



OHIO DEPARTMENT OF HEALTH

246 North High Street
Columbus, Ohio 43215

614/466-3543
www.odh.ohio.gov

Ted Strickland/Governor

Alvin D. Jackson, M.D./Director of Health

October 29, 2008

James Luehman, Deputy Director
Division of Materials Safety and State Agreements
Federal and State Materials and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. Luehman:

The purpose of this letter is to clear an outstanding comment on Ohio's "State Regulations Status" sheet for RATS ID #'s 1991-4 and 1993-1 dated July 26, 2000. The Bureau could not locate this letter and your office could not supply us with a copy due to the age of the letter. We were able to locate the Federal Register notices noted RATS ID #'s 1991-4 and 1993-1 (56 FR 64980 and 58 FR 39628). A copy of the Federal register notices is attached.

The following Ohio rules are also attached to show that they are compatible with the changes from RATS ID #'s 1991-4 and 1993-1.

RATS ID # 1991-4:

Rule 3701:1-49-26 of the Ohio Administrative Code – 10 CFR 39.77

RATS ID # 1993-1:

Rule 3701:1-40-17 of the Ohio Administrative Code – 10 CFR 30.35

Rule 3701:1-40-18 of the Ohio Administrative Code – 10 CFR 30.36

Rule 3701:1-44-18 of the Ohio Administrative Code – 10 CFR 40.36

Rule 3701:1-44-20 of the Ohio Administrative Code – 10 CFR 40.42

Rule 3701:1-56-19 of the Ohio Administrative Code – 10 CFR 70.25

Rule 3701:1-56-21 of the Ohio Administrative Code – 10 CFR 70.38

I believe that these Ohio rules satisfy the compatibility and health and safety categories established in the FSME Procedure SA-200.

If you have any questions, please feel free to contact Michael Snee of my staff at 614-644-2727 or Michael.Snee@odh.ohio.gov.

Sincerely,

Robert E. Owen, Chief
Bureau of Radiation Protection

Healthy
Ohio

STATE REGULATION STATUS

State: Ohio

[2 amendment(s) reviewed is identified by a ★
at the beginning of the equivalent NRC requirement.]

Tracking Ticket Number: 8-71

Date: September 5, 2008

| RATS ID | NRC Chronology Identification | Date Due for State Adoption | Incoming Package | Outgoing Package | Notes |
|---------|--|-----------------------------|----------------------|--|---|
| 1991-1 | Safety Requirements for X-Radiographic Equipment Part 32 53 FR 84 (Superceded by 1997-5) | 01/30/1994 | Final ML023250117 | No Comments 01/08/2000 ML03000040 | Ohio has adopted Final Regulations equivalent to RATS ID: 1991-1 |
| 1991-2 | ASNT Certification of Radiographers Part 34 56 FR 11504 (Superceded by 1997-5) | none | Final ML023250117 | No Comments 01/08/2000 ML03000040 | Ohio has adopted Final Regulations equivalent to RATS ID: 1991-2 |
| 1991-3 | Standards for Protection Against Radiation Part 20 56 FR 23360; 56 FR 61352; 57 FR 38588; 57 FR 57877; 58 FR 67657; 59 FR 41641; 60 FR 20183; | 01/01/1994 | Final ML040920160 | No Comments 04/14/2004 ML041060011 | |
| 1991-4 | Notification of Incidents Parts 20, 30, 31, 34, 39, 40, 70 56 FR 64980; | 10/15/1994 | Proposed | Comments 07/26/2000 | |
| 1992-1 | Quality Management Program and Misadministrations Part 35 55 FR 34104 (Superceded by 2002-2) | 01/27/1995 | Final ML051440106 | No Comments 06/08/2000 ML061590215 | Ohio has adopted Final Regulations equivalent to RATS ID: 1992-1 |
| 1992-2 | Eliminating the Recordkeeping Requirements for Departures from Manufacturers Instructions Parts 30, 35 57 FR 45566 | none | Final ML061440106 | No Comments 06/08/2000 ML061590215 | This requirement places control required to be adopted for purposes of comparability. |
| 1993-1 | Decommissioning Recordkeeping and License Termination: Documentation Additions [Restricted areas and spill sites] Parts 30, 40 58 FR 39628 | 10/25/1996 | Proposed | Comments 07/26/2000 | |

§ 140.2 Scope.

(a) The regulations in this part apply:
 (1) To each person who is an applicant for or holder of a license issued pursuant to 10 CFR parts 50 and 54 of this chapter to operate a nuclear reactor, and

12. Section 140.10 is revised to read as follows:

§ 140.10 Scope.

This subpart applies to applicants for and holders of licenses issued pursuant to 10 CFR parts 50 and 54 of this chapter authorizing operation of nuclear reactors, except licenses for the conduct of educational activities issued to, or applied for, by persons found by the Commission to be nonprofit educational institutions and except persons found by the Commission to be Federal agencies. This subpart also applies to persons licensed to possess and use plutonium in a plutonium processing and fuel fabrication plant.

Dated at Rockville, Maryland, this 6th day of December 1991.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission.
 [FR Doc. 91-29628 Filed 12-12-91; 8:45 am]
 BILLING CODE 7850-01-M

10 CFR Parts 20, 30, 31, 34, 39, 40 and 70

RIN 3150-AC91

Notification of Incidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule appearing in the *Federal Register* on August 16, 1991 (56 FR 40757), that revised the NRC's material licensee reporting requirements to ensure that significant occurrences at material licensee facilities are promptly reported. This action is necessary to correct minor printing errors and resolve an inconsistent reference to an appendix. This action will also add language which was inadvertently omitted from the supplementary information to the final rule and restore previously added language to § 39.77.
EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-7758.

1. On page 40758, in the second sentence of the sixth full paragraph in the second column, the word

"accuracy" should read "assurance."

2. The final rule contained a Summary and Analysis of Public Comments. On page 40758, in the third column, the response to comment No. 5 has been revised to provide greater clarity.

5. *Comment:* * * *

Response: In developing the proposed rule, the NRC considered the idea of providing specific activity thresholds for each of the new reporting requirements. However, the NRC felt that thresholds for all of the new reporting requirements would be cumbersome and difficult to develop and use. Many of the licensed operations use mixtures of isotopes in different chemical forms that pose various safety hazards. Nevertheless, the NRC agrees that thresholds for some of the new reporting requirements would help to minimize reports of insignificant events. As a result, the NRC felt that a set of activity thresholds would be appropriate for determining what fires and explosions and contamination events are reportable. Therefore, the final rule has been revised to require NRC notification only for fires and explosions and contamination events involving licensed material in quantities that are greater than five times the lowest annual limit on intake specified in appendix B of §§ 20.1001-20.2401 of 10 CFR part 20.

3. On page 40764, in the third sentence of the second full paragraph, (seventh line from the bottom) in the third column, "the 20" should read "than 20."

4. On May 21, 1991 the Nuclear Regulatory Commission published in the *Federal Register* (56 FR 23363) a final rule revising 10 CFR part 20 et al. The final rule also made conforming amendments to § 39.77(b). On page 40768, the conforming amendments made on May 21, 1991 that added references to §§ 20.1001-20.2401 were not reflected in amendatory instruction 13 that amended § 39.77. To restore the omitted references to § 39.77, amendatory instruction 13 is set forth below. For the convenience of the user, the instruction will present the change as a revision of § 39.77(b) and the complete text of the paragraph is presented.

13. In § 39.77, paragraph (b) is revised to read as follows:

§ 39.77 Notifications of incidents and lost sources; abandonment procedures for ir retrievable sources.
 * * * * *

(b) The licensee shall notify the Commission of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and certain other accidents as required by §§ 20.402,

20.403, 20.405 and 30.50 or, for licensees implementing the provisions of §§ 20.1001-20.2201, §§ 20.2201-20.2202, § 20.2203 and § 30.50 of this chapter.
 * * * * *

§ 70.50 [Corrected]

5. In the third line of § 70.50(c)(2), in the third column, on page 40768, the word "prepare" should read "submit."

Dated at Rockville, Maryland, this 9th day of December, 1991.

For the Nuclear Regulatory Commission,
Donnie H. Grimsley,
Director, Division of Freedom of Information and Publications Services, Office of Administration.
 [FR Doc. 91-29820 Filed 12-12-91; 8:45 am]
 BILLING CODE 7850-01-M

**DEPARTMENT OF THE TREASURY
 Internal Revenue Service
 26 CFR Parts 1 and 301**

[T.D. 8378]

RIN 1545-A085

Extension of Time for Making Elections

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations under 26 CFR part 301 concerning the extension of time for making elections or applications for relief when that time is not expressly prescribed by statute. The change permits the Commissioner to grant taxpayers an extension of time for making these elections or applications under any subtitle of the Code other than subtitle E, governing Alcohol, Tobacco, and Certain Other Excise Taxes; subtitle G, governing the Joint Committee on Taxation; subtitle H, governing the Financing of Presidential Elections; and subtitle I, governing the Trust Fund Code.

DATES: These amendments are effective February 13, 1959.

FOR FURTHER INFORMATION CONTACT: Barbara B. Walker, 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1.9100-1 of the Income Tax Regulations was originally adopted in 1959, 24 FR 1206 (February 17, 1959), and amended in 1970, 35 FR 17640 (November 20, 1970), under the authority of section 7805(a) of the Internal Revenue Code ("the Code"). Temporary regulations (T.D. 8342), relating to § 1.9100-1, were published in the *Federal Register* on April 5, 1991 (56 FR 14023). A notice of proposed rulemaking

3701:1-49-26 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(A) The licensee shall immediately notify the department by telephone and subsequently, within thirty days, by confirmatory letter using an appropriate method listed in rule 3701:1-40-04 of the Administrative Code, if the licensee knows or has reason to believe that a sealed source has been ruptured. The letter must designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

(B) The licensee shall notify the department of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation, and other accidents as required by rules 3701:1-38-21 and 3701:1-40-20 of the Administrative Code.

(C) If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:

(1) Notify the department by telephone of the circumstances that resulted in the inability to retrieve the source; and

(a) Obtain department approval to implement abandonment procedures; or

(b) State or declare that the licensee implemented abandonment procedures before receiving department approval because the licensee believed there was an immediate threat to public health and safety; and

(2) Advise the well owner or operator, as appropriate, of the abandonment procedures under paragraph (A) or (C) of rule 3701:1-49-04 of the Administrative Code; and

(3) Either ensure that abandonment procedures are implemented within thirty days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures.

(D) The licensee shall, within thirty days after a sealed source has been classified as irretrievable, make a report in writing to the department. The licensee shall send a copy of the report to each appropriate state or federal agency that issued permits or otherwise approved of the drilling operation. The report must contain the following information:

(1) Date of occurrence;

(2) A description of the irretrievable well logging source involved including the radionuclide and its quantity, chemical, and physical form;

(3) Surface location and identification of the well;

(4) Results of efforts to immobilize and seal the source in place;

- (5) A brief description of the attempted recovery effort;
- (6) Depth of the source;
- (7) Depth of the top of the cement plug;
- (8) Depth of the well;
- (9) The immediate threat to public health and safety justification for implementing abandonment if prior department approval was not obtained in accordance with paragraph (C)(1)(b) of this rule;
- (10) Any other information, such as a warning statement, contained on the permanent identification plaque; and
- (11) State and federal agencies receiving copy of this report.

Effective: 10/08/2007

R.C. 119.032 review dates: 07/09/2007 and 07/01/2012

Promulgated Under: 119.03

Statutory Authority: 3748.04

Rule Amplifies: 3748.04

Prior Effective Dates: 10/20/2002

series 570; compliance examiners in job series 301; and

(ii) All other employees of the Division of Supervision and the Division of Resolutions at or above the grade 13.

(b) *Report contents.* Each confidential report of indebtedness filed pursuant to this section shall include:

(1) In part I, information on any indebtedness of the employee, his or her spouse, and/or dependent child, which is evidenced by a credit card issued by an FDIC insured depository institution, including the type of card, the year of receipt, the name and location of the issuer, and the total line of credit, regardless of the amount outstanding; and

(2) In part II, information on other indebtedness of the employee, his or her spouse, and/or dependent child, at any time during the reporting period and regardless of amount, to a federally insured financial institution, or any subsidiary or affiliate thereof, including mortgages and other consumer debt not reported in part I. With respect to each creditor, an employee shall disclose the type of liability, the name and location of the creditor, the year the debt was incurred, the term of the loan, and either the original or outstanding balance.

§ 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10).

(a) *Who must file/when.* Within 30 days of acquiring a credit card obligation to an insured state nonmember bank headquartered outside of the employee's region of employment, a "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification," FDIC Form 2410/10, must be filed by:

(1) The Executive Director of the Divisions of Supervision and Resolutions;

(2) The Director of Supervision;

(3) The holder of any position immediately subordinate to the Director of Supervision;

(4) An Assistant Director, Regional Director, Deputy Regional Director, or an Assistant Regional Director; and

(5) An examiner, assistant examiner, compliance examiner, or other covered employee of the Division of Supervision at or above a grade 13 level.

(b) *Report contents.* Each statement filed pursuant to this section shall disclose the name of any Corporation insured state nonmember depository

institution outside of the employee's region of assignment from which he or she has received a credit card and shall include certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed \$10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Approved: July 14, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

12 CFR CHAPTER III—(AMENDED)

PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 336 is revised to read as follows:

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a); sec. 502(a), E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306, as modified; 5 CFR 2635.403(a), 2635.803, 2637.101(a).

2. Part 336 is amended by removing and reserving subpart D, §§ 336.24–336.28.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–17612 Filed 7–23–93; 8:45 am]

BILLING CODE 6714-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 70, and 72

RIN 3150-AD98

Decommissioning Recordkeeping and License Termination: Documentation Additions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require holders of a specific license for possession of certain

byproduct material, source material, special nuclear material, or for independent storage of spent nuclear fuel and high-level radioactive waste to prepare and maintain additional documentation that identifies all restricted areas where licensed materials and equipment were stored or used, all areas outside of restricted areas where documentation is required under current decommissioning regulations for unusual occurrences or spills, all areas outside of restricted areas where waste has been buried, and all areas outside of restricted areas containing material such that if the license were terminated, the licensee would be required to decontaminate the area or seek special approval for disposal. The final rule also requires licensees to submit specific information at the time of final decommissioning on decontaminated equipment that had been involved in the licensed activity that will remain onsite at the time of license termination. The information required by these amendments will provide greater assurance that decontamination and decommissioning of licensee facilities have been carried out in accordance with the Commission's regulations.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3883.

SUPPLEMENTARY INFORMATION:

Background

NRC licensees subject to the requirements of 10 CFR Parts 30, 40, 70, and 72 who wish to terminate their licenses must decontaminate all contaminated facilities and sites according to NRC requirements before the NRC can authorize the termination of the license. Therefore, the licensee's application for license termination, and other records on decommissioning available from the licensee, must contain sufficient information on the residual radioactivity levels in the licensee's facilities and sites to allow the NRC staff to make a determination on whether the licensee's facilities and sites can be released for unrestricted use.

A General Accounting Office (GAO) report, "NRC Decommissioning Procedures and Criteria Need to Be Strengthened" (GAO/RCED-89-119, May 26, 1989), indicated incomplete recordkeeping as a potential problem. The issue was also discussed by the NRC at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and

Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (Synar Subcommittee) on August 3, 1989. Both the GAO report and the Synar Subcommittee were concerned that, because of poor or insufficient knowledge as to the location within a licensee's site where licensee activities were conducted, the NRC could terminate a license and release facilities and sites for unrestricted use which may remain partially contaminated at levels which would be unacceptable. Currently, NRC's rules on decommissioning recordkeeping (10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d)) specifically require licensees to keep certain records important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. These records include drawings of structures and equipment in restricted areas where radioactive materials were used or stored, documentation identifying the location of inaccessible residual contamination, and detailed descriptions of unusual occurrences or spills of radioactive materials that can affect decommissioning. In addition, NRC's rules (10 CFR 20.2108) require licensees to maintain records on the location and radionuclide content of waste burial areas until license termination. However, these rules are not sufficiently explicit to ensure that all relevant areas of possible contamination will be identified at the actual time of decommissioning. For example, the licensee is not specifically required to list (1) all areas designated and formerly designated as restricted areas; (2) all areas outside of restricted areas that require documentation under the current decommissioning rules; (3) all areas outside of restricted areas where radioactive waste has been buried and require documentation under the current rules; (4) all areas outside of restricted areas which contain radioactive material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval of disposal (e.g. tailings piles); and (5) the location and description of equipment to remain onsite after license termination that was considered to be radioactively contaminated when final decommissioning was initiated. Yet the NRC will need to know of the existence and location of these areas and equipment in order to perform its confirmatory survey.

