

From: [Ragland, Randolph](#)
To: TPotter@archcoal.com
Subject: NRC License Amendment Request for Additional Information
Date: Friday, January 17, 2020 2:56:00 PM
Attachments: [NUREG 1556 Vol. 15.docx](#)

Terry Potter, Engineering Manager
Coal MAC, LLC

Dear Mr. Potter,

We are in receipt of your letter dated November 11, 2019, notifying NRC that Coal Mac, Inc. License No. 47-25599-01 has had a change of control. Please be aware that we require specific information regarding changes of control of NRC licenses.

I have attached a copy of NUREG 1556, Vol. 15, "**Consolidated Guidance About Materials Licenses**, Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses." Section 5 of the document contains guidance regarding Changes of Control of NRC licenses and Appendix E, "Information Needed for Transfer of Control Applications." Because the document is in Word Format, you should be able to cut and paste Appendix E into a new document and answer the questions, and submit that information back to us.

Please include the following on your submittal:

NRC License No.: 47-25599-01
Docket No.: 03036047
Mail Control Number: 617127

Regards,

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Consolidated Guidance About Materials Licenses

Guidance About Changes of Control and About
Bankruptcy Involving Byproduct, Source, or
Special Nuclear Materials Licenses

Final Report

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Consolidated Guidance About Materials Licenses

Guidance About Changes of Control and About
Bankruptcy Involving Byproduct, Source, or
Special Nuclear Materials Licenses

Final Report

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ABSTRACT

This technical report contains information intended to provide program-specific guidance and to assist applicants, licensees, and others in preparing and reviewing requests involving materials license (including fuel cycle and uranium recovery facilities) bankruptcy, or changes of control. This report contains guidance describing the types of information needed from the licensee, and others, in the preparation and submittal of a notice of bankruptcy or change of control.

Paperwork Reduction Act Statement

This NUREG contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.). These information collections were approved by the Office of Management and Budget (OMB), approval numbers 3150-0014; 3150-0017; 3150-0016; 3150-0001; 3150-0007; 3150-0010; 3150-0214; 3150-0020; 3150-0009; and 3150-0120.

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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.

FOREWORD

The U.S. Nuclear Regulatory Commission's (NRC's) NUREG–1556 technical report series provides a comprehensive source of reference information about various aspects of materials licensing and materials program implementation. These reports, where applicable, describe a risk-informed, performance-based approach to licensing that is consistent with the current regulations. The reports are intended for use by applicants, licensees, license reviewers, and other NRC personnel. The NUREG–1556 series currently includes the following volumes:

Volume No.	Volume Title
1	Program-Specific Guidance About Portable Gauge Licenses
2	Program-Specific Guidance About Industrial Radiography Licenses
3	Applications for Sealed Source and Device Evaluation and Registration
4	Program-Specific Guidance About Fixed Gauge Licenses
5	Program-Specific Guidance About Self-Shielded Irradiator Licenses
6	Program-Specific Guidance About 10 CFR Part 36 Irradiator Licenses
7	Program-Specific Guidance About Academic, Research and Development, and Other Licenses of Limited Scope Including Electron Capture Devices and X-Ray Fluorescence Analyzers
8	Program-Specific Guidance About Exempt Distribution Licenses
9	Program-Specific Guidance About Medical Use Licenses
10	Program-Specific Guidance About Master Materials Licenses
11	Program-Specific Guidance About Licenses of Broad Scope
12	Program-Specific Guidance About Possession Licenses for Manufacturing and Distribution
13	Program-Specific Guidance About Commercial Radiopharmacy Licenses
14	Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study Licenses
15	Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses
16	Program-Specific Guidance About Licenses Authorizing Distribution to General Licensees
17	Program-Specific Guidance About Special Nuclear Material of Less Than Critical Mass Licenses
18	Program-Specific Guidance About Service Provider Licenses
19	Guidance for Agreement State Licensees About NRC Form 241 "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" and Guidance for NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity)
20	Guidance About Administrative Licensing Procedures
21	Program-Specific Guidance About Possession Licenses for Production of Radioactive Materials Using an Accelerator

The current document, NUREG–1556, Volume 15, Revision 1, "Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses," is intended for use by applicants, licensees, license reviewers, and other NRC personnel. This revision provides a general update to the previous information contained in NUREG–1556, Volume 15, dated November 2000.

This report takes a risk-informed, performance-based approach to evaluating changes of control or bankruptcy involving byproduct, source, or special nuclear materials (including fuel cycle and uranium recovery facilities). A team composed of staff from NRC Headquarters and NRC regional offices prepared this document, drawing on their collective experience in radiation safety in general and as specifically applied to changes of control and bankruptcies.

NUREG–1556, Volume 15, Revision 1, is not a substitute for NRC or Agreement State regulations. The approaches and methods described in this report are provided for information only. Methods and solutions different from those described in this report may be acceptable if they include a basis for the NRC staff to make the determinations needed to issue or renew a license.

The comments received during the comment period for NUREG–1556, Volume 15, Revision 1, were summarized and addressed in a document that can be located on NRC’s Agencywide Documents Access and Management System (ADAMS) under ML15224B599. Access to ADAMS is available on the public Web site at <http://www.nrc.gov/reading-rm/adams.html>. The only comment the NRC received involved procedures for drawing on financial assurance instruments.

Daniel S. Collins, Director
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ABBREVIATIONS

ADAMS	Agencywide Documents Access and Management System
AEA	Atomic Energy Act of 1954, as amended
ALARA	as low as is reasonably achievable
AUSA	Assistant United States Attorney
BRT	Bankruptcy Review Team
CFR	<i>Code of Federal Regulations</i>
DFP	Decommissioning Funding Plan
DOJ	U.S. Department of Justice
DUWP	Division of Decommissioning, Uranium Recovery, and Waste Programs
FA	financial assurance
IMC	Inspection Manual Chapter
IN	Information Notice
IP	Inspection Procedure
MML	Master Materials License
MSTR	Division of Material Safety, State, Tribal, and Rulemaking Programs
NMSS	Office of Nuclear Material Safety and Safeguards
NRC	U.S. Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
NSIR	Office of Nuclear Security and Incident Response
OCFO	Office of the Chief Financial Officer
OE	Office of Enforcement
OGC	Office of the General Counsel
OMB	Office of Management and Budget
PII	Personally Identifiable Information
RSO	radiation safety officer
U.S.C.	United States Code

1 PURPOSE OF REPORT

This report provides important information to persons who own or manage activities that are licensed by the NRC. It is intended for use by license applicants, licensees, and the staff of the U.S. Nuclear Regulatory Commission (NRC), and it will also be available to Agreement States. The report contains guidance for licensees and, in some cases, license applicants to use in preparing a notification to NRC of a change of control or bankruptcy. It also contains NRC's criteria for evaluating such a notification and determining whether a new or amended license is needed. Appendix D of this NUREG lists the recommended licensing action(s) that may need to be performed for each type of transaction. This report is organized into specific sections, discussing change of control (Chapter 5) and bankruptcy (Chapter 6). Chapters 7 through 12 provide specific information for licensees or applicants to use should it be necessary to apply for a new or amended license as the result of a change of control or bankruptcy. Chapter 13 provides information for properly protecting sensitive information, such as financial data submitted to NRC. Information about the specific requirements for particular uses of licensed materials may be found in the applicable volume of the NUREG-1556 series, or other appropriate guidance documents. For the purposes of this document, NRC generally uses the term "change" rather than the statutory term "transfer" to describe the variety of events that could require prior notification to, and written consent of, NRC.

Provisions of the Atomic Energy Act of 1954, as amended (AEA), and regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) require that NRC licensees notify NRC of any changes of control or bankruptcy.

"Control over licensed activities" can be construed as the authority to decide when and how that license (licensed material or activities or both) will be used. A change of ownership may be an example of a change of control if authority over the license has transferred from one person to another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the authority over the license has changed.

The AEA, as well as NRC regulations in 10 CFR, further state that no NRC license nor any right under an NRC license shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any NRC license to any person, unless NRC has found, after securing full information, that the transfer is in accordance with the provisions of the AEA and has given its consent in writing.

Persons who are in the process of applying for an NRC license and who do not already hold one or more other NRC licenses are not subject to NRC regulations with regard to bankruptcy or changes of control. However, applicants must advise NRC of any change of control or bankruptcy that result in changes to the information being reviewed by NRC that would impact the basis on which NRC would eventually issue the license.

NRC is not only concerned with change of control, as it occurs in private business, but also as it affects Government agencies. Appendix B of this NUREG addresses specific considerations for Government agencies.

The regulations are clear that control of licensed activities cannot be transferred without prior written consent from NRC. It is not NRC's intent to interfere with the business decisions of licensees. However, it is necessary for licensees to notify NRC, with sufficient time before the actual change, to allow NRC to conduct an appropriate review of all aspects of the proposed changes of control. NRC is focused on the health, safety, common defense, security and

environmental protection aspects, not solely on the financial intricacies of the proposed transaction. NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place. NRC is required by law to ensure that the public's health and safety and the common defense and security are not compromised; therefore, the agency must be confident that when a licensee's program undergoes a change of control, all efforts are made to ensure that the radiation safety, security, and environmental protection aspects of the program are adequately maintained.

Although the burden of notification is on the existing licensee, it may also be necessary for the transferee or the successor to provide supporting information or to independently coordinate the change of control with the appropriate NRC office.

In the case of bankruptcy, NRC regulations require that a licensee notify NRC in writing immediately following the filing of a voluntary or involuntary petition under the Bankruptcy Code by or against the licensee, or an entity controlling the licensee or listing the license or licensee as property of the estate, or an affiliate of the licensee. This notification must indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

No changes of control or license terminations will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public, and waste disposal (such as releases to sewers, incineration, radioactive spills, and onsite burials) have been transferred to the new licensee, if licensed activities will continue at the same location, or to NRC if the license is to be terminated.

This document is intended to be used for all NRC byproduct, source, and special nuclear materials licenses (including fuel cycle and uranium recovery facilities) that are licensed in accordance with 10 CFR Parts 30, 31, 40, and 70. It does not address bankruptcy or change of control for licenses issued under 10 CFR Parts 61, 72, 76, or 110. This document provides important information, including citations of relevant case law regarding bankruptcy and the various forms of changes of control that may take place. It is important to understand that each instance of bankruptcy or change of control is unique and must be evaluated on a case-by-case basis. NRC and licensee staffs involved in these matters are strongly encouraged to become familiar with the guidance in this document and to consult with qualified technical and legal experts when questions regarding a particular case are raised.

Changes in a licensee's program resulting from a change of control or bankruptcy may result in the need to amend the existing license. In some cases, NRC may require the transferee or successor to apply for a new license. Appendix D of this NUREG lists recommended licensing actions that may be needed, depending on the nature of the transaction(s). The regulations in 10 CFR 30.32 and 10 CFR 40.31, both titled "Application for specific licenses," state, in part, that a person may file an application for a new specific license on NRC Form 313, "Application for Materials License" (see Appendix A of this NUREG). 10 CFR 30.38, "Application for amendment of licenses and registration certificates," and 10 CFR 40.44, "Amendment of licenses at request of licensee," require, in part, that applications for amendment of a license be filed on NRC Form 313. The licensee must specify how the license is to be amended and the grounds for the amendment.

This report identifies general information that is needed to complete NRC Form 313 for amending, terminating, or issuing new licenses, as the result of a change of control or bankruptcy. Licensees should also refer to program-specific guidance found either in the NUREG-1556 series or other appropriate regulatory documents for specific information that

must be included in their application for a new or amended license. The information collection requirements in 10 CFR Parts 30, 31, 40, and 70 and NRC Form 313 have been approved under OMB Clearance Nos. 3150-0017, 3150-0016, 3150-0020, 3150-0009, and 3150-0120, respectively.

Applicants for, and holders of, licenses authorizing possession and use of special nuclear material should refer to 10 CFR 70.22, "Contents of applications," and 10 CFR 70.34, "Amendment of licenses," for the regulatory requirements for applying for a new or an amended special nuclear material license.

Note: The text of these and other NRC regulations may be found at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

Persons using certain generally licensed devices, in accordance with 10 CFR Parts 31, 40, or 70, are required to notify and receive NRC written consent before implementing the change of control of licensed materials. Chapter 5 of this NUREG, "Change of Control," contains information specific to general licenses.

The format within this document for each item of technical information is as follows:

- Regulations—references the regulations applicable to the item.
- Criteria—outlines the criteria used to judge the adequacy of the applicant's response.
- Discussion—provides additional information.
- Response from Applicant or Licensee—provides suggested response or responses, offers the option of an alternative reply, or indicates that no response is needed on that topic during the licensing process.

Notes and references are self-explanatory and may not be found for each item on NRC Form 313.

2 AGREEMENT STATES

Certain States, called Agreement States (see Figure 2-1), have entered into agreements with the U.S. Nuclear Regulatory Commission (NRC) that give them the authority to license and inspect byproduct, source, and special nuclear materials, in quantities not sufficient to form a critical mass, which are used or possessed within their borders. Any applicant, other than a Federal entity, who wishes to possess or use licensed material in one of these Agreement States should contact the responsible officials in that State for guidance on preparing an application. These applications should be filed with State officials, not with NRC. In areas under exclusive federal jurisdiction within an Agreement State, NRC continues to be the regulatory authority.

¹Locations of NRC Offices and Agreement States

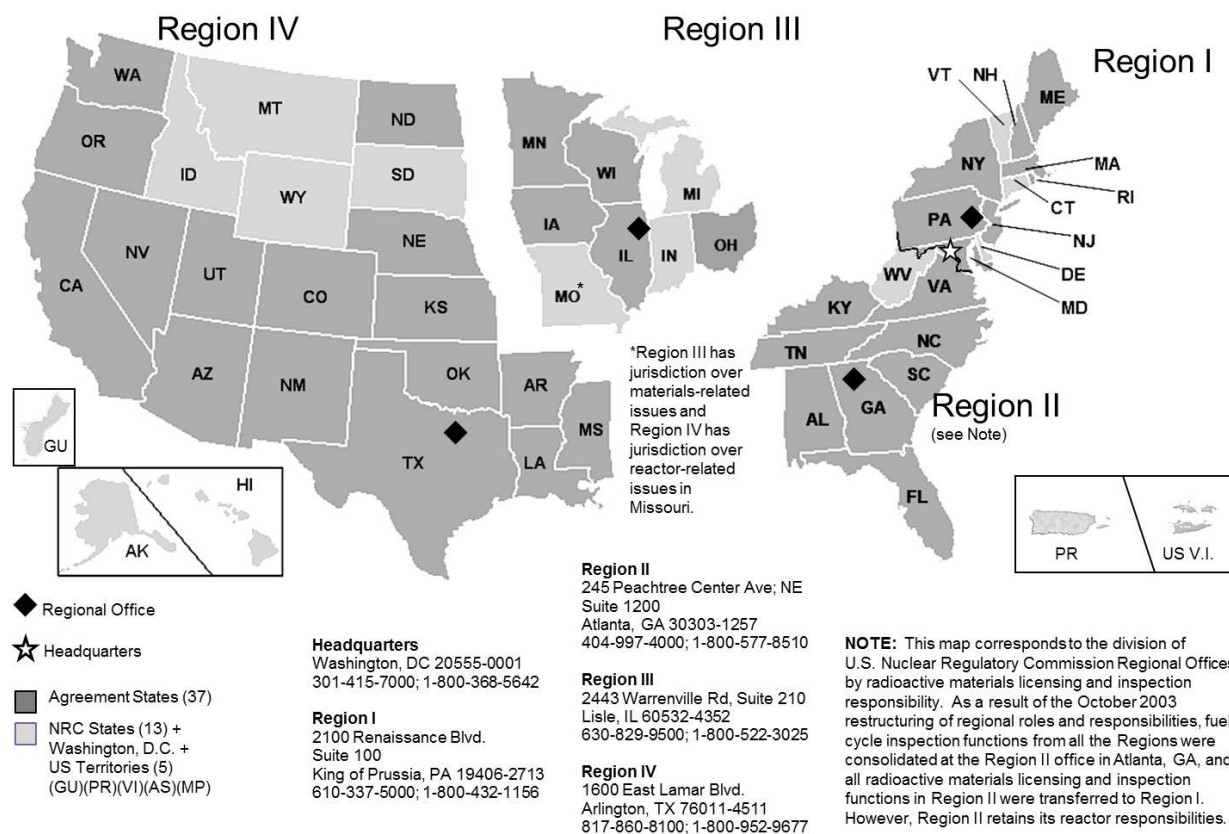


Figure 2-1. U.S. Map: Locations of NRC Offices and Agreement States

In the special situation of work at Federally controlled sites in Agreement States, it is necessary to ascertain the jurisdictional status of the land to determine whether NRC or the Agreement State has regulatory authority. These areas can also include Tribal lands of Federally recognized Indian Tribes.²

²For the purposes of this guidance, an "Indian tribe" is defined as an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994. A list of Federally recognized tribes is available at www.bia.gov.

The NRC has regulatory authority over land determined to be “exclusive Federal jurisdiction,” while the Agreement State has jurisdiction over nonexclusive Federal jurisdiction land. Applicants are responsible for determining in advance the jurisdictional status of the specific areas where they plan to conduct licensed operations. Additional guidance on determining jurisdictional status is found in the Office of Nuclear Material Safety and Safeguards (NMSS) procedures in the State Agreement series, SA-500, “Jurisdiction Determination,” which is available at <https://scp.nrc.gov>. Once on the Web site, use the link for “NMSS Procedures” in the left-hand column under “Resources & Tools.”

Table 2-1 provides a quick way to evaluate whether NRC or an Agreement State has regulatory authority.

