



# U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation

## ***NRR OFFICE INSTRUCTION***

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### **Change Notice**

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Office Instruction No.: **LIC-107, Revision 2**

Office Instruction Title: **Procedures for Handling License Transfers**

Effective Date: **June 5, 2017**

Approved By: **Michele G. Evans**

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Responsible Organization: **NRR/DORL**

**Summary of Changes:** This issuance of LIC-107, Revision 2, "Procedures for Handling License Transfers," reflects the elimination of the Office of Federal and State Materials and Environmental Management Programs (FSME); additional responsibilities for the Office of Nuclear Material Safety and Safeguards (NMSS); additional guidance on indemnity agreements; additional guidance for the licensing assistants to ensure that conforming amendments are updated in the ADAMS authority file and that any organizational name changes are reflected in the plant's boilerplates, associated NRC Web pages and plant rosters; organizational changes; the availability of updated boilerplates in ADAMS; and miscellaneous editorial changes and clarifications.

Training: **None**

ADAMS Accession No.: **ML17031A006**

Office Instruction: LIC-107, Revision 2, "Procedures for Handling License Transfers"  
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**ADAMS Accession No. ML17031A006**

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**OFFICIAL AGENCY RECORD**

**NRR OFFICE INSTRUCTION**  
**LIC-107, Revision 2**  
**Procedures for Handling License Transfers**

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**1. POLICY**

The provisions of Section 184 of the Atomic Energy Act of 1954, as amended, and the Nuclear Regulatory Commission's (NRC's) regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) 50.80, "Transfer of licenses," stipulate that NRC approval is required for transfer of control of the ownership and/or operating authority responsibilities within the facility operating license. Specifically, 10 CFR 50.80(a) states, in part, that "No license for a production or utilization facility..., shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing."

An application for transfer of a license is required by 10 CFR 50.80(b) to include as much of the technical and financial qualifications information described in 10 CFR 50.33 and 50.34 on the proposed transferee as would be required for an initial license. After appropriate notice to interested persons (e.g., members of the public), an application for the transfer of a license will be approved, if the Commission determines that: (1) the proposed transferee is qualified to be the holder of the license; and (2) the transfer of the license is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. For indirect license transfers that do not involve a change to the licensee, the relevant question with respect to qualifications is whether the indirect transfer of control of the license would affect the qualifications of the existing licensee to continue to hold the license. An approval of the transfer of the license will be accomplished through an order authorizing the transfer and, as necessary, a conforming license amendment will be approved by the order and will be issued when the transfer is consummated.

Other Federal (e.g., Federal Energy Regulatory Commission, Federal Trade Commission, and Department of Justice) and State (e.g., Public Service Commissions) approvals may be required before the proposed transfer can be consummated. These organizations have jurisdiction over issues such as antitrust, rates, and public benefit. The NRC reviews and authorizes, if found acceptable, the proposed transfer within the NRC's jurisdiction. However, the transfer cannot be consummated until the applicant(s) has received regulatory approvals from all governmental agencies with jurisdiction over the transfer.

**2. OBJECTIVES**

This office instruction describes the processing by the Office of Nuclear Reactor Regulation (NRR) of license transfer applications, including orders and associated conforming amendments. This office instruction also specifies the responsibilities of the NRR licensing project manager (PM) and the technical and financial qualifications reviewers, as well as the interfaces with other offices (e.g., Offices of the General Counsel (OGC) and Nuclear Material Safety and Safeguards (NMSS)) in processing

these licensing actions. This instruction applies to power reactors and research and test reactors.

### **3. BACKGROUND**

License transfer requests can include either “direct” transfers, which are generally those that involve the transfer of ownership or operating authority of the plant itself from one entity to another (e.g., the sale of a plant), or “indirect” transfers, which are generally those that involve the transfer of ownership or control of the licensee itself rather than the facility (e.g., the formation of a new parent holding company above a licensee). License transfer requests can also include partial direct or partial indirect transfers (e.g., the sale of a percentage of a plant or a percentage of a licensee).

The transfer of a license, direct or indirect, normally does not result in any physical changes to the plant or any changes in the conduct of operations. Thus, license transfers do not involve the type of technical issues that would impact plant operation. Typically, the on-site organization and plant staff, including senior managers, will remain essentially unchanged by the license transfer, and plant procedures and policies will not change. Further, the NRC’s regulations and the licensee’s compliance responsibilities will not change as a result of a license transfer. Therefore, the safety and health of the public is not expected to be adversely affected by the license transfer.

The majority of the staff review of license transfer applications consists of determining whether the ultimately licensed entity meets the financial qualifications, decommissioning funding, foreign ownership, control, or domination, insurance and indemnity, and technical qualifications requirements in the NRC’s regulations. The NRC has determined that requests for hearings on applications for license transfers should be governed by a separate subpart of the regulations (Subpart M of 10 CFR Part 2) that provides an efficient and streamlined process for handling hearing requests associated with license transfer applications. The guidance in this office instruction applies to all license transfers conducted under 10 CFR 50.80.

### **4. BASIC REQUIREMENTS**

License transfers are unique in that they result in the exchange of ownership and/or the responsibility for operating a nuclear facility. Typically, the exchange is orchestrated by a team of lawyers representing both the current and future owners and is financially supported by complex agreements that are planned and scheduled for months in advance. It is critical that the PM be aware of the planned transaction date of the license transfer and that the staff’s review be supportive of the proposed schedule. Significant financial penalties can be incurred on all parties involved if the staff’s review does not support the planned transaction date.

The legal staff of OGC will be involved throughout the processing of the application. Frequent communications between OGC and the legal staffs of the current and/or future owners will occur. Once the application is submitted, the PM should immediately confer with the assigned attorney from OGC to confirm the licensee’s characterization of the proposed transaction as being direct versus indirect.