On October 7, 1991 (56 FR 50524), the NRC published a notice of proposed

rulemaking in the Federal Register. The purpose of this proposed rulemaking was to clarify and make more explicit the recordkeeping and documentation requirements specified in the recently enacted decommissioning amendments (June 27, 1988, 53 FR 24018). The proposed rule would have required licensees to maintain in a single document and certify for completeness and accuracy, a list of the following:

(1) All onsite areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(e)(14) or 20.1003;

(2) All onsite areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in Appendix C to §§ 20.1001-20.2401 of 10 CFR part 20 are or have been used, possessed or stored;

(3) All onsite areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 30.50 (b)(1) or (b)(4), including areas where subsequent cleanup procedures have removed the contamination; and

(4) All known locations and radionuclide contents of previous and current burial areas within the site.

Areas that contained byproduct material having half-lives of 10 days or less, or depleted uranium used only for shielding or as penetrators in unused munitions, or sealed sources authorized to be used at "temporary job sites" outside of the licensee's permanent facility and site boundary as specified in the license would not have had to be listed.

The proposed rule also would have required licensees who are required to submit a decommissioning plan, to submit this list as part of their plan. Finally, the proposed rule would have required that the above list include the location and description of all equipment, involved in the licensed operation, that is to remain onsite after license termination.

The comment period on the proposed rule expired December 23, 1991. Public comments were received on the proposed rule and are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC.

The NRC received nine comment letters in response to the proposed rule. The commenters consist of a broad institutional licensee, a medical licensee, State agencies, a Federal Government laboratory, several material

licensees, and a nuclear power utility. In a number of cases, letters from different commenters addressed similar issues. The NRC has identified and responded to 12 separate issues that include all of the significant points raised by the commenters. The comments and NRC responses are presented below.

Summary and Analysis of Public Comments

1. Comment. The listing requirement under the expiration and termination of license which states that "Upon approval of the decommissioning plan by the Commission, the licensee shall * * * include a list of the location and description of all equipment involved in licensed operations that is to remain onsite at the time of license termination" is too broad. For example, as one commenter argued, under the proposed requirement, even a typewriter can be considered as a piece of "equipment involved in licensed operations" because the typewriter was used to generate reports concerning the licensed activities. Another commenter stated that "old" equipment decontaminated and returned to inventory for others to use should not be tracked until the termination of the license.

Response. The supplementary information to the proposed rule stated that, " * * * equipment to be left onsite at the time of license termination are appropriate for listing since these may be potential sources of exposure." It is not the intent of the Commission that licensees should list and track equipment such as a typewriter which never was contaminated or "old" equipment decontaminated to unrestricted area release levels and returned to inventory until the time of license termination; existing requirements in §§ 20.401 and 20.2103 require records of surveys made to confirm that equipment is suitable for unrestricted before it is removed from the site. Rather, the intention of this recordkeeping requirement is to ensure that any (contaminated) equipment that was decontaminated during decommissioning and is to be left onsite after license termination is identified. This would assist the NRC in performing a confirmatory survey. Therefore, the rule has been modified to clarify that contaminated equipment that has been or will be sent offsite to authorized radioactive waste disposal sites or decontaminated and released from the site to some other location and use need not be listed. A licensee is not required to identify this equipment prior to conducting the decontamination

and decommissioning operations. Specifically, §§ 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.54(e)(2) will now read as follows:

" * * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

2. *Comment.* Extend the exemption to all sealed sources on or offsite provided there has been no damage to or leakage from the sources. Commenters supported NRC's assessment that the risk of "contamination" from any sealed source "authorized to operate at temporary job sites" is minimal under normal use conditions. One commenter questioned the impact of the proposed rule on the uses of brachytherapy sources. Another commenter suggested that all sealed sources on or off the site should be exempted from the proposed rule provided there has been no damage or leakage from the sources.

Response. The NRC agrees that areas containing only sealed sources, both on or off the site, need not be listed provided the sealed sources have not leaked, or no contamination remains after any leak. Sections 30.35(g)(3) and 70.25(g)(3) have been amended to reflect this decision.

3. *Comment.* Will the proposed requirements be retroactive?

Response. The NRC does not intend for the requirements to be retroactive. However, the list should be as complete as possible and licensees should go back into the history of their licensed operation as far as possible to develop their initial list. After the initial list is generated, it would need to be updated at least every 2 years. Therefore, §§ 30.35(g)(3), 40.36(f), 70.25(g)(3), and 72.30(d)(3) have been amended to reflect this position.

4. *Comment.* Aside from exempting radioactive materials that possess half-lives of 10 days or less, an exemption should also be given for those radioactive materials that through time of possession have also decayed to very low levels.

Response. In principle it seems reasonable to exempt radioactive materials with half-lives greater than 10 days if during their time of possession they have decayed to very low levels. However, in practice this would be difficult to implement because the NRC would need to define, at that time, what NRC considers to be "very low levels." In addition, most licensees cannot predict the exact time of their license termination. However, the NRC agrees that the 10-day half-life is too restrictive. Moreover, materials with

less than 65-day half-lives are already authorized by the Commission for decay-in-storage, for example, under 10 CFR 35.92. Therefore, a 65-day half-life appears to be a more reasonable and consistent limit. The rule has been modified accordingly. It is important to note that the purpose of this recordkeeping rule is to prevent contaminated areas and equipment from being overlooked at the time of license termination, because of inadequate recordkeeping. Any large amount of licensed material, no matter how short the half-life, should be properly controlled, surveyed, inventoried, and documented at all times. At the time of license termination, if the licensee possesses a sufficient amount of short half-life materials to affect decommissioning, the Commission would expect that the licensee would be able to identify the areas where these materials are used and/or stored.

5. *Comment.* The proposed rule is unduly burdensome and will not ensure that the stated aim is met. Therefore, the proposed rule should be withdrawn and problems that have been identified should be solved by existing methods, such as during routine inspections, under the current requirements, such as decommissioning regulations (10 CFR part 30.35) and 10 CFR part 20, subpart M, and through real time inspection and enforcement programs. At some large research institutions, the burdens created by the proposed regulation would be very significant because activities with small amounts of radioactive materials are conducted in numerous rooms and buildings.

Response. The Commission has carefully considered the comments received and reviewed the impact of the proposed rule. The discussed changes have been made to minimize the recordkeeping burden without diminishing the effectiveness of the rule. In addition, aside from the required list of previous and current restricted areas designated in the proposed rule, the final rule requires only the list of areas outside of restricted areas that require documentation (records) in the existing rule under §§ 30.35(g)(1), 40.36(f)(1), 70.25(g)(1), and 72.25(g)(1) for spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. Further, these records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas. The NRC regards remaining contamination as anything above the NRC's most current residual

radioactivity criteria for allowing release for unrestricted use; see 57 FR 13382, April 16, 1992, for case specific guidance on this issue.