Table 2-1. Who Regulates the Activity?	
Applicant and Proposed Location of Work	Regulatory Agency
Federal agency, regardless of location (except the U.S. Department of Energy and, under most circumstances, its prime contractors are exempt from licensing, in accordance with 10 CFR 30.12, “Persons using byproduct material under certain Department of Energy and Nuclear Regulatory Commission contracts”; also, see 10 CFR 40.11 and/or 10 CFR 70.11, if applicable)	NRC
Non-Federal entity in non-Agreement State, District of Columbia, U.S. territory, or possession, or in offshore Federal waters	NRC
Federally recognized Indian Tribe or Tribal member on Indian Tribal land	NRC
Non-Federal entity on Federally recognized Indian Tribal land	NRC ³
Federally recognized Indian Tribe or Tribal member outside of Indian Tribal land in Agreement State	Agreement State
Non-Federal entity in Agreement State	Agreement State ⁴
Non-Federal entity in Agreement State at Federally controlled site not subject to exclusive Federal jurisdiction	Agreement State ⁴
Non-Federal entity in Agreement State at Federally controlled site subject to exclusive Federal jurisdiction	NRC
Non-Federal entity in Agreement State using radioactive materials (except industrial radiography) directly connected with 10 CFR Part 50 or 52 reactor operations or needed during the construction and preoperational phases of a reactor	NRC

³The NRC can exercise jurisdiction as the regulatory authority on Tribal land of a Federally recognized Indian Tribe. Section 274b agreements do not give States the authority to regulate nuclear material in these areas. However, there are few States that exercise regulatory authority over these areas based on treaties or agreements with specific tribes. Companies owned or operated by Federally recognized Indian Tribe members or non-Indians that wish to possess or use licensed material on Tribal lands should contact the appropriate NRC regional office to determine the jurisdictional status of the Tribal lands and identify the appropriate regulatory agency for licensing and reciprocity.

⁴Section 274m of the Atomic Energy Act of 1954, as amended (AEA) withholds to the NRC regulatory authority over radioactive materials covered under the Section 274b agreements when the activity can affect the Commission’s authority to protect the common defense and security, to protect restricted data, or guard against the loss or diversion of special nuclear material. (This is an uncommon situation, which NRC usually evaluates on a case-by-case basis.) Individuals or companies wishing to possess or use licensed material should contact the licensee to determine the jurisdictional status for specific AEA radioactive materials they intend to possess or use.

Table 2-1. Who Regulates the Activity?	
Applicant and Proposed Location of Work	Regulatory Agency
Non-Federal entity in Agreement State using radioactive materials not directly connected with 10 CFR Part 50 or 52 reactor operations or needed during the construction and preoperational phases of a reactor	Agreement State ⁴

Reference: A current list of Agreement States (including names, addresses, and telephone numbers of responsible officials) is available at <https://scp.nrc.gov>. A request for the list can also be made to an NRC regional office.

3 MANAGEMENT RESPONSIBILITY

The U.S. Nuclear Regulatory Commission (NRC) recognizes that effective management of radiation safety programs is vital to achieving safe, secure, and compliant operations. Consistent compliance with NRC regulations provides reasonable assurance that licensed activities will be conducted safely and that effective management will result in increased safety, security, and compliance.

“Management,” as used in this volume, refers to the processes for conduct and control of a radiation safety program and to the individuals who are responsible for those processes and who have *authority to provide necessary resources* to achieve regulatory compliance.

3.1 Commitments and Responsibilities

It is the licensee’s obligation to keep the license current. Should a change of control or a bankruptcy action result in a change to the licensee’s program, the licensee must amend the license to reflect that change. If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date [see 10 CFR 2.109, “Effect of timely renewal application,” Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.36(a), 10 CFR 40.42(a), 10 CFR 70.38(a)].

Persons applying for an initial license should update and modify their pending applications if they are undergoing a change of control or bankruptcy. NRC license reviewers should consult with appropriate technical, legal, and management staff in each of these cases.

Generally, licensee or applicant management has a responsibility for all aspects of the radiation safety program, including, but not limited to, the following:

- ☐ radiation safety, security, and control of radioactive materials, and compliance with regulations
- completeness and accuracy of the radiation safety records and all information provided to the NRC (10 CFR 30.9, 10 CFR 40.9, 10 CFR 70.9, “Completeness and accuracy of information”)
- ☐ knowledge about the contents of the license and application
- compliance with current NRC and U.S. Department of Transportation regulations and the licensee’s operating, emergency, and security procedures and NRC license commitments
- ☐ commitment to provide adequate resources (including space, equipment, personnel, time, and, if needed, contractors) to the radiation protection program to ensure that the public and workers are protected from radiation hazards and that compliance with regulations is maintained

- ☐ selection and assignment of a qualified individual to serve as the radiation safety officer (RSO) for licensed activities and confirmation that the RSO has independent authority to stop unsafe operations and will be given sufficient time to fulfill radiation safety duties and responsibilities
- ☐ commitment to ensure that radiation workers have adequate training
- prevention of discrimination of employees engaged in protected activities (10 CFR 30.7, 10 CFR 40.7, 10 CFR 70.7, "Employee protection")
- commitment to provide information to employees regarding deliberate misconduct provisions (10 CFR 30.10, 10 CFR 40.10, or 10 CFR 70.10, "Deliberate misconduct,")
- commitment to obtain NRC's prior written consent before transferring control of the license
- ☐ notification of the appropriate NRC Regional Administrator in writing, immediately following filing of petition for voluntary or involuntary bankruptcy [10 CFR 30.34(h) 40.41(f) and 70.32(a)(9)]

Licensee (and applicant) management is strongly cautioned that cases where change of control, such as change of ownership, occur without NRC's prior written consent may be considered violations of the provisions of 10 CFR 30.34, "Terms and conditions of licenses" (or the similar provisions of 10 CFR 40.46 and 10 CFR 70.36, "Inalienability of licenses").

It is not the intent of NRC to interfere with the business decisions of licensees. NRC's focus is on the health, safety, common defense, security, and environmental protection aspects, not solely on the financial intricacies of the proposed transaction. NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place.

Subpart M, "Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2, "Agency Rules of Practice and Procedure," describes the requirements for making documents related to changes of control publicly available. NRC recognizes that information regarding a proposed change of control may be extremely sensitive and that the public release of such information may have an adverse impact on the licensee, as well as on other persons potentially involved in the change of control. Licensees, or other persons wishing to protect sensitive information regarding proposed changes of control, should request that sensitive information be protected, in accordance with 10 CFR 2.390, "Public inspections, exemptions, requests for withholding." This regulation specifies the procedures and requirements for the protection of sensitive information from disclosure. Chapter 13 of this report further describes how sensitive information may be protected from public disclosure.

For information on NRC inspection, investigation, enforcement, and other compliance programs, see the current version of NRC's Enforcement Policy, Inspection Manual Chapter, and Inspection Procedures, available in the NRC's online library, under "Document Collections," at <http://www.nrc.gov/reading-rm.html>.

3.2 **Safety Culture**

Individuals and organizations performing regulated activities are expected to establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This applies to all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority.

“Nuclear safety culture” is defined in NRC’s safety culture policy statement (76 FR 34773; June 14, 2011) as “the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment.” Individuals and organizations performing regulated activities bear the primary responsibility for safely handling and securing these materials. Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal-conflict situations (e.g., production versus safety, schedule versus safety, and cost of the effort versus safety). Refer to Table 3-1 for the traits of a positive safety culture from NRC’s safety culture policy statement.

Organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve both safety and security in their activities. Safety and security activities are closely intertwined. While many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. It is important that consideration of these activities be integrated so as not to diminish or adversely affect either; thus, mechanisms should be established to identify and resolve these differences. A safety culture that accomplishes this would include all nuclear safety and security issues associated with NRC-regulated activities.

The NRC, as the regulatory agency with an independent oversight role, reviews the performance of individuals and organizations to determine compliance with requirements and commitments through its existing inspection and assessment processes. However, NRC’s safety culture policy statement and traits are not incorporated into the regulations. Safety culture traits may be inherent to an organization’s existing radiation safety practices and programs. For instance, during the daily visual inspection of logging equipment, a well logging supervisor identifies damaged threads on a well logging tool, removes the defective tool from service, and notifies management so the tool can be repaired or replaced. The requirement for daily visual inspections of logging equipment may correspond with the safety culture trait specified in Table 3-1 as “Personal Accountability” (all individuals take personal responsibility for safety). However, licensees should be aware that this is just an example and should consider reviewing their radiation safety programs in order to develop and implement a safety culture commensurate with the nature and complexity of their organizations and functions.

Refer to Appendix K of this NUREG for NRC’s safety culture policy statement. More information on NRC activities relating to safety culture can be found at:
<http://www.nrc.gov/about-nrc/safety-culture.html>.

Table 3-1. Traits of a Positive Safety Culture

Leadership Safety Values and Actions	Problem Identification and Resolution	Personal Accountability
Leaders demonstrate a commitment to safety in their decisions and behaviors.	Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance.	All individuals take personal responsibility for safety.
Work Processes	Continuous Learning	Environment for Raising Concerns
The process of planning and controlling work activities is implemented so that safety is maintained.	Opportunities to learn about ways to ensure safety are sought out and implemented.	A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination.
Effective Safety Communications	Respectful Work Environment	Questioning Attitude
Communications maintain a focus on safety.	Trust and respect permeate the organization.	Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.

4 APPLICABLE REGULATIONS

It is the applicant's, licensee's, or registrant's responsibility to obtain and have available up-to-date copies of applicable regulations, to read and understand the requirements of each of these regulations, and to comply with each applicable regulation. The following parts of Title 10 of the *Code of Federal Regulations* (10 CFR) contain regulations applicable to change of control and bankruptcy issues. Some of these parts are specific to one type of license, while others are general and will apply to many, if not all, licensees.

The current versions of these 10 CFR regulations can be found under the "Basic References" link at the U.S. Nuclear Regulatory Commission (NRC) online library at <http://www.nrc.gov/reading-rm.html>. For viewing in a browser, the following list includes a direct link to the rules:

- [10 CFR Part 2](#) "Agency Rules of Practice and Procedure"
- [10 CFR Part 30](#) "Rules of General Applicability to Domestic Licensing of Byproduct Material"
- [10 CFR Part 31](#) "General Domestic Licenses for Byproduct Material"
- [10 CFR Part 40](#) "Domestic Licensing of Source Material"
- [10 CFR Part 70](#) "Domestic Licensing of Special Nuclear Material"
- [10 CFR Part 170](#) "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended"
- [10 CFR Part 171](#) "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC"

Copies of these documents may be obtained by calling the Government Publishing Office Customer Contact Center toll free at 866-512-1800, in Washington, DC; calling 202-512-1800; or ordering online at <http://bookstore.gpo.gov>.

In addition, 10 CFR Parts 1 through 199 can be found on NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/> under "Regulations (10 CFR)."

NRC regulations can also be accessed from the "NRC Library" link on the NRC's public Web site at <http://www.nrc.gov>. Regulations are periodically amended and NRC (as well as all other Federal agencies) is required to publish notice of such amendments in the *Federal Register*.

5 CHANGE OF CONTROL

Regulations: 10 CFR Part 2, Subpart M; 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36

Criteria: 10 CFR 30.34(b) requires, in part, that “No license issued or granted pursuant to the regulations, nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.” Therefore, control of licenses cannot be transferred without the prior written consent of the Commission.

This requires that licensees notify the Commission that they are undergoing a possible change of control. While this notification is not required within a certain time frame, NRC needs adequate time to review the response to ensure that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended (AEA) and the regulations in 10 CFR Part 2, Subpart M, which require that notice must be provided. Once notified, NRC will ask that licensees submit the details of the transaction, as described in Sections 5.1 through 5.6. Following its review of the information provided by the licensee, NRC will notify the licensee as to its determination and include an analysis describing the staff’s rationale for that determination, including whether the licensee meets other regulatory requirements applicable to the activity subject to the license. This analysis must provide the basis for the NRC staff’s determination, referencing relevant regulatory criteria and guidance documents where appropriate, include the potential impact of the transfer on public health and safety, and support the NRC staff’s conclusion as to whether to consent to the transfer of control, including a finding that the transfer is in accordance with the AEA.

Note: *A general license is one that is provided by regulation to any person meeting the criteria identified in the regulation and is effective without the filing of an application with U.S. Nuclear Regulatory Commission (NRC) or the issuance of a licensing document. A general licensee is, nonetheless, required to comply with all applicable NRC regulations. However, because a general license is provided for by regulation to a person meeting the requirements of the regulation and not through an application process, transfer of control of the general license is technically not possible. Rather, a current general licensee may transfer the material, devices, or products it owns, possesses, or uses under the general license to another general licensee that meets the requirements of the regulation granting the general license or to a specific licensee, as provided for in NRC’s regulations. To the maximum extent possible, a general licensee transferring items it owns, uses, or possesses to another NRC licensee should comply with the guidance in this section. For more information about general licenses, please refer to Volume 16 of NUREG–1556.*

In addition, Title 10 of the Code of Federal Regulations (10 CFR) 40.22, “Small quantities of source material,” contains provisions for a general license authorizing commercial and industrial firms; research, educational, and medical institutions; and certain government agencies to receive, possess, use and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium for research, development, educational, commercial, or operational use in specific quantities and forms. General licensees under this section are subject to the change of control requirements of 10 CFR 40.46.

Note: In accordance with 10 CFR 2.1301, “Public notice of receipt of a license transfer application,” NRC will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application on the NRC’s Web site at www.nrc.gov. The NRC will also publish notice of receipt of an application for approval of license transfer for major fuel cycle facilities licensed under 10 CFR Part 70 in the *Federal Register*. In accordance with 10 CFR 2.1305, “Written comments,” persons may submit written comments regarding the license transfer application. NRC will consider and, if appropriate, respond to comments. Comments should be submitted within 30 days after public notice of the receipt of the application. NRC will not notify the licensee as to its determination whether NRC approves of the change of control until after the 30-day comment period is closed. Licensees may not complete the change of control until NRC has approved the application.

Discussion: Control over licensed activities can be construed as the authority to decide when and how that license (licensed material and/or activities) will be used. A change of ownership may be an example of a change of control, depending on whether the authority over the license has transferred from one person to another. The transfer of stock or other assets is not necessarily a change of control. The central issue is whether the entity that has the right to exercise authority over the license has changed. Appendix C of this NUREG provides examples of transactions that would and would not constitute changes of control. **In all cases, determining whether a change of control has taken place is the agency’s responsibility and must be determined on a case-by-case basis.**

It is not the intent of NRC to interfere with the business decisions of licensees. NRC’s focus is on the health, safety, common defense, security, and environmental protection aspects, not solely on the financial intricacies of the proposed transaction. NRC will only require licensees to submit business information necessary to permit the Commission to determine whether a change of control will take place. NRC is required by law to ensure that the public’s health and safety and the common defense and security are not compromised; therefore, the agency must be confident that when a licensee’s program undergoes a change of control, all efforts are made to ensure that the radiation safety, security, and environmental protection aspects of the program are not degraded.

Response from the Licensee:

See Appendix E of this NUREG for information required for a request in change of control.

5.1 Description of Transaction

Regulations: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.23(a)(5); 10 CFR 70.36

Criteria: Prior to approval of a change of control, NRC requires a complete, clear description of the transaction, including the identity and the technical and financial qualifications of the proposed transferee and financial assurance for decommissioning information.

Discussion: The required description includes, but is not limited to, any transfer of stocks or assets, or mergers. This description will enable the NRC staff to differentiate between name changes and changes of control, when necessary.

The licensee needs to include the new name of the licensed organization or state that the name has not changed. If applicable, the licensee should include the new licensee contact and telephone number(s) to facilitate communications. The licensee should also include a pre- and

post-transaction organizational chart showing the corporate structure of the license holder and its parent companies, if any.

In addition, proposed transferees who are new owners of fuel cycle facilities are to provide information showing that they are financially capable to conduct normal operations. The information can be in the form of income statements for past years' performance and balance sheet forecasts for future years' performance.

Response from the Licensee:

- ☐ Provide notification of a Change of Control.
- ☐ Provide information described in Sections 5.1 through 5.6. (See also Appendices D and E of this NUREG).
- ☐ Describe changes in the organization that exercises control over the licensed program.

For further information, see Regulatory Issue Summary (RIS) 2014-08, Revision 1, "Regulatory Requirements for Transfer of Control (Change of Ownership) of Specific Materials Licenses," dated May 5, 2016 (Agencywide Documents Access and Management System Accessions No. ML15181A223). This RIS can also be found on the NRC's Generic Communications Web page under "Regulatory Issue Summaries" at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>.

5.2 Changes of Personnel

Regulations: 10 CFR 30.34(b); 10 CFR 37.23 (b)(2); 10 CFR 40.46; 10 CFR 70.36

Criteria: Prior to approval of a change of control, NRC requires that changes in personnel be documented, reviewed, and approved.

Discussion: Changes in personnel that need to be documented include those involving individuals who have control over licensed activities. These may include, in some cases, officers of a corporation or other management individuals who are listed on the license or are referred to in the supporting documentation. The licensee should also document any changes in personnel that have responsibility for radiation safety or are authorized to use licensed material, (e.g., the radiation safety officer, authorized users, and reviewing official as described in 10 CFR 37.23(b)(2), and the responsible individual for devices generally licensed under 10 CFR 31.5). The phrase "changes of personnel," as used in this report, does not include notifications of new authorized users made in accordance with 10 CFR 35.14, "Notifications."

As with any change in personnel listed on a license, pertinent information with regard to training, experience, and qualifications applicable to the type of use will be required. The licensee should include applicable information concerning the qualifications, training, and responsibilities of any new individuals not previously listed on the current license or who are referred to in the supporting documentation. Licensees can find the specific information required in the respective program-specific guidance for the type of operation in which a particular licensee is engaged or by contacting the appropriate NRC Headquarters or regional license reviewer.

Response from the Licensee:

- ☐ Describe changes in personnel, particularly those requiring a license amendment or notification, regardless of the change of control.
- ☐ Provide the training and experience of *new* individuals to be listed on the NRC license.

OR

- ☐ State that there will be no changes to personnel.

Note: Licensees or applicants should provide information about the training and experience of personnel, relative to the licensed material requested in the application. Extraneous information, such as unrelated lists of publications, research grants, and committee and society memberships, does not need to be submitted. Submittal of unrelated material may slow the review process. Licensees should also avoid providing personally identifiable information, such as home addresses or telephone numbers, Social Security numbers, marital status, names of spouse and children, or age.

5.3 Changes of Location, Equipment, and Procedures

Regulations: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36

Criteria: Prior to the approval of a change of control, the licensee must submit a complete description of any planned changes in location, facilities, equipment, or procedures.

Discussion: Provide a detailed description of any changes in the licensee's location(s) of use, facility description, equipment, or procedures (i.e., changes in operating or emergency procedures) that would normally require a license amendment. Include any changes in the organization that may not be identified in Section 5.2 of this NUREG.

The location must be described if the licensee is adding a place of use. A description of the contaminated condition of the facility, if any, is required if the licensee is removing a place of use. Refer to Section 5.6 for a more detailed description of the information needed. Any changes in the facilities where licensed material will be used or stored must be described. If equipment used in licensed activities is required to be described by license condition or regulation, or if information regarding this equipment is requested by appropriate licensing guidance, a description of all equipment changes should be provided. Changes in procedures, including routine operating and emergency procedures must be reviewed to ensure that they are adequate for the types and uses described on the license. Changes in personnel that would require a license amendment, even without the change of ownership, must be submitted as requested in the appropriate licensing guidance.

Response from the Licensee:

- ☐ Describe changes in place of use, including potentially affected adjacent areas, as required.
- ☐ Describe changes in facilities where licensed material is to be used or stored.

- ☐ Describe changes in equipment to be used in the licensed program.
- ☐ Submit relevant procedural changes.

5.4 Surveillance Records

Regulations: 10 CFR 30.34(b); 10 CFR 40.46; 10 CFR 70.36

Criteria: Prior to the approval of a change of control, licensees or applicants must submit a review of the status of all applicable surveillance requirements and records. This should include an indication of whether the surveillance program is current and if it will be current at the time of transfer.

Discussion: Typical surveillance requirements include leak tests, physical inventories, ventilation measurements, and conductivity tests. Surveillance requirements specific to the types of use may be found in the license, the regulations, the appropriate volume in the NUREG-1556 series, or any other pertinent guidance NRC published. The licensee must review any and all pertinent surveillance records to determine if they are current and to ensure that the records will be current at the time of transfer, or include an explanation if this is not the case. The licensee may perform the surveillance as authorized by its license. The licensee may also choose to have surveillance items performed by another party, such as a contractor or the transferee, as authorized by the license and if agreeable to both parties. It should be noted that the requirement for surveillance items in the regulations or the license is not waived due to a change of control.

Response from the Licensee:

- ☐ Submit a statement that all required surveillance has been performed, documented, and reviewed, including the results, if appropriate.
- ☐ If surveillance items are not or will not be completed, submit the reasons, any corrective actions, and/or the date these corrective actions will be submitted to NRC.

5.5 Decommissioning and Related Records Transfers

Regulations: 10 CFR 20.1401, 20.1402, 20.1501; 10 CFR 30.32(h), 30.34(b), 30.35(g), 30.51; 10 CFR 40.36(f), 40.46; 10 CFR 70.25(g), and 70.36

Criteria: Prior to the approval of a change of control, NRC regulations require that licensees arrange for the transfer and maintenance of records important to the safe and effective decommissioning of facilities involved in licensed activities. NRC also requires a description of the status of the licensed facility, with regard to ambient radiation levels and fixed and/or removable contamination as a result of NRC-licensed activities. The transferee must confirm, in writing, that they accept full responsibility for the decommissioning of the site, including any contaminated facilities and equipment.

Discussion: Licensees are required to maintain certain records important to safe and effective decommissioning, including sealed source leak test results, evaluations concerning waste disposal by release as effluents (either air or water), release to sewers, incineration, disposal of liquid scintillation medium and animal tissue as if it were not radioactive, and disposal by methods specifically allowed through the license.

After the transfer, the new licensee will become responsible for maintaining these records until the license is terminated. If licensed activities will continue at the same location, NRC requires confirmation that all the records of the evaluations mentioned before have been transferred to the new licensee. If the license will be terminated, these records must be forwarded to the appropriate NRC regional office.

No change of control or ownership or license termination will be authorized until all required records have been transferred to the new licensee or to NRC, as appropriate.

The regulations require that before licenses are transferred or assigned, all records need to be transferred to the new licensee. The regulations require that all records of measurements and calculations used to evaluate the release of radioactive effluents to the environment and records of certain disposals be transferred to the new licensee before the license is transferred or assigned, unless the existing licensee was only authorized to possess and use unsealed material with a half-life of less than 120 days or material in a sealed source form with no history of source leakage.

The current licensee must document ambient radiation levels and the presence or absence of contamination. The documentation must include, as appropriate, the method and sensitivity of the evaluation. If contamination is present, the documentation should describe how and when decontamination will occur or indicate that the timing and means of decontamination and/or decommissioning have not yet been determined.

The current licensee must also discuss how the parties agree to assume responsibility for the decontamination and decommissioning of licensed facilities. Those licensees required under 10 CFR 30.35, 40.36, and/or 70.25 "Financial assurance and recordkeeping for decommissioning," to provide evidence of adequate resources to fund any required decommissioning must describe the effect that the change of control will have on financial assurance for decommissioning. As necessary, documents describing financial assurance must be amended to reflect the change in control. This documentation may refer to decontamination plans, including any required financial assurance arrangements of the transferor that were previously submitted in support of a decommissioning funding plan. If licensed activities will continue throughout the transfer process, the parties should agree as to whether a survey will be performed prior to the transfer to confirm the absence of contamination or whether the transferee will agree to accept the facility "as is" on the date of transfer.

Response from the Licensee:

- State the following: "Pursuant to 10 CFR 30.35(g), we shall maintain drawings and records important to decommissioning and will transfer these records to an NRC or Agreement State licensee before licensed activities are transferred; or we will transfer the records to the appropriate NRC regional office before the license is terminated."

AND

- ☐ Describe the method and proposed timetable for the transfer of required records.
- ☐ Provide a commitment by the transferee to maintain the records received from the transferor.

- ☐ Provide a description of the facility with regard to contamination and ambient radiation levels.
- ☐ Describe any decontamination to prepare the facility for decommissioning prior to the change of control.
- ☐ If decommissioning will not occur until after the change of control, describe any contamination and confirm that the transferee is knowledgeable of the extent and levels of contamination and applicable decommissioning requirements.
- Indicate whether operations will continue during the transfer process; if so, provide either an agreement to perform a survey confirming that the facility is free of contamination or agreement by the transferee to accept the facility “as is” on the date of transfer.

Notes:

- Licensees should contact NRC regional or Headquarters personnel to determine acceptable methods and criteria for decommissioning and releasing licensed facilities for unrestricted use. (See NUREG-1757, “Consolidated Decommissioning Guidance,” for guidance on decommissioning).
- ☐ The licensee or applicant should refer to Section 9.11 for a discussion of the records involved in the management and disposal of radioactive waste specific to their type of licensed program.

5.6 Transferee’s Commitment to Abide by the Transferor’s Commitments

Regulations: 10 CFR 30.34(b); 30.39; 10 CFR 40.46; 10 CFR 70.36

Criteria: The transferee must either (i) commit to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license, or (ii) provide a description of its own program to comply with the license and all applicable regulations.

Discussion: The transferee may agree to abide by all constraints, conditions, requirements, representations, and commitments the transferor made previously to NRC. This would include, but not be limited to, information submitted in support of license amendments (including documents itemized in the tie-down condition of the license) and the maintenance of decommissioning records required by 10 CFR 30.35, 40.36, and 70.25. This would also include completion of corrective actions for open inspection items and enforcement actions and, if required, implementation of site decontamination and decommissioning activities.

Alternatively, the transferee may submit a description of its own program to ensure compliance with the license and regulations.

With regard to open inspection items and/or enforcement actions, the transferee should confirm, in writing, that it is knowledgeable of and accepts full responsibility for open inspection items and/or any resulting enforcement actions. Alternatively, the transferee may propose other measures for meeting these requirements, or the transferor may provide a commitment to close out all such actions with NRC before license transfer.

Response from Licensee:

- Provide an agreement to abide by all constraints, license conditions, requirements, representations, and commitments identified in and attributed to the existing license or a description of the transferee's program to ensure compliance with the license and regulations.
- ☐ Provide a description of action to be taken to resolve open inspection and enforcement issues.

6 BANKRUPTCY

Regulations: 10 CFR 30.34(h); 10 CFR 31.5(c)(13)(ii); 10 CFR 40.41(f); 10 CFR 70.32(a)(9)

Criteria: A specific licensee and those general licensees who are also registrants under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 31.5 (c)(13) must notify the appropriate U.S. Nuclear Regulatory Commission (NRC) Regional Administrator, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy by or against (i) a licensee, (ii) an entity controlling the licensee, or (iii) an affiliate of the licensee.

This notification must identify the bankruptcy court in which the petition was filed and the date of filing. Specific legal definitions of the terms “entity” and “affiliate,” as used in this regulation, appear in 11 U.S.C. 101(15) and in 11 U.S.C. 101(2), respectively.

Discussion: A licensee’s financial condition could affect its ability to control licensed material. Therefore, NRC must be notified so it can ensure that appropriate measures to protect the public health and safety have been or will be taken. These measures include the following:

- ☐ maintaining control and security of licensed material and contaminated facilities
- ☐ maintaining control and security of sensitive matter and information, including computer networks
- ☐ ensuring that licensed material is transferred only to authorized NRC or Agreement State licensees
- ☐ ensuring that properly trained and experienced personnel are retained to implement appropriate radiation safety measures

Licensees who have filed for bankruptcy remain responsible for all regulatory requirements.

There are different types of bankruptcies described in Title 11 of the United States Code. Of these, the following two types most frequently involve NRC:

- ☐ Chapter 7 is used primarily by individuals and by businesses who wish to free themselves from debt simply and inexpensively, and involves liquidation. The debtor may enter Chapter 7 bankruptcy voluntarily, or be forced to enter it involuntarily by creditors. The creditors of a debtor, as well as the debtor, have the right under Chapter 11 to convert to a case under Chapter 7.
- ☐ Chapter 11 is generally used to reorganize a business; it allows the debtor to continue its business operations by a plan of reorganization in the hopes it can be returned to a viable state. As under Chapter 7, the debtor may enter Chapter 11 bankruptcy either voluntarily or involuntarily.

The filing of a petition in bankruptcy court triggers the automatic stay provision in Section 362(a) of the United States Bankruptcy Code. This provision stays legal actions against the debtor or against the property of the bankruptcy estate, except in certain limited circumstances that include public health, safety, and environmental obligations. [See *Midlantic National Bank v New Jersey Department of Environmental Protection*, 474 U.S. 494 (1986) and *In re*

Chateaugay Corporation, 944 F.2d 997 (2d Cir 1991)]. Generally, once a petition for bankruptcy is filed, the assets of the debtor can be expended or distributed only with the supervision of the bankruptcy court and in accordance with statutory requirements and priorities.

Any owner of contaminated property transferred by the licensee before completion of decommissioning must comply with all applicable NRC requirements, including obtaining an NRC license and completing decommissioning. Additionally, a reorganized entity emerging from Chapter 11 bankruptcy is required to receive NRC's written approval prior to its assumption of control over licensed activities.

NRC licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by the NRC.

- Appendix G of this NUREG describes NRC's procedures for reviewing bankruptcy actions. These procedures ensure that bankruptcy cases are managed in a fully coordinated manner with all involved NRC staff.

Response from Licensee or Applicant: A licensee (or an entity controlling the licensee, or an affiliate of the licensee) must immediately notify the appropriate NRC Regional Administrator, in writing, of the following:

- ☐ bankruptcy court in which the petition was filed
- ☐ date that the petition was filed

Licensees are requested to provide the information described in Appendix F of this NUREG, by fax, e-mail, or first-class mail. If submitting information by e-mail, this should be a portable document format (pdf) file containing a formal document, such as a signed and dated company letter.

Notes:

- ☐ The requirements in these regulations apply to a bankruptcy proceeding for or against the licensee itself, an entity controlling the licensee, an entity listing the licensee as a property of the estate, or an affiliate of the licensee. For example, Company A owns Company B, and Company B is an NRC licensee. Company A files to reorganize under Chapter 11 of the bankruptcy law. Company B must notify the NRC immediately after such a filing.
- ☐ Licensees (or entities controlling a licensee, or affiliates of the licensee) may contact the appropriate NRC regional or Headquarters office for further information or guidance.
- ☐ General licensees that have filed for bankruptcy have the responsibility to ascertain the regulations that are applicable, and must comply with any regulations specific to their situation.

7 HOW TO FILE

7.1 Application Preparation

Applicants for a materials license should do the following:

- ☐ Use the most recent guidance in preparing an application.
- ☐ Complete U.S. Nuclear Regulatory Commission (NRC) Form 313 (Appendix A of this NUREG), Items 1 through 4, 12, and 13, on the form itself. A link to the form is available at <http://www.nrc.gov/reading-rm/doc-collections/forms/>.
- ☐ Complete NRC Form 313, Items 5 through 11, on supplementary pages.
- ☐ Provide sufficient detail for NRC to determine that equipment, facilities, training, experience, and the radiation safety program are adequate to protect health and safety and minimize danger to life and property.
- ☐ For each separate sheet other than NRC Form 313 submitted with the application, identify and cross-reference submitted information to the item number on the application or the topic to which it refers.
- ☐ Avoid submitting proprietary information and personally identifiable information. If submitted, proprietary, personal privacy, security-related, and other sensitive information should be clearly identified according to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2.390, "Public inspections, exemptions, requests for withholding" (see Chapter 13, "Identifying and Protecting Sensitive Information").

7.2 Where to File

Applicants wishing to possess or use licensed material in any State, U.S. territory, or U.S. possession subject to NRC jurisdiction must file an application with the NRC regional office for the locale in which the material will be possessed or used. Figure 2-1 identifies the NRC's four regional offices and their respective areas for licensing purposes and the Agreement States. Note that all materials applications are submitted to Regions I, III, or IV. All applicants for materials licenses located in the Region II geographical area should send their applications to Region I.

In general, applicants wishing to possess or use licensed material in Agreement States must file an application with the Agreement State and not with the NRC. However, if work will be conducted at Federally controlled sites or Federally recognized Indian Tribal lands in Agreement States, applicants must first determine the jurisdictional status of the land in order to determine whether NRC or the Agreement State has regulatory authority. See Chapter 2, "Agreement States," for additional information.

7.3 **Paper Applications**

Paper applications received by the NRC are scanned through an optical character reader and converted to an electronic format. To ensure a smooth transfer to an electronic format, applicants should do the following:

- Submit all documents, typed, on 8½ x 11-inch or legal-sized paper that will feed easily into a document scanner.
- ☐ Choose typeface designs that are sans serif, such as Arial, Helvetica, or Futura.
- ☐ Use 11-point or larger font.
- ☐ Avoid stylized characters, such as script or italics.
- ☐ Ensure that the print is clear and sharp.
- ☐ Ensure that there is high contrast between the ink and paper (black ink on white paper is best).

Applications must be signed by the applicant, licensee, or a person duly authorized, as required by 10 CFR 30.32(c) (see Section 9.13, "Certification").

7.4 **Electronic Applications**

Applications may be submitted in electronic form via the NRC's Electronic Information Exchange, or CD-ROM. Detailed guidance on making electronic submissions can be obtained by visiting NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.

8 APPLICATION AND LICENSE FEES

Each application for which a fee is specified must be accompanied by the appropriate fee. Refer to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 170.31, "Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses," to determine the amount of the fee. The U.S. Nuclear Regulatory Commission (NRC) will not issue a license until the fee is received. Consult 10 CFR 170.11, "Exemptions," for information on exemptions from these fees. Once the technical review of an application has begun, no fees will be refunded. Application fees will be charged regardless of the NRC's disposition of an application or the withdrawal of an application.

Most NRC licensees are also subject to annual fees; refer to 10 CFR 171.16, "Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC." Consult 10 CFR 171.11 for information on exemptions from annual fees and 10 CFR 171.16(c) on reduced annual fees for licensees that qualify as "small entities." Note that in order to pay reduced fees, a licensee that qualifies as a "small entity" must provide proper certification of this status to the NRC each year along with its annual fee payment.

NRC does not impose fees for review of notification of change of control or of bankruptcy. However, NRC will assess a fee if a new license is required, based on a review of the information provided. Appendix E of this NUREG lists the different transactions and resulting licensing actions that may be needed.

Direct all questions about the NRC's fees or completion of Item 12 of NRC Form 313 to the Office of the Chief Financial Officer at NRC Headquarters in Rockville, MD, 301-415-7554. Information about fees may also be obtained by calling NRC's toll-free number, 800-368-5642, extension 415-7554. The e-mail address is Fees.Resource@nrc.gov.

9 CONTENTS OF AN APPLICATION

As noted elsewhere in this report, changes of control or bankruptcies that result in changes in the licensee's radiation safety program generally will require that the license be amended. The following information applies to the indicated items on the U.S. Nuclear Regulatory Commission (NRC) Form 313 (Appendix A of this NUREG). Persons are required to use NRC Form 313 in applying for a new or amended license under Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 30, 40, or 70 (please refer to 10 CFR 70.22, "Contents of applications," and 10 CFR 70.34, "Amendment of licenses," for the regulatory requirements for applying for a new or amended special nuclear material license under Part 70). Not all amendment actions will require that each item on NRC Form 313 be addressed. Applications for amendment of current licenses should address only the changes necessary to reflect changes in control.

All information submitted to the NRC during the licensing process may be incorporated as part of the license and will be subject to review during inspection.

9.1 **Item 1: License Action Type**

For those situations where a change in control will result in the need to amend or apply for a new license, indicate the following: (Appendix D of this NUREG lists recommended licensing actions for different transactions.)

This is an application for (check appropriate item):

Type of Action	License No.
<input type="checkbox"/> A. New License	Not Applicable
<input type="checkbox"/> B. Amendment	XX-XXXXXX-XX
<input type="checkbox"/> C. Renewal	XX-XXXXXX-XX

Check box A for a new license request. Note that a precensing visit may be required prior to issuance of the license.

Check box B for an amendment to an existing license, and provide the license number.

Check box C for a renewal of an existing license, and provide the license number.

9.2 **Item 2: Name and Mailing Address of Applicant**

List the legal name of the applicant's corporation or other legal entity with direct control over use of the radioactive material. A division or department within a legal entity may not be a licensee. An individual may be designated as the applicant only if the individual is acting in a private capacity and the use of the radioactive material is not connected with employment in a corporation or other legal entity. Provide the mailing address where correspondence should be sent. A post office box number is an acceptable mailing address.

Notify NRC of changes in mailing address. These changes do not require a fee.

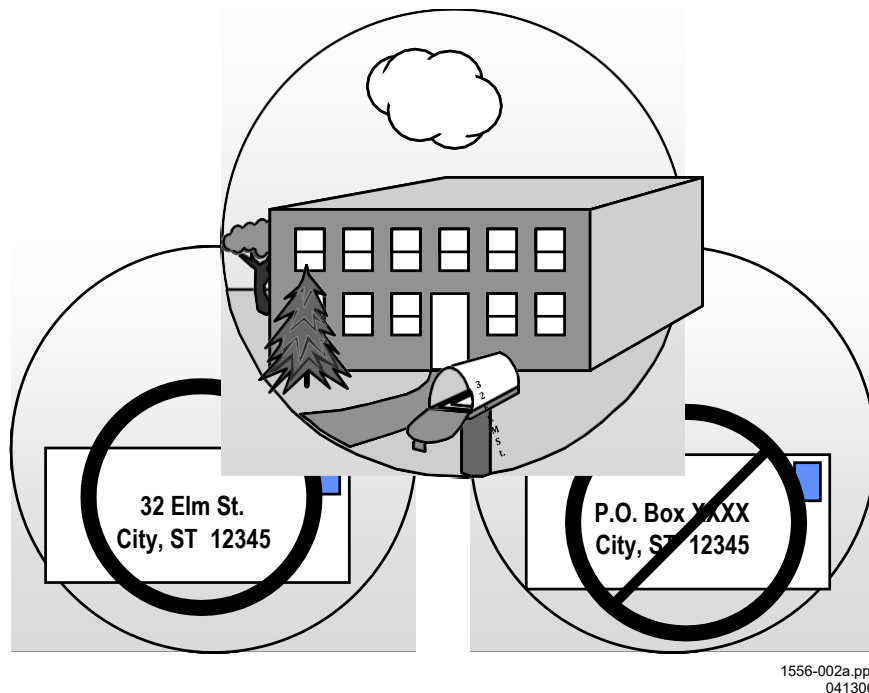
Note: The NRC must be notified and the transfer approved before control of the license is transferred (see Chapter 5, "Change of Control"). The NRC must also be notified when bankruptcy proceedings have been initiated (see Chapter 6, "Bankruptcy").

9.3 **Item 3: Address(es) Where Licensed Material Will Be Used or Possessed**

Specify the street address, city, and State or other descriptive address (e.g., on Highway 10, 5 miles east of the intersection of Highway 10 and State Route 234, Anytown, State) for each facility. The descriptive address should be sufficient to allow an NRC inspector to find the facility location. A post office box address is not acceptable (see Figure 9-1). In addition, applicants are encouraged to provide global positioning system (GPS) coordinates, as appropriate.

If an applicant submits documents that give the exact location of use and storage for any amount of radioactive materials, the applicant should mark these documents as “Security Related Information—Withhold under 10 CFR 2.390.” See Chapter 13, “Identifying and Protecting Sensitive Information,” for more details.

A license amendment is required before receiving, using, or storing licensed material at an address or location not already listed on the license.



An acceptable location of use specifies street address, city, State, and zip code and does not include a post office box number.

Figure 9-1. Location of Use

An NRC license does not relieve a licensee from complying with other applicable Federal, State, or local regulations (e.g., local zoning requirements).

It should be noted that if a current licensee merges with another licensee and becomes a multi-site licensee or if a current multi-site licensee increases the number of authorized places

of use on the subsequent license, consideration must be given to maintaining safe operations and providing adequate oversight.

Notes: As discussed in Section 5.5, “Decommissioning and Related Records Transfers,” licensees must maintain permanent records describing where licensed material was used or stored while the license was in effect. This is important for making future determinations about the release of these locations for unrestricted use (e.g., before the license is terminated). Licensees who increase the authorized quantities of licensed materials possessed under a license as the result of a change of control (such as merger, acquisition of assets, or bankruptcy-related reorganization) must evaluate, and modify if needed, the amount of funding needed to ensure the safe and effective decommissioning of licensed activities.

9.4 Item 4: Person To Be Contacted About This Application

Identify the individual who can answer questions about the application, and include a telephone number where the individual may be contacted. Also include business cell phone numbers and e-mail addresses. This individual, usually the radiation safety officer (RSO), will serve as the point of contact during the review of the application. If this individual is not a full-time employee of the licensed entity, his or her position and relationship to the licensee should be specified. The NRC should be notified if the person assigned to this function changes or if his or her telephone number, cell phone number, or e-mail address change. Notification of a contact change is only provided for informational purposes and would not be considered an application for license amendment, unless the notification involves a change in the contact person who is also the RSO.

As indicated on NRC Form 313 (Appendix A of this NUREG), Items 5 through 11 should be submitted on separate sheets of paper. Applicants should note that using the suggested wording of responses and committing to use the model procedures in this report and in the various appropriate volumes in the NUREG–1556 series will facilitate NRC’s review.

9.5 Item 5: Radioactive Material

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: NRC will approve an application for a new or amended license authorizing the possession of byproduct, source, and/or special nuclear material if the appropriate regulatory requirements are met.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted for the licensed materials to be possessed.

Response from Applicant: Licensees should submit the information on licensed materials to be possessed, as specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes in types, forms, and quantities of licensed materials to be possessed. It is also helpful to indicate what authorized materials will remain unchanged.

9.5.1 Financial Assurance and Recordkeeping for Decommissioning

Regulations: 10 CFR 30.32(h); 10 CFR 30.35; 10 CFR 30.51(f); 10 CFR 40.31(i); 10 CFR 40.36; 10 CFR 40.61(f); 10 CFR 70.22(a)(9); 10 CFR 70.25; 10 CFR 70.51(a)(3)

Criteria: A licensee authorized to possess sufficient licensed material to require financial assurance in accordance with 10 CFR 30.35, 10 CFR 40.36, or 10 CFR 70.25, must submit a Decommissioning Funding Plan (DFP) and/or provide a certification of financial assurance (FA) for decommissioning. Licensees must maintain records important to decommissioning of the facility in an identified location until the site, or any area, is released for unrestricted use. Licensees must transfer these records either to the new licensee when licensed activities are transferred or assigned, or to the appropriate NRC regional office when the license is terminated.

Discussion: Licensees who increase the authorized quantities of licensed materials possessed under a license as the result of a change of control (such as merger, acquisition of assets, or bankruptcy-related reorganization) must evaluate, and modify if needed, the amount of funding available to ensure the safe and effective decommissioning of licensed activities.

Decommissioning should be carried out with minimum impact on public and occupational health and safety and the environment. There are two applicable sets of requirements: (i) financial assurance, which applies to some licensees, and (ii) recordkeeping, which applies to all licensees.

NRC regulations requiring FA or a DFP are designed to provide reasonable assurance that the decommissioning of licensed facilities will be accomplished in a safe and timely manner, and that licensees will provide adequate funds to cover all costs associated with decommissioning. These requirements, if applicable, specify that a licensee either set aside funds for decommissioning activities or provide a guarantee, through a third party, that funds will be available. Applicants are required to submit FA for decommissioning or a DFP when the authorization to possess radioactive material with half-lives ($t_{1/2}$) greater than 120 days exceeds certain limits. Criteria for determining whether an applicant is required to submit a DFP or has an option of submitting either a DFP or FA for decommissioning appear in 10 CFR 30.35, 10 CFR 40.36, and 10 CFR 70.25.

Criteria relating to the use of self-guarantees or parent company guarantees can be found in Appendices A, C, D, and E to 10 CFR Part 30.

NUREG-1757, Volume 3, "Consolidated Decommissioning Guidance—Financial Assurance, Recordkeeping, and Timeliness," provides guidance acceptable to the NRC staff on the information to be submitted for establishing financial assurance for decommissioning.

The requirements for maintaining records important to decommissioning, including the type of information required, appear in 10 CFR 30.35(g), 10 CFR 40.36(f), and 10 CFR 70.25(g). All licensees are required to maintain these records in an identified location until the site is released for unrestricted use. In the event that control over licensed activities is transferred to another person, these records shall be transferred to the new licensee upon the transfer of control. The new licensee is responsible for maintaining these records until the license is terminated. When the license is terminated, these records must be transferred to the NRC.

Careful recordkeeping of radionuclides used, including form, amount, and areas where used, will facilitate area release and license termination.

Section 5.5, “Decommissioning and Related Records Transfers,” contains additional information about keeping and transferring records that are important to safe and effective decommissioning.

Response from Applicant:

- State the following “Pursuant to 10 CFR 30.35, 10 CFR 40.36, or 10 CFR 70.25, we shall transfer records important to decommissioning to the new licensee before licensed activities are transferred or assigned. Furthermore, pursuant to 10 CFR 30.51(f), 10 CFR 40.61(f), or 10 CFR 70.51(a)(3), prior to license termination, we shall forward the records required by 10 CFR 30.35(g), 10 CFR 40.36(f), or 10 CFR 70.25(g) to the appropriate NRC regional office.”

AND

- If financial assurance is required, submit evidence of financial assurance following the guidance of NUREG–1757, Volume 3.

Reference: NUREG–1757, Volume 3, “Consolidated Decommissioning Guidance—Financial Assurance, Recordkeeping and Timeliness”

9.6 Item 6: Purpose(s) for Which Licensed Material Will Be Used

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the proposed activity is authorized by the Atomic Energy Act of 1954, as amended.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted concerning the authorized uses of licensed materials.

Response from Applicant: Licensees should submit the information on authorized uses of licensed materials specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to authorized use of licensed materials. It is also helpful to indicate what authorized uses will remain unchanged.

9.7 Item 7: Individual(s) Responsible for Radiation Safety Program and Their Training and Experience

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the individuals responsible for the radiation safety program and their training and experience.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted concerning the identity, as well as the training and experience, of the individuals responsible for the radiation safety program. Generally, these individuals include the RSO and any authorized users who will be named on the license. It is NRC licensing policy to name an RSO on all NRC materials licenses.

Response from Applicant: Licensees should submit the information on the individuals responsible for the radiation safety program, as specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Licensees should particularly focus on whether a change of control or bankruptcy will result in changes in the personnel responsible for the radiation safety program. Licensees must specify who is to be named on the license as the RSO. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the personnel responsible for the radiation safety program. It is also helpful to indicate what personnel with radiation safety oversight components of the radiation safety program will remain unchanged.

9.8 Item 8: Training for Individuals Working in or Frequenting Restricted Areas

Regulations: 10 CFR Part 19; 10 CFR Part 20; 10 CFR Part 30; 10 CFR Part 33; 10 CFR Part 34; 10 CFR Part 35; 10 CFR Part 36; 10 CFR Part 39; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the appropriate regulatory requirements are met regarding the training of individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted about the training for individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas.

Response from Applicant: Licensees should submit information on the training for individuals, such as occupationally exposed workers and ancillary personnel, working in or frequenting restricted areas as specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety training program. It is also helpful to indicate what components of the radiation safety training program will remain unchanged.

9.9 Item 9: Facilities and Equipment

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee (or applicant) has facilities and equipment that are adequate to protect health and to minimize danger to life or property.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted concerning the facilities and equipment needed to ensure the safe storage and use of licensed materials.

Response from Applicant: Licensees should submit information demonstrating that adequate facilities and equipment are available for licensed activities as specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing facilities. It is also helpful to indicate what components of the existing facilities will remain unchanged.

9.10 Item 10: Radiation Safety Program

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the appropriate regulatory requirements are met demonstrating that the licensee's (or applicant's) radiation safety program is adequate to protect health and minimize danger to life or property.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted on the specific aspects of the radiation safety program to demonstrate that the program will be adequate to ensure the safe receipt, storage, use, transfer, and disposal of licensed materials.

Generally, all licensees or applicants should include detailed descriptions of the following components of their radiation safety program. However, this list is generic, and some licensees may need to address additional aspects of their radiation safety program while others may not need to include information about all of the following items:

- ☐ A description of the audit program used to review at least annually the content and implementation of the radiation protection programs to ensure the following:
 - Compliance with NRC and Department of Transportation regulations (as applicable) and the terms and conditions of the license.
 - Occupational doses and doses to members of the public are as low as reasonably achievable (ALARA) (10 CFR 20.1101, "Radiation protection programs").
 - Records of audits and other reviews of program content are maintained for 3 years.

NRC routinely reviews licensee's records to verify if appropriate corrective actions were implemented in a timely manner to address recurrence. It is in the best interest of the licensee to identify potential violations of regulatory requirements and take necessary steps to correct them. NRC can opt to exercise discretion and may elect not to cite the licensee for these violations if prompt and effective corrective actions are implemented. NRC's Enforcement Policy may be found online at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>, and the Enforcement Manual may be found online at <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>. For examples of NRC's use of discretion in issuing a

notice of violation, refer to the most recent version of NRC's enforcement documents at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/>.

- a description of the radiation monitoring equipment available for making required surveys and the program to keep that equipment properly calibrated
- a description of the procedures used to safely receive and maintain sufficient accountability of licensed materials
- a description of the program for monitoring the radiation dose of individuals who are occupationally exposed as the result of licensed activities
- a description of the program for ensuring that doses to members of the general public as the result of licensed activities do not exceed regulatory limits and are ALARA
- a description of normal, emergency, and operating procedures
- a description of the procedures for leak testing any sealed sources authorized on the license
- a description of the procedures for maintaining equipment containing licensed materials and radiation safety-related equipment
- a description of the procedures for safely packaging and transporting licensed materials
- descriptions of the facility design and procedures for operating to minimize contamination of the facility and the environment; to facilitate eventual decommissioning; and to minimize, to the extent practicable, the generation of radioactive waste

Response from Applicant: Licensees should submit information describing a radiation safety program that is appropriate and adequate for the proposed licensed activities as specified in the applicable volume of the NUREG-1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to the existing radiation safety program. It is also helpful to indicate what components of the radiation safety program will remain unchanged.

References: The current version of NRC's Enforcement Policy is included on NRC's Web site at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

IN 96-28, "Suggested Guidance Relating to Development and Implementation of Corrective Action," dated May 1, 1996, can be found on the NRC's Generic Communications Web page under Information Notices: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>.

9.11 Item 11: Waste Management

Regulations: 10 CFR Part 30; 10 CFR Part 40; 10 CFR Part 70

Criteria: An application for a new or amended license authorizing the use of byproduct, source, and/or special nuclear material will be approved if the appropriate regulatory requirements are met. The licensee (or applicant) must demonstrate that it has procedures and equipment to

safely dispose of licensed materials in accordance with NRC requirements and to maintain appropriate records of these disposals.

Discussion: Licensees or applicants, and the NRC staff, should refer to the appropriate program-specific guidance found in the NUREG–1556 series or other appropriate guidance documents to determine what information should be submitted concerning the facilities, equipment, and procedures needed for the safe disposal of licensed materials, or they should contact the appropriate NRC Headquarters or regional office for guidance or information. Licensees should ensure that any transfer of control or bankruptcy does not adversely impact the waste management program.

Applicants or licensees may request alternate methods not specifically described in the regulations for the disposal of radioactive waste generated at their facilities. Such requests must describe the waste containing licensed material, including the physical and chemical properties that may be important to assess risks associated with the waste, and the proposed manner and conditions of waste disposal. Additionally, the applicant must submit its analysis and evaluation of pertinent information on the nature of the environment, nature and location of other affected facilities, and procedures to ensure that radiation doses are maintained ALARA and within regulatory limits.

Response from Applicant: Licensees or applicants should submit the information about their equipment and procedures (including the maintenance of required records) for the safe disposal of licensed materials as specified in the applicable volume of the NUREG–1556 series or other appropriate guidance documents. Persons applying for an amendment of an existing license as the result of a proposed change of control or a bankruptcy should specifically describe any changes to their existing radioactive waste management program. It is also helpful to indicate what components of the radioactive waste management program will remain unchanged.

9.12 Item 12: License Fees

On NRC Form 313, enter the appropriate fee category from 10 CFR 170.31 and the amount of the fee enclosed with the application.

Direct all questions about the NRC's fees or the completion of Item 12 of NRC Form 313 to the Office of the Chief Financial Officer at NRC Headquarters in Rockville, MD, 301-415-7554. Information about fees may also be obtained by calling NRC's toll-free number, 800-368-5642, extension 415-7554. The e-mail address for fees questions is Fees.Resource@nrc.gov.

9.13 Item 13: Certification

A representative of the corporation or legal entity filing the application should sign and date NRC Form 313. The representative signing the application must be authorized to make binding commitments and to sign official documents on behalf of the applicant. As discussed previously in Chapter 3, "Management Responsibility," signing the application acknowledges management's commitment to and responsibility for the radiation protection program. The NRC will return all unsigned applications for proper signature.

Notes:

- ☐ It is a criminal offense to knowingly and willfully make a false statement or representation on applications or correspondence (18 U.S.C. 1001).
- ☐ When the application references commitments, those items will be incorporated into the license and, therefore, become binding regulatory requirements.

10 LICENSE AMENDMENTS AND RENEWALS

It is the licensee's obligation to keep the license current. If any of the information provided in the original application is to be modified or changed, the licensee must submit an application for a license amendment before the change takes place. The change is not in effect until the amendment has been issued. Also, to continue the license after its expiration date, the licensee must submit an application for a license renewal at least 30 days before the expiration date [10 CFR 2.109(a), 10 CFR 30.36(a)].

Applicants for license amendment or renewal should do the following:

- ☐ Use the most recent guidance in preparing an amendment or renewal request.
- ☐ Submit either an U.S. Nuclear Regulatory Commission (NRC) Form 313 or a letter requesting amendment or renewal.
- ☐ Provide the license number and docket number.
- For renewals, provide a complete and up-to-date application, if many outdated documents are referenced or there have been significant changes in regulatory requirements, the NRC's guidance, the licensee's organization, or the licensee's radiation protection program. Alternatively, describe clearly the exact nature of the changes, additions, and deletions.

11 APPLICATIONS FOR EXEMPTIONS

Regulations: Title 10 of the *Code of Federal Regulations* (10 CFR) 19.31; 10 CFR 20.2301; 10 CFR 30.11; 10 CFR 40.14; 10 CFR 70.17

Criteria: Licensees may request exemptions from the U.S. Nuclear Regulatory Commission (NRC) regulations. The licensee must demonstrate that the exemption is authorized by law, will not endanger life, property, or the common defense and security, and is otherwise in the public interest. Licensees may also use existing specific exemptions outlined in the 10 CFR regulations if they meet the established criteria.

Discussion: Various sections of the NRC's regulations address requests for exemptions (e.g., 10 CFR 19.31, "Application for exemptions;" 10 CFR 20.2301, "Applications for exemptions;" 10 CFR 30.11, "Specific exemptions;" 10 CFR 40.14, "Specific exemptions;" 10 CFR 70.17, "Specific exemptions"). These regulations state that the NRC may grant an exemption, acting on its own initiative or on an application from an interested person.

Exemptions are not intended to revise regulations or to apply to large classes of licensees and are generally limited to unique situations. Requests for exemptions submitted to the NRC must identify the regulation for which the exemption is being requested and include a justification for the requested exemption.

Until the NRC has granted an exemption in writing, licensees must comply with all applicable regulations.

12 TERMINATION OF ACTIVITIES

Regulations: Title 10 of the *Code of Federal Regulations* (10 CFR) 30.34(b); 10 CFR 30.35(g); 10 CFR 30.36; 10 CFR 30.51(f); 10 CFR 40.42; and 10 CFR 70.38

Criteria: The licensee must do the following:

- ☐ Notify U.S. Nuclear Regulatory Commission (NRC), in writing, within 60 days of the occurrence of any of the following:
 - Expiration of its license.
 - A decision to permanently cease principal activities¹ at the entire site.
 - For licensees subject to 10 CFR Part 30.36, a decision to permanently cease principal activities¹ in any separate building or outdoor area that contains residual radioactivity such that the building or area is unsuitable for release according to NRC requirements.
 - For licensees subject to 10 CFR 40.42 or 10 CFR 70.38, a decision to permanently cease principal activities in any separate building or outdoor area.
 - No principal activities¹ under the license have been conducted for a period of 24 months.
 - No principal activities¹ 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 area is unsuitable for release according to NRC requirements.
- ☐ Submit a decommissioning plan, if required by 10 CFR 30.36(g), 40.42 or 70.38.
- ☐ Conduct decommissioning, as required by 10 CFR 30.36(h) and 10 CFR 30.36(j), 40.42(h) or 70.38(h).
- Submit, to the appropriate NRC regional office, a completed NRC Form 314, “Certificate of Disposition of Materials” (or equivalent information), and information demonstrating that the premises are suitable for release for unrestricted use (e.g., results of final survey, leak test results).
- ☐ Before a license is terminated, send the records important to decommissioning to the appropriate NRC regional office. If licensed activities are transferred or assigned in accordance with 10 CFR 30.34(b), 40.46(b) or 70.36(b), transfer records important to decommissioning to the new licensee in accordance with 10 CFR 30.35(g)(or similar provisions of 10 CFR Part 40 or 10CFR Part 70, as applicable).

¹‘Principal activities’ are activities which 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.

Discussion: If the licensee files for bankruptcy and the licensee's company is dissolving or selling its assets, termination of the license may be required. If the licensee no longer exists as an entity, the NRC will provide any trustee, receiver, or owner of contaminated property transferred by the licensee with written notification of its obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license.

To comply with the above criteria, before a licensee can decide whether it must notify NRC under 10 CFR 30.36(d), 40.42(d), or 70.38(d), as applicable, the licensee must determine whether residual radioactivity is present and, if so, whether the levels make the building or outdoor area unsuitable for release, according to NRC requirements. A licensee's determination that a facility is not contaminated is subject to verification by NRC inspection.

For further information, see Regulatory Issue Summary (RIS) 2015-19, "Decommissioning Timeliness Rule Implementation and Associated Regulatory Relief," dated December 21, 2015, which can be found on the NRC's Generic Communications Web page under "Regulatory Issue Summaries": <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>.

For guidance on the disposition of licensed material, see Section 9.11, "Waste Management." For guidance on decommissioning records, see Section 5.5, "Decommissioning and Related Records Transfers."

Response from Applicant: The applicant is not required to submit a response to the NRC during the initial application. The licensee's obligations in this matter begin when the license expires or at the time the licensee ceases operations, whichever is earlier. These obligations are to undertake the necessary decommissioning activities, to submit NRC Form 314 or equivalent information, and to perform any other actions as summarized in the "Criteria" above.

References:

- NRC Form 314 is available at <http://www.nrc.gov/reading-rm/doc-collections/forms>
- NUREG-1757 is available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>

13 IDENTIFYING AND PROTECTING SENSITIVE INFORMATION

All licensing applications, except for portions containing sensitive information, will be made available for review in the U.S. Nuclear Regulatory Commission (NRC) Public Document Room and electronically at the NRC Library. For more information on the NRC Library, visit <http://www.nrc.gov>.

The applicant or licensee should identify, mark, and protect sensitive information against unauthorized disclosure to the public. License applications that contain sensitive information should be marked as indicated below, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2.390, before the information is submitted to the NRC. Key examples are as follows:

- Proprietary Information and Trade Secrets: If it is necessary to submit proprietary information or trade secrets, follow the procedure in 10 CFR 2.390(b). Failure to follow this procedure could result in disclosure of the proprietary information to the public or substantial delays in processing the application. Appendix J includes a checklist for requests for withholding information from public disclosure.
- Personally Identifiable Information: Personally identifiable information (PII) about employees or other individuals should not be submitted unless specifically requested by the NRC. Examples of PII are social security number, home address, home telephone number, date of birth, and radiation dose information. If PII is submitted, a cover letter should clearly state that the attached documents contain PII, and the top of every page of a document that contains PII should be clearly marked as follows: "Privacy Act Information—Withhold Under 10 CFR 2.390." For further information, see Regulatory Issue Summary (RIS) 2007-04, "Personally Identifiable Information Submitted to the U.S. Nuclear Regulatory Commission," dated March 9, 2007, and Information Notice (IN) 2013-22, "Recent Licensing Submittals Containing Personally Identifiable Information," dated November 15, 2013, which can be found on NRC's Generic Communications Web page under "Regulatory Issue Summaries" and "Information Notices," respectively: <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>.
- Security-Related Information: Following the events of September 11, 2001, the NRC changed its procedures to avoid release of information that terrorists could use to plan or execute an attack against facilities or citizens in the U.S. As a result, certain types of information are no longer routinely released and are treated as sensitive, unclassified information. For example, certain information about the quantities and locations of radioactive material at licensed facilities and associated security measures are no longer released to the public. Therefore, a cover letter should clearly state that the attached documents contain sensitive security-related information and the top of every page of a document that contains such information should be clearly marked: "Security Related Information—Withhold under 10 CFR 2.390." For the pages having security-related sensitive information, an additional marking should be included (e.g., an editorial note box) adjacent to that material. For further information, see RIS 2005-31, "Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material," dated December 22, 2005, which can be found on NRC's Generic Communications Web page under "Regulatory Issue Summaries" at <http://www.nrc.gov/reading-rm/doc-collections/gen-comm/>. Additional

information on procedures and any updates is available at <http://www.nrc.gov/reading-rm/sensitive-info.html>.

The regulations list various forms of information that can be protected from public disclosure. These include:

- ☐ trade secrets and commercial or financial information
- ☐ interagency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with NRC
- ☐ certain records or information compiled for law enforcement purposes
- ☐ geological and geophysical information and data, including maps, or information concerning wells
- ☐ personnel, medical, or other information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy

In 10 CFR 2.390, NRC specifies the procedures and requirements for persons to submit sensitive information to NRC so that it may be properly protected from disclosure. This regulation is available electronically on the NRC Web site: <http://www.nrc.gov/reading-rm/doc-collections/cfr>.

Except for personal privacy information, which is not subject to the affidavit requirement, if NRC determines that the application or affidavit is deficient (i.e., does not contain the required information as outlined in 10 CFR 2.390), the applicant will be notified that additional information is needed and that the review will continue when the required information is received.

If the request is denied, in whole or in part, NRC will give the applicant the option of withdrawing the information or application, as permitted in 10 CFR 2.390. If the applicant decides not to withdraw the information or application, NRC will notify the applicant in writing that the request for withholding has been denied and that NRC will disregard any references concerning the proprietary status of the information.

Any part of a license application or information provided by a licensee or applicant that the NRC determines should be withheld from public disclosure will be handled in accordance with Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program," and the licensee or applicant will be notified in writing that NRC plans to honor the request. Management Directive 12.6 is available electronically on the NRC Web site: <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>.

Anyone submitting a request to withhold information from public disclosure should thoroughly review 10 CFR 2.390 and be familiar with its requirements and limitations.

Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the documents. If the need arises, NRC may send copies of this information to NRC consultants working in that area. NRC will ensure that the consultants have signed the appropriate agreements for handling proprietary information.

If the basis for withholding this information from public inspection should change in the future, such that the information could then be made available for public inspection, the licensee or applicant should promptly notify the NRC. The licensee or applicant also should understand that NRC may have cause to review this determination in the future; for example, if the scope of a Freedom of Information Act request includes the information in question. In all review situations, if NRC makes a determination adverse to the above, the licensee or applicant will be notified in advance of any public disclosure. Anyone submitting commercial or financial information they believe to be privileged, confidential, or a trade secret must remember that NRC's policy is to achieve an effective balance between legitimate concerns for the protection of competitive positions and the right of the public to be fully apprised of the basis for, and the effects of, licensing or rulemaking actions. It is within NRC's discretion to withhold such information from public disclosure.


APPENDIX A

U.S. NUCLEAR REGULATORY COMMISSION FORM 313

U.S. Nuclear Regulatory Commission Form 313

Please use the most current version of this form, which may be found at:

<http://www.nrc.gov/reading-rm/doc-collections/forms/>

NRC FORM 313 (06-2016) 10 CFR 30, 32, 33, 34 35, 36, 37, 39, and 40		U.S. NUCLEAR REGULATORY COMMISSION		APPROVED BY OMB: NO. 3150-0120		EXPIRES: 06/30/2019	
		APPLICATION FOR MATERIALS LICENSE					
INSTRUCTIONS: SEE THE CURRENT VOLUMES OF THE NUREG-1556 TECHNICAL REPORT SERIES ("CONSOLIDATED GUIDANCE ABOUT MATERIALS LICENSES") FOR DETAILED INSTRUCTIONS FOR COMPLETING THIS FORM: http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/. SEND TWO COPIES OF THE COMPLETED APPLICATION TO THE NRC OFFICE SPECIFIED BELOW.							
APPLICATION FOR DISTRIBUTION OF EXEMPT PRODUCTS FILE APPLICATIONS WITH: MATERIALS SAFETY LICENSING BRANCH DIVISION OF MATERIAL SAFETY, STATE, TRIBAL AND RULEMAKING PROGRAMS OFFICE OF NUCLEAR MATERIALS SAFETY AND SAFEGUARDS U.S. NUCLEAR REGULATORY COMMISSION WASHINGTON, DC 20555-0001 ALL OTHER PERSONS FILE APPLICATIONS AS FOLLOWS: IF YOU ARE LOCATED IN: ALABAMA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, GEORGIA, KENTUCKY, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, PENNSYLVANIA, PUERTO RICO, RHODE ISLAND, SOUTH CAROLINA, TENNESSEE, VERMONT, VIRGINIA, VIRGIN ISLANDS, OR WEST VIRGINIA, SEND APPLICATIONS TO: LICENSING ASSISTANCE TEAM DIVISION OF NUCLEAR MATERIALS SAFETY U.S. NUCLEAR REGULATORY COMMISSION, REGION I 2100 RENAISSANCE BOULEVARD, SUITE 100 KING OF PRUSSIA, PA 19406-2713				IF YOU ARE LOCATED IN: ILLINOIS, INDIANA, IOWA, MICHIGAN, MINNESOTA, MISSOURI, OHIO, OR WISCONSIN, SEND APPLICATIONS TO: MATERIALS LICENSING BRANCH U.S. NUCLEAR REGULATORY COMMISSION, REGION III 2443 WARRENVILLE ROAD, SUITE 210 LISLE, IL 60532-4352 ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, HAWAII, IDAHO, KANSAS, LOUISIANA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, PACIFIC TRUST TERRITORIES, SOUTH DAKOTA, TEXAS, UTAH, WASHINGTON, OR WYOMING, SEND APPLICATIONS TO: NUCLEAR MATERIALS LICENSING BRANCH U.S. NUCLEAR REGULATORY COMMISSION, REGION IV 1600 E. LAMAR BOULEVARD ARLINGTON, TX 76011-4511			
PERSONS LOCATED IN AGREEMENT STATES SEND APPLICATIONS TO THE U.S. NUCLEAR REGULATORY COMMISSION ONLY IF THEY WISH TO POSSESS AND USE LICENSED MATERIAL IN STATES SUBJECT TO U.S. NUCLEAR REGULATORY COMMISSION JURISDICTIONS.							
1. THIS IS AN APPLICATION FOR (Check appropriate item) <input type="checkbox"/> A. NEW LICENSE <input type="checkbox"/> B. AMENDMENT TO LICENSE NUMBER _____ <input type="checkbox"/> C. RENEWAL OF LICENSE NUMBER _____				2. NAME AND MAILING ADDRESS OF APPLICANT (Include ZIP code)			
3. ADDRESS WHERE LICENSED MATERIAL WILL BE USED OR POSSESSED				4. NAME OF PERSON TO BE CONTACTED ABOUT THIS APPLICATION			
				BUSINESS TELEPHONE NUMBER		BUSINESS CELLULAR TELEPHONE NUMBER	
				BUSINESS EMAIL ADDRESS			
SUBMIT ITEMS 5 THROUGH 11 ON 8-1/2 X 11" PAPER. THE TYPE AND SCOPE OF INFORMATION TO BE PROVIDED IS DESCRIBED IN THE LICENSE APPLICATION GUIDE.							
5. RADIOACTIVE MATERIAL a. Element and mass number; b. chemical and/or physical form; and c. maximum amount which will be possessed at any one time.				6. PURPOSE(S) FOR WHICH LICENSED MATERIAL WILL BE USED.			
8. TRAINING FOR INDIVIDUALS WORKING IN OR FREQUENTING RESTRICTED AREAS.				7. INDIVIDUAL(S) RESPONSIBLE FOR RADIATION SAFETY PROGRAM AND THEIR TRAINING AND EXPERIENCE.			
10. RADIATION SAFETY PROGRAM.				9. FACILITIES AND EQUIPMENT.			
				11. WASTE MANAGEMENT.			
12. LICENSE FEES (Fees required only for new applications, with few exceptions*) (See 10 CFR 170 and Section 170.31) *Amendments/Renewals that increase the scope of the existing license to a new or higher fee category will require a fee.				FEE CATEGORY		AMOUNT ENCLOSED \$	
13. CERTIFICATION. (Must be completed by applicant) THE APPLICANT UNDERSTANDS THAT ALL STATEMENTS AND REPRESENTATIONS MADE IN THIS APPLICATION ARE BINDING UPON THE APPLICANT. THE APPLICANT AND ANY OFFICIAL EXECUTING THIS CERTIFICATION ON BEHALF OF THE APPLICANT, NAMED IN ITEM 2, CERTIFY THAT THIS APPLICATION IS PREPARED IN CONFORMITY WITH TITLE 10, CODE OF FEDERAL REGULATIONS, PARTS 30, 32, 33, 34, 35, 36, 37, 39, AND 40, AND THAT ALL INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF. WARNING: 18 U.S.C. SECTION 1001 ACT OF JUNE 25, 1948 62 STAT. 749 MAKES IT A CRIMINAL OFFENSE TO MAKE A WILLFULLY FALSE STATEMENT OR REPRESENTATION TO ANY DEPARTMENT OR AGENCY OF THE UNITED STATES AS TO ANY MATTER WITHIN ITS JURISDICTION.							
CERTIFYING OFFICER—TYPED/PRINTED NAME AND TITLE				SIGNATURE		DATE	
FOR NRC USE ONLY							
TYPE OF FEE	FEE LOG	FEE CATEGORY	AMOUNT RECEIVED	CHECK NUMBER	COMMENTS		
			\$				
APPROVED BY				DATE			

NRC FORM 313 (06-2016)

APPENDIX B

LEGAL AND REGULATORY BASIS FOR TRANSFER OF CONTROL

Legal and Regulatory Basis for Transfer of Control

Transfer of Control – Materials Licenses

In general, no U.S. Nuclear Regulatory Commission (NRC) materials license may be transferred, assigned, or disposed of unless NRC gives its prior consent in writing. Relevant statutory and regulatory provisions are as follows:

Section 184 of the Atomic Energy Act of 1954, as amended (AEA) states, in part, the following:

No license granted hereunder and no right to utilize or produce special nuclear material granted hereby shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of this Act, and shall give its consent in writing.

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.34(b), 40.46 and 70.36 state the following:

No license issued or granted pursuant to the regulations in this part and parts 31 through 36 and 39 (30.34(b)), 40 (40.46) or special nuclear material under Part 70 (70.36) nor any right under a license shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and shall give its consent in writing.

The purpose of these regulations is to allow the NRC the opportunity to ensure that licensees provide notification whenever business decisions could involve changes in the corporate form(s) responsible for management oversight, control, or radiological safety of licensed materials.

Case Law on transfer of control:

Case law has not completely addressed the definition of “control,” in either the regulations or Section 184. However, in *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350 (1990), the Atomic Safety and Licensing Appeal Board stated, “[C]ontrol of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used.” *Id.* at n. 46. The Appeal Board went on to note, “In the instance of a corporate Part 30 or Part 50 licensee, that control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and thus the direction of the activities under the license.” *Id.* at 367 (emphasis in original).

In 1995, an Atomic Safety and Licensing Board took a broader view of Section 184. In *Safety Light Corp.* (Bloomsburg Site Decommissioning and License Renewal Denials), LBP-95-9, 41 NRC 412, 451 (1995), a case involving the transfer of byproduct materials licenses, it stated, “On its face, Section 184 not only broadly prohibits all manner of transfers, assignments, and disposals of NRC licenses, but also all manner of actions that have the effect of, in any way, directly or indirectly, transferring actual or potential control over a license without the agency’s

knowledge and express written consent.” However, not all business decisions of licensees or their parent entities require NRC consent. For example, internal changes that have no impact on the structure or funding of a licensee do not require notice to NRC. On the other hand, changes of ownership or control resulting from legal changes such as mergers, buyouts, or majority stock transfers do require prior consent. In some cases, internal management adjustments and actual changes of control may be difficult to distinguish. Therefore, it is imperative that licensees notify the Commission of not only actual, but also suspected, changes of control so that the agency may make a determination.

For example, the parent corporation of a wholly-owned licensee proposed to merge with another corporation. The licensee, a part-owner and operator of a facility, would, under the proposed merger, remain the holder of the license. Its personnel and operations would be unaffected. The parent corporation’s indirect control of the license was eliminated (as opposed to transferred to another entity); the licensee indicated to NRC that it foresaw no change in control. The licensee provided NRC with full documentation of the proposed changes. The Commission was therefore able to fully review the transactions and agreed that there was no change of control.

If a transferee proposes to purchase a licensed operation, and the transferor continues in business as a separate entity without the license, the transferee must submit notification to the Commission that reflects both the change in identity of the licensee and any other pertinent changes in the operation. The transferee can always apply for a new license by providing a complete application, for which it may use the transferor’s docketed documents as a basis. The transferor is also obligated to notify NRC of the proposed change of control; furthermore, if NRC issues a new license, the transferor must request termination of its license in a separate proceeding.