Processing of applications for license transfers is, in many respects, similar to the processing of other licensing actions. Submittals are made to the NRC under oath and affirmation by applicants (current and proposed licensees). If the application is not being made by the current licensee, the applicant should clearly state that the application is being made on behalf of the current licensee, unless there is a hostile acquisition involved, which would be extremely rare and in which case the NRC must give appropriate notice to the current licensee. Staff evaluations are then conducted, and a safety evaluation (SE) is prepared that will accompany the order. In direct transfers, a license amendment will normally be issued upon consummation of the transfer to conform the facility operating license and technical specifications to reflect the new owner and/or operator. The thorough involvement of OGC during the processing of the application from the initial individual *Federal Register* (FR) notice to the final order is essential.

## **5. RESPONSIBILITIES AND AUTHORITIES**

### Office of General Counsel

The Operating Reactors Division of OGC provides legal advice regarding operating reactors and represents the NRC's staff position in administrative proceedings concerning applications for license amendments. Legal services include, in part, reviewing applications for license transfers, providing advice to the Office of Commission Appellate Adjudication staff regarding license transfer adjudicatory proceedings when the staff is not a party to these proceedings, representing the staff when it is a party to license transfer adjudicatory proceedings, advising the staff on implementation of the Price-Anderson Act, being the point of contact between the NRC and counsel representing licensees and prospective licensees in license transfer applications, and advising the staff throughout the entire license transfer process. Legal services in support of license transfers includes reviewing the initial FR notice, reviewing requests for additional information, and reviewing the proposed order, safety evaluation, and conforming amendments.

### Director, NRR

Consistent with the delegation of signature authority in NRR Office Instruction ADM-200, "Delegation of Signature Authority," the Director of NRR signs all orders authorizing the direct transfer of operating licenses and approving the associated conforming amendments for both power reactors and research and test reactors. Although the conforming amendment(s) is not signed and issued until the actual transfer of the ownership of the plant and/or operating authority is consummated, the conforming amendment(s) is approved by the order.

### Director, NMSS

If the facility is in SAFSTOR or has been transferred to NMSS in accordance with NRR Office Instruction COM-101, "NRR Interfaces with NMSS," and a "Transfer of Project Management Responsibilities" memorandum has been signed, NMSS prepares the

order and the Director of NMSS, or designee, signs the order for both direct and indirect license transfers. The Director of NMSS, or designee, also signs the order for any transfer of an independent spent fuel storage installation (ISFSI) that has a specific license as opposed to authorization under the general license provisions of Subpart K to 10 CFR Part 72, "General License for Storage of Spent Fuel at Power Reactor Sites." Finally, the Director of NMSS, or designee, signs the amended ISFSI license if a specific license is involved.

### NRR Divisions

The NRR focal points for initial assessment of license transfer requests are the Division of Operating Reactor Licensing (DORL) and the Division of Licensing Projects (DLP). Staff within DORL is responsible for overall management of the review for power reactors whereas DLP is responsible for overall management of the review for research and test reactors.

### Director of DORL

Consistent with the delegation of signature authority in ADM-200, the Director of DORL signs all orders approving indirect license transfers for power reactors. In the unusual situation where license amendments are involved with an indirect transfer, the Director of DORL will sign them when issued.

### DORL Project Manager

Project manager responsibilities are similar to those for other licensing actions. In addition to the process presented in this office instruction, PMs can find general and other supporting guidance in NRR Office Instruction LIC-101, "License Amendment Review Procedures."

Unlike other licensing actions where OGC does its review and provides "no legal objection" at the conclusion of the review, OGC should be involved from the beginning of the review for license transfers.

The PM will need to be cognizant whether an ISFSI has a specific license or is authorized under the general license provisions of Subpart K to 10 CFR Part 72. Whether an ISFSI is authorized under a specific license or a general license can be readily determined by referring to the appendix to NUREG-1350, "Information Digest," entitled, "Dry Cask Spent Fuel Storage Licensees." Review and approval by NMSS is not required for the transfer of an ISFSI authorized under a general license. However, as discussed further in this office instruction, NMSS approval is required when dealing with an ISFSI authorized under a specific license. The PM will need to coordinate as appropriate with the NMSS counterpart.

### DORL Licensing Assistant

Licensing assistant responsibilities are similar to those for other licensing actions. In addition to the process presented in this office instruction, licensing assistants can find general and other supporting guidance in Office Instruction LIC-101.

### Division of Licensing Projects

The Director of the Division of Licensing Projects is responsible for financial reviews including decommissioning funding, foreign ownership, control, or domination, insurance and indemnity, reviews of amendments to antitrust license conditions, and for all licensing and oversight for research and test reactors. The Director also signs all orders approving indirect license transfers for research and test reactor licenses, as well as associated license amendments.

### Research and Test Reactors Licensing Branch

The Research and Test Reactors Licensing Branch is responsible for overall management of license transfer reviews for research and test reactors. Project management responsibilities for these transfers are similar to those for power reactor license transfers

### Financial Projects Branch

The Branch Chief of the Financial Projects Branch (PFPB) is responsible for assigning the review resources and complying with the agreed upon schedule for completion of the financial qualification evaluation as reflected in the NRR Reactor Program System - Licensing/Workload Management (RPS - Licensing/WL) software. The Branch Chief determines whether the target dates and estimate of staff hours required for the review are reasonable. If not, the Branch Chief negotiates new figures with the DORL staff and assigns a PFPB financial analyst to perform the review.

### Financial Analyst

The financial analyst will review the financial qualifications, including decommissioning funding, foreign ownership, control, or domination, and insurance and indemnity of the new licensee if a direct transfer is involved or the effect on the current licensee if an indirect transfer is involved, and provide SE input. The financial analyst will work closely with the assigned OGC attorney during the review.

### Division of Risk Assessment

The Director of the Division of Risk Assessment is responsible, in part, for providing technical expertise in evaluating licensee technical qualifications.