Rulemaking activities for specifying residual radioactivity limits for site cleanup are presently underway. As a result of these changes, only those areas and equipment that need to be surveyed by the NRC prior to license termination are now required to be listed. One comment from a large research institution noted that licensed activities and work locations changed on a frequent basis, and over time, rooms were renumbered or even disappeared. Although this rule only requires a list of previously restricted areas, it is prudent for all licensees to retain records of general historical information to support decisions by the licensee and the Commission on what decommissioning actions are necessary to release a facility for unrestricted use. Detailed records required by the regulations and other general information is often needed to determine how closely various areas must be surveyed to verify that they are suitable for unrestricted use. This information also may be needed to respond to allegations that certain decommissioning actions may not have been adequate to protect public health and safety. Therefore, in addition to the specific records required by this rule, all licensees are encouraged to maintain records of general information that will allow them to produce an accurate historical account of all licensed activities conducted during the life of the facility.

As a practical matter, the current regulations do not provide the assurance that all areas that need to be surveyed will be identified. This rule provides that assurance. As now modified, this rule applies to those areas of actual or potential contamination, whether restricted areas or areas outside of restricted areas, that the licensee would be expected to identify.

6. *Comment.* The requirement to list, in a single document, is redundant and too restrictive. Listing should allow reference to other records.

Commenters stated that licensees already have the required information under existing NRC regulations and license conditions. Although not in a specific listing, the information can be obtained from the licensee's existing records. Commenters also stated that the proposed requirement for a single document is too restrictive and that the current NRC decommissioning recordkeeping requirement (e.g., 10 CFR 70.25(g)) already requires licensees to keep decommissioning records "in an identified location." Certain documents

kept by the licensee at various locations for decommissioning purposes (e.g., as-built drawings submitted with original license application, results of wipe tests, etc.) need not be duplicated by the licensee at the central location but only referenced to their locations from a central location. These commenters further stated that to require that records be maintained in a single document will impose an unnecessary burden on licensees who must create a new document containing information found in other documents.

Response. Although the required information may be redundant because the information contained in the "single document" may exist in other licensee records, this information may not be in a form either readily available for inspection, or more important, to facilitate a confirmatory survey prior to license termination. In addition, information needed in the "single document" can be lost over a period of time because there is consequently no specific requirement for the licensee to create or maintain such a record until the end of the license. This was one of the points made at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (held on August 3, 1989). Thus, to assure that the needed information both exists and is available, the NRC is requiring the subject list and that it be a single document. Guidance explicitly specifying the level of detail expected in the list is being developed and included in a Regulatory Guide on material facilities decommissioning recordkeeping requirements.

7. *Comment.* The proposed 10 CFR 30.35(g)(3)(i) which requires a listing of "all onsite areas designated or formerly designated as restricted areas" should include an indication of the type of material used in each of these areas.

Response. The Commission does not believe that it is necessary to include this information in the list required by this rule. The documentation requirements currently contained at 10 CFR 30.35(g)(1) and corresponding sections under 10 CFR parts 40, 70, and 72, already require the information for situations the NRC considers appropriate, including spills and unusual occurrences.

8. *Comment.* The proposed requirement under 10 CFR 30.35(g)(3)(ii) is inconsistent because licensees are required to list all onsite areas, other than restricted areas, for radioactive materials in quantities greater than a certain threshold amount (i.e., new part 20 appendix C values),

yet this same amount for certain materials (e.g., I-125) can be exempt under 10 CFR 30.71, Schedule B. Therefore, to reduce the size of the "single document" and to be consistent with current requirements, it was proposed that the threshold amount be increased 10 (or 100) times.

Response. Upon consideration of this comment, the NRC has concluded that only areas outside of the licensee's restricted areas that actually have been contaminated by these materials in a way that affects decommissioning need be listed. Any areas contaminated above the NRC unrestricted area release criteria outside of the licensee's restricted areas and covered under 10 CFR 30.35(g)(1) and corresponding sections of 10 CFR parts 40, 70, and 72 would require inclusion in the list as discussed earlier under Comment 5.

The NRC notes that the small quantities of material listed in 10 CFR 30.71, Schedule B, can only be distributed for certain uses by a licensee holding a distribution license pursuant to 10 CFR 32.18. Persons possessing such material are exempt from the regulations pursuant to 10 CFR 30.18. Distribution licenses under 10 CFR 32.18 authorize distribution of exempt materials in approved chemical/physical forms for specified purposes only. Manufacturers of byproduct materials are strictly prohibited under 10 CFR 30.18, from distributing radioactive materials to the general public, no matter how small the quantity, without the NRC approving the intended application of the material on a case-by-case basis.

9. *Comment.* The proposed requirements under 10 CFR 30.35(g)(3)(iii) are inconsistent with other regulatory requirements because licensees would be required to keep records of all incidents requiring reports as specified in 10 CFR 30.50(b) (1) or (4), and yet under current 10 CFR 30.35(g)(1), records of spills or other unusual occurrences in restricted areas may be "limited to instances when contamination remains after any cleanup procedures * * *."

Response. The NRC agrees that there was an inconsistency between the proposed requirements and current regulations under 10 CFR 30.35(g)(1). The intent of the proposed §§ 30.35(g)(3)(iii) was to ensure that at the time of actual decommissioning, all areas (i.e., restricted areas as well as unrestricted areas) that may still have contamination resulting from spills or other unusual occurrences are identified. The NRC agrees with the commenter that the current requirement under 10 CFR 30.35(g)(1) is sufficient to

handle this concern because it covers all onsite areas. Therefore, proposed §§ 30.35(g)(3)(iii) has been deleted from the final rule, as have proposed §§ 40.36(f)(3)(iii) and 70.25(g)(3)(iii).

10. *Comment.* Listing of buried waste should include offsite as well as onsite specification if such waste has not been disposed of in a licensed disposal facility.

Response. The Commission agrees with this comment. However, 10 CFR 20.2108, "Records of Waste Disposal," already requires that these records be kept "until the Commission terminates each pertinent license requiring the record." Therefore, the proposed requirement to list "all known locations and radionuclide contents of previous and current burial areas within the site" is modified in the final rule to list all areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108, since the purpose of this rule is to consolidate all necessary information in one list.

However, the Commission is concerned that there may be areas outside of the licensee's restricted area containing radioactive materials which have radioactive concentrations greater than levels authorized by the Commission for unrestricted release, which are not considered to be spills or unusual occurrences, and which are currently not documented under 10 CFR 20.2108 because the licensee either does not consider these materials currently to be waste, or plans to dispose of these materials before the license is terminated. The Commission is concerned that these areas, if forgotten at the time of license termination, may become de facto areas of onsite disposal of radioactive waste. Onsite disposal would have to be authorized by the NRC per licensee application under 10 CFR 20.2002, subpart K and documented.

Therefore, to clarify the original intent of this proposed requirement, §§ 30.35(g)(3)(iii), 40.36(f)(3)(iii), and 70.25(g)(3)(iii) of the proposed rule have been changed to include in the list:

"All areas outside of restricted areas which contain material so that, if the license expired the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002."

See the response to Comment 5 for NRC case specific guidance concerning residual radioactivity limits for site cleanup. The NRC does not believe that similar requirements are necessary for part 72 licensees, because these licensees are not likely to have conduct of operations which would result in

contaminated areas arising from situations other than unusual occurrences or spills, which are already covered.

11. *Comment.* Proposed requirements under 10 CFR part 72 should allow independent spent fuel storage facilities that had previously held a part 50 license to use their part 50 records (i.e., 50.75(g)) to satisfy the listing requirements.

Response. Current part 50 licensees will have to apply to the NRC for a separate license if they wish to establish an independent spent fuel storage installation (ISFSI) under 10 CFR part 72. Whether the part 72 licensee was formerly a part 50 licensee is immaterial to the NRC in determining whether the applicant should get a part 72 license. The recordkeeping requirement for a part 72 license (72.18(d)) is similar to that for a part 50 license (50.75(g)); nevertheless, for the reasons explained in response to Comment 8, this does not allow for an exemption from the provisions of the listing requirement. Therefore, regardless of whether the part 72 licensee is also a holder of a part 50 license, the part 72 licensee should still provide the required listing.

12. *Comment.* A discussion needs to be included about the degree of compatibility this rule will require with respect to the Agreement States.

Response. The NRC agrees. In this case, the Commission believes that there is no reason for strict compatibility, and that while the Agreement States should have requirements similar to those being adopted in this final rule, they should be permitted flexibility to apply more stringent requirements if the States deem them appropriate. Therefore, the Commission proposed a Division 2 matter of compatibility and provided the Agreement States an opportunity to comment. The Agreement States generally agreed that such a level of compatibility was reasonable.

Summary of Final Rule Provisions

A. The final rule contains new requirements applicable to the licensed possession and use of source, byproduct, and special nuclear materials, and independent storage of spent nuclear fuel and high-level radioactive waste during ongoing facility operations.

Sections 30.35(g)(3), 40.36(f)(3), and 70.25(g)(3). Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak) or byproduct materials having only half-lives of less than 65 days, or depleted uranium used only for shielding or as penetrators in unused

munitions, licensees will be required to establish and maintain a list, contained in a single document. This list must be updated every 2 years, and include the following:

- (i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;
- (ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1) or 40.36(f)(1) or 70.25(g)(1).;
- (iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and
- (iv) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

Section 72.30(d): A list contained in a single document. The list must be updated every 2 years and include the following:

- (i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;
- (ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

B. For those licensees who are required to submit a decommissioning plan, new requirements are applicable at the plan submittal and license termination stage.

Sections 30.36(c)(2)(iii)(D), 40.42(c)(2)(ii)(D), 70.38(c)(2)(iii)(D), and 72.54(b)(4). The information required in section A (the list of areas) above and any other information not required by section A that is considered necessary to support the adequacy of the decommissioning plan for approval.

Sections 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.56(e)(2). " * * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

Environmental Impact—Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) (ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject

to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150-0017, 3150-0020, 3150-0009, and 3150-0132.

Public reporting burden for this collection of information is estimated to average 5 hours per licensee response, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0017, 3150-0020, 3150-0009, and 3150-0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a final regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comments on the draft regulatory analysis, but no comments were received. However, because of comments on the proposed rule amendments, significant changes were made to the final rule amendments which considerably lessen the impact on licensees. Therefore, the draft regulatory analysis was changed to reflect the modified final rule and its subsequent reduced regulatory impact. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The final rule, contrary to the proposed rule, will only affect a small number of small entities because licensees will not be required to list either sealed sources that do not leak or unsealed licensed materials with half-lives of less than 65 days. Even for affected small entity licensees, the added requirements would require only a small effort not exceeding approximately 5 hours to compile the information and create the required list which essentially documents

information the licensee already has or will have. In fact, licensee costs may be reduced to the extent that these requirements allow the license to be terminated more expeditiously.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1), and therefore, that a backfit analysis is not required.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous material—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training program, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 181, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282);

secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.81 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.8 is amended by revising paragraph (b) to read as follows:

§ 30.8 Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and Appendix A.

3. Section 30.35 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1).

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

4. Section 30.36 is amended by redesignating paragraph (c)(2)(iii)(D) as (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 30.36 Expiration and termination of licenses.

(c) * * *
(2) * * *

(iii) * * *

(D) The information required in § 30.35(g)(3) and any other information required by § 30.35(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 98 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. Section 40.8 is amended by revising paragraph (b) to read as follows:

§ 40.8 Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and Appendix A.

7. Section 40.36 is amended by redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3) to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

(f) * * *

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 40.36(f)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR Part 20.302 or 20.2002.

8. Section 40.42 is amended by redesignating paragraph (c)(2)(iii)(D) as paragraph (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 40.42 Expiration and termination of licenses.

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 40.36(f)(3) and any other information required by § 40.36(f) that is considered necessary to support the adequacy of the decommissioning plan for approval;

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20(a)(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 2152). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. Section 70.8 is amended by revising paragraph (b) to read as follows:

§ 70.8 Information collection requirements: OMB approval.

(b) The approved information collection requirements contained in this part appear in §§ 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, and 70.60.

11. Section 70.25 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak), a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 70.25(g)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR part 20.302 or 20.2002.

12. Section 70.38 is amended by redesignating paragraphs (c)(2)(iii)(D)

and (c)(2)(iii)(E) as paragraphs (c)(2)(iii)(E) and (F), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 70.38 Expiration and termination of licenses.

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 70.25(g)(3) and any other information required by § 70.25(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 68, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102 Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15).

2(19), 117(a), 141(b), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(b). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and 218(a) 98 Stat. 2252 (42 U.S.C. 10198).

14. Section 72.30 is amended by revising the section heading, redesignating paragraph (d)(3) as paragraph (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

- (d) * * *
- (3) A list contained in a single document and updated no less than every 2 years of the following:
 - (i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003; and
 - (ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

15. Section 72.54 is amended by redesignating paragraph (b)(4) as paragraph (b)(6), adding a new paragraph (b)(4) and revising paragraph (e)(2) to read as follows:

§ 72.54 Application for termination of license.

- (b) * * *
- (4) The information required in § 72.30(d)(3) and any other information required by § 72.30(d) that is considered necessary to support the adequacy of the decommissioning plan for approval;
- (e) * * *
- (2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use and the licensee include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

Dated at Rockville, Maryland, this 12th day of July 1993.
 For the Nuclear Regulatory Commission.
James M. Taylor,
Executive Director for Operations.
 [FR Doc 93-17585 Filed 7-23-93; 8:45 am]
 BILLING CODE 7590-01-P

DEPARTMENT OF ENERGY

10 CFR Part 810

Assistance to Foreign Atomic Energy Activities

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.
ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its regulations concerning unclassified assistance to foreign atomic energy activities. These amendments will: Establish a general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in the list of countries; add a definition of "operational safety" as this concept relates to existing civilian nuclear power plants; update the list of countries requiring specific authorization for assistance in the production of special nuclear material by deleting certain countries and adding others; require specific authorization for assistance relating to certain research and test reactors; require that any materials, equipment, or technology transferred under certain general authorizations not be retransferred to a country without prior U.S. Government consent; and make certain technical changes, such as updating addressees to whom reports and requests under these regulations should be submitted.

EFFECTIVE DATE: These amendments are effective on July 26, 1993.
FOR FURTHER INFORMATION CONTACT: Mr. Zander Hollander, Export Control Specialist, Export Control Operations Division, Office of Export Control and International Safeguards, IS-40, U.S. Department of Energy, 1000 Independence Ave. SE, Washington, DC 20585. Telephone (202) 586-2125.

SUPPLEMENTARY INFORMATION:

1. Background

10 CFR part 810 implements section 57 b. (2) of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2077 (b) (2)). This section requires that U.S. persons who engage directly or indirectly in the production of special nuclear material outside the United States be authorized to do so by the Secretary of Energy. According to the part 810 regulations, assistance by U.S. persons to nuclear power reactor-related activities outside the United States is generally authorized for countries not listed in § 810.8(a), which sets forth the circumstances in which specific authorization is required. A main purpose of this revision is to

establish a new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in countries listed in § 810.8(a), thus eliminating the need for specific authorization by the Secretary of Energy for that assistance. In this regard, the new general authorization can be viewed as building on the long-standing, and still retained, authority in § 810.7(b), which generally authorizes assistance to prevent or correct a current or imminent radiological emergency posing a significant danger to public health and safety. However, unlike for other general authorizations, applicants must obtain the written permission of the Department of Energy in order to use the new general authorization. Accordingly, the new general authorization can be viewed as a hybrid authorization in that it will not be automatic, as for example a general authorization under § 810.7(a), but does not involve the time-consuming process required for specific authorizations. DOE will review applications to confirm that proposed activities meet the criteria for use of the authorization and are consistent with the objectives of U.S. national security, national disclosure, and nuclear nonproliferation policy. In addition, DOE will provide each application received to the Departments of State (DOS), Commerce, and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, along with notice of DOE's proposal to allow or disallow use of the new general authorization. It is anticipated that in most cases, with DOS concurrence, permission or denial will be given within 30 days. If it appears that review is required beyond the 30-day period, DOE will notify the applicant within the 30-day period not to proceed until DOE informs the applicant otherwise.

The intent of the new general authorization is to:

- Expedite safety-related assistance to civilian nuclear power plants, particularly in the former Soviet Union, and support the U.S. Government's efforts to improve the operational safety of nuclear power reactors worldwide.
- Enable U.S. firms to compete more effectively against foreign competitors for safety-related nuclear business.
- Eliminate unnecessary paperwork and time-consuming bureaucratic delays.

