that a non-licensed third party may elect to locate potentially hazardous facilities, or engage in hazardous activities, on property adjacent to a licensed site, including property released for unrestricted use. Although the NRC has no authority to regulate the activities of non-licensed third parties or to prevent third parties from constructing facilities or engaging in activities which present a potential hazard to the licensee's plant, the NRC does have authority to take action against the licensee. Assuming that the potential hazard is such that the NRC would not have allowed the siting of the plant if the conditions were known, then under Section 186 of the Atomic Energy Act, the NRC could revoke the license to prevent the hazard. Since the license can be revoked, lesser actions can be taken as well - such as issuing an order or suspension or a demand for information, depending on the circumstances.

19. Rule Language Comments.

Comment: One reactor licensee and NEI commented that the language contained in Section 50.75(g)(4) is not consistent with existing Section 50.75(g) which states "Information the Commission considers important to decommissioning consist of ... (4) Licensees shall maintain property records containing the following information:...." The term "Licensees shall maintain" should be deleted.

Response: The NRC agrees with the commenters and the final wording in Section 50.75(g) reflects the comment.

Comment: One reactor licensee and NEI commented on the wording in Section 50.75(g)(4)(iv) of the proposed rule, stating that the word "disposition" should be changed to "release and final disposition" the first time it appears, and change "disposition" to "release" the

second time it appears."

Response: The NRC agrees with the commenters and the final wording in Section 50.75(g) reflects the comment.

Comment: One reactor licensee and NEI commented on the wording in Section 50.82(a)(9)(ii)(H) of the proposed rule, stating that the term "released for use" should be changed to "released for unrestricted use."

Response: The comment is not incorporated. The intent of the wording in Section 50.82(a)(9)(ii)(H) is that the LTP identify previously released parts of the facility or site whether they were released for restricted or unrestricted use.

Comment: One reactor licensee and NEI commented that Sections 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements specified in Section 50.83(f).

Response: The NRC believes that including references to the public meeting requirement in Sections 50.83(c) and 50.83(e) is redundant and unnecessary. The requirement to hold a public meeting described in Section 50.83(f) applies, as stated, to either an approval request for a partial site release or a license amendment application and, therefore applies to the submittals described in Sections 50.83(c) and 50.83(e).

Comment: One reactor licensee and NEI commented that, for a release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply, since a license amendment would be required. Therefore, the wording in Section 50.83 should be modified to delete the reference to complete a 10 CFR 50.59 evaluation for these release requests.

Response: The NRC agrees with the commenters. Section 50.83(b) has been modified in the final rule to only require a § 50.59 evaluation for the case where a written release request is submitted.

Section-by-Section Analysis

This final rule amends NRC's requirements in 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," 10 CFR Part 20, "Standards for Radiation Protection," and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," as follows:

1. 10 CFR 2.1201 — use is inconsistent on following sections

This final rule amends 10 CFR 2.1201 by adding a new paragraph (a)(4) which permits the use of informal hearing procedures for amendments associated with partial site releases at nuclear power reactors. This change is needed in order to provide an opportunity for a hearing on a license amendment request for a partial site release. The staff believes that informal hearings are appropriate in this situation since the issues would be similar to the materials licensing issues that are currently subject to Subpart L under §2.1201(a)(1). It should be noted that the rule does not provide for license amendments to authorize partial site releases when there is no reasonable potential for residual radioactivity in the area to be released. Because there are no license amendments in these cases, there are no corresponding opportunities for hearings. However, the NRC will notice receipt of a licensee's proposal for a partial site release and make it available for public comment. The NRC will also hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

2. 10 CFR 20.1401

Paragraphs 20.1401(a) and (c) have been revised to expand the scope of radiological criteria for license termination to include the release of part of a facility or site for unrestricted

use in accordance with § 50.83. In 10 CFR Part 20, the NRC provides standards for protection against radiation. These modifications are necessary because NRC's regulations did not address cases when part of a facility or site is to be released for unrestricted use. The expansion in scope pursuant to §§ 20.1401 is related to the radiation dose limits to individual members of the public and to radiological criteria for license termination which are specified in 10 CFR Part 20, Subparts D and E, respectively.