### Operations and Human Factors Branch

The Branch Chief of the Operations and Human Factors Branch is responsible for assigning the review resources and complying with the agreed upon schedule for completion of the technical qualifications evaluation as defined in the RPS - Licensing/WM software. The Branch Chief determines whether the target dates and estimate of staff hours required for the review are reasonable. If not, the Branch Chief negotiates new figures with the DORL staff and assigns a technical qualifications reviewer to perform the review.

### Technical Qualifications Reviewer

The technical qualifications reviewer from the Operations and Human Factors Branch will provide an SE input in those transfer cases where the responsibility for the operating authority, plant staffing, technical qualifications, or organizational structure is changed by the transfer.

### Other Technical Review Organizations

Branches within the Office of Nuclear Security and Incident Response (NSIR) may provide input on special emergency preparedness or security issues, while NMSS may address spent fuel issues that might be affected by the proposed license transfer. Inputs should be provided to the PM in accordance with the schedule agreed upon in the RPS - Licensing/WM software, so as not to delay issuance of the transfer order.

## **6. ACTIVITIES IN PROCESSING LICENSE TRANSFER APPLICATIONS**

**Note: Because the license transfer process is a complex matter governed by many regulations, a companion checklist has been prepared to assist PMs with identifying and addressing all details appropriately. The checklist is included as Enclosure 2 to this office instruction. Project Managers are urged to use the checklist in combination with this office instruction.**

The governing parts of the regulations are 10 CFR Part 2, Subpart M (e.g., 2.1301, 2.1315, and 2.1316), 10 CFR Sections 50.33, 50.34, 50.38, 50.40, 50.54(w), 50.80, 50.90 (if an amendment request is involved) and 10 CFR Parts 51 and 140.

Section III.1.e of NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," describes the types of transfers that are subject to a 10 CFR 50.80 review. Examples include those involving ownership changes, mergers, formation of holding companies, creation of new unregulated entities which are either subsidiaries of a holding company or stand-alone entities, and other restructuring proposals that go beyond corporate name changes or simple internal reorganizations of functions. If the entity that will become the operating authority (i.e., the operator) is different from the entity that will have ownership of the facility, the financial qualifications for both entities need to be assessed. In this regard, the Commission has stated that, while the same type of financial review done for an



owner is not applicable, there still has to be a financial review for the operator. The operator review is a combination of the financial qualifications of the owner (assuming it is ultimately responsible for costs) with the analysis of the contract between the owner and the operator regarding the payment of costs. The Commission's ruling requiring an appropriate financial qualifications review of a non-owner operator is in the Northern States Power Company/Monticello case, CLI-00-14, 52 NRC 37 (2000), and the companion case, CLI-00-19, 52 NRC 135 (2000).

The NRC consents to license transfers via an order. The order is accompanied by a supporting SE which, in turn, typically has a proprietary and a non-proprietary version due to the discussion of proprietary financial information as part of the financial qualifications analysis. The DORL or DLP administrative staffs and licensing assistants must ensure that the proprietary version of the SE is not dispatched to organizations that have not entered into a non-disclosure agreement with the owner of the information. For indirect license transfers, issuance of the order and SE generally concludes the staff's actions. Direct license transfers typically occur in two separate actions. The first action includes issuance of the order and SE with an unsigned, unnumbered, and undated conforming amendment. The second action includes issuance of the signed, numbered, and dated conforming amendment. As a condition of the license transfer order, the licensee/applicant will inform the staff when all approvals are in place and that the transfer will occur on a specific date. When the specified date arrives and upon notification by the applicant that the transfer will be consummated, the staff will sign and issue the conforming amendment. As its name implies, the conforming amendment does no more than conform the license to reflect the transfer action and is administrative in nature. Typically, a conforming amendment will change the name of the licensee throughout the license so that the license accurately reflects the approved license transfer.

An example of an indirect license transfer is the transfer of the ultimate ownership of the Susquehanna renewed facility operating licenses and general ISFSI license, which is available in Agencywide Documents Access and Management System (ADAMS) under Accession No. ML16320A084. An example of a direct license transfer is the transfer from Entergy to Exelon of the FitzPatrick renewed facility operating license and general ISFSI license. The FitzPatrick order consenting to the license transfer, the supporting SE, and the unsigned, undated, and unnumbered conforming amendment are available in ADAMS under Accession No. ML17041A196. The signed, dated, and numbered conforming amendment for FitzPatrick is available in ADAMS under Accession No. ML17082A283. An example of an amendment to an indemnity agreement is available in ADAMS under Accession No. ML15161A121.

Upon receipt of an application for either a direct or indirect license transfer, the PM, in conjunction with the applicable technical review groups, perform the acceptance review in accordance with NRR Office Instruction LIC-109, "Acceptance Review Procedures," to ensure that the application contains sufficient information as required by 10 CFR 50.80 for the staff to conduct its review. The PM will determine whether the applicant has provided the basis for its schedule request and whether the schedule request is reasonable. If not, the PM and the assigned OGC attorney should contact the applicant and negotiate an appropriate time period for the staff to complete its evaluation. The PM

will need to obtain a specific licensee point of contact and the licensee's schedule for completion of all regulatory reviews in order to coordinate the NRC review schedule. Although license transfer requests are typically filed by licensees, requests may also be filed by a non-licensee (e.g., the intended buyer of the plant), or a co-licensee that is not the operator of the plant (see the Wolf Creek license transfer as an example of two non-operator co-licensees requesting a license transfer despite the opposition of the third non-operator co-licensee, available in ADAMS under Accession No. ML17037D120). In all cases, the NRC products are an order and supporting SE. However, products may include a conforming license amendment and an amendment to the licensee's indemnity agreement. Project managers need to determine which of these products the application supports. License transfer applications can also vary considerably. Occasionally, the staff may not agree with a licensee's determination about the characterization of the request as indirect versus direct. Should the technical and/or legal review staffs determine that an application is incorrectly characterized or does not contain sufficient information to begin the review, the PM will follow the guidance of LIC-109 and work with the assigned OGC attorney.

