

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, DC 20555

September 27, 2016

**NRC REGULATORY ISSUE SUMMARY 2015-19, REVISION 1
DECOMMISSIONING TIMELINESS RULE IMPLEMENTATION AND ASSOCIATED
REGULATORY RELIEF**

ADDRESSEES

All holders of and applicants for U.S. Nuclear Regulatory Commission (NRC) licenses under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material"; 10 CFR Part 40, "Domestic Licensing of Source Material"; 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material"; and 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor- Related Greater Than Class C Waste"; Agreement State Radiation Control Program Directors; and State Liaison Officers.

INTENT

The NRC is issuing Revision 1 of this regulatory issue summary (RIS) to correct the reference for Administrative Letter 96-05, Revision 1, and to clarify language pertaining to the time period for completing decommissioning in the subsection labeled "Requirement To Begin Decommissioning." The NRC is also taking the opportunity to provide additional clarification to the sections "Alternate Schedules for Decommissioning" and "Requesting an Alternative to the DTR's Timeliness Requirements."

This RIS was issued to: (1) provide clarity on the Decommissioning Timeliness Rule's (DTR's) requirements to notify the NRC to begin and complete decommissioning after certain criteria are met, (2) highlight opportunities for licensees to request alternatives to the DTR's requirements, (3) remind licensees that there are situations where they can request an alternative to the DTR's timeliness requirements for both beginning and completing decommissioning if adequately justified, (4) clarify when the DTR applies to licensees whose only location of use are temporary jobsites, and (5) clarify when the NRC considers that the licensee has transitioned from an "operational" to a "decommissioning" status.

This RIS informs licensees of requirements regarding the DTR requirements under 10 CFR Parts 30, 40, 70, and 72. This RIS is supplemental guidance for decommissioning and does not contradict information presented in Administrative Letter 96-05, Revision 1, "Compliance with the Rule, 'Timeliness in Decommissioning of Material Facilities'" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081570203) or NUREG-1757, Volume 3, Revision 1, "Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness, Final Report" (ADAMS Accession No. ML12048A683). Nor does this RIS apply to power reactors that have specific regulations concerning decommissioning (e.g., 10 CFR 50.82, "Termination of License," and 10 CFR 50.83, "Release of Part of a Power Reactor Facility or Site for Unrestricted Use"). This RIS requires no action or written response beyond that already required by regulations. The NRC is providing

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this RIS to the Agreement States for their information and for distribution to their licensees, as appropriate.

BACKGROUND INFORMATION

In July 1994, the Commission established the DTR to ensure the timely decommissioning of licensed facilities. The DTR was established to avoid delays in decommissioning sites at which licensed activities have permanently ceased to avoid the risk of compromised safety practices. Additionally, the DTR reduces the risk of delays in decommissioning because of bankruptcy, corporate takeover, or other unforeseen changes in a company's financial status, that may occur after licensed activities have ceased.

The DTR established specific decommissioning timeliness requirements for entire sites after the permanent cessation of all licensed activities. It also established timeliness requirements for separate buildings and outdoor areas that contain residual radioactivity such that they are unsuitable for release in accordance with NRC requirements after licensed activities have ceased in these areas, even if licensed activities continue at other site locations.

SUMMARY OF ISSUE

The NRC staff has recently identified a number of situations where confusion regarding the application of the DTR has resulted in licensees not completing decommissioning in accordance with the DTR requirements. This RIS is being issued to reiterate the NRC's positions on these issues.

Clarification of "Operational" vs. "Decommissioning" Status

Discussions of "status" in this RIS are meant only with respect to demonstrating compliance with the DTR. Under 10 CFR Parts 30, 40, 70, and 72, the DTR requires all licensees to notify the NRC within 60 days of one or more of the events listed below and begin decommissioning, unless a decommissioning plan (DP) is required.¹ If a DP is required, the licensee is still required to notify the NRC within 60 days and to submit a DP within 12 months after the notification. The licensee would then begin decommissioning after the NRC approves the DP.