With respect to 10 CFR Part 20, Subpart D, the requirements specified set the annual dose limit for an individual member of the public at 1.0 mSv/yr (100 mrem/yr). However, there are a number of more stringent dose standards applicable to power reactor licensees that must also be considered. These standards include the EPA environmental radiation standards incorporated in § 20.1301(d), the Subpart D compliance standards in § 20.1302(b), the radiological effluent release objectives to maintain effluents ALARA in Appendix I to 10 CFR Part 50, and any dose standards that may be established by special license conditions.

A licensee performing a partial site release must continue to comply with the public dose limits and standards as they pertain to the area remaining under the license. In addition, the licensee must comply with the public dose limits for effluents entering the released portion of the site. A licensee must demonstrate that moving its site boundary closer to the operating facility would not result in a dose to a member of the public that exceeds these criteria. If residual radioactivity exists in the area to be released for unrestricted use, the dose caused by the release must be considered along with that from the licensee's facility, as well as, for the case of the EPA's environmental radiation standard (40 CFR Part 190) incorporated in § 20.1301(d), that from any other uranium fuel cycle operation in the area, for example, a facility licensed under 10 CFR Part 72, to determine compliance with the above standards. As a consequence, a partial site release for unrestricted use that contains residual radioactivity

not clear - more stringent ?

may have to meet a standard lower than the radiological criteria of 10 CFR Part 20, Subpart E, because the combined dose from the partial site release and the dose from these other sources must meet the public dose limits and standards described above.

With respect to 10 CFR Part 20, Subpart E, the scope applies to decommissioning reactor facilities. However, as currently written, it does not specifically apply to operating reactors. The reactor remains "operating" until a licensee submits the certifications of permanent cessation of operations specified in § 50.82(a)(1), when its status changes to "decommissioning."

Radiological criteria for license termination at 10 CFR Part 20, Subpart E, limit radiation exposure to the "average member of the critical group." The limit applicable to release for unrestricted use is 0.25 mSv/yr (25 mrem/yr) total effective dose equivalent (TEDE), with additional reductions consistent with the ALARA principle. The determination of ALARA in these cases explicitly requires balancing reduction in radiation risk with the increase from other health and safety risks resulting from decontamination activities, such as adverse health impacts from transportation accidents that might occur if larger amounts of waste soil are shipped for disposal. The standard applies to doses resulting from "residual radioactivity distinguishable from background radiation" and includes doses from ground water sources of drinking water. The standard for unrestricted use at 10 CFR Part 20, Subpart E, does not include doses from effluents or direct radiation from continuing operations. However, as noted in the above section on public dose limits, the dose from these sources must be considered when demonstrating compliance with the radiological release criteria.

Section 20.1401(c) limits additional cleanup following the NRC's termination of the license. Additional cleanup would only be required if new information reveals that the requirements of Subpart E were not met and a significant threat to public health and safety

remains from residual radioactivity. Similarly, the rule applies to portions of the site released for use within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release.

The rule is intended to apply Subpart E to power reactor licensees, both operating and decommissioning, that have not received approval of the LTP. Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option would be available to licensees for a partial site release before they receive approval of the LTP.

Section 20.1402 specifies the radiological criteria to be used to determine that a site is acceptable for unrestricted use. This final rule does not require an analysis to demonstrate that the area to be released meets the criteria of § 20.1402 for cases when the licensee is able to demonstrate that there is no reasonable potential for residual radioactivity in the area to be released. In these cases, compliance with § 20.1402 is demonstrated by providing documentation of an evaluation of the site to identify areas of potential or known sources of radioactive material. The evaluation must conclude that the area is non-impacted and there is no reasonable potential for residual radioactivity. Acceptable guidance describing the performance of this demonstration is contained in draft NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)."

For areas classified as impacted, the rule requires a license amendment that includes a demonstration of compliance with § 20.1402 for the area that is released for unrestricted use.