If the request is for a direct transfer (i.e., one that involves a new licensee and thus requires a conforming change in the name of the owner(s) or operators stated in the license), there should be an accompanying license amendment request pursuant to 10 CFR 50.90. If not, the PM should check with OGC to determine if an amendment is required. The license amendment that conforms the operating license to the new licensees, is referred to as a conforming amendment. Normally, a license amendment is not required for an indirect transfer. However, there are exceptions, particularly if the matter involves an organizationally complex indirect transfer.

The PM may need to coordinate the license transfer review with NMSS. NMSS has responsibility for (1) facilities that are in SAFSTOR, (2) facilities that have been transferred to NMSS in accordance with NRR Office Instruction COM-101, "NRR Interfaces with NMSS," and a "Transfer of Project Management Responsibilities" memorandum has been signed, and (3) ISFSIs that received a specific license. NMSS review and approval is not required for an ISFSI authorized under the general license provisions of Subpart K to 10 CFR Part 72. License transfer reviews may include a permanently shut down facility and almost all license transfer reviews include an ISFSI. The NMSS Office Director, or designee, will need to approve and sign any orders associated with facilities under the responsibility of NMSS. When a license transfer falls under the responsibilities of both NMSS and NRR, the DORL PM typically takes the lead and prepares the SE, order, and conforming amendment. If required, NMSS will prepare the amended license for the ISFSI. The NMSS Office Director, or designee, co-signs the order consenting to the license transfer, signs the applicable conforming amendment(s) and the amended license for the ISFSI if the ISFSI has a specific license.

Most license transfer requests include proprietary financial or commercial information, along with an affidavit requesting that the information be withheld from public disclosure under 10 CFR 2.390. The PM must coordinate (usually with the financial analyst) the review of the information requested to be withheld to determine whether the staff agrees that the information should be withheld. The PM and technical staff should refer to NRR Office Instruction LIC-204, "Handling Requests to Withhold Proprietary Information from

Public Disclosure,” for specific guidance. The PM must be aware that the proprietary information may need to be withheld from some of the co-applicants in addition to the general public. The PM must issue a proprietary information determination letter for the proprietary material.

In accordance with the RPS – Licensing/WM software, the PM must request a Cost Activity Code (CAC) for each unit involved. The PM must also confirm that the application is in ADAMS, and that the proprietary and non-proprietary information have been properly profiled.

Working with the NRR Web Services, the PM will request that a non-proprietary copy of the application be placed on the NRC public Web site (a license transfer and merger Web page is available for posting of these documents) in accordance with 10 CFR 2.1301 and 2.1303. The PM should send an e-mail message to [NRRWebServices.Resource@nrc.gov](mailto:NRRWebServices.Resource@nrc.gov) and request that information regarding the proposed license transfer be noticed at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html#change>, “Notice of Ownership Change.” The PM will need to provide NRR Web Services with the exact information to be included (i.e., 1) Deadline for Filing Hearing Request, 2) Facility and Location, 3) Applicant, 4) Licensing Action, 5) ADAMS Accession Number, and 6) Contact). In addition to the application and any associated requests, the PM will request that NRR Web Services also add to the NRC public Web site Commission correspondence with the applicant related to the application, *FR* notices, the staff’s SE, the staff’s order acting on the license transfer application and, if a hearing is held, the hearing record and decision. Once the staff has completed all actions associated with the license transfer, the PM should contact NRR Web Services to request that the notice be removed from the NRC’s public Web page.

Using the templates for the transmittal letter and the individual *FR* notice (ADAMS Accession Nos. ML082130259 and ML14022A036, respectively) for direct/indirect license transfers (also available in the list of “DORL Master Boilerplates” located on the DORL home page, <http://fusion.nrc.gov/nrr/team/dorl/default.aspx>), the PM shall process the *FR* notice. The notice must be reviewed and concurred on by OGC. The notice will state that following publication in the *FR*, stakeholders will be permitted to (1) provide comments within 30 days, and (2) request a hearing within 20 days. The PM should be aware that the *FR* notice directs anyone seeking access to the proprietary, confidential information redacted from the publicly available version of the application (typically the proprietary financial projections) to the applicant as opposed to the NRC.

As stated in 10 CFR 2.1315, the Commission has determined that any conforming amendment that only reflects the license transfer action involves no significant hazards consideration. Therefore, such a conforming amendment for a license transfer does not need to be included in the biweekly notice (i.e., BWN) in the *FR*.

The license to be transferred may also reference other licenses that were issued under Parts 30, 40, 70, and/or 72. If that is the case, the PM should coordinate with the offices issuing those licenses so that all transfers are accomplished in parallel and smoothly.

Occasionally, the applicant may request approval of other changes such as a Quality Assurance Plan that must be scheduled to be issued with the transfer order.

The PM shall verify that a copy of the license transfer application was received by the State representative.

The PM needs to be aware of any changes that may need to be made to the indemnity agreement. The Price-Anderson Act (Section 170 of the Atomic Energy Act of 1954, as amended) and the NRC's regulations at 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," and 10 CFR 50.54(w), "Conditions of licenses," require that the plant owner(s) maintain sufficient levels of insurance and that the indemnity agreement reflect the current plant ownership.

Direct license transfers require a change to a licensee's indemnity agreement. The indemnity agreement is updated through PFPB and an advance copy is provided to the PM for licensees to examine for completeness. After the licensees agree to or provide comments on the content of the indemnity agreement, the PM should notify PFPB for further processing. The final copies are forwarded to the PM with signatures from the branch chief of PFPB. Once the order has been issued approving the license transfer, the PM should send out all original signed copies of the indemnity agreement to the licensees for signature. The indemnity agreement(s) should be signed by all licensees concurrently with the issuance of the conforming license amendments upon the consummation of the license transfer action. After the indemnity agreement has all required signatures, one copy should be retained by each licensee for their records and one copy should be sent back to the NRC. A signed copy should be received back to the NRC within 7 days following the consummation of the license transfer action.

