

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
WASHINGTON, D.C. 20555-0001

August 28, 2008

U.S. NUCLEAR REGULATORY COMMISSION REGULATORY ISSUE SUMMARY 2008-19:  
LESSONS-LEARNED FROM RECENT 10 CFR PART 70  
LICENSE-TRANSFER APPLICATION REVIEWS

**ADDRESSEES**

All U.S. Nuclear Regulatory Commission (NRC) 10 CFR Part 70 fuel cycle licensees.

**INTENT**

NRC is issuing this regulatory issue summary (RIS), to discuss lessons-learned from the review of the recent license transfer-of-control applications, to facilitate predictability, timeliness, and efficiency in implementing the process for transferring the control of Part 70 licenses. This RIS focuses on: (1) licensee application requests involving change in organizational structure; (2) the insights gained by the NRC staff in addressing these requests; and (3) the NRC staff's expectation that such issues, to the extent practicable and appropriate, should be resolved through the normal licensing process. Neither specific action nor written response is required.

**BACKGROUND**

Fuel cycle facilities possess special nuclear material, and are issued NRC licenses under the authority of Section 53 of the Atomic Energy Act of 1954, as amended (hereafter the Act). Section 184 of the Act governs the transfer of such licenses, and its provisions are largely repeated in Title 10 of the *Code of Federal Regulations* (10 CFR) 70.36. This NRC regulation states that no license nor any right under a license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

Fuel cycle licensees must provide timely notification to NRC, before the planned transfer of ownership or control of licensed activities, and obtain prior written consent to such action, from NRC, as specified in 10 CFR 70.36.

In 1989, NRC issued an information notice (IN 89-25) to: (1) inform licensees of their responsibilities regarding license transfer; (2) to provide guidance on the type of information that should be submitted to NRC before a change of ownership or control; and (3) to communicate NRC's expectation that licensees should maintain procedures to preclude problems from occurring as the result of a transfer of control of licensed activities. This IN was updated in 1994 and is found on the NRC website at <http://www.nrc.gov/reading-rm/doc-collections/gen->

[comm/info-notices/1989/in89025r1.html](http://comm/info-notices/1989/in89025r1.html).

Various guidance documents provide information relevant to license transfers. For example, in 2003, NRC's Office of Nuclear Material Safety and Safeguards (NMSS) consolidated and updated numerous decommissioning guidance documents into a three-volume NUREG (NUREG-1757). Volume 3 of this NUREG series, "Financial Assurance, Recordkeeping, and Timeliness," provides, among other things, the financial assurance guidance based on the requirements set forth as part of the decommissioning rulemaking in 1988 (53 FR 24018); and the recordkeeping guidance based on the requirements set forth as part of the technical and financial criteria for decommissioning licensed nuclear facilities (53 FR 24018 and 58 FR 39628). Specifically, as related to this RIS, Volume 3 of NUREG-1757 provides guidance relevant to demonstrating compliance with 10 CFR 70.25, "Financial Assurance and Recordkeeping for Decommissioning." Appendix A, of Volume 3 of NUREG 1757, provides more detailed guidance on financial assurance mechanisms, for decommissioning, that also applies to Part 70 licensees.

NUREG-1556, Volume 15, "Consolidated Guidance about Materials Licenses: Guidance about Change of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Material Licenses," dated November 2000, also applies to the transfer of control of licenses. NUREG- 1556, Vol. 15, combines and updates the guidance found in: (1) NRC IN 89-25, Rev. 1, "Unauthorized Transfer of Ownership or Control of Licensed Activities;" (2) NRC IN 97-30, "Control of Licensed Material during Reorganizations, Employee-Management Disagreements, and Financial Crises;" and (3) Policy and Guidance Directives 1-13, Rev. 2, "Processing Material License Applications Involving Change of Ownership," and 8-11, "NMSS Procedures for Reviewing Declarations of Bankruptcy."

These guidance documents were developed in part to help determine whether a proposed transferee is technically and financially qualified to hold a Part 70 license. Additionally, these documents aid in the evaluation of foreign ownership and control issues and improve the NRC staff and licensee preparedness for addressing issues associated with license transfers and restructuring. In accordance with 10 CFR 70.40, a license may not be issued to a Corporation if the Commission determines that the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign govern or the issuance of such a license would be inimical to the common defense and security of the United States; or the maintenance of a reliable and economical domestic source of enrichment services. Also, the Commission must make an administrative determination that, from a security viewpoint, that a facility is eligible for access to classified information of a certain category. As part of such a determination, as described in 10 CFR 95.17, the Commission must make a finding that the facility is not under foreign ownership, control, or influence, as defined in 10 CFR 95.5. There have been several recent examples where Part 70 fuel cycle licensees have not adequately addressed the relevant requirements and guidance regarding the direct and indirect transfers of licenses. Specifically, licensees submitted incomplete information, particularly with respect to the financial assurance requirements applicable to the transferees.

## **SUMMARY OF ISSUES**

The first example involved a license transfer application where the licensee did not update all the financial assurance mechanisms in the name of the transferee. The licensee interpreted the financial assurance guidance in NUREG-1757 as allowing the transferee to merely make a commitment to honor the licensee's decommissioning commitments. As required by 10 CFR 70.25(b)(2), the licensee, on behalf of the transferee, must submit the transferee's executed financial instruments and a certification from the transferee that financial assurance for decommissioning has been provided in the amount prescribed by 10 CFR 70.25(d), using one of the methods prescribed in 10 CFR 70.25(f).

The second example involved a license transfer-of-control application that involved foreign ownership, and numerous licenses and certificates of compliance that had to be transferred across the organization. The licensee, at first, did not recognize the documentation required for this licensing action and initially planned on completing the action in a few months. The licensee, on behalf of the transferee, had to provide, to NRC, a letter from the licensee's insurer, to change the holder of the liability policies that cover the licensed activities. In addition, the transferee committed to having a majority of its voting Board members being United States citizens and had to meet the requirements of 10 CFR 70.40 and 10 CFR 95.17. As a result of the licensee's failure to submit the information needed by the NRC to support its review, this licensing action took substantially longer than anticipated by the licensee.

The third example involved a license transfer-of-control application request that was characterized to the NRC as a "simple" name change. The licensee requested that NRC complete the licensing action in approximately 2 weeks. During the NRC staff's review of the information submitted by the licensee, it was determined that the changes the licensee was requesting involved a transfer-of-control. Specifically, the licensee's corporation restructured and created a limited-liability corporation that it wanted to transfer the current NRC license to. This reorganization created a corporation that is insulated by the parent company with respect to decommissioning financial assurance liability. A significant effort was expended by both NRC and the licensee, before an acceptable application was submitted, showing the organizational relationship between the parent company and the restructured corporation as well as a certification of financial assurance for decommissioning in the proposed licensee's name. It is important for licensees to understand that a transfer-of-control is a licensing action in which the licensing process must be followed. It is also important that licensees review 10 CFR 70.25, NUREG-1757, Volume 3, and NUREG-1556, Volume 15, before submitting an application requesting changes that involve a name change or transfer-of-control. If a licensee is unclear about the process, it may be helpful to request a pre-licensing meeting, where the NRC staff can review the process and answer questions.

The fourth example involved an inquiry from a licensee about the transfer-of-control process and guidance. The licensee communicated, to NRC, that it may soon be requesting a transfer of control, and asked NRC if it could complete the action within a 2-month timeframe, from the time the request was submitted. A license transfer-of-control application review cannot be accomplished in this short period of time, because of the regulatory nature of a licensing action. In accordance with 10 CFR 2.309(b)(1), unless otherwise provided by the Commission, in proceedings for the direct or indirect transfer-of-control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statute, or pursuant to a license condition, the NRC must notice the receipt of the application in the *Federal Register* and a request and/or petition and the list of contentions must be filed within twenty (20) days from the date of publication of the notice in the *Federal Register*. In accordance with 10 CFR 2.1305(a), as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding the license transfer application. These comments must be submitted within 30 days from the date of publication of the notice in the *Federal Register*, in accordance with 10 CFR 2.1305(b), to be assured consideration. License transfers are subject to the established license review process, to better ensure that the required NRC staff findings are properly made. Usually there is a round of request for additional information (RAIs). This can take a minimum 60 days --30 days for the licensee to respond and 30 days for the NRC staff to evaluate the responses. After the NRC staff has completed its evaluation and documented its findings, in a "Safety Evaluation Report" that documents whether the transfer is in accordance with the Act, an Order must be prepared authorizing the transfer of control. The Order must be signed by the Office Director. This is then followed by an amendment to the license. The above actions usually take five months to complete and can take longer, if there are complex issues to resolve, or if information from the licensee is not readily available.

