Signed at Washington, DC, on July 7, 1994.

Mike Espy,

Secretary.

[FR Doc. 94–17239 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–98–M

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7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Science and Education and to the Administrator, Agricultural Research Service, the authority to administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, to conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program as authorized by the National Nutrition Monitoring and Related Research Act of 1990, and to conduct a program of nutrition education research.

EFFECTIVE DATE: July 15, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Ollila, