

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF WASTE, AIR, RADIATION AND REMEDIATION
BUREAU OF RADIATION PROTECTION
HARRISBURG, PA 17101

August 12, 2016

BRP INFORMATION NOTICE 2016-05

REGULATORY REQUIREMENTS FOR
TRANSFER OF CONTROL OF SPECIFIC
RADIOACTIVE MATERIALS LICENSES

ADDRESSEES

All Pennsylvania Department of Environmental Protection (DEP) Specific Licensees.

PURPOSE

The DEP is issuing this Information Notice (IN) to bring to the attention of PA licensees, the required information to be submitted to the DEP prior to a change of control or ownership for all specific radioactive materials licenses issued under Title 25 Chapter 217, which incorporates by reference 10 CFR Part 30.

DISCUSSION

Regulations 10 CFR Part 30.34(b)(1) and 10 CFR Part 40.46(a) provide that no license granted under 10 CFR Parts 30 through 36, Part 39, or Part 40 can be "transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control (TOC) of any license to any person, unless the Commission (DEP by incorporation) . . . [gives] its consent in writing." Transferring control of a PA license without proper notification is considered to be an act of noncompliance with the DEP regulations and, more specifically, is typically considered to be a violation. As such, the violation may warrant escalated enforcement action to include civil penalties and orders against one or both of the parties involved, if indicated by the circumstances.

Please note that complete detailed information on a proposed TOC should be submitted to the DEP no less than 90 days prior to the anticipated license transfer. The purpose of such notification is to allow the DEP to review information pertaining to the transfer so that the Department can ensure: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid PA licenses; (2) materials are properly handled and secured; (3) persons using such materials are capable, competent, and committed to implementing appropriate radiological controls; (4) licensees provide adequate financial assurance for compliance with the applicable PA requirements; and (5) public health and safety are not compromised by the use of such materials. Related information is provided in the enclosed "NRC Regulatory Issue Summary 2014-08, Revision 1, Regulatory Requirements for Transfer of Control (Change of Ownership) of Specific Materials Licenses."

CONTACT

This Information Notice requires no specific action or written response. If you have any questions about the information in this notice, please contact the Radiation Control Division at 717-787-3720.

Issued By:
David J. Allard, CHP, Director
Bureau of Radiation Protection

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

May 5, 2016

**NRC REGULATORY ISSUE SUMMARY 2014-08, REVISION 1
REGULATORY REQUIREMENTS FOR TRANSFER OF CONTROL (CHANGE OF
OWNERSHIP) OF SPECIFIC MATERIALS LICENSES**

ADDRESSEES

All holders of, and applicants for, a specific materials license in accordance with the provisions of Title 10, "Energy," of the *Code of Federal Regulations* (10 CFR) Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," or 10 CFR Part 40, "Domestic Licensing of Source Material." All Agreement State Radiation-Control Program Directors and State Liaison Officers.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to clarify which information is required to be submitted to the NRC, prior to a change of ownership or control for specific materials licenses issued under 10 CFR Part 30 or 10 CFR Part 40. This RIS also provides clarification on reporting requirements under 10 CFR 2.1301, "Public Notice of Receipt of a License Transfer Application," and 10 CFR 2.1305, "Written Comments." Revision 1 of this RIS supersedes in its entirety, the original RIS. This RIS does not transmit any new requirements. The RIS clarifies that all transfer of control (TOC) applications for specific materials licensees will be placed on the NRC's Web site. The NRC requires no specific action or written response to this RIS. The NRC is providing this RIS to the Agreement States for their information and for distribution to their licensees, as appropriate.

BACKGROUND INFORMATION

Under Section 184 of the Atomic Energy Act of 1954, as amended, transfer of control of any license is prohibited unless the Commission finds that the transfer is in accordance with the Act and consents to the transfer in writing. The NRC has issued regulations implementing this requirement, including 10 CFR Part 30.34(b)(1) and 10 CFR Part 40.46(a), which provide that no license granted under 10 CFR Parts 30 through 36, Part 39, or Part 40 can 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 . . . [gives] its

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consent in writing." NUREG-1556, Volume 15, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, and Special Nuclear Material," further outlines the need for licensees to obtain prior written permission from the Commission before transferring control of licenses to other parties. Furthermore, NUREG-1556, Volume 15 clarifies that transferring control of an NRC license without proper notification is considered to be an act of noncompliance with the NRC regulations and, more specifically, is typically considered to be a Severity Level III violation and may warrant escalated enforcement action, to include civil penalties and orders against one or both of the parties involved, if indicated by the circumstances.

Under Section 189.a(1)(A) of the Atomic Energy Act of 1954, as amended (AEA), an application for TOC of a license shall be subject to an opportunity for hearing. In 1998, the NRC issued a final rule, "Streamlined Hearing Process for NRC Approval of License Transfers" (1998 Rule), (*Federal Register*, 63 FR 66721; December 3, 1998). This rule amended 10 CFR Part 2, "Agency Rules of Practice and Procedure," to provide "uniform" procedures and "rules of practice" that would be applicable to all license transfers requiring prior NRC approval. Under the 1998 Rule along with the 1999 final rule, "Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program" (1999 Rule) (64 FR 48942; September 9, 1999), the following documents must be placed at the NRC Web site, <http://www.nrc.gov>: the license transfer application and any associated requests; the NRC correspondence with the applicant or licensee related to the application; the NRC staff Safety Evaluation; any NRC staff order which acts on the license transfer application; and, if a hearing is held, the hearing record and decision.