## Insights Gained

- NRC licensees are required to provide sufficient prior notice of pending license transfers and information about the proposed change as detailed in IN 89-25, Rev. 1, December 7, 1994, and NUREG 1757, Volume 3. NRC licensees shall obtain written consent from the Commission before the transfer. The burden of notification is on the existing licensee.
- The transferee may need to provide supporting information or need to independently coordinate the change in ownership or control with the appropriate NRC office. For example, the certification of financial assurance, as required by 10 CFR 70.25(b), must be signed by the transferee. Therefore, the licensee will have to coordinate with the transferee. Similarly, if the licensee has a Certificate of Compliance (CoC) pursuant to 10 CFR Part 71, "Packaging and Transportation of Radioactive Material," that is to be transferred, the transferee's quality assurance program description, as required by 10 CFR 71.37, would need to be submitted, to determine whether it was in accordance with 10 CFR Part 71, Subpart H.
- Lead times, on the order of 6 months, are needed when planning for a transfer-of-control of a license. These lead times are needed to identify changes related to financial instruments, cost estimates, quality assurance plans, and exemptions that may be needed. Although some restructuring plans can occur with little warning, many are anticipated well in advance of the desired implementation date. Licensees should provide the NRC ample advance notification of such plans so that the NRC staff can schedule the appropriate resources for review.

Frequent and early discussions with NRC, during the licensee planning process, are recommended. Before a license is transferred, all other licenses or certificates that are to be transferred must be evaluated. For example, if there are CoCs, import/export licenses, or any other licenses under another part of the regulation that are to be transferred to the transferee, the licensee must notify NRC about them, and they must be addressed in parallel.

- In cases of the restructuring of the licensee's internal organization, which results in a limited-liability corporation as the transferee where the management and technical staff are remaining the same, NRC's review focus is mainly in the area of financial assurance, for decommissioning activities, as opposed to technical qualifications.
- NRC must determine if the proposed licensing action will involve a direct or indirect transfer of control. The transferee should not take any actions that could influence the control of the license until NRC has completed its review and has provided its consent in writing. If a licensee requests a license amendment to effectuate a name change, and NRC determines that the action is instead a transfer-of-control, the licensee must revise its submittal, to request a transfer-of-control licensing action, in writing, as part of its application request.
- A licensee should provide detailed information that clearly explains any proposed change in organizational structure. Before and after organizational charts are most helpful to aid NRC staff in understanding the proposed changes. Such charts, although not required, have facilitated the NRC staff's technical review.
- In restructuring situations, where a limited-liability company is formed, and the new entity

is the proposed transferee, the licensee should provide proof that the new entity is incorporated. This is necessary to support the financial assurance certification as required by 10 CFR 70.25. In addition, the licensee should provide the transferee's unexecuted or draft financial instruments for NRC technical staff review. Although such drafts are not required to be submitted to the NRC staff, they are recommended because they can avoid additional RAIs and potential rework, by the licensee, on executed financial instruments that are not acceptable to NRC. On receipt of the executed financial document, the NRC staff should be able to verify that the changes were made and make its findings.

- All financial instruments must be held in the transferee's name before the license is transferred. This is demonstrated by a financial certification. It is recommended that an unexecuted copy of the transferee's financial assurance certification be submitted to the NRC staff, for review, to expedite the NRC staff technical review. Conversely, the licensee must hold all financial instruments, as approved through the license, until the effective date of the transfer of control. Transfer-of-control actions are implemented, by NRC, through an Order. The Order will specify an effective date of a transfer of the license. In addition, it is the responsibility of the licensee and the transferee to coordinate with their financial institutions to establish when their respective financial assurance instruments will be effective. The transferee's financial assurance instruments must be effective on the date of transfer. The financial assurance mechanisms that NRC recognizes are designed so that licensees may not cancel them without NRC approval, even if a replacement instrument is being established.
- The licensee, on behalf of the transferee, must update all the financial mechanisms to reflect the updated decommissioning cost estimate and to add the transferee's signatures to all financial instruments. If the decommissioning cost estimate was updated within several months of the transfer, then the NRC staff may not require its update before the transfer, provided no significant changes to decommissioning costs have occurred since the update. In such a case, the NRC staff may use the recently updated estimate for purposes of evaluating the financial assurance provided by the transferee.
- A description of the sources of funds should include a discussion of the basis for the projections. For either a direct or an indirect license transfer, licensees must provide a five-(5)-year proforma balance sheet and a five-(5)-year proforma cash flow statement that includes a baseline of the last 2 years of operations. Therefore, these statements are to show a seven-(7)-year period - - - the last two (2) years of operations, and projections for each of the next five (5) years.
- For direct or indirect transfers that involve exemption requests, 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," requires that the NRC staff conduct an Environmental Assessment (EA), or an Environmental Impact Statement (EIS), as appropriate. The need for exemptions from 10 CFR 70.25 (e) and (f) can be avoided by using financial instruments recognized in the NRC regulations and providing decommissioning cost estimates for specific licensed activities. For example, a licensee or applicant can choose to use one of several methods, listed in the regulations, to demonstrate financial assurance. However, if the transferee proposes to use a financial instrument that is not recognized by NRC regulations, the licensee must apply for an exemption from 10 CFR 70.25(e), on behalf of the transferee, regardless of whether the current licensee was granted such an exemption by the NRC. If a transferee proposes not to provide a cost estimate for decommissioning activities for a specific licensed activity, the licensee must apply for an