Government Agencies:

NRC is not only concerned with change of control as it occurs in private business, but also as it affects Government agencies. For Government agencies, the lowest organizational level listed in Item 1 of the license is considered to be the licensee. Therefore, NRC should be informed whenever a change in ownership or control at the lowest organizational level listed on the license occurs.

Some agencies possess a Master Materials License (MML), which authorizes a single organization within the agency to issue permits authorizing the use of licensed materials by individuals or organizations at multiple sites. NRC does not review or approve new MML permit holders and/or locations before use. A change in authority over a permit within the scope of a single MML would not constitute a change of control requiring the prior written consent of the Commission. However, a change in control from the MML licensee to another organization would require the Commission’s prior written consent. For example, change of control over a medical center from one Government agency to another agency would require the Commission’s prior written consent.

Materials licensees:

In the area of materials licensing, there are no categorical foreign ownership, control, or domination limitations, except for those pertaining to the United States Enrichment Corporation, as provided in 10 CFR 40.38 and 70.40. However, under Sections 57c, 63b, and 82b of the AEA, NRC must make a finding that issuance of the license for byproduct, source, or special nuclear material, would not be “inimical to the common defense and security, and would not

constitute unreasonable risk to the health and safety of the public.” The Commission must make the same finding when consenting to a change of control. As a part of that determination, NRC will consider foreign ownership, control, and domination.

Although NRC has never adopted any explicit criteria for determining whether a particular transaction will be “inimical to the common defense and security,” the Commission has historically focused on a relationship between a potential licensee and other entities involved in the transaction that could lead to the ultimate power of a foreign entity to direct the actions of the licensees with regard to licensed activities.

For materials licenses, indirect control by a foreign entity of 100 percent of the licensee may be permissible, provided insulation measures are taken to protect the national security. Such measures include, but are not limited to, management directives shielding directors or board members from decisions involving classified or secret information, or from the management or control of special nuclear material. For example, one materials licensee merged with a foreign-owned corporation, ultimately becoming a wholly-owned subsidiary of that foreign entity. Based upon the licensee’s commitments to maintaining its existing headquarters, management, corporate structure, key personnel, and licensed activities, the NRC staff found that the change of control of the licenses was not inimical to the common defense and security, did not present an unreasonable risk to public health and safety, and was in accordance with the AEA.

APPENDIX C

EXAMPLES OF CHANGE OF CONTROL

Examples of Change of Control

The following examples describe what constitutes a change of control or ownership. These examples are based on previous cases U.S. Nuclear Regulatory Commission (NRC) reviewed.

Direct Change of Control

The transfer of “management-related responsibilities” from one licensee to another constitutes a change of control. For example, the Acme Company filed an application to transfer control of its possession-only license for the ABC facility to XYZ, Inc. for all maintenance, characterization, decontamination, dismantling, decommissioning, and other management-related responsibilities, including the following:

- ☐ XYZ, Inc. would take responsibility for safely maintaining the containment vessel and performing characterization activities changed from the Acme Company to XYZ, Inc.
- ☐ XYZ, Inc. would take responsibility from the Acme Company for administration of all facility functions, for radiation safety activities, and for providing onsite management and continuing oversight of production activities.
- ☐ The appointment of members to the Acme Company Radiation Safety Committee and the reporting of the Committee would change from the Acme Company president to an XYZ, Inc. vice president.
- ☐ The president of XYZ, Inc. would have the authority to request audits and would receive audit reports instead of the president of the Acme Company.
- ☐ The responsibility for procedure development and implementation would change from the Acme Company to XYZ, Inc.
- ☐ The responsibility for records retention and reporting would change from the Acme Company to XYZ, Inc.
- ☐ The organization chart for the facility would be changed to reflect the addition of XYZ, Inc. as a licensee.

Under this arrangement, XYZ, Inc. would be added as a possession-only licensee for the ABC facility. Except for the management-related responsibilities listed above, the Acme Company's duties as a licensee would not otherwise be affected. NRC approved the transfer, concluding that XYZ, Inc. was qualified to be a joint holder of the facility license for the management-related functions, and that the transfer was otherwise consistent with the applicable provisions of law, regulations, and orders the NRC issued (subject to certain conditions).

Indirect Change of Control

The following are examples of indirect changes of control:

- (1) A licensee was a wholly-owned subsidiary of its parent corporation. The licensee was engaged in business associated with byproduct material licenses issued under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30. The parent entity sold its entire interest in the licensee to the individuals serving as president and vice presidents of that subsidiary. This transaction, a sale of 100 percent of the stock of the NRC-licensed

subsidiary, constituted a “transfer of control of any license” for the purposes of Section 184 of the Atomic Energy Act of 1954, as amended (AEA). Before the sale, those who possessed dominion over the full range of the operations of the parent entity had the authority, if they desired to exercise it, to determine the licensee’s activities under the licenses by reason of the licensee’s status as a wholly-owned subsidiary. Upon completion of the sale, the parent entity’s management necessarily relinquished all right to dictate how the licensed activities should be conducted. Rather, the full right to direct those activities—and thus to control the licenses themselves—became vested in the licensee’s new owners, subject to the requirement of conformity to the licenses. *Safety Light Corp.* (Bloomsburg Site Decontamination), ALAB-931, 31 NRC 350, 363-65 (1990). Please note that a sale of a less than 50 percent control of stock in a licensee might still constitute a transfer of control if that less than 50 percent control of stock represents a majority share in the licensee.

- (2) A materials licensee, Licensee, merged with another company, Holding Co., which was the wholly owned subsidiary of Buyer. This merger was accomplished in two steps:
 - (i) Buyer was empowered to designate a majority of Licensee’s Board of Directors, and
 - (ii) Licensee was later merged into Holding Co. In sum, Licensee merged with another company to become a wholly owned subsidiary of the parent. NRC concluded that an indirect change of control had occurred.

- (3) A materials licensee was wholly owned by Parent Corporation. A holding company acquired 70 percent of Parent Corporation’s stock. The holding company was, in turn, wholly owned by Acquiring Corporation. Shortly after Parent Corporation notified NRC of the transaction, Acquiring Corporation stated the following in a letter to NRC:

- The transaction would not result in any changes in Parent Corporation’s operations relating to the license.
- The transaction would not result in any change to the license, its management, its personnel (including the radiation safety officer), or the licensee’s name.
- Acquiring Company pledged to abide by the terms of the license.

NRC determined that this sale of a controlling interest of stock constituted a change of control under 10 CFR 30.34(b), 40.46, or 70.36, requiring prior notification to and consent of NRC. The Acquiring Corporation, through the Holding Company, now has ultimate authority over the conduct of licensed activities, even though there were no changes in the Parent Corporation’s operations relating to the licensee, the employees of the licensee control daily operations, and no changes occurred in personnel or facilities. The Acquiring Corporation is empowered to decide when and how the license will be used.

- (4) Parent Corporation sold substantially all of the assets of its wholly owned subsidiary, a materials licensee, to Buyer. Following the sale, the management of the licensee took the form of three bodies with discrete functions:
 - Buyer’s Board of Directors had ultimate decision-making power, control, and authority over the licensee’s operations, including oversight of day-to-day operations and responsibility for the licensee’s executives, management, and employees.

- A new governing board was established for the licensee. None of its members were affiliated with Buyer, but the board was subject to the ultimate decision and control of Buyer.
- Parent Corporation and Buyer established a committee to advise Buyer on various matters relating to the licensee, including strategic planning and approval of the licensee's Chief Executive Officer.

In addition, Parent Corporation and Buyer entered into an agreement, under which the parties intended the licensee to manage and supervise licensed activities, and maintain full control and authority over licensed materials for the purpose of avoiding a change of control under AEA Section 184. However, Buyer retained elements of control under this agreement, including the following:

- Buyer is liable for the site (Parent Corporation is to indemnify Buyer when the liability involves licensed materials).
- Buyer is to maintain adequate resources to fund decommissioning.
- Buyer agreed to accept full responsibility for open inspection items and/or any resulting enforcement actions that could have arisen within the licensed facilities prior to and following the sale.
- Buyer agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the NRC license.

Following the transaction, Parent Corporation and Buyer share some responsibilities, including paying all fees required to maintain the license and making required filings. Buyer agreed to pay Parent Corporation 50 percent of the amount required for decommissioning financial assurance.

NRC determined that this sale of assets constituted a change of control under 10 CFR 30.34(b), 10 CFR 40.46, and 10 CFR 70.36, requiring prior notification to and consent of NRC. Buyer now has ultimate authority over the conduct of the licensed activities, even though employees of the licensee control daily operations. Buyer is empowered to decide when and how the license will be used; the change of ownership, combined with Buyer's extensive managerial authority, allows Buyer to determine the policies of the licensee. In addition, Buyer took on responsibilities in the area of license maintenance and financial assurance for decommissioning.

- (5) A materials licensee (who was the transferor) sold its facility to Holding Company. Holding Company is wholly owned by Owner, which created Holding Company to control a number of its subsidiaries, including the licensee. Following the transaction, the licensee continued to operate the facility. The only changes were to the licensee's governing structure:

- The licensee changed its corporate status.
- Holding Company was empowered to elect a majority of the licensee's directors.
- The licensee's name was not changed, but it is now identified to the public as an affiliate of Holding Company.

NRC determined that this sale constituted a change of control under 10 CFR 30.34(b), requiring prior notification to and consent of NRC, because Owner, through Holding Company, now has ultimate authority over the conduct of licensed activities, even though no changes occurred in personnel or facilities. Owner is empowered to decide when and how the license will be used. The change of ownership, combined with Owner's managerial authority over the Board of Directors, results in control over the license by Owner.

- (6) A materials licensee exchanged stock with and merged into Buyer through Holding Company, a wholly owned subsidiary of Buyer. Holding Company was then dissolved, leaving the licensee a wholly owned subsidiary of Buyer. The license itself was not transferred to Buyer, and the licensee reported no change in staff responsible for radiation safety. NRC found that this transaction constituted a change of control under 10 CFR 30.34(b) and issued a notice of violation (Severity Level IV) to the licensee, who failed to obtain NRC's prior written consent to the transaction.

No Change of Control

The following are examples of cases that did not constitute a change of control:

- (1) A licensee notified NRC of a management services agreement with a contractor for the oversight of a plant, indicating that neither the agreement nor the specific changes in management would require prior NRC approval. The NRC staff concurred with this assessment because the licensee unequivocally retained ultimate authority and control over, and responsibility for, safe plant operation and regulatory compliance. Provisions of the agreement that confirmed the licensee's control of plant operations included the following:
- The licensee retained ultimate responsibility and authority for budgetary controls, operating plans, policies and procedures, regulatory matters, and the management direction of the plant.
 - The licensee retained exclusive authority and responsibility to define the economic life of the plant, as well as to retire and decommission the plant.
 - The licensee retained the power and authority to modify or terminate the authority and scope of services to be provided by the contractor.
 - Management personnel the contractor provided were approved by the licensee and served at the licensee's pleasure.
 - The licensee retained responsibility for compliance with NRC's requirements.
 - Licensed operators in the control room were solely the licensee's employees.
 - The licensee retained the right to terminate the agreement with or without cause.

In all cases, determining whether a transfer of control has taken place is the Commission's responsibility. Whenever an actual or suspected change in ownership or control may occur, the licensee must inform the Commission in order to comply with the license provisions of 10 CFR 30.34, "Terms and conditions of licenses," (or similar provisions found in other sections of Title 10). This notification must include a complete, clear description of the transaction that

will enable legal counsel to differentiate between name changes and actual changes of control. All notifications of change of control, as well as suspected changes, will be reviewed by the NRC. NRC may request additional supplemental information so that each case may be properly evaluated.

(2) Substantially all the assets of four materials licensees were restructured, resulting in a change in corporate form. All four licensees were affiliated with the same parent, both before and after the transaction. In the case of each licensee, no changes were made to the following:

- personnel having control over licensed activities (including the radiation safety officer)
- the use, possession, location, or storage of licensed materials
- the licensee's organization
- the licensee's facility
- the licensee's equipment
- the licensee's procedures.

Following the restructuring, each licensee did the following:

- Assumed full liability for facility decontamination.
- Agreed to abide by all commitments and representations previously made to the NRC by the licensee in its old corporate form.
- Agreed to abide by all constraints, conditions, requirements, representations, and commitments identified in the license.
- Accepted full liability and responsibility for the site.

Here, the entities and personnel remained the same, except for a change in corporate status. All four licensees were affiliates of the same parent entity prior to and following the transaction. No change of control occurred under 10 CFR 30.34(b); the licensees were not required to obtain NRC's prior written consent to the transaction.

(3) A materials licensee, wholly owned by Parent, sold one division of its operations to Buyer. The division that was sold did not involve licensed activities. Parent retained licensed activities under a different name. Following the sale, Licensee retained full control of and responsibility for licensed activity. However, Buyer owned the facility in which licensed activity took place and jointly occupied the facility with Licensee. Both Licensee and Buyer wished to conduct licensed activities at the facility, with Buyer's employees conducting licensed activities under the supervision and control of Licensee, until Buyer moved to a new facility and obtained its own license.

NRC determined that this transaction, a change of ownership, did not constitute a change of control as to Parent and Licensee. The same licensee, under a different name, still controlled the licensed activity, and Licensee's parent did not change.

APPENDIX D

RECOMMENDED LICENSING ACTIONS FOR DIFFERENT TRANSACTIONS

Recommended Licensing Actions for Different Transactions

Action by Licensee	Licensing Action Recommended
Is the licensee ceasing all operations or continuing operations as a non-licensed entity? Does the new entity need a license?	Terminate existing license and issue a new license, if needed, as the new entity is a new institution.
Is the licensee selling off a portion of its licensed activities to a non-licensee?	Amend the transferor's license accordingly and issue a new license to the transferee.
Is the licensee selling off a portion of its licensed activities to a licensee?	Amend both licenses accordingly.
Is the licensee becoming part of a non-licensed entity with no changes in the license?	Treat as a notification and possible transfer of control.
Is the licensee becoming part of a licensed entity, but the license is to be retained with changes?	Treat as a possible transfer of control. Perform a license amendment review.
Is the licensee becoming part of a licensed entity, and one of the licenses is to be terminated?	Terminate the requested license and amend the continuing license for any activities that are to be continued and any other changes as appropriate. Also examine whether the transaction is a change of control.
Is the licensee changing its name with no other changes to items on the license, and no change in control or ownership is occurring?	Amend the license to change the name of the licensee.
Is the licensee's ownership changing, but all items on the license are to remain the same?	Treat as a possible transfer of control. Terminate the existing license and perform a new license application review, as the new entity is a new institution.

APPENDIX E

INFORMATION NEEDED FOR TRANSFER OF CONTROL APPLICATION

Information Needed For Transfer of Control Application

Include a contact name and either U.S. Nuclear Regulatory Commission (NRC) regional office or Headquarters telephone numbers for follow-up information, as required.

NRC Region: _____ **Contact:** _____
Telephone: () - _____ **Fax:** () - _____

Definitions:

Control: Control of a license is in the hands of the person or persons who are empowered to decide when and how that license will be used. That control is to be found in the person or persons who, because of ownership or authority explicitly delegated by the owners, possess the power to determine corporate policy and, thus, the direction of the activities under the license.

Transferee: A transferee is an entity that proposes to purchase or otherwise gain control of an NRC-licensed operation.

Transferor: A transferor is an NRC licensee selling or otherwise giving up control of a licensed operation.

Information Needed for Transfer of Control

Licensees must provide full information and obtain NRC's **prior written consent** before transferring control of the license. Provide the following information concerning changes of control by the applicant (transferor and/or transferee, as appropriate). If any items are not applicable, so state.

1. Describe any planned changes in the organization, including but not limited to, transfer of stocks or assets and mergers, change in members on Board of Directors, etc. Provide the new licensee name, mailing address, and contact information, including phone numbers. Clearly identify when the amendment request is due to a name change only.
2. Describe any changes in personnel or duties that relate to the licensed program. Include training and experience for new personnel and any changes in the training program.
3. Describe any changes in the location, facilities, equipment, radiation safety program, use, possession, waste management, or other procedures that relate to the licensed program.
4. Describe the status of the licensee's facilities, equipment, and radiation safety program, including any known contamination and whether decontamination will occur prior to transfer. Include the status of calibrations, leak tests, area surveys, wipe tests, training, quality control, and related records.
5. If current decommissioning funding plans (DFP) will be changed as a result of the transfer, the revised DFP should be submitted. If other financial assurance documents will be changed as a result of the transfer, confirm that all financial assurance instruments associated with the license will be held in the transferee's name before the

license is transferred, and as required by 10 CFR 30.35(f), the licensee must, within 30 days, submit financial instruments reflecting such changes.

6. Confirm that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to NRC, as appropriate. These records include documentation of surveys of ambient radiation levels and fixed and/or removable contamination, including methods and sensitivity.
7. Confirm that both transferor and transferee agree to transferring control of the licensed material and activity, and the conditions of transfer, and that the transferee has been made aware of any open inspection items and its responsibility for possible resulting enforcement actions.
8. Confirm that the transferee will abide by all constraints, conditions, requirements, representations, and commitments of the transferor or that the transferee will submit a complete description of the proposed licensed program.
9. The transferee, in the case of fuel cycle facilities, shall provide documentation showing that it is financially qualified to conduct normal operations. The information can be in the form of income statements and balance sheet forecasts.

APPENDIX F

SUGGESTED FORMAT FOR REQUESTS FOR ADDITIONAL INFORMATION REGARDING BANKRUPTCY

Suggested Format for Requests for Additional Information Regarding Bankruptcy

The following pages contain a sample U.S. Nuclear Regulatory Commission (NRC) letter to be sent to companies declaring, or about to declare, bankruptcy and, if applicable, to the parent company or legally responsible representative.

- (Licensee contact)
- (Title of licensee contact)
- (Address of licensee contact)

SUBJECT: POSSIBLE BANKRUPTCY NOTIFICATION INFORMATION

Dear (licensee contact):

It has come to our attention that (name of licensee) possessing NRC License No(s) _____ may have filed (or is considering filing) for bankruptcy. Please note that the U.S. Nuclear Regulatory Commission (NRC) has requirements for licensees that are the subject of a bankruptcy filing to immediately notify, in writing, the appropriate NRC Regional Administrator of this action.

The NRC requirements for licensees that are the subject of a bankruptcy filing can be found in Title 10 of the *Code of Federal Regulations* (10 CFR) Parts 30.34(h), 40.41(f), and 70.32(a)(9). **(Reviewer Note: Include all that apply.)** The purpose of the regulations is to ensure that public health and safety is adequately protected and that radioactive material is properly controlled.

Specifically, any licensee who is involved in a bankruptcy proceeding, either voluntarily or involuntarily, under any chapter of the bankruptcy law must notify the appropriate NRC Regional Administrator, in writing, immediately after the filing.

The requirements in these regulations apply to a bankruptcy proceeding, for or against the licensee itself, an entity controlling the licensee, an entity listing the licensee as a property of the estate, or an affiliate of the licensee.

The regulations state that the notification must include the identity of the bankruptcy court in which the petition was filed and the date the petition was filed.

Because the regulations cited above require each licensee to provide the required notification, we request your assistance in providing to us the names, addresses, and telephone numbers of any other entities who may be affected by the bankruptcy (i.e., other daughter companies of a bankrupt parent company, where the daughter has an NRC or Agreement State license).

In addition, please provide the following information:

- (1) List any radionuclides and/or nuclear gauges currently possessed by your company. Include any generally licensed material.
- (2) Indicate if you plan to dispose of or transfer any of your radionuclides and/or nuclear gauges during bankruptcy proceedings.

- (3) For each of the radionuclides and/or nuclear gauge(s) identified above, specify whether the radionuclide(s) and/or device(s) are in use or in secured storage.
- (4) Indicate whether any changes have taken place in terms of the radiation safety officer or authorized user(s) for the radionuclides and/or nuclear gauges.
- (5) Specify the type of bankruptcy filed, such as Chapter 7, 11, 12, or 13.
- (6) Describe any changes that are planned for the company operations and use/storage/disposition of the radionuclides and/or nuclear gauges during the bankruptcy proceedings.
- (7) Indicate the anticipated date when the bankruptcy will end.
- (8) Specify any other affiliated companies that may also have radionuclides and/or nuclear gauges that require an NRC license. If so, specify what radionuclides and/or nuclear gauges they possess, and specify the license number and location of the company.
- (9) Specify a contact person and the frequency at which he or she will update NRC about any changes in the status of the radionuclides and/or nuclear gauge(s), or of the bankruptcy proceedings. Immediately contact the NRC of any change in the status of the use, security, and/or storage of the radionuclides and/or nuclear gauges and any change in the individual(s) responsible for the radionuclides and/or nuclear gauge(s).
- (10) For medical licensees, indicate the same information regarding PET radionuclides and the length of time the licensee has been in operation.
- (11) Indicate whether the licensee had decommissioning financial assurance requirements, such as a financial "instrument."

Please note that even though a licensee may be involved in bankruptcy proceedings, NRC regulations and license conditions remain in full effect. Also, NRC licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by the NRC. If the licensee no longer exists as an entity, the person with legal control of contaminated equipment or property transferred by the licensee is obligated to control all licensed materials and to decontaminate and decommission any facilities or equipment and to comply with applicable NRC requirements.

If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building.

If you need to lay off the radiation safety officer, you must first properly secure, dispose of, or transfer all licensed material, and you must inform the NRC of this situation.

We will call you soon to verify the current status of your situation and to confirm the disposition of licensed material. We may also conduct an inspection to aid us in our evaluation of your situation. We will continue to monitor your activities to ensure that either the facility is cleaned up and licensed material is properly disposed of, or the company is able to exit bankruptcy and operate normally.

If you have any questions, we encourage you to contact (name of lead individual) at (toll-free telephone number).

Sincerely,

Chief, Materials Licensing Branch

License No.

Docket No.

Attachment: Information to Notify the NRC of Bankruptcy

Enclosures: (1) 10 CFR Part 30

(2) 10 CFR Part 40

(3) 10 CFR Part 70

Attachment
INFORMATION TO NOTIFY THE NRC OF BANKRUPTCY

1. Name of bankruptcy court where petition was filed. _____

2. Date bankruptcy petition was filed. _____

Your assistance is requested in identifying any other entities that may have U.S. Nuclear Regulatory Commission or Agreement State licenses that may be affected by the bankruptcy.

Company Name

Address

Telephone Number

_____	_____	_____
_____	_____	_____

APPENDIX G

NRC PROCEDURES FOR PROCESSING BANKRUPTCY ACTIONS

NRC Procedures for Processing Bankruptcy Actions

U.S. Nuclear Regulatory Commission (NRC) has established a Bankruptcy Review Team (BRT) to review and act on bankruptcy notifications. The BRT brings together various NRC offices and typically includes members of the regional offices, the Office of the General Counsel (OGC), the Office of the Chief Financial Officer (OCFO), the Office of Enforcement (OE), the Office of Nuclear Material Safety and Safeguards (NMSS) Division of Material Safety, State, Tribal, and Rulemaking Programs (MSTR), Division of Decommissioning, Uranium Recovery, and Waste Programs (DUWP), and the Office of Nuclear Security and Incident Response (NSIR). In certain specific circumstances, when the licensee filing for bankruptcy is NRC regulated under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70 (i.e., fuel cycle facilities) or 10 CFR Part 50 (i.e., production or utilization facility), a special BRT may be formed to include staff from the NMSS and the Office of Nuclear Reactor Regulation (NRR).

- In general, the roles of representatives on the BRT are as follows:
 - OGC: Legal assistance and coordination with the U.S. Department of Justice (DOJ).
 - NMSS: Coordinate appropriate actions with regional offices and ensure that the licensee maintains enhanced security measures for licensed material during bankruptcy proceedings. (If the licensee is no longer a viable entity and enhanced security measures cannot be maintained, NRC should implement Manual Chapter 1301 or 1303).
 - NMSS/DUWP/Low-Level Waste Branch: Coordinate financial viability and decommissioning financial assurance issues.
 - OE: Review any potential enforcement matters.
 - NMSS/MSTR: Coordinate emergency response and generic materials licensee policy issues.
 - Regional staff: Coordinate regional inspection/licensing issues, as applicable.
 - OCFO: Determine whether there are outstanding financial obligations on the part of the licensee.
 - NSIR: Keep management informed of bankruptcy activities related to licenses with risk-significant sources and any cases involving the potential for loss of security materials, and help the BRT assess the current public health and safety (and security) situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations.
 - If the BRT includes representatives of NMSS or NRR, representatives of these offices should coordinate appropriate actions with regional offices and ensure that the licensee maintains enhanced security measures for NRC regulated material during bankruptcy proceedings.

The procedures described in this appendix should ensure that bankruptcy cases are managed in a fully coordinated manner with headquarters and regional offices and divisions.

- Licensees are required under 10 CFR 30.34(h), 10 CFR 40.41(f), and 10 CFR 70.32(a)(9) to provide notification to the appropriate NRC Regional Administrator, in writing, immediately after the filing of a voluntary or involuntary petition for bankruptcy by or against them. However, the NRC staff may learn of a bankruptcy by any means, including notification by the DOJ, a letter from the licensee, a telephone call, newspaper report, or discovered during an inspection. The NRC staff needs to contact licensee personnel to verify any bankruptcy information that is obtained and to ensure that the licensee submits the required written notification.
- The following procedures apply primarily to specific licensees. However, there are certain requirements with regard to general licensees, as well, including the requirement to notify NRC of bankruptcy. Note that NRC's regulations at 10 CFR 31.5 contain various recordkeeping and inspection requirements, as well as transfer limitations and NRC's general license regulations permit the Debtor to export, transfer, assign or dispose of its NRC-licensed materials under certain specified conditions.
- After receiving a report that a licensee has filed for bankruptcy or that an involuntary petition has been filed against it, the NRC staff must verify that all licensed material the licensee possesses is being adequately controlled. As warranted, the NRC staff must verify that classified material and information are being adequately controlled, as well. The NRC staff should immediately contact the licensee to verify the status of NRC-regulated material (and classified material and information as warranted). A special inspection should be conducted, if necessary. Inspection Manual Chapter (IMC)-1301, "Radioactive Material Incidents That Do Not Require Activation of the NRC Incident Response Plan," and IMC-1303, "Requesting Emergency Acceptance of Radioactive Material by the Department of Energy," provide procedures for responding to inadequately controlled radioactive material. Inspection Procedure (IP)-81815, "Authorization for Access to National Security Information (NSI) and Restricted Data (RD)," and IP-81820, "Physical Protection Facility Approval and Safeguarding of National Security Information (NSI) and Restricted Data (RD)," provide guidance for classified material and information inspections. If the licensee is no longer a viable entity and enhanced security measures cannot be maintained, the NRC staff should implement Manual Chapter 1301 or 1303.

If there is an immediate threat to public health and safety, the NRC staff can request emergency assistance from other Federal agencies, in accordance with IMC-1301. If a bankrupt licensee is controlling its licensed material, but the situation has the potential to cause a significant health and safety risk, requesting U.S. Department of Energy emergency acceptance of the material may be an option. This procedure is intended for discrete sources, confined to a single location. However, the need for emergency acceptance of other materials will be evaluated on a case-by-case basis.

- Timely reporting by license reviewers and inspectors of licensee bankruptcies to NRC management will ensure early and thorough attention by NMSS, the regions, OCFO, and OGC staff to changes in the financial condition or corporate restructuring of licensees. The branch chief should, within 24 hours of receipt of a formal or informal bankruptcy notification, alert management and the appropriate headquarters or regional representative on the BRT.

- Depending upon the type of license involved and which office has issued the license, either Headquarters or regional NRC staff should promptly inform (by telephone or fax) the licensee or the trustee, if one has been appointed, that bankruptcy will not relieve the licensee of its obligations to comply with NRC requirements, including the license, and that inspections and other NRC regulatory actions are not terminated upon filing of the petition for bankruptcy.

After this initial contact, the NRC licensing staff should, with the assistance of the OGC representative to the BRT, do the following:

- Provide the licensee, any trustee or receiver in bankruptcy, or owner of property contaminated by licensee activities with written notification of the licensee's obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license. This appendix includes a sample letter to be sent to a licensee discussing bankruptcy-related issues.
- If the licensee no longer exists as an entity, provide any trustee, receiver, or owner of contaminated property transferred by the licensee with written notification of his or her obligations to control the site, to decontaminate and decommission, and to comply with applicable NRC requirements and the conditions of the license.
- The BRT will assess the current public health and safety situation at the licensee's facility and any impacts that bankruptcy could have on licensed operations, security of material, and classified material and information. NRC will perform a safety assessment of the extent of the contamination and health risks posed by any contamination present. This assessment will be used to determine whether prompt action is necessary to secure the site or to take any other action required under the AEA.
- The BRT will keep the OGC representative informed of any pertinent developments regarding the licensee, including the disposition of the license and licensed material.
- The OCFO representative on the BRT will ascertain whether there are outstanding financial obligations on the part of the licensee and notify the OGC representative. The OCFO representative will take all necessary steps to ensure that Suggestions of Interest or Proofs of Claim are filed with the Bankruptcy Court, for such matters as licensing fees or civil penalties that may be due to NRC, or for actions to maintain control of radioactive materials or to conduct site decommissioning. Regional enforcement staff should assist the OE representative to the BRT to determine whether any civil penalties are outstanding.
- The OGC representative to the BRT will determine whether the United States is represented in the bankruptcy proceeding and contact DOJ and secure DOJ representation of NRC's interests in the proceeding. The DOJ will notify the OGC representative of the DOJ attorney or Assistant United States Attorney (AUSA) who will be assigned to the case. With regard to specific licensees that are in bankruptcy, OGC will notify DOJ and/or the relevant AUSA that any trustee or receiver in bankruptcy retains the debtor licensee's legal obligations, including public health, safety, and environmental obligations and obligations under NRC regulations and license conditions. The OGC representative will inform DOJ and/or the AUSA of the licensee's obligations

to control the site and to decontaminate and decommission the site and comply with applicable NRC requirements and conditions of the license; that approval of the Commission is necessary for any license transfer; and that licensed material must be properly transferred. The OGC representative will request that DOJ or the AUSA inform the Bankruptcy Court of the debtor licensee's obligations. In addition, the OGC representative will inform DOJ as to whether there are outstanding financial obligations on the part of the licensee.

- The OGC representative will also advise DOJ if the debtor is a general licensee, request that NRC be advised of any reorganization or sale involving these licensees, and request that DOJ or the AUSA inform the Bankruptcy Court of the general licensee's responsibility to ascertain the regulations applicable to its license and comply with any regulations specific to its situation.
- Following notification by DOJ of the attorney that has been assigned to the case, the OGC representative will continue to coordinate with DOJ and/or the AUSA as warranted and advise the appropriate representative on the BRT and Regional Counsel of all pertinent filings or developments in the bankruptcy proceeding. This appendix includes a sample electronic communication to DOJ or the appropriate AUSA.
- The BRT should assess the current public health and safety situation at the licensee's facility and any impacts the bankruptcy could have on licensed operations. This should include a safety assessment of the extent of contamination and health risk posed by that contamination. This assessment would be based on the best information that is currently available to determine if prompt action is necessary to secure the site or to take any other action required under the AEA. Such an assessment could provide important information to DOJ in its representation of NRC in bankruptcy proceedings and so should also be made available to DOJ. Additionally, any steps to secure the site should be taken only after consultation with OGC, to ensure that NRC's rights to compel the debtor to satisfy its public health, safety, and environmental obligations, or to pursue any claim against the assets of the bankruptcy estate, would not be unnecessarily prejudiced. The OGC representative on the BRT may ask DOJ to provide copies of any pertinent filings as warranted.
- The BRT should decide if additional information is required from the licensee and provide a list of issues to be addressed. The OE representatives to the BRT should help prepare any Demands for Information, Orders, Notices of Violation, or other enforcement actions regarding the licensee, the trustee, or the receiver in bankruptcy if these are warranted. The OGC representative to the BRT should be informed of any such actions and will coordinate with and assist the appropriate attorney in OGC in developing such actions as warranted.
- The BRT should make recommendations on the need to draw on financial assurance instruments that the licensee may have submitted. Appendix H to this report contains a detailed procedure for drawing on financial assurance instruments. The DUWP representative to the BRT will assist the BRT by advising on the appropriate actions, information needs, and when and how to draw on the decommissioning financial assurance instrument. Management Directive 8.12, "Decommissioning Financial Assurance Instrument Security Program," discusses the applicable procedures for safeguarding decommissioning financial assurance instruments and discusses the signature authority for drawing on the instruments.

- The BRT should also consider the need to prepare additional legal papers, to be filed on behalf of the NRC with the bankruptcy court, to preserve the NRC's rights to require the debtor to expend available resources to decommission and decontaminate the site. The OGC representative to the BRT should determine whether there are other NRC administrative proceedings or litigation pending or anticipated (i.e., civil penalties, fee collection) that may affect the NRC staff's actions in the bankruptcy proceeding.

Sample Electronic Communication to the U.S. Department of Justice for Specific Licensees in Bankruptcy

The U.S. Nuclear Regulatory Commission (NRC) has been recently made aware of the date of filing, bankruptcy filing of [licensee name], with the United States Bankruptcy Court for the [court's identity]. [Licensee name] filed under Chapter [correct chapter number]. It possesses NRC License No. _____, which authorizes it to use [brief description of authorized licensed activities]. NRC requests that your office represent the Commission in the above referenced bankruptcy proceeding.

The primary concern of the Commission is the safe control of the nuclear material in the possession of [licensee name]. To this end, the Atomic Energy Act of 1954, as amended, mandates that a license may not be transferred, even involuntarily, absent Commission approval. In addition, licensed material may only be transferred to authorized recipients in accordance with the Atomic Energy Act and the Commission's regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.41, "Transfer of byproduct material."

NRC would appreciate if you would inform the Bankruptcy Court, [licensee name]'s attorney, and the United States Trustee of the NRC's interest in this case and of the requirements that (i) approval of the Commission is necessary for any license transfer, and (ii) radioactive material licensed under the above license[s] must be properly transferred.

Attached for your use is a draft Order that could be filed with the Court to set forth NRC's interest in this case. However, you may choose to notify the Court by other means. I will fax you a copy of the licensee's NRC license and NRC's notification to the licensee, referenced in this draft as Exhibit 1 and Exhibit 2.

Thank you in advance for your assistance in this matter. If you have any questions on this matter, please contact me at (____)____-____or____@nrc.gov.

Attachment to Electronic Communication

DRAFT

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF []

In Re:

[LICENSEE NAME]

Debtor

Bankruptcy Case No. []
Chapter 11

1. On [DATE], [LICENSEE NAME] ("Debtor") filed a voluntary petition for relief in this Court under Chapter 11 of Title 11 of the Bankruptcy Code in the U.S. Bankruptcy Court in this District. The Debtor continues to operate its business and manage its properties as a debtor in possession, pursuant to sections 1107(a) and 1108 of the U.S. Bankruptcy Code.
2. [LICENSEE NAME] currently holds a license from the U.S. Nuclear Regulatory Commission (NRC) to use, possess, and store certain radioactive materials (NRC License No. []) (attached as Exhibit 1), as specified in its license.
3. [LICENSEE'S NAME]'s license remains and will continue to remain in effect, pursuant to sections 81, 161, and 183 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Sections 2111, 2201, and 2233) and NRC's regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30.34, "Terms and conditions of licenses," with respect to the possession, transfer, and storage of licensed radioactive material remaining in Debtor's possession, as contamination or in other forms, until NRC notifies Debtor, in writing, that the license is terminated.
4. Although in bankruptcy, Debtor remains responsible for all regulatory requirements under its NRC license, including those relating to the security and control of licensed radioactive material, decontamination and decommissioning of contaminated facilities, and retention of personnel required by the license conditions.
5. NRC's regulations at 10 CFR 30.34 do not permit Debtor to transfer, assign, or dispose of its NRC license or the licensed radioactive material, either voluntarily or involuntarily, directly or indirectly, through a transfer of control of the license or any of the licensed radioactive material, to any person or entity, without NRC's prior written approval.
6. NRC notified the Debtor of its continuing obligations, as described above, in a letter dated [DATE] (attached as Exhibit 2).
7. NRC understands that the automatic stay provision in section 362(a) of the U.S. Bankruptcy Code stays legal actions against the Debtor, except in certain limited circumstances that include public health, safety, and environmental obligations. See

Midlantic National Bank v. New Jersey Department of Environmental Protection, 474 U.S. 494 (1986); *Pacific Gas and Electric Company v. California ex rel. California Department of Toxic Substances Control*, 350 F. 3d 932 (9th Cir. 2003), *cert. denied*, *Pacific Gas and Electric Company v. California Public Utilities Commission*, 543 U.S. 956 (2004); *In re Chateaugay Corporation*, 944 F. 2d 997 (2d Cir. 1991).