Each of the 10 items listed below are distinct sections of the SE for review of a license transfer application. The financial analyst is responsible for producing the content for sections A, B, C, D, and F below. Also, the financial analyst provides input to section J, but not necessarily all of its content. The technical qualifications reviewer is responsible for producing the content for section E while the remaining sections are provided by the PM.

- A. Financial Qualifications
- B. Decommissioning Funding Assurance
- C. Antitrust (special attention must be given if the license contains antitrust conditions; see NUREG-1574, Revision 2)
- D. Foreign Ownership, Control, or Domination
- E. Technical Qualifications
- F. Insurance and Indemnity
- G. Conforming Amendment

#### H. State Consultation

#### I. Environmental Consideration

#### J. Conclusion

The financial analyst is responsible for collaboration with the assigned OGC attorney to ensure that all aspects of the financial review are identified, that the scope and content of the evaluation is sufficient, and that any unique financial instruments, license conditions, and indemnity agreement changes are identified. The financial analyst is also responsible for keeping the PM informed and involved in the process. The PM need not be present for every interaction between the financial analyst and OGC. However, the financial analyst needs to keep the PM informed of issues that will require additional information, as well as any significant impact on the overall review schedule.

When preparing an SE, the financial analyst may need to request additional information from the applicant in order to clarify a particular item and complete the review. A request for additional information (RAI) will follow the guidance included in LIC-101. Since requests for license transfers generally involve strict deadlines due to time sensitive financial implications, the financial analyst should attempt to identify any necessary RAIs as soon as possible during the review. Unlike routine RAIs for licensing actions, RAIs associated with license transfers should include OGC review and/or concurrence. The PM should discuss the need for concurrence with OGC before issuing the RAI. Also, since requests for license transfers more often than not contain proprietary information, the resulting staff RAI may also contain proprietary information. Therefore, the PM should discuss the RAI with the applicant before formally issuing the RAI to ensure that any proprietary information is identified and handled appropriately.

The technical qualifications reviewer will review the application using the relevant sections of Chapter 13, "Conduct of Operations," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," regarding the conduct of operations to determine whether the plant staffing and management are acceptable to support the technical qualifications of the proposed new operator or the existing operator under the proposed new owner.

License transfers meet the eligibility criterion for categorical exclusion set forth in 10 CFR 51.22(c)(21). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the approval of the license transfer or any associated conforming amendments. This finding should be included in the Environmental Consideration section of the SE.

After receipt of SE inputs documenting the results of the technical and financial reviews, the PM prepares the order, the final SE, and the conforming license amendment if required. Templates for the preparation of a direct transfer order, conforming amendment, and SE are available in ADAMS at Accession Nos. ML090500005 and ML090500022. Templates for the preparation of an indirect transfer order and SE are available in ADAMS at Accession Nos. ML090500028 and ML090500026. The SE is

typically prepared in both proprietary and non-proprietary versions. Guidance on the treatment of proprietary information and the NRC's procedures for handling sensitive unclassified non-safeguards information is provided in NRR Office Instruction LIC-204. Any public comments received as a result of the *FR* notice are to be addressed in the SE. Note that it is current practice to have a technical editor review and concur on any document that is to be signed by the NRR Office Director. Thus, the PM may need to forward the draft order to QTE Resource and request that a technical editor review and edit the document. Changes from the tech editor should be incorporated before the document is sent to OGC for concurrence.

The staff's SE will often impose specific conditions on the approval of the license transfer. The PM should ensure that the conditions described in the SE are accurately reflected in the order.

The licensing assistant is responsible for reviewing all license transfer related documents in accordance with the guidance document "DORL Licensing Assistant Review (for Most Documents)" (ADAMS Accession No. ML15352A155), and NRR Office Instruction LIC-101. The licensing assistant will ensure correct usage of noticing templates, and check [www.regulations.gov](http://www.regulations.gov) to determine if there were any public comments received. The licensing assistant will review changes to the license if a conforming amendment is involved against the application/supplements and the current license, and assign an amendment number, if needed, for a conforming amendment. In addition, the licensing assistant will perform a final quality and proprietary information check prior to issuance. If the approved license transfer is consummated, the licensing assistant may have additional follow-up activities to ensure that the amended license (if any) is updated in the ADAMS authority file and that any organizational name changes from the conforming amendments are reflected in the plant's boilerplates, and associated NRC Web pages and plant rosters.

Caution: If the package will be forwarded to the NRR Office Director for signature, it is expected that a second licensing assistant perform a peer review of the package before it is sent to the NRR Office Director. It is recommended that this step be performed after the DORL Division Director review so that all changes made during the concurrence process are reviewed. The DORL PM should request the licensing assistant peer review through their respective branch chief.

If a conforming amendment is issued, the PM will prepare a biweekly notice of issuance of conforming amendments (i.e., BWI) in the *FR* using the DORL template found at ML16166A006.

Typically, there are licensing requests made by the previous license holder that are pending at the time that the conforming amendment is issued. If the new license holder wants the staff to continue work on those licensing requests, the new license holder must submit a letter on the docket on the date of issuance of the conforming amendment or shortly thereafter. The letter must state that the new licensee "adopts and endorses" all outstanding items on the docket, including, but not limited to, requests for license

amendments, exemptions, relief requests, etc. The letter needs to be submitted under oath or affirmation.

The package should have concurrence through the Director, DORL or DLP, before it is sent for final OGC concurrence. Concurrence by OGC will be finalized just prior to the package being presented to the approving official (Office or Division Director, as appropriate). Orders for direct transfers are signed according to the delegation authority of ADM-200. The signature of the NMSS Office Director may be needed if the transfer involves an ISFSI or other NMSS license.

The PM will discuss the need for a communication plan with DORL, DLP, and Regional management. If it is determined that a communication plan is needed, the PM will prepare the plan. The Office of Public Affairs in both headquarters and the Region must be notified at least 3 days before issuance. The Office of Public Affairs may prepare a press release to coincide with release of an order.

If there has been a request for a hearing, it should be addressed in the SE and the order. In the case of a hearing, the Commission will be the "Presiding Officer," unless it designates otherwise. If the Commission remains as the Presiding Officer, the Office of Commission Appellate Adjudication may contact the staff for assistance or information in their role of supporting the Commission as long as the staff does not become a party to the proceeding. If the staff is prepared to issue the order while a hearing request or hearing is pending, the PM must prepare a Notice of Significant Licensing Action (NSLA), prior to issuance of the order, to the Commission and to other NRC offices informing them of the intended issuance of the order approving the license transfer. A copy of the proposed NSLA is included with the package when it is sent to OGC for final concurrence. The NSLA is not made publicly available. Guidance and a template regarding NSLAs are available in an NRR memorandum dated December 13, 2000 (ADAMS Accession No. ML003779315). The NSLA template is also available in ADAMS at Accession No. ML15113A963. [Note: In the rare situation where a hearing request is made subsequent to issuance of the order but prior to issuance of a conforming amendment for a direct license transfer, the PM should use the NSLA template found at ADAMS Accession No. ML15113A797 for the proposed issuance of a conforming amendment.]

The NSLA must be concurred upon by the Director of NRR and the Executive Director for Operations. After the Executive Director for Operations concurs, and at least 5 work days before the proposed issuance of the order, the NSLA should be dated and sent to the Commission. The PM should inform OGC of the transmission of the NSLA to the Commission so that OGC can notify the Presiding Officer and the parties to any proceeding of this communication, as appropriate. After 5 work days, if no communication to the contrary has been received from the Commission, the PM should contact the Office of the Executive Director of Operations to confirm that the Commission does not object to the staff's proposed action. If there is no objection, the order can be issued. The PM should inform OGC of the issuance of the order so that OGC can notify the Presiding Officer and the parties to any proceeding of this action, as appropriate.

**7. PERFORMANCE MEASURES**

No performance measures for this office instruction have been developed at this time.

**8. PRIMARY CONTACTS**

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**9. RESPONSIBLE ORGANIZATION**

NRR/DORL

**10. EFFECTIVE DATE**

June 5, 2017

**11. REFERENCES**

1. *Code of Federal Regulations*, Title 10, Section 50.80, "Transfer of licenses."
2. *Code of Federal Regulations*, Title 10, Section 50.90, "Application for amendment of license, construction permit, or early site permit."
3. NUREG-1577, Revision 1, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance."
4. NUREG-1574, Revision 2, "Standard Review Plan on Transfer and Amendment of Antitrust License Conditions and Antitrust Enforcement."
5. NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," Chapter 13, "Conduct of Operations," Section 13.1.1, Revision 6, August 2016, and Sections 13.1.2 and 13.1.3, Revision 7, August 2016.

**Enclosures:**

1. Appendix A - Change History
2. Appendix B – Checklist



## Appendix A - Change History

### Office Instruction LIC-107, Revision 2 Procedures for Handling License Transfers

LIC-107 Change History			
Revision Date	Description of Changes	Method Used to Announce & Distribute	Training
03/21/2002	This office instruction discusses procedures for handling direct or indirect license transfer requests in accordance with 10 CFR 50.80.	E-mail to NRR staff	None
11/22/2008	Revision to increase level of detail, reflect organizational and editorial changes, and include research and test reactors within the instruction scope.	E-mail to NRR staff	None
05/30/2017	Revision 2 reflects the elimination of the Office of Federal and State Materials and Environmental Management Programs (FSME); additional responsibilities for the Office of Nuclear Material Safety and Safeguards (NMSS); additional guidance on indemnity agreements; additional guidance for the licensing assistants to ensure that the conforming amendment is updated in the ADAMS authority file and that any organizational name changes are reflected in the plant's boilerplates, associated NRC Web pages and plant rosters; organizational changes; the availability of updated boilerplates in ADAMS; and miscellaneous editorial changes and clarifications.	E-mail to NRR staff	None

## **Appendix B - Checklist**

### **Office Instruction LIC-107, Revision 2 Procedures for Handling License Transfers**

This checklist is meant as an aid to PMs in handling license transfer orders and conforming amendments. As such, it is a document that accompanies NRR Office Instruction LIC-107, "Procedures for Handling License Transfers." This checklist does not replace or negate the need to understand the responsibilities and actions required in this office instruction. It should be used in conjunction with the office instruction to assist the PM with planning the work involved in processing and issuing the order, SE, conforming amendment, and other associated documents and to ensure that nothing is inadvertently overlooked. The PM must refer to the details in the office instruction to fully address the scope of actions in the checklist.

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#### **FRONT-END ACTIONS OR QUESTIONS**

Shortly after receipt of the application from the licensee or applicant, the PM should address the following questions and take appropriate actions:

- (1) Does the application meet all pertinent regulatory requirements for submission of an application?

☐ Yes ☐ No

"Any person" may submit an application for license transfer, provided that the application can be supported by "a written consent from the existing licensee, or a certified copy of an order or judgment of a court of competent jurisdiction attesting to the person's right ... to possession of the facility or site involved" (10 CFR 50.80). Such an application must be executed in a signed original by a duly authorized officer under oath or affirmation (10 CFR 50.30) and addressed to the NRC Document Control Desk (10 CFR 50.4). For additional guidance regarding oath or affirmation, and an alternate method to meet this requirement, see Regulatory Issue Summary 2001-18 (ADAMS Accession No. ML010990211). The PM should discuss with the licensee remedial actions if any of these requirements are not met.

- (2) Is the transfer direct or indirect?

☐ Direct ☐ Indirect

Did the application request a conforming amendment?

☐ Yes ☐ No

A direct transfer involves a new licensee, and most likely would need a name change in the license (i.e., the application should include an application for a conforming amendment to reflect the new licensee name). On the other hand, an indirect transfer may involve a change in the parent or holding company of the current licensee, and may not need anything changed in the current operating license. If in doubt, consult with OGC and discuss with the licensee.

In terms of work planning, a separate CAC number may be needed for the conforming amendment if the target date for consummation of the transfer is significantly later than that for the order.

Enclosure 2

- (3) Does the application include “as much of the information described in §§ 50.33 and 50.34 of this part with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license”?

☐ Yes ☐ No

At this early stage of review, the PM should discuss the acceptance review for sufficiency of information to begin the review with the responsible technical branches. The PM should refer to NRR Office Instruction LIC-109, “Acceptance Review Procedures,” for guidance. The PM should promptly communicate with the licensee if any deficiency is identified.

- (4) Is a copy of the publicly available version of the application placed on the NRC public Web site? ☐ Yes ☐ No

This requirement is stated in 10 CFR 2.1301. Per 10 CFR 2.1303, unless exempt from disclosure under 10 CFR Part 9, the following documents should also be placed on the NRC public Web site: (a) correspondence to and from the applicant or licensee related to the application, (b) *FR* notices, (c) NRC staff safety evaluations, (d) NRC staff order, and (e) if a hearing is held, hearing records and decision.

- (5) If the plant site houses an independent spent fuel storage installation (ISFSI) with a specific license, did the application also address transfer of the ISFSI?

☐ Yes ☐ No

The PM needs to discuss this with NMSS to understand its scope of review as it relates to NRR’s review, and agree on target dates. If the application makes no mention of the ISFSI with a specific license, the PM should immediately discuss with the licensee and NMSS about the omission.

- (6) Has OGC been informed of the application and provided copies?

☐ Yes ☐ No

License transfer reviews are mostly concerned with legal and financial matters. Accordingly, OGC should be involved from the start of the acceptance review. The assigned OGC attorney normally keeps in touch with attorneys representing the applicant and/or the licensee, the NRR financial reviewer(s), and the PM during the review. Note that OGC must concur on all correspondence from the staff including *FR* notices and may also need to concur on requests for additional information, particularly when a hearing has been requested.

- (7) Is public notification prepared and issued?

☐ Yes ☐ No

The regulations at 10 CFR 50.80 requires the NRC staff to issue an “appropriate notice to interested persons, including the existing licensee.” This notice is to be published in the *FR* (see template at ADAMS Accession No. ML14022A036). The notice will (1) describe the proposed transfer; (2) announce that requests for a hearing must be filed within 20 days; (3) announce that written comments must be filed within 30 days per

10 CFR 2.1305, (4) declare that, per 10 CFR 2.1315, and unless otherwise determined by the Commission, the conforming amendment to be issued involves no significant hazards consideration (NSHC) and no comments on the NSHC determination are solicited from the public; and (5) state that the comment procedures contained in 10 CFR 2.1305 apply. The PM should make sure that the *FR* notice directs anyone seeking access to the proprietary, confidential information redacted from the publicly available version of the application (typically the proprietary financial projections) to the applicant as opposed to the NRC.

If the applicant determined that a conforming amendment is needed, it would apply for it under 10 CFR 50.90. Under such circumstance, 10 CFR 50.91 requires the applicant to provide an NSHC analysis. The NRC staff, however, does not need to publish an NSHC evaluation because 10 CFR 2.1315 has generically determined that a conforming amendment involves NSHC; this is so stated in the NRC staff's *FR* notice regarding the proposed license transfer.

Per 10 CFR 2.309(b)(1), the *FR* notice will specify a date, 20 days from publication, on or before which hearing requests and intervention petitions must be filed.

- (8) Does the application propose an issuance date for the order and conforming amendment?

☐ Yes ☐ No

Some applications are very specific in this regard, while others only provide a general target date because the applicant/licensee may still be undergoing financial negotiations and seeking approval from other governmental bodies. License transfers typically involve significant time-sensitive financial implications (e.g., the fuel in a reactor core is worth tens of thousands of dollars less after each day of burnup). The NRC staff's failure to approve the transfer on the date the application specifies could mean significant financial penalty, or significant re-work of the financial arrangements. Thus, it is incumbent upon the PM to ensure that the NRR technical review branches, NMSS, and OGC all aim their review schedule using the same target date.

- (9) What should be done about environmental considerations?

There is no statutory or regulatory requirement for an environmental impact statement or environmental assessment for the order and conforming amendment. The regulation at 10 CFR 51.22(c)(21) provides that approvals of direct or indirect license transfers and any associated conforming amendments are categorically excluded from environmental review. The "Environmental Considerations" section of the SE should cite this regulation.

- (10) Does the application indicate that a copy has been sent to the designated State official?

☐ Yes ☐ No

This requirement is specified in 10 CFR 50.91(b)(1) regarding amendments. Specifically, the licensee should have sent a copy of the application to the designated State official.

- (11) Does the application contain proprietary information? ☐ Yes ☐ No

License transfer applications usually contain proprietary information. The NRC staff should follow the guidance of NRR Office Instruction LIC-204. In the context of a proposed license transfer order and conforming amendment, the staff needs to be cautious in its day-to-day activities (e.g., issuance of formal or draft correspondence) such that proprietary information is not inadvertently released. The PM should be cognizant that one party in the transaction may be withholding certain information from another party. This is typical for financial projections when each entity is in competition in the same power market area. Note that proprietary information may be as simple as a number (e.g., dollar amounts), a word, or a single phrase. Inadvertent release of proprietary information is reportable to the Inspector General and the Executive Director for Operations (see Management Directive 3.4, section on "Inadvertent Release of Information").