Over the past several years, DOE has received numerous requests from U.S. firms to provide safety-related assistance to foreign nuclear power plants and has granted those requests after careful executive branch review.

3701:1-40-17 Financial assurance and record keeping for decommissioning.

(A) Prior to the department issuing a radioactive materials license, each applicant for a specific license or license renewal authorizing the possession and use of unsealed byproduct or accelerator produced material of half-life greater than one hundred twenty days and in quantities exceeding ten thousand times the applicable quantities set forth in appendix A to this rule shall submit a decommissioning funding plan as described in paragraph (D) of this rule. The decommissioning funding plan must also be submitted when a combination of radionuclides is involved if R divided by ten thousand is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in appendix A to this rule.

(B) Prior to the department issuing a radioactive materials license, each applicant for a specific license or license renewal authorizing possession and use of byproduct or accelerator produced material of half-life greater than one hundred twenty days and in quantities specified in paragraph (C) of this rule shall either:

(1) Submit a decommissioning funding plan as described in paragraph (D) of this rule; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (C) of this rule using one of the methods described in paragraph (E) of this rule. The applicant shall submit to the department, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule.

(C) Prior to the department issuing a radioactive materials license, an applicant providing certification of financial assurance for decommissioning as specified in paragraph (B)(2) of this rule shall provide the certification in a monetary amount based upon the quantity of licensed material specified as follows:

(1) Greater than one thousand but less than or equal to ten thousand times the applicable quantities of appendix A to this rule in unsealed form. For a combination of radionuclides, if R , as defined in paragraph (A) of this rule, divided by one thousand is greater than 1 but R divided by ten thousand is less than or equal to one, the sum of three hundred thousand dollars.

(2) Greater than ten billion times the applicable quantities of appendix A to this rule in sealed sources or plated foils. For a combination of radionuclides, if R , as defined in paragraph (A) of this rule, divided by ten billion is greater than one, the sum of one hundred fifty thousand dollars.

(D) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning in accordance with paragraph (E) of this rule, including the means for adjusting cost estimates and associated funding levels at each renewal over the life of the facility. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule.

(E) Financial assurance for decommissioning, either by a decommissioning funding plan or certification of financial assurance, shall be provided by the licensee and approved by the department prior to the issuance of the license and shall be provided by one or more of the following methods:

(1) Prepayment by depositing into an account segregated from licensee assets and outside the licensee's administrative control, cash or liquid assets such that the amount of funds will be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) Surety, insurance, or other method in accordance with paragraph (F) of this rule, that guarantees that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this paragraph or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

(3) A parent company guarantee of funds for decommissioning costs based on a financial test may be used provided that the parent company meets the requirements specified in appendix B to this rule. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this rule.

(4) For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used provided that the guarantee meets the requirements of appendix C to this rule.

(5) For commercial companies that do not issue bonds, a guarantee of funds for decommissioning costs may be used provided that the guarantee meets the requirements of appendix D to this rule.

(6) For nonprofit colleges, universities, hospitals, or research and development entities, a guarantee of funds for decommissioning costs may be used provided that the guarantee meets the requirements of appendix E to this rule. The director may require proof of nonprofit status.

(7) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in paragraph (E)(2) of this rule.

(8) In the case of state or local government licensee, a statement of intent containing a cost estimate for decommissioning or an amount specified in paragraphs (C)(1) to (C)(3) of this rule, and indicating that funds for decommissioning will be obtained when necessary. As used in this rule, "state or local government licensee" does not include government owned or assisted colleges, universities or hospitals.

(F) Any surety method or insurance used to provide financial assurance for decommissioning shall be in the form of instruments that contain language as provided in appendix F of this rule, and shall contain the following conditions:

(1) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the director within thirty days after receipt of notification of cancellation.

(2) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The surety method or insurance must remain in effect until the director has terminated the license.

(4) The surety company issuing the bond must, at a minimum, be among those listed as acceptable in the most recent version of "Circular 570" of the United States department of the treasury.

(G) A licensee must notify the department by certified mail within ten business days of the commencement of a voluntary or involuntary bankruptcy proceeding under Title 11 of the United States Code. A licensee who fulfills the financial assurance requirements by obtaining a trust fund, surety bond, or other acceptable financial assurance will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution issuing the instrument. The licensee shall establish other financial assurance within sixty days after such an event.

(H) Financial assurance for decommissioning, either by a decommissioning funding plan or certification of financial assurance, that is provided by a contract of insurance shall not include any arrangement that constitutes self-insurance. As used in this rule:

(1) "Insurance" means a contract issued or underwritten by an insurance company, insurance service, or insurance organization which is licensed to engage in the business of insurance in Ohio, that binds the insurer to indemnify another against a specified loss in return for premiums paid.

(2) "Self insurance" means a contract of insurance issued either by the licensee or by an insurer affiliated with or an affiliate of the licensee.

(3) "Affiliate of" or "affiliated with" means that the licensee, either directly or indirectly, through one or more intermediaries or subsidiaries, controls, is controlled by, or is under common control with the insurer.

(4) "Control", including "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, proxy, membership on the board, or otherwise.

(I) Each person licensed under this chapter, and rule 3701:1-38-02 of the Administrative Code as well as chapters containing rules regarding manufacturing and distribution (Chapter 3701:1-46 of the Administrative Code), industrial radiography (Chapter 3701:1-48 of the Administrative Code), well logging Chapter 3701:1-49 of the Administrative Code), irradiators (Chapter 3701:1-52 of the Administrative Code), and medical use Chapter 3701:1-58 of the Administrative Code) promulgated pursuant to Chapter 3748. of the Revised Code shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with paragraph (B) of rule 3701:1-40-20 of the Administrative Code, a licensee shall transfer all records described in this paragraph to the new licensee, which will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. As used in this rule, "information important to the decommissioning of a facility" includes the following:

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved radionuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except in the case of an area that contains only a sealed source, provided the source has not leaked or no contamination remains after any leak, or in the case of a byproduct or accelerator produced material having only a half-life of less than sixty-five days, a list contained in a single document and updated every two years, of the following:

(a) All areas designated and formerly designated restricted areas as defined in rule 3701:1-38-01 of the Administrative Code.

(b) All areas outside of restricted areas that require documentation under paragraph (1)(1) of this rule.

(c) All areas outside of restricted areas where current and previous wastes have been buried as documented under rule 3701:1-38-20 of the Administrative Code; and

(d) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code, or apply for approval for disposal under rule 3701:1-38-19 of the Administrative Code.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

APPENDIX A

Radionuclide Kilobecquerel Microcuries

Americium-241 0.37 0.01

Antimony-122 3700 100

Antimony-124 370 10

Antimony-125 370 10

Arsenic-73 3700 100

Arsenic-74 370 10

Arsenic-76 370 10

Arsenic-77 3700 100

Barium-131 370 10

Barium-133 370 10

3701:1-40-18 Expiration or termination of license; decommissioning of sites and separate buildings or outdoor areas.

(A) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under rule 3701:1-38-02 of the Administrative Code and this rule not less than ninety days before the expiration date stated in the existing license. Except that a licensee holding a broad scope license shall apply for renewal not less than one hundred eighty days prior to expiration in accordance with paragraph (E) of rule 3701:1-38-02 of the Administrative Code. If an application for renewal has been filed at least ninety days, or in the case of a broad scope license, at least one hundred eighty days prior to the expiration date stated in the existing license, the existing license expires at the later of the end of the day on which the director makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(B) Each specific license for the possession of byproduct or accelerator produced material that requires a decommissioning plan shall continue in effect and shall be renewed during the decommissioning period, until the director notifies the licensee in writing after decommissioning that the license is terminated. During this time, the licensee shall:

(1) Limit actions involving byproduct or accelerator produced material to those related to decommissioning; and

(2) Continue to control entry to any restricted area until that area is suitable for release in accordance with department requirements as may be imposed by Chapter 3748. of the Revised Code or rules adopted thereunder.