Part 30 licensees transition from an "operational" to "decommissioning" status by one or more of the following initiating events:

- (1) The license has expired.
- (2) The licensee has decided to cease principal activities permanently, as defined in Part 30, at the entire site or 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 NRC requirements.

¹ NRC regulations require that a licensee must submit a DP to support the decommissioning of its facility when it is required by license condition, or if the NRC has not approved the procedures and activities necessary to carry out the decommissioning and these procedures could increase the potential health and safety impacts to the workers or the public. Cases where this applies are described in the applicable regulations (e.g., see 10 CFR 30.36(g)). Additional guidance for DPs can be found in NUREG-1757.

- (3) No principal activities under the license have been conducted for a period of 24 months.
- (4) No principal activities have been conducted for a period of 24 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 NRC requirements.

The regulations in 10 CFR Parts 40.42, 70.38, and 72.54 all list similar initiating events but, for simplicity, they are not listed here. Licensees should review the specific initiating actions in the specific part of the regulations under which they are licensed.

Similarly, “principal activities” as defined in 10 CFR 30.4, 40.4, and 70.4—all titled “Definitions”—refer to activities authorized by the license that are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities. Licensees regulated under other parts should refer to those provisions, as storage may be a principal activity (e.g., Part 72). Administrative Letter 96-05, Revision 1, provides guidance regarding storage-only licenses.

The regulations in 10 CFR 20.1003, “Definitions,” refer to “residual radioactivity” as radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee’s control. This includes radioactivity from all licensed and unlicensed sources, but excludes background radiation. It also includes radioactive materials remaining at the site because of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 10 CFR Part 20, “Standards for Protection against Radiation.” For compliance with the DTR, the NRC considers that residual radioactivity will include any licensed sealed sources and licensed radioactive materials that remain at the site once principal activities have ceased.

During the development of the DTR, the NRC estimated that licensees that are not required to submit DPs will complete their decommissioning activities in approximately 50 months or less after permanent cessation of operations. The DTR breaks down the 50 months into three periods. The first period is the 24 months of inactivity, such as described in events 3 and 4 listed above. The second period is the 60 days allowed for notification, such as specified in 10 CFR 30.36(d). The third period is the 24 months to complete decommissioning, such as specified in 10 CFR 30.36(h). These time periods are the same for Parts 30, 40, and 70 of the regulations where a DP is not required. If a licensee determines it has exceeded the timeliness requirements for the second or third periods, it should immediately notify the appropriate NRC regional office.

Requirement To Begin Decommissioning

A licensee is required to both notify the NRC and begin decommissioning its site within 60 days of one or more of the initiating events discussed previously unless the licensee is required to submit a DP consistent with 10 CFR Parts 30, 40, 70, and 72. If a DP is required, the licensee is required to notify the NRC within 60 days of one or more of the initiating events and submit a DP to the NRC, for review and approval, within 12 months of notification. The licensee must then begin decommissioning after the NRC approves the DP. Unless the NRC approves an alternative schedule, decommissioning must be complete within 24 months of the NRC’s approval of the DP. If no DP is required or no alternative schedule approved, then decommissioning should be complete within 24 months of initiating decommissioning. Subpart

E of 10 CFR Part 20, "Radiological Criteria for License Termination," provides the criteria licensees must meet in decommissioning.

"Decommission" is defined in 10 CFR 30.4, and means "to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) Release of the property for unrestricted use and termination of the license; or (2) Release of the property under restricted conditions and termination of the license." The following examples are activities that the NRC would consider as actions the licensee could take during the 60-day period to begin decommissioning. Note, this is not a complete list and the licensee may take other actions to begin the decommissioning process. However, it is incumbent upon the licensee to document the actions and to proceed in a timely manner to complete the decommissioning as required by the DTR:

- (1) Transport source(s), licensed material, or waste offsite.
- (2) Perform surveys or remediation activities, if allowable under the license.
- (3) Evaluate decommissioning costs based on current residual activity found on site.
- (4) Begin budgeting process for waste removal or remediation.