The procedures for requesting a hearing and petitions to intervene are set forth in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Under those procedures, interested persons have 60 days from the date the transfer is noticed on the NRC Web site, as described below, to submit a request for hearing or petition to intervene and must do so in accordance with the e-filing and other requirements set forth in 10 CFR 2.309.

Under 10 CFR 2.1301 and 10 CFR 2.1305, as amended by the 1998 Rule and 1999 Rule, members of the public may submit written comments as an alternative to a request for a hearing or petition to intervene, and "[the NRC] will notice receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, <http://www.nrc.gov>." Furthermore, "if appropriate, [the NRC will] respond to submitted comments, but these comments do not otherwise constitute part of the decisional record." Written comments are required to be submitted to the NRC within 30 days after public notice of the receipt of the application, and the NRC will provide the licensee with a copy of any received comments. While the licensee is not required to respond to the written comments, if it chooses to do so, any response must be submitted to the NRC within 10 days of the licensee's receipt of the comments.

This RIS has been revised to clarify the NRC's process for TOC applications of uranium recovery and complex material facility licensees because they are more complex transfers than TOC applications of portable gauge users, medical institutions, and sealed source and device manufacturers and distributors, for example.

SUMMARY OF ISSUE

Holders of material licenses issued under 10 CFR Parts 30 or 40 should review NUREG-1556, Volume 15, for guidance on submitting requests to the NRC prior to transferring control of a license. Additionally, while written specifically for licensees holding 10 CFR Part 70 material licenses, all material licensees should also review RIS 08-19, "Lessons-Learned from Recent 10 CFR Part 70 License-Transfer Application Reviews" for further insight regarding the required information to be submitted to NRC with respect to materials TOC applications. RIS 08-19 discusses the complexity of TOC's in general and is also applicable to 10 CFR Parts 30 and 40.

The length of time needed for the NRC to complete its review is directly related to the complexity of the licensed activity, the proposed transaction and to the degree of public involvement. For most licenses and transactions, full information on a proposed TOC should be submitted to the appropriate NRC regional or Headquarters office no less than 90 days prior to the proposed transfer. However, certain sites involved in the TOC may have extensive decommissioning needs such as groundwater contamination or may involve foreign owned or controlled entities. Those types of sites may require additional time to process the TOC, and should be submitted no less than six months prior to the proposed transfer. Examples of sites that should be submitted six months prior to the TOC include uranium recovery and complex material facilities. In order to allow the NRC sufficient time to post a notice of an application for TOC, to provide the required opportunity for a petition to intervene, to provide for the submission of written comments, and request additional information from the licensee to complete the review, if needed, any licensee that intends to transfer control of a specific materials license should submit the TOC application to the NRC as soon as possible. The NRC will review information pertaining to the transfer so that the agency can ensure that: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid NRC licenses; (2) materials are properly handled and secured; (3) persons using such materials are capable, competent, and committed to implementing appropriate radiological controls; (4) licensees provide adequate financial assurance for compliance with the applicable NRC requirements; and (5) public health and safety are not compromised by the use of such materials. Although the burden of notification is on the existing licensee, it may still be necessary for the transferee to provide supporting information or to independently coordinate the TOC with the appropriate NRC office.

The NRC requires, in accordance with 10 CFR 2.1301 and 10 CFR 2.1305, that a notification of an application for a TOC be posted for a 30-day public comment period. Except in extenuating circumstances where the NRC determines that it is in the interest of ensuring public health and safety, consent for a TOC will not be granted by the NRC until this 30-day posting period has elapsed and the NRC has found that the transfer is in accordance with the AEA. Any application for a TOC must include the information outlined in 10 CFR 30.34(b)(2) or 10 CFR 40.46(b) for 10 CFR Part 30 and 10 CFR Part 40 licenses, respectively. Licensees are encouraged to follow the guidance in NUREG-1556, Volume 15, when preparing a TOC application. A notice of each TOC application for a materials license will be posted on the NRC's "Hearing Opportunities and License Applications" webpage located at <http://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing-license-applications.html>. The NRC had previously noticed TOCs for uranium recovery facilities and complex materials sites in

the *Federal Register*. With the publication of the revision to this RIS, the staff will now only publish notices for these TOCs on the NRC's Web site as specified in 10 CFR 2.1301(a).

BACKFIT DISCUSSION

This RIS requires no action or written response beyond that already required by the NRC regulations. Any action on the part of addressees in accordance with the guidance contained in this RIS is strictly voluntary and, therefore, is not a backfit under any requirement. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was not published in the *Federal Register*. This RIS identifies the change in the NRC's policy.

CONGRESSIONAL REVIEW ACT

This NRC has determined this RIS is a rule as designated by the Congressional Review Act (5 U.S.C. §§ 801–808). However, the Office of Management and Budget (OMB) has determined this RIS is not a major rule as designated by the Congressional Review Act.

RELATED GENERIC COMMUNICATIONS

Information Notice 1989-25, Revision 1, "Unauthorized Transfer of Ownership Control of Licensed Activities," ADAMS Accession No. ML082320739.

Regulatory Issue Summary 2008-19, "Lessons Learned from Recent 10 CFR 70 License-Transfer Application Reviews," ADAMS Accession No. ML081760011.

PAPERWORK REDUCTION ACT STATEMENT

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

PUBLIC PROTECTION NOTIFICATION

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

CONTACT

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

/RA/

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