(C) A licensee shall provide written notice to the director within sixty days of the occurrence of any of the following, in accordance with rule 3701:1-40-04 of the Administrative Code:

(1) The license has expired;

(2) The licensee has decided to permanently cease licensed activities at the entire site or in any separate building, room or outdoor area that contains residual radioactivity such that the building, room or outdoor area is unsuitable for release in accordance with the definition of "decommissioning" in Chapter 3748. of the Revised Code and the regulations for decommissioning in rule 3701:1-38-22 of the Administrative Code.

(3) No licensed activities have been conducted for a period of twenty-four months; or

(4) No licensed activities have been conducted for a period of twenty-four months in any separate building, room or outdoor area that contains residual radioactivity such that the building, room or outdoor area is unsuitable for release in accordance with Chapter 3748. of the Revised Code and the rules adopted thereunder.

(D) In the event of an occurrence as set forth in paragraph (C) of this rule, the licensee shall either:

(1) Begin decommissioning the site, and any separate building, room or outdoor area that contains residual radioactivity so that the site, building, room and outdoor area are suitable for release in accordance with Chapter 3748. of the Revised Code and the rules adopted thereunder; or

(2) If required by paragraph (G)(1) of this rule, submit within twelve months of notification, a decommissioning plan and begin decommissioning upon the director's approval of that plan.

(E) In addition to written notification of an occurrence, the licensee shall maintain all decommissioning financial assurances established by the licensee pursuant to rule 3701:1-40-17 of the Administrative Code in conjunction with a license issuance or renewal or as required by this rule.

(F) The director may grant a request to extend the twelve-month time period to submit a decommissioning plan established in paragraph (D)(2) of this rule provided that the director determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and that the extension is not detrimental to the public health and safety or the environment and is otherwise in the public interest. The extension request must be submitted no later than thirty days after the occurrence for which notification is required. Decommissioning set forth in paragraph (D)(2) of this rule may not commence until the director has made a determination on the extension request.

(G) The licensee shall submit a decommissioning plan to the director prior to commencing any decommissioning in the following cases:

(1) If required by license condition; or

(2) If the procedures and activities necessary to carry out decommissioning of the site or separate building, room or outdoor area have not been previously approved by the director and these procedures could increase potential health and safety risk to workers or to the public, such as in any of the following cases:

(a) Decommissioning procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(b) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(c) Decommissioning procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Decommissioning procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(H) A proposed decommissioning plan for a site or separate building, room or outdoor area shall include the following:

(1) A description of the conditions of the site or separate building, room or outdoor area sufficient to evaluate the acceptability of the plan;

- (2) A description of planned decommissioning activities;
- (3) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;
- (4) A description of the planned final radiation survey;
- (5) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and
- (6) In the case of a decommissioning plan that results in the licensee completing decommissioning later than twenty-four months after plan approval, the plan shall include a justification for the delay based on the criteria in paragraph (J) of this rule.

The proposed decommissioning plan will be approved by the director if the information therein demonstrates compliance with Chapter 3748. of the Revised Code and the rules adopted thereunder, that the decommissioning will be completed as soon as practicable, and that the health and safety of workers and the public will be adequately protected.

(I) Except as provided in paragraph (J) of this rule, a licensee shall:

- (1) Complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than twenty-four months following the initiation of decommissioning; and
- (2) When decommissioning involves the entire site, request license termination as soon as practicable but no later than twenty-four months following the initiation of decommissioning, unless the decommissioning is still actively in progress.

(J) The director may approve a request for an alternative schedule for completion of decommissioning and license termination. In considering whether an alternative schedule is warranted, the director shall consider the following:

- (1) Whether it is technically feasible to complete decommissioning within twenty-four months;
- (2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within twenty-four months;
- (3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;
- (4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and
- (5) Any other factor that the director finds is unique to the site, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and

other factors beyond the control of the licensee.

(K) After decommissioning the site, the licensee shall:

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed disposition of radioactive materials form provided by the director; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning set forth in rules promulgated pursuant to Chapter 3748. of the Revised Code. The licensee shall survey and report as follows:

(a) Levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces and radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per one hundred square centimeters, removable and fixed, for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(b) Identification of any survey instrument used and a certification that each instrument was properly calibrated and tested prior to being used to measure radioactivity at the site.

(L) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the director determines that:

(1) Byproduct or accelerator produced material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present;

(3) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning, or other information is submitted by the licensee that is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in this chapter and rule 3701:1-38-22 of the Administrative Code adopted pursuant to Chapter 3748. of the Revised Code; and

(4) All applicable fees have been paid.

Effective: 01/29/2007

R.C. 119.032 review dates: 11/02/2006 and 06/01/2011

Promulgated Under: 119.03

Statutory Authority: 3748.02, 3748.04

Rule Amplifies: 3748.04, 3748.11

Prior Effective Dates: 7/22/2001, 8/15/05

3701:1-44-18 Financial assurance and recordkeeping for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in the appendix to rule 3701:1-44-14 of the Administrative Code, criteria for providing financial assurance for decommissioning are as follows:

(A) Each applicant for a specific license authorizing the possession and use of more than 3.7 gigabecquerels (one hundred millicuries) of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (D) of this rule.

(B) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 0.37 gigabecquerels (ten millicuries) but less than or equal to 3.7 gigabecquerels (one hundred millicuries) in a readily dispersible form shall either:

(1) Submit a decommissioning funding plan as described in paragraph (D) of this rule; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 using one of the methods described in paragraph (E) of this rule. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule must be submitted to the department prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the department , as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule.

(C)

(1) Each holder of a specific license issued on or after July 27, 1990, which is covered by paragraph (A) or (B) of this rule, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this rule.

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (A) of this rule shall submit a decommissioning funding plan as described in paragraph (D) of this rule or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in this rule. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (B) of this rule shall submit a decommissioning funding plan, as described in paragraph (D) of this rule, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this rule.

(4) Any licensee who has submitted an application for renewal of license in accordance with rule 3701:1-38-02 of the Administrative Code shall provide financial assurance for decommissioning in accordance with paragraphs (A) and (B) of this rule.

(D) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from paragraph (E) of this rule, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule.

(E) Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B to rule 3701:1-40-17 of the Administrative Code. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to rule 3701:1-40-17 of the Administrative Code. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to rule 3701:1-40-17 of the Administrative Code. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to rule 3701:1-40-17 of the Administrative Code. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(a) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within thirty days after receipt of notification of cancellation.

(b) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the department. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The surety method or insurance must remain in effect until the department has terminated the license.

(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (E)(2) of this rule.

(4) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (B) of this rule, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a government entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such government entity.

(F) Each person licensed under Chapter 3701:1-44 of the Administrative Code shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with paragraph (B) of rule 3701:1-44-19 of the Administrative Code licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused

munitions, a list contained in a single document and updated every two years, of the following:

(a) All areas designated and formerly designated as restricted areas as defined in rule 3701:1-38-01 of the Administrative Code;

(b) All areas outside of restricted areas that require documentation under paragraph (F)(1) of this rule;

(c) All areas outside of restricted areas where current and previous wastes have been buried as documented under paragraph (K) of rule 3701:1-38-20 of the Administrative Code; and

(d) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code, or apply for approval for disposal under paragraph (C) of rule 3701:1-38-19 of the Administrative Code.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Effective: 02/06/2006

R.C. 119.032 review dates: 02/01/2011

Promulgated Under: 119.03

Statutory Authority: 3748.04

Rule Amplifies: 3748.04

3701:1-44-20 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(A) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under rule 3701:1-38-02 of the Administrative Code not less than ninety days before the expiration date stated in the existing license. If an application for renewal has been filed at least ninety days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the department makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(B) Each specific license revoked by the department expires at the end of the day on the date of the department's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by department order.