exemption 10 CFR 70.25(f), on behalf of the transferee, regardless of whether the current licensee was granted such an exemption by NRC. Although approvals of direct or indirect transfer per 10 CFR 51.22 are categorical exclusions, exemption requests require that the NRC staff prepare and issue an EA, or an EIS, as appropriate. Any exemptions requested, as part of a license transfer, must be issued on or before the time that a license transfer is approved.

- Licensees that submit information that they believe should be withheld from public disclosure must meet the requirements of 10 CFR 2.390. The recommended procedures set forth in RIS 2005-31 are relevant if a submittal contains Sensitive Unclassified Non-Safeguards Information (SUNSI). NRC will determine whether any information in the application will be withheld from public disclosure, in accordance with 10 CFR Part 2 requirements or its SUNSI policy.
- Licensees should submit a public version (portion redactions as appropriate) and a non-public version of their applications, as applicable. Financial instruments and their associated affidavits (signed originals) must be sent to NRC. A licensee should send a copy of each financial instrument and associated affidavit to the Document Control Desk, and each original signed affidavit to the Project Manager. The Project Manager is required to evaluate a licensee's request to withhold information from the public. During this process, the Project Manager verifies that a signed original was received. With license transfers, each executed financial instrument, along with its associated affidavit, must be submitted to the NRC Project Manager. Executed financial instruments are usually the last documents submitted to NRC before the Order authorizing the transfer becomes effective. As part of NRC's financial assurance recordkeeping process, the NRC Project Manager forwards the executed original financial assurance documents and their affidavits to the appropriate NRC Office or Region.
- Licensees should not expect NRC to authorize or acknowledge a name change before the license is transferred. Section 184 of Act not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control of a license without the Agency's knowledge and express written consent. Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license. If a licensee restructures its organization and forms a limited-liability corporation that it proposes as the transferee, the transferee must not exert any influence or control over the current license until the transfer-of-control licensing action is complete.
- On acceptance of the application for technical review, NRC must notice the receipt of a license-transfer request in the *Federal Register* and offer a 20-day opportunity in which to request a hearing, and a 30-day period to provide comments. It is the Division of Fuel Cycle Safety and Safeguards' goal that the time period in which to request a hearing be expired before the requested licensing action is taken.
- If the licensee also submits an update to the license at the time it submits its application for transfer of control, the license is amended at the same time, or within a short period of time after the order authorizing the transfer of control becomes effective. Otherwise, the new licensee must request a license amendment that would update its license to reflect the name change and any other changes made as a result of the order

authorizing the transfer of the license.

- In cases of a name change or a proposed transfer of control, where a U.S. Department of Energy (DOE) contract is the proposed financial assurance instrument, a letter from DOE acknowledging that it is cognizant of the transaction will expedite the review process.

## **BACKFIT DISCUSSION**

This RIS requires neither action nor written response and is, therefore, not a backfit. Consequently, the NRC staff did not perform a backfit analysis.

## **FEDERAL REGISTER NOTIFICATION**

A notice of opportunity for public comment on this RIS was not published in the *Federal Register*, because this RIS is informational and pertains to an NRC staff position that does not represent a departure from current regulatory requirements and practice.

## **CONGRESSIONAL REVIEW ACT**

NRC has determined that this action is not subject to the Congressional Review Act (5 U.S.C. §§ 801-808).

## **PAPERWORK REDUCTION ACT STATEMENT**

This RIS does not contain information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

## **CONTACT**

This RIS requires no specific action or written response. If you have any questions about this summary, please contact the individual listed below, or the appropriate regional office.

IRA

Daniel H. Dorman, Director  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Technical Contact: Amy M. Snyder, NMSS  
(301) 492- 3225  
E-mail: [amy.snyder@nrc.gov](mailto:amy.snyder@nrc.gov)

Enclosure: "List of Recently Issued NRC Generic Communications"

Note: NRC generic communications may be found on the NRC public website at <http://www.nrc.gov>, under Electronic Reading Room/Document Collections.