## WORK PLANNING

License transfers typically involve significant time-sensitive financial implications (e.g., the fuel in a reactor core is worth tens of thousands dollars less after each day of burnup). The NRC staff's failure to approve the transfer on the date the application specifies could mean significant financial penalty, or significant re-work of the financial arrangements.

- (1) Through RPS - Licensing/WM software, assign PFPB to complete the financial qualifications review. PFPB reviews the financial qualifications of the proposed owner and operator (if different from the owner).

If the entity that will become the operator is different from the entity that will become the owner, the financial qualification for both entities needs to be assessed. While the exact same type of financial review done for an owner is not applicable for the operator, PFPB still needs to review a combination of the financial qualifications of the owner (assuming it is ultimately responsible for costs) with the analysis of the contract between the owner and the operator regarding the payment of costs. See the Commission ruling on the Northern States Power Company/Monticello case, CLI-00-14, 52 NRC 37 (2000), and the companion case, CLI-00-19, 52 NRC 135 (2000).

☐ Yes ☐ No

- (2) Through RPS - Licensing/WM software, assign the Operations and Human Factors Branch to complete the technical qualifications review.

☐ Yes ☐ No

- (3) Does the plant site include an ISFSI, under a specific or general license, which would be transferred at the same time?

☐ Yes ☐ No

If the ISFSI received a specific license as opposed to authorization under the general license provisions of Subpart K to 10 CFR Part 72, the NMSS Office Director, or

designee, must sign the order consenting to the license transfer and the amended ISFSI license. The DORL PM should also confirm that NMSS will revise the ISFSI license as appropriate.

- (4) Are the SE target dates supportive of the proposed date of consummation of the transfer?

☐ Yes ☐ No

#### **PRE-ISSUANCE OBLIGATIONS FOR THE ORDER**

- (1) Has the 20-day period (i.e., the period for requesting a hearing) required by 10 CFR 2.309(b)(1) passed since publication of the notice in the *FR*? ☐ Yes ☐ No

- (2) Any comments from the public or State government? ☐ Yes ☐ No

Per 10 CFR 2.1305, as an alternative to requests for hearings and petition to intervene, persons may submit written comments regarding license transfer applications. The NRC will consider and, if appropriate, respond to these comments, but these comments do not otherwise constitute part of the decisional record.

- (3) Are all of the applicant's submittals (i.e., original application and any supplemental information) submitted under oath or affirmation, and docketed in ADAMS?

☐ Yes ☐ No

- (4) Has the PM issued a letter to determine withholding from public disclosure for each applicant submittal containing proprietary information?

☐ Yes ☐ No

The applicant's submittals typically contain proprietary information of financial nature (i.e., dollar amounts). The PM should suspect that any formal or informal communication with the applicant may likewise contain proprietary information, and handle them accordingly.

- (5) If a hearing has been requested and the hearing will not be completed before issuance of the order, did the PM prepare an NSLA to inform the Commission of the imminent issuance of the order?

☐ Yes ☐ No

If there is an ongoing or pending hearing, it should be so noted in the SE and the order. Before issuance of the order, the PM prepares an NSLA to inform the Commission of the imminent issuance of the order. The PM should inform OGC when the NSLA is transmitted to the Commission.

- (6) Did the PM discuss with management and the Regional office about the need for a communication plan?

☐ Yes ☐ No

There is no regulatory requirement or guidance that specifies a communication plan. The need for such would be determined by the level of public interest in the proposed license transfer or the plant itself (e.g., requests for intervention, public comments, State government comments, media interest, etc.).

- (7) Did the proposed new licensee provide a letter to the NRC stating that it has the required insurance?

☐ Yes ☐ No

This letter is needed before PFPB can issue an amendment to the indemnity agreement to reflect the name of the new licensee.

- (8) Has PFPB prepared an amended or new indemnity agreement?

☐ Yes ☐ No

An indemnity agreement is required to reflect the ownership of the facility. Therefore, a direct license transfer typically requires an amended or new indemnity agreement that is issued concurrent with the conforming amendment(s) upon the consummation of the license transfer action. The indemnity agreement for an indirect license transfer is generally unchanged.

- (9) Did the licensee/applicant send a letter to the NRC to indicate the date the transaction will be consummated?

☐ Yes ☐ No

The conforming amendment is to be issued on that day, not before and not after.

- (10) Did the new licensee send a letter to the NRC to identify all the ongoing reviews (amendments, exemptions, relief requests, etc.), and request the NRC to continue its review of those actions?

☐ Yes ☐ No

This letter is needed because those actions were requested by the prior licensee, and the NRC has no reason to continue its review unless the new licensee “adopts and endorses” the outstanding items on the docket. Since some of the ongoing reviews (e.g., amendments) were requested by the prior licensee under oath or affirmation, the new licensee’s “adoption” letter must also be under oath or affirmation, or equivalent.

## **PREPARATION OF CONFORMING AMENDMENT**

Issuing the conforming amendment is essentially done the same way as issuing a regular amendment, except that the package contains no SE because the conforming amendment is referenced and approved as part of the order consenting to the license transfer. In addition, the

amendment package contains a biweekly notice of issuance of conforming amendments (template at ADAMS Accession No. ML16166A006).

The conforming amendment, the amended or new indemnity agreement, the amended ISFSI license, if applicable, and biweekly notice of issuance are issued on the day the license transfer transaction is consummated and after receipt of notification from the licensee confirming the transaction. This is necessary because if it is issued before, the new licensee name may invalidate the operating license for the current and exiting licensee, and if it is issued afterwards, the new licensee would have no authorization to operate under the old license.

- (1) Does the conforming amendment package include an amendment to the indemnity agreement (prepared by PFPB) for the new licensee?  
☐ Yes ☐ No
- (2) Did the PM inform the NRR Director, who is the signer of the conforming amendment, that the conforming amendment is identical to the draft issued with the order, or that minor changes had been made?  
☐ Yes ☐ No