Alternate Schedules for Decommissioning

The regulation in 10 CFR 30.36(f) states that the Commission may grant a request to extend the time periods in the DTR for the initiation of the decommissioning process if the Commission determines that this 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 30 days before required notification of the initiating events described previously. Corresponding regulations in 10 CFR Parts 40.42(f), 70.38(f), and 72.54(f) similarly offer relief. Licensees should note that the timeframe for making a request to extend the time period for the initiation of the decommissioning process occurs before the 60-day period for notification has elapsed. It is incumbent upon licensees to make a timely decision regarding the initiation of decommissioning so that any request to extend the decommissioning schedule is appropriately submitted for consideration. The schedule for decommissioning will not commence until the Commission has made a determination on the relief request.

The NRC has approved alternative schedules when licensees have adequately demonstrated that they expect future work, but have not conducted principal activities within 24 months for economic reasons, such as a lack of grants or contracts. Licensees have adequately demonstrated an expectation to conduct future work by showing they are actively pursuing grants or contracts for work that requires a principal activity to be conducted. These licensees have also maintained appropriate safety measures and demonstrated that the delay in the initiation of decommissioning process was not detrimental to public health and safety and was otherwise in the public interest.

Furthermore, for an alternative schedule to be approved, the Commission must determine 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. The licensee must maintain in effect all decommissioning financial assurances pursuant to 10 CFR 30.36(e), or the corresponding regulations in Parts 40, 70, or 72, as applicable. Additional guidance on requesting an alternative schedule can be found in NUREG-1757, Volume 3, Revision 1, Section 2.6.

Requesting an Alternative to the DTR's Timeliness Requirements

The regulation in 10 CFR 30.36(h), and the corresponding regulations in Parts 40.42(h), 70.38(h), and 72.54(j), require licensees to complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months after the initiation of decommissioning unless an alternative schedule has been approved by the NRC. Additionally, in accordance with 10 CFR 30.36(h)(2), or with similar regulations in Parts 40, 70, or 72, if the decommissioning involves the entire site, and the NRC has not approved an alternative schedule, the licensee is required to submit a license termination request as soon as practicable, but no later than 24 months after the initiation of decommissioning, which is also the base time frame for completing the decommissioning.

If a DP is not required, the licensee transitions from “operational” to “decommissioning” status when one of the initiating events described in 10 CFR 30.36(d)(1)-(4), or corresponding regulations in 10 CFR 40.42, 70.38, or 72.54, occurs. The licensee is then required to provide notification that they intend to start decommissioning. Failure to submit the required notification does not relieve the licensee from compliance with the DTR timeliness requirements to begin and complete decommissioning. If a licensee fails to submit notification of the intent to decommission as required, initiation begins when the applicable time limit for the notification requirement ends. For example, if a Part 30 licensee does not conduct principal activities for 24 months, the licensee has 60 days to notify the NRC that it has transitioned to a decommissioning status. If the licensee has not notified the NRC of the intent to decommission by the 60th day, initiation of decommissioning is presumed to begin even though the licensee failed to notify the NRC that it had not conducted principal activities for 24 months. The licensee would then have a maximum of 24 months (50 months total from the time principal activities were ceased) to complete decommissioning and request license termination unless the NRC approves an alternative schedule. This automatic transitioning to decommissioning does not apply to licenses where the authorized activity is “storage only.” For “storage only” licensees, decommissioning issues will be addressed when the license comes up for renewal.

If a licensee cannot feasibly complete decommissioning within the 24 months, the licensee may request an alternative schedule in accordance with 10 CFR 30.36(i), or through a similar regulation in Parts 40, 70, or 72. Guidance for such a request may be found in NUREG-1757, Volume 3, Revision 1. If a licensee submits a request for an alternative schedule, decommissioning need not start until the NRC rules on that request. If a DP is required, the decommissioning need not start until the approval of the DP. The licensee would be expected to complete decommissioning within 24 months after the approval of the DP if an alternative schedule has not been approved.

The process described above is shown in block diagram in NUREG-1757, Volume 3, Revision 1, Figures 2.1a and 2.1b. Attached to this RIS as an enclosure are larger, more legible versions of these figures for determining compliance with the timeliness rule.