- In cases of a name change or a proposed transfer of control, where a U.S. Department of Energy (DOE) contract is the proposed financial assurance instrument, a letter from DOE acknowledging that it is cognizant of the transaction will expedite the review process.

**BACKFIT DISCUSSION**

This RIS requires neither action nor written response and is, therefore, not a backfit. Consequently, the NRC staff did not perform a backfit analysis.

**FEDERAL REGISTER NOTIFICATION**

A notice of opportunity for public comment on this RIS was not published in the *Federal Register*, because this RIS is informational and pertains to an NRC staff position that does not represent a departure from current regulatory requirements and practice.

**CONGRESSIONAL REVIEW ACT**

NRC has determined that this action is not subject to the Congressional Review Act (5 U.S.C. §§ 801-808).

**PAPERWORK REDUCTION ACT STATEMENT**

This RIS does not contain information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.).

**CONTACT**

This RIS requires no specific action or written response. If you have any questions about this summary, please contact the individual listed below, or the appropriate regional office.

\_\_\_\_\_  
/RA/  
Daniel H. Dorman, Director  
Division of Fuel Cycle Safety  
and Safeguards  
Office of Nuclear Material Safety  
and Safeguards

Technical Contact: Amy M. Snyder, NMSS  
(301) 492- 3225  
E-mail: [amy.snyder@nrc.gov](mailto:amy.snyder@nrc.gov)

Enclosure: "List of Recently Issued NRC Generic Communications"

Note: NRC generic communications may be found on the NRC public website at <http://www.nrc.gov>, under Electronic Reading Room/Document Collections.

DISTRIBUTION:  
FMB/rf

**ML081760011**

<b>OFC</b>	FMB		FMB		FMB		FFLD		NMSS Tech Ed	FSM E	
<b>NAME</b>	A.Snyder		V.Cheney		P.Habighorst		M.Tschlitz		E. Kraus	L.Chang	
<b>DATE</b>	6/26/08		07/17/08		08/13/08		8/25/08		8/18/08	08/08/08	
<b>OFC</b>	OIS		OGC-Cong. Review Act		OGC		NMSS Generic Comm. Coord.		FCSS		
<b>NAME</b>	JB		MSmith NLO		NLO w/revisions 11/11/08		J.Smith		D. Dorman		
<b>DATE</b>	07/18/08		07/25/08		08/19/08		08/27/08		08/28/08		

**OFFICIAL RECORD COPY**



## RECENTLY ISSUED NRC GENERIC COMMUNICATIONS

Document Number	Date	Title
<a href="#">RIS 08-14</a>	6/16/08	"Use of Tormis Computer Code for Assessment of Tornado Missile Protection"
<a href="#">RIS 08-12</a>	5/09/08	"Considerations for Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees"
<a href="#">RIS-08-11</a>	5/12/08	"Precautions to Protect Children Who May Come in Contact with Patients Released After Therapeutic Administration of Iodine-131"
<a href="#">RIS-08-10</a>	5/13/08	"Notice Regarding Forthcoming Federal Firearms Background Checks"
<a href="#">RIS-08-09</a>	3/24/08	"Notice of Revision to Criteria for Nominating Materials Licensees for Discussion at the Agency Action Review Meeting"
<a href="#">RIS-08-08</a>	3/19/08	"Endorsement of Revision 1 to Nuclear Energy Institute Guidance Document NEI 06-04, 'Conducting a Hostile Action-based Emergency Response Drill' "
<a href="#">RIS-08-06</a>	03/06/08	"Protection Against the Malevolent Use of Vehicles When Utilizing Landform Obstacles"
<a href="#">RIS-08-05</a>	02/27/08	"Lessons-Learned to Improve Inspections, Tests, Analyses, and Acceptance Criteria Submittals"
<a href="#">RIS 08-04</a>	02/28/08	"Discontinuation of Two Performance Indicators Associated with the Security Reactor Oversight Process"
<a href="#">RIS-08-03</a>	02/13/08	"Return/Re-use of Previously Discharged Radioactive Effluents"
<a href="#">RIS-08-02</a>	02/01/08	"Actions to Increase the Security of High-Activity Radioactive Sources"
<a href="#">RIS-08-01</a>	01/10/08	"Process for Scheduling Acceptance Reviews Based on Notification of Applicant Submission Dates for Early Site Permits, Combined Licenses, and Design Certifications and Process for Determining Budget Needs for Fiscal Year 2010"