(C) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of source material until the department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) Limit actions involving source material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with department requirements;

(D) Within sixty days of the occurrence of any of the following, consistent with the administrative directions in rule 3701:1-44-05 of the Administrative Code, each licensee shall provide notification to the department in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within twelve months of notification a decommissioning plan, if required by paragraph (G)(1) of this rule, and begin decommissioning upon approval of that plan if:

(1) The license has expired pursuant to paragraph (A) or (B) of this rule; or

(2) The licensee has decided to permanently cease principal activities, as defined in this chapter, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of twenty-four months; or

(4) No principal activities have been conducted for a period of twenty-four months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

(E) Coincident with the notification required by paragraph (D) of this rule, the licensee shall maintain

in effect all decommissioning financial assurances established by the licensee pursuant to rule 3701:1-44-18 of the Administrative Code in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (G)(4)(e) of this rule.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

(F) The department may grant a request to delay or postpone initiation of the decommissioning process if the department determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than thirty days before notification pursuant to paragraph (D) of this rule. The schedule for decommissioning set forth in paragraph (D) of this rule may not commence until the department has made a determination on the request.

(G)

(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(b) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(c) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (D) of this rule if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (G)(1) of this rule may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(a) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(b) A description of planned decommissioning activities;

(c) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(d) A description of the planned final radiation survey; and

(e) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(f) For decommissioning plans calling for completion of decommissioning later than twenty-four months after plan approval, a justification for the delay based on the criteria in paragraph (I) of this rule.

(5) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(H)

(1) Except as provided in paragraph (I) of this rule, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(2) Except as provided in paragraph (I) of this rule, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(I) The department may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted twenty-four month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(J) As the final step in decommissioning, the licensee shall:

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed form HEA 5116 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code or, for uranium milling (uranium and thorium recovery) facilities, criterion 6(6) in the appendix to rule 3701:1-44-14 of the Administrative Code. The licensee shall, as appropriate:

(a) Report levels of gamma radiation in units of millisieverts (microrentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per one hundred square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(b) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(K) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(1) Source material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)

(a) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code or, for (uranium and thorium recovery) facilities, criterion 6(6) in the appendix to rule 3701:1-44-14 of the Administrative Code; or

(b) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code or, for uranium milling (uranium and thorium recovery) facilities, criterion 6(6) in the appendix to rule 3701:1-44-14 of the Administrative Code.

(4) Records required by paragraphs (D) and (F) of rule 3701:1-44-23 of the Administrative Code have been received.

(L) Specific licenses for uranium and thorium milling are exempt from paragraphs (D)(4), (G) and (H) of this rule with respect to reclamation of tailings impoundments and/or waste disposal areas.

Effective: 02/06/2006

R.C. 119.032 review dates: 02/01/2011

Promulgated Under: 119.03

Statutory Authority: 3748.04

Rule Amplifies: 3748.04

3701:1-56-19 Financial assurance and recordkeeping for decommissioning.

(A) Each applicant for a specific license authorizing possession and use of unsealed special nuclear material in quantities specified in paragraph (B) of this rule shall either:

(1) Submit a decommissioning funding plan as described in paragraph (C) of this rule; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (B) of this rule using one of the methods described in rule 3701:1-40-17 of the Administrative Code. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of rule 3701:1-40-17 of the Administrative Code must be submitted to the department prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the department, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of rule 3701:1-40-17 of the Administrative Code.

(B) Prior to the department issuing a radioactive materials license, an applicant providing certification of financial assurance for decommissioning as specified in paragraph (A)(1) of this rule shall provide the certification in a monetary amount based upon the quantity of licensed material specified as follows:

(1) Greater than ten thousand but less than or equal to one hundred thousand times the applicable quantities in appendix A to rule 3701:1-38-18 of the Administrative Code. For a combination of radionuclides if R , where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix A to rule 3701:1-40-17 of the Administrative Code, divided by ten thousand is greater than one but R divided by one hundred thousand is less than or equal to one, the sum of one million one hundred twenty-five thousand dollars.

(2) Greater than one thousand but less than or equal to ten thousand times the applicable quantities of appendix A to rule 3701:1-38-18 of the Administrative Code. For a combination of radionuclides, if R , where R is defined as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix A to rule 3701:1-40-17 of the Administrative Code, divided by one thousand is greater than one but R divided by ten thousand is less than or equal to one, the sum of two hundred twenty-five thousand dollars.

(C) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from rule 3701:1-40-17 of the Administrative Code, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates must be adjusted at intervals not to exceed three years. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements

of rule 3701:1-40-17 of the Administrative Code.

(D) Each person licensed under Chapter 3701:1-56 of the Administrative Code shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak), a list contained in a single document and updated every two years, of the following:

(a) All areas designated and formerly designated as restricted areas as defined in rule 3701:1-38-01 of the Administrative Code;

(b) All areas outside of restricted areas that require documentation under paragraph (D)(1) of this rule;

(c) All areas outside of restricted areas where current and previous wastes have been buried as documented under paragraph (K) of rule 3701:1-38-20 of the Administrative Code; and

(d) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code, or apply for approval for disposal under paragraph (C) of rule 3701:1-38-19 of the Administrative Code.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Effective: 10/08/2007

R.C. 119.032 review dates: 07/01/2012

Promulgated Under: 119.03

Statutory Authority: 3748.04

Rule Amplifies: 3748.04

3701:1-56-21 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(A) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under rule 3701:1-38-02 of the Administrative Code not less than ninety days before the expiration date stated in the existing license. If an application for renewal has been filed at least ninety days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the department makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(B) Each specific license revoked by the department expires at the end of the day on the date of the department's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by department order.

(C) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of special nuclear material until the department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) Limit actions involving special nuclear material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with department requirements;

(D) Within sixty days of the occurrence of any of the following, consistent with the administrative directions in rule 3701:1-56-12 of the Administrative Code, each licensee shall provide notification to the department in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within twelve months of notification a decommissioning plan, if required by paragraph (G)(1) of this rule, and begin decommissioning upon approval of that plan if:

(1) The license has expired pursuant to paragraph (A) or (B) of this rule; or

(2) The licensee has decided to permanently cease principal activities, as defined in this chapter, at the entire site or in any separate building or outdoor area; or

(3) No principal activities under the license have been conducted for a period of twenty-four months; or

(4) No principal activities have been conducted for a period of twenty-four months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

(E) Coincident with the notification required by paragraph (D) of this rule, the licensee shall maintain

in effect all decommissioning financial assurances established by the licensee pursuant to rule 3701:1-56-20 of the Administrative Code in conjunction with a license issuance or renewal or as required by this rule. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph (G)(4)(e) of this rule.

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

(F) The department may grant a request to delay or postpone initiation of the decommissioning process if the department determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than thirty days before notification pursuant to paragraph (D) of this rule. The schedule for decommissioning set forth in paragraph (D) of this rule may not commence until the department has made a determination on the request.

(G)

(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(a) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(b) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(c) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to paragraph (D) of this rule if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) The procedures listed in paragraph (G)(1) of this rule may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(a) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(b) A description of planned decommissioning activities;

(c) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(d) A description of the planned final radiation survey; and

(e) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

(f) For decommissioning plans calling for completion of decommissioning later than twenty-four months after plan approval, a justification for the delay based on the criteria in paragraph (I) of this rule.

(5) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(H)

(1) Except as provided in paragraph (I) of this rule, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(2) Except as provided in paragraph (I) of this rule, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than twenty-four months following the initiation of decommissioning.

(I) The department may approve a request for an alternate schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

(1) Whether it is technically feasible to complete decommissioning within the allotted twenty-four month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted twenty-four month period;

(3) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(4) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(5) Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(J) As the final step in decommissioning, the licensee shall:

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed form HEA 5116 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code. The licensee shall, as appropriate:

(a) Report levels of gamma radiation in units of millisieverts (microrentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per one hundred square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(b) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(K) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(1) Special nuclear material has been properly disposed;

(2) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(3)

(a) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code; or

(b) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code.

(4) Records required by paragraphs (D) and (F) of rule 3701:1-56-10 of the Administrative Code have been received.

Effective: 10/08/2007

R.C. 119.032 review dates: 07/01/2012

Promulgated Under: 119.03

Statutory Authority: 3748.04

Rule Amplifies: 3748.04