This amendment to Part 20, Subpart E, revises §§ 20.1401(a) and (c) and adds the release of part of a facility or site for unrestricted use to the provisions and scope of 10 CFR Part 20, Subpart E.

3. 10 CFR 50.2

ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E (0.25 mSv/yr[25 mrem/yr] reduced to ALARA) at the time the license is terminated. This amendment to § 50.82(a)(11)(ii) requires that the final radiation survey and associated documentation include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria in accordance with 10 CFR Part 20, Subpart E. Although no further surveys of previously released areas are anticipated, the dose assessment must account for possible dose contributions associated with previous releases in order to ensure that the entire area meets the radiological release requirements of 10 CFR Part 20, Subpart E (0.25 mSv/yr [25 mrem/yr] reduced to ALARA) at the time the license is terminated.

6. 10 CFR 50.83.

This rule adds a new section § 50.83, separate from the current decommissioning and license termination rules, that identifies the criteria and regulatory framework for power reactor licensees that seek to release part of a facility or site for unrestricted use at any time before NRC approval of its LTP. This section is also required because NRC regulations do not address cases in which the NRC may release portions of the site or facility before the approval of the license termination plan.

The rule requires NRC approval for a partial site release. The approval process under which the property will be released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as *non-impacted* and, therefore, having no reasonable potential for residual radioactivity, the licensee will be allowed to submit a letter containing specific information and requesting approval of the release. Because there is no reasonable potential for residual radioactivity in these cases, the NRC will approve the release of the property by letter after determining that

the licensee has met the criteria of the rule. Guidance for demonstrating that a proposed release area is *non-impacted* is contained in NUREG-1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." The NRC would generally not perform radiological surveys and sampling of a non-impacted area. However, if the NRC determines that surveys and sampling were needed, they would be done as part of NRC's inspection process. Second, for areas classified as impacted and having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The proposed amendment will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.

Licensees may find it beneficial to review their survey plans and design with the NRC staff before performing the surveys. As warranted, the NRC will conduct parallel and/or confirmatory radiation surveys and sampling to ensure that the licensee's conclusions are adequate.

Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option is available to licensees for a partial site release prior to LTP approval.

The rule also requires a licensee to evaluate the effect of releasing the property to ensure that the licensee will continue to comply with all other applicable statutory and regulatory requirements that may be impacted by the release of property and changes to the site boundary. This includes, for example, regulations in 10 CFR Parts 20, 50, 72, and 100. In those instances involving license amendments, licensees are also required to provide a supplement to the existing environmental report to address the planned release. This requirement is similar to the requirement of 10 CFR 50.82(a)(9)(ii)(G).

The rule provides for public participation. The NRC will notice receipt of a licensee's

AFFIRMATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MERRIFIELD

SUBJECT: **SECY-02-0221 - FINAL RULE TO STANDARDIZE THE PROCESS FOR ALLOWING A LICENSEE TO RELEASE PART OF ITS REACTOR FACILITY OR SITE FOR UNRESTRICTED USE BEFORE NRC HAS APPROVED I TS LICENSE TERMINATION PLAN**

Approved ✓ Disapproved _____ Abstain _____

Not Participating _____

COMMENTS:

See attached comments

SIGNATURE

1/23/03

DATE

Entered on "STARS" Yes ✓ No ____

Commissioner Merrifield's Comments on SECY-02-0221

I approve that staff's request to publish in the Federal Register the final rule to standardize the process for allowing a partial site release. I support the added flexibility this rule allows licensees by providing the option to request the release of portions of a site or facility prior to license termination. As I have stated in my vote on the draft proposed rule, "as long as the health and safety can be adequately protected, reducing the scope of property encumbered by reactor licenses make sense to permit excess land to be used in more economically prosperous ways." I believe that this will ultimately afford the surrounding communities an opportunity to initiate redevelopment projects well in advance of license termination and thus lessen the economic impacts associated with a plant closure.

The staff should revise the draft Congressional letters pertaining to the final rule to reflect the recent leadership changes.