8. NRC requests that the Court prohibit Debtor from transferring or disposing of its NRC license or any of the licensed radioactive material without prior NRC approval.

WHEREFORE, NRC requests that the Court issue an order consistent with NRC's request herein.

Respectfully submitted,

[DOJ OR AUSA]

Sample Electronic Communication to the U.S. Department of Justice for General Licensees in Bankruptcy

The U.S. Nuclear Regulatory Commission (NRC) has been recently made aware of the [date of filing], bankruptcy filing of [licensee name], with the United States Bankruptcy Court for the [court's identity]. [Licensee name] filed under Chapter [correct chapter number]

[Licensee name] is a general licensee of NRC under [regulation] for [type of device]. The NRC maintains a database of the location of generally licensed devices. As such, we would ask to be advised of any reorganization or sale involving these licensees so that we can keep our database current. In addition, although general licensees are not subject to the same requirements as specific licensees, there are still requirements for a general licensee, including certain notification requirements, depending upon the type of licensed material involved and the purpose for which this material will be used, and requirements that prohibit certain transfers and provide that the licensee must apply for an export license in certain situations (e.g., 10 CFR 110.20 and 110.23). We would very much appreciate your notifying the court that we require a general licensee to ascertain the regulations that are applicable to its license and comply with any regulations specific to its situation.

Sample Letter to Licensee Acknowledging Bankruptcy Notification

[Name]
[Address]

SUBJECT: ACKNOWLEDGMENT OF _____ BANKRUPTCY NOTIFICATION

Dear _____:

This acknowledges your letter dated _____, informing the U.S. Nuclear Regulatory Commission (NRC) that _____ filed for bankruptcy under Chapter _____ in Federal Bankruptcy Court on [Date]__.

Please be informed that the bankruptcy filing does not relieve [licensee's name]_____ of its obligations to comply with NRC requirements, including those relating to the security and control of licensed material, classified material and information, decontamination and decommissioning of contaminated facilities, and the retention of personnel required by NRC requirements [e.g., the radiation safety officer (RSO), authorized users]. Additionally, the NRC will continue to conduct inspections of your activities.

If the RSO leaves your organization, you must first properly secure, dispose of, or transfer all licensed material, and you must inform NRC of this situation. If you need to close a building, you must first properly secure, dispose of, or transfer all licensed material that was in the building. NRC licenses remain in full effect, even beyond their stated expiration date, until terminated in writing by NRC.

You may not (i) transfer control of your license without prior written NRC approval or (ii) transfer licensed material, except as authorized by NRC regulations. You should ensure that your attorney and any trustee involved in the bankruptcy proceeding are aware of these obligations. Any person who takes control of licensed activities or possession of the licensed material, including any contaminated equipment or property transferred by the licensee, must first obtain an NRC license.

Please notify us immediately if you are unable to meet any of these conditions. Also, please notify us when the bankruptcy proceeding is completed.

Thank you for your cooperation in this matter. You may contact _____ at (____)____-____ if you have any questions or need information concerning the status of your license or activities.

Sincerely,

(HQ/Regional Branch Chief or above)

APPENDIX H

PROCEDURES FOR DRAWING ON FINANCIAL ASSURANCE INSTRUMENTS

Procedures for Drawing on Financial Assurance Instruments

Letter of Credit

Before drawing on a letter of credit, the U.S. Nuclear Regulatory Commission (NRC) licensing office should contact the individual at the issuing bank who signed the letter of credit to determine the specific bank procedures to be followed to draw on the instrument. In these discussions, the following details should be resolved:

- ☐ where the transaction is to take place
- ☐ whether the transaction needs to take place in person
- ☐ what documents need to be presented (e.g., if the originals are needed)
- ☐ if there are deadlines for drawing on the instrument
- ☐ if there are deadlines before which the instrument cannot be drawn on
- ☐ the form of the sight draft (a bill of exchange or draft payable when presented)

In consultation with the licensing office, the Office of the Chief Financial Officer (OCFO), and the Office of Nuclear Material Safety and Safeguards (NMSS) Division of Decommissioning, Uranium Recovery and Waste Programs (DUWP), the Office of the General Counsel (OGC) should prepare the sight draft and the sight draft certification with the exact wording referenced in the letter of credit and in accordance with other letter of credit conditions and bank instructions. The sight draft must reference the letter of credit number.

The Office Director, Deputy Office Director, or the applicable Regional or Deputy Regional Administrator should sign the sight draft and certify the sight draft certification. The certification should be notarized.

The appropriate individual should present the sight draft, sight draft certification, and other required documents at the bank in accordance with bank instructions.

During initial discussions with the bank, OGC, OCFO, DUWP, and licensing office staff should contact the trustee named in the standby trust agreement. The licensing office, OGC, OCFO, and DUWP, in consultation with the trustee, should determine the method the trustee desires for transfer of the letter of credit funds. Arrangements for direct transfer of the funds to the trustee account must be made so that NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the bank to make any instrument payable to the NRC or to the licensee.

If the licensee is capable of directing the remediation and has an NRC-approved decommissioning plan, it must give NRC 30 days' notice if it intends to withdraw funds from the trust. The licensee also must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have an NRC-approved decommissioning plan, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), licensing office staff, in consultation with OGC, OCFO, and DUWP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Surety Bond

OGC, OCFO, DUWP, and the licensing office staff should review the conditions in the bond before contacting the surety company.

Licensing office staff, in consultation with OGC, OCFO, and DUWP, should prepare an Order to the licensee to fund the standby trust in the amount identified for the facility or to provide an alternative financial assurance instrument and to prepare any other documents specified in the surety bond conditions.

If the licensee cannot meet these specified conditions in the surety bond, the NRC staff should request that the licensee state such.

Licensing office staff, in consultation with OGC, OCFO, and DUWP, should contact the surety bond company to determine the specific procedures to draw on the instrument in terms of the following:

- ☐ where the transaction is to take place
- ☐ whether the transaction needs to take place in person
- ☐ what documents need to be presented
- ☐ what form of the NRC notification is desired

OGC, OCFO, DUWP, and the licensing office staff should determine if the conditions for drawing on the bond have been met, as stated in the surety bond. If so, the NRC licensing office staff, in consultation with OGC, OCFO, and DUWP, should prepare a notification of default, with the applicable supporting documents.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the notification documents and have the certification notarized. These documents and other required documents should then be presented to the surety bond company in accordance with surety bond company instructions.

During initial discussions with the surety company, the licensing office staff, in consultation with OGC, OCFO, and DUWP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DUWP should determine the method the trustee desires for transfer of the bond funds. Arrangements for direct transfer of the funds to the trustee account must be made so that NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the bank to make any instrument payable to NRC or to the licensee.

If the licensee is capable of directing the remediation and has an NRC-approved decommissioning plan, it must give NRC 30 days' notice if it intends to withdraw funds from the standby trust. The licensee also must complete, as specified in the trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have an NRC-approved decommissioning plan, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust fund (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DUWP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Trust Agreement

Licensing office staff, in consultation with OGC, OCFO, and DUWP, should contact the trustee named in the trust agreement to determine the specific procedures to draw on the instrument in terms of the following:

- ☐ where the transaction is to take place
- ☐ whether the transaction needs to take place in person
- ☐ what documents need to be presented
- ☐ the form of any additional documents needed from NRC

The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the bank to make any instrument payable to the NRC or to the licensee.

If the licensee is capable of directing the remediation and has an NRC-approved decommissioning plan, the licensee must give the NRC 30 days' notice if it intends to draw funds from the trust. The licensee also must complete, as specified in the trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have an NRC-approved decommissioning plan, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning

and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust fund (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the NRC licensing office staff, in consultation with OGC, OCFO, and DUWP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Parent Company Guarantee

After consultation with OGC, OCFO, and DUWP, the licensing office staff should contact the parent company to notify it that the licensee has defaulted or is unwilling or unable to complete decommissioning. The licensing office staff, in consultation with OGC, OCFO, and DUWP, and the parent company should determine any specific procedures the parent company needs for requesting funding.

In consultation with OGC, OCFO, and DUWP, the licensing office should prepare a document formally notifying the parent company that the licensee has defaulted or is unwilling or unable to complete decommissioning.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the letter and ensure that the certification is notarized.

A parent guarantee mechanism must be used with a standby trust agreement. During initial discussions with the parent company, the licensing office staff, together with OGC, OCFO, and DUWP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DUWP should determine the method the trustee desires for transfer of the parent company funds. Arrangements for direct transfer of the funds to the trust account must be made so that NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the parent company to make any instrument payable to NRC or to the licensee.

If the licensee is capable of directing the remediation and has an NRC-approved decommissioning plan, the licensee must give NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete, as specified in the standby trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the licensee is capable of directing the remediation but does not have an NRC-approved decommissioning plan approved, the licensee must give the NRC 30 days' notice if it intends to withdraw funds from the standby trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement

of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the licensee should ensure that these modifications are acceptable to the trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DUWP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

Self-Guarantee

In consultation with OGC, OCFO, Office of Enforcement, and DUWP, the licensing office staff should prepare an order formally notifying the licensee that, under the self-guarantee, the licensee is required to fund the standby trust fund in the amount of the self-guarantee for the decommissioning of any contaminated facilities.

During initial discussions with the licensee, the licensing office staff, together with OGC, OCFO, and DUWP, should contact the trustee named in the standby trust agreement. In consultation with the trustee, the licensing office, OGC, OCFO, and DUWP should determine the method the trustee desires for transfer of the self-guarantee funds. Arrangements for direct transfer of the funds to the trust account must be made so that NRC does not directly acquire funds. The NRC staff must not accept funds, even if instruments are made out to the trustee. The NRC staff must never allow the licensee to make any instrument payable to NRC or to the licensee.

If a management trustee is appointed to handle decommissioning and is capable of directing the remediation, and NRC has approved a decommissioning plan for the site, the management trustee must give NRC 30 days' notice if it intends to withdraw funds from the trust and must complete, as specified in the trust agreement, the Certificate of Events and the Certificate of Resolution. This includes a copy of NRC's approval of the decommissioning plan and approval to begin decommissioning.

If the management trustee is capable of directing the remediation but does not have an NRC-approved decommissioning plan, the management trustee must give NRC 30 days' notice if it intends to withdraw funds from the trust and must complete the Certificate of Resolution and a modified Certificate of Events. This includes a copy of NRC's approval of the commencement of decommissioning and a statement concerning the terms and conditions of NRC's approval of the continuing development of the decommissioning plan. The NRC staff and the management trustee should ensure that these modifications are acceptable to the financial trustee.

To disburse funds from the trust (i.e., if the licensee has defaulted or is unwilling or unable to direct the remediation), the licensing office staff, in consultation with OGC, OCFO, and DUWP, will need to prepare instructions, in writing, and provide them to the trustee for the disbursement of funds.

NRC will need to approve, in writing, all disbursements in excess of 10 percent of the amount held in the trust.

The NMSS Office Director, NMSS Deputy Office Director, or the applicable Regional or Deputy Regional Administrator must certify the disbursement approval documents and ensure that the certifications are notarized.

APPENDIX I

DOCUMENTS CONSIDERED IN THE PREPARATION OF THIS REPORT

Documents Considered in the Preparation of This Report

This report incorporates and updates the guidance previously found in Policy and Guidance Directives and Information Notices (INs) listed below. Other U.S. Nuclear Regulatory Commission documents, such as Manual Chapters, Inspection Procedures (IPs), and Memoranda of Understanding, were also consulted during the preparation of this report.

Table I-1. List of NUREG Reports, Regulatory Guides, and Policy and Guidance Directives

Document Identification	Title	Date
IN 89-25, Rev. 1	Unauthorized Transfer of Ownership or Control of Licensed Activities	12/07/1994
IN 93-100	Reporting Requirements for Bankruptcy	12/22/1993
IN 97-30	Control of Licensed Material during Reorganizations, Employee-Management Disagreements and Financial Crises	06/03/1997
IP 87103	Inspection of Material Licensees Involved in an Incident or Bankruptcy Filing	11/03/2000
IP 87103, App. B	Guidance for Inspection of Materials Licensees Who Have Filed for Bankruptcy	11/03/2000

APPENDIX J
CHECKLIST FOR REQUESTS TO WITHHOLD PROPRIETARY
INFORMATION FROM PUBLIC DISCLOSURE (UNDER 10 CFR 2.390)

Checklist for Requests to Withhold Proprietary Information from Public Disclosure (Under 10 CFR 2.390)

In order to request that the U.S. Nuclear Regulatory Commission (NRC) withhold information from public disclosure, the applicant or licensee must submit the information, including an affidavit, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.390, "Public Inspections, Exemptions, Requests for Withholding." The applicant should submit all of the following:

	A proprietary copy of the information. Brackets should be placed around the material considered to be proprietary. This copy should be marked as proprietary.
	A non-proprietary copy of the information. Applicants should white out or black out the proprietary portions (i.e., those in the brackets), leaving the non-proprietary portions intact. This copy should not be marked as proprietary.
	An affidavit that:
	Is signed under oath and affirmation (notarization may suffice).
	Clearly identifies (such as by name or title and date) the document to be withheld.
	Clearly identifies the position of the person executing the affidavit. This person must be an officer or upper-level management official who has been delegated the function of reviewing the information the organization is seeking to withhold and is authorized to apply for withholding on behalf of the organization.
	States that the organization submitting the information is the owner of the information or is required, by agreement with the owner of the information, to treat the information as proprietary.
	Provides a rational basis for holding the information in confidence.
	Fully addresses the following issues:
	Is the information submitted to, and received by, the NRC in confidence? Provide details.
	To the best of the applicant's knowledge, is the information currently available in public sources?
	Does the applicant customarily treat this information, or this type of information, as confidential? Explain why.
	Would public disclosure of the information be likely to cause substantial harm to the competitive position of the applicant? If so, explain why in detail. The explanation should include the value of the information to your organization, the amount of effort or money expended in developing the information, and the ease or difficulty for others to acquire the information.

APPENDIX K

SAFETY CULTURE POLICY STATEMENT

Safety Culture

The safety culture policy statement was published in the *Federal Register* (76 FR 34773) on June 14, 2011 and can be found at: <http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14656.pdf>. It is also posted in NRC's Agencywide Documents Access and Management System (ADAMS) Accession Number ML11146A047.

Safety Culture Policy Statement

The purpose of this Statement of Policy is to set forth the Commission's expectation that individuals and organizations establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This includes all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority. The Commission encourages the Agreement States, Agreement State licensees and other organizations interested in nuclear safety to support the development and maintenance of a positive safety culture, as articulated in this Statement of Policy.

Nuclear Safety Culture is defined as *the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment*. Individuals and organizations performing regulated activities bear the primary responsibility for safety and security. The performance of individuals and organizations can be monitored and trended and, therefore, may be used to determine compliance with requirements and commitments and may serve as an indicator of possible problem areas in an organization's safety culture. The NRC will not monitor or trend values. These will be the organization's responsibility as part of its safety-culture program.

Organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve both safety and security in their activities. Safety and security activities are closely intertwined. While many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. It is important that consideration of these activities be integrated so as not to diminish or adversely affect either; thus, mechanisms should be established to identify and resolve these differences. A safety culture that accomplishes this would include all nuclear safety and security issues associated with NRC-regulated activities.

Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal conflict situations, e.g., production, schedule, and the cost of the effort versus safety. It should be noted that although the term "security" is not expressly included in the following traits, safety and security are the primary pillars of the NRC's regulatory mission. Consequently, consideration of both safety and security issues, commensurate with their significance, is an underlying principle of this Statement of Policy.

The following are traits of a positive safety culture:

- (1) *Leadership Safety Values and Actions*—Leaders demonstrate a commitment to safety in their decisions and behaviors;
- (2) *Problem Identification and Resolution*—Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance;
- (3) *Personal Accountability*—All individuals take personal responsibility for safety;
- (4) *Work Processes*—The process of planning and controlling work activities is implemented so that safety is maintained;
- (5) *Continuous Learning*—Opportunities to learn about ways to ensure safety are sought out and implemented;
- (6) *Environment for Raising Concerns*—A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination;
- (7) *Effective Safety Communication*—Communications maintain a focus on safety;
- (8) *Respectful Work Environment*—Trust and respect permeate the organization; and
- (9) *Questioning Attitude*—Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.

There may be traits not included in this Statement of Policy that are also important in a positive safety culture. It should be noted that these traits were not developed to be used for inspection purposes.

It is the Commission's expectation that all individuals and organizations, performing or overseeing regulated activities involving nuclear materials, should take the necessary steps to promote a positive safety culture by fostering these traits as they apply to their organizational environments. The Commission recognizes the diversity of these organizations and acknowledges that some organizations have already spent significant time and resources in the development of a positive safety culture. The Commission will take this into consideration as the regulated community addresses the Statement of Policy.

NRC FORM 335 (12-2010) NRCMD3.7		U.S. NUCLEAR REGULATORY COMMISSION		1. REPORT NUMBER (Assigned by NRC, Add Vol., Supp., Rev., and Addendum Numbers, If any.) NUREG-1556, Volume 15, Revision 1 FINAL	
BIBLIOGRAPHIC DATA SHEET <i>(See instructions on the reverse)</i>					
2. TITLE AND SUBTITLE Consolidated Guidance About Materials Licenses: Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses - Final Report				3. DATE REPORT PUBLISHED	
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5. AUTHOR(\$) Michelle Beardsley, Susan Chidakel, Steven Courtemanche, Sara Forster, Kenneth Kline				6. TYPE OF REPORT Technical	
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9. SPONSORING ORGANIZATION - NAME AND ADDRESS (If NRC, type "Same as above", if contractor, provide NRC Division, Office or Region, U.S. Nuclear Regulatory Commission, and mailing address.) Same as above					
10. SUPPLEMENTARY NOTES					
11. ABSTRACT (200 words or less) This report contains guidance for byproduct, source, and special nuclear material licensees and, in some cases, license applicants to use in preparing a notification to the NRC of a change of control or bankruptcy. This report also contains NRC's criteria for evaluating such a notification and determining whether a new or amended license is needed.					
12. KEY WORDS/DESCRIPTORS (List words or phrases that will assist researchers in locating the report.) NUREG-1556 Volume 15 Bankruptcy Change of Control Transfer				13. AVAILABILITY STATEMENT unlimited	
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OFFICIAL BUSINESS



**NUREG-1556, Vol. 15
Revision 1, Final**

**Consolidated Guidance About Materials Licenses: Guidance About Changes of
Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear
Materials Licenses**

June 2016