DTR Applicability to Temporary Job Site-Only Location of Use

The DTR applies to all licensees that are licensed under 10 CFR Parts 30, 40, 70 and 72, including licensees who conduct licensed activities at a temporary job site (TJS). However,

as described in Administrative Letter 96-05, Revision 1, operations conducted at a TJS generally do not result in site contamination and licensed materials are required to be removed from the site at the completion of the licensed work. If a TJS does not contain residual radioactivity that would result in a separate building or outdoor area being unsuitable for release in accordance with NRC requirements in 10 CFR Part 20, Subpart E, the DTR would not apply to the TJS. However, if contamination occurs at a TJS that results in residual radioactivity in a building or outdoor area such that the building or outdoor area would be unsuitable for release in accordance with NRC requirements in 10 CFR 20, Subpart E, the DTR does apply to the TJS. Additionally, if the license has expired, or no principal activities have been conducted under the license within 24 months, the DTR applies to the licensed material even if it is only used at a TJS. The licensee would submit notifications and begin decommissioning within 60 days after the license transitions from operational to decommissioning status, as described previously.

The DTR applies to licenses individually; and therefore, applies to a license under which no principal activities have been conducted within 24 months, even if a licensee is conducting similar principal activities under a different license (e.g. under an Agreement State license). In these situations, if the licensee would like to postpone the initiation of decommissioning under the license in which no principal activities have been conducted within the past 24 months, they should seek relief as described in 10 CFR 30.36(f), or similar regulations found in 10 CFR Parts 40, 70, or 72, as described in NUREG-1757, Volume 3, Revision 1, Section 2.6. As a reminder, such licensees must be able to demonstrate that the relief is not detrimental to the public health and safety and is otherwise in the public interest.

BACKFIT DISCUSSION

This RIS reminds the addressees of the requirements regarding applicable decommissioning timeliness rules. These positions do not represent new or changed staff positions. In addition, the RIS does not require any action or written responses on the part of any licensee or applicant. Accordingly, issuance of this RIS in final form would not represent backfitting as defined in 10 CFR 70.76 or 72.62. Therefore, the NRC did not prepare a backfit analysis for this RIS.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register* because this RIS is informational and does not represent a departure from current regulatory requirements.

CONGRESSIONAL REVIEW ACT

This RIS is not a rule as defined in the Congressional Review Act (5 U.S.C. §§ 801-808).

RELATED GENERIC COMMUNICATIONS

Administrative Letter 96-05 Revision 1: "Compliance with the Rule 'Timeliness in Decommissioning of Material Facilities'"

PAPERWORK REDUCTION ACT STATEMENT

The information collections contained in this RIS are covered by the requirements of 10 CFR Parts 30, 40, 70 and 72 were approved by the Office of Management and Budget, approval numbers 3150-0017, 3150-0020, 3150-0009, and 3150-0132.

PUBLIC PROTECTION NOTIFICATION

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

CONTACT

Please direct any questions about this matter to the technical contact listed below or the appropriate regional office.

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Enclosure: NUREG-1757, Vol. 3, Rev. 1
Figures 2.1a and 2.1b

Note: NRC generic communications may be found on the NRC public Web site, <http://www.nrc.gov>, under "NRC Library" > "Document Collections."

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Figures 2.1a and 2.1b

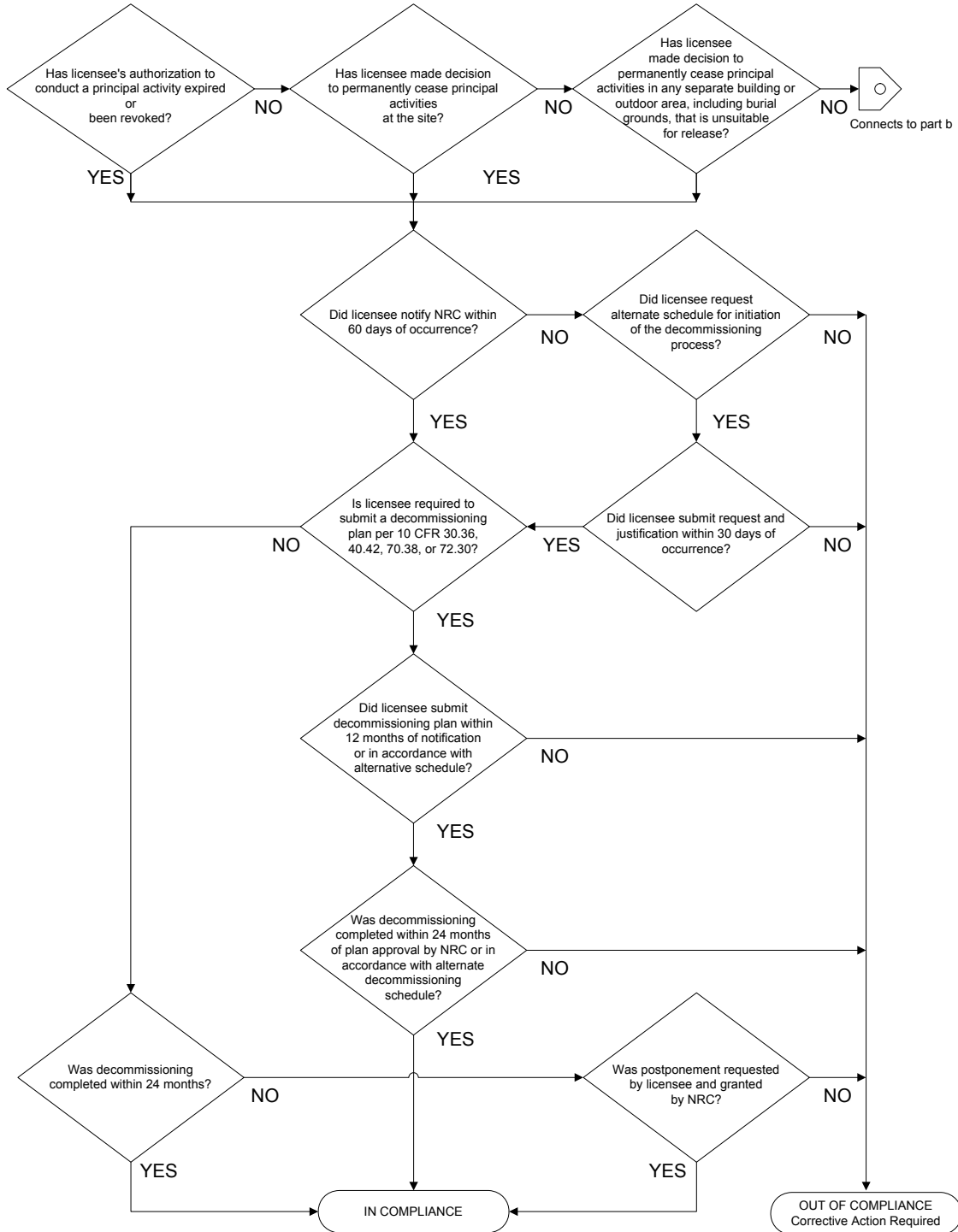
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OFC	MDB/DUWP	MDB/DUWP	MSSA/MSTR	DNMS/R-I	DNMS/R-III
NAME	GChapman	MNorato	AMcIntosh	JNick	JGiessner
DATE	2/9/16	2/9/16	2/9/16	3/1/16	2/12/16
OFC	DNMS/R-IV	OCIO	QTE	OGC	DUWP/NMSS
NAME	MShaffer	LFishman	JDougherty	AGendelman	JTappert
DATE	3/3/16	03/09/16	2/18/16	9/1/16	8/1/16
OFC	DSFM/NMSS	FCSE/NMSS	MSTR/NMSS		
NAME	MLombard	CErlanger (Donoghue for)	DCollins		
DATE	8/16/16	8/25/16	9/27/16		

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NUREG 1757, Volume 3, Rev. 1, Figure 2.1a



NUREG 1757, Volume 3, Rev. 1, Figure 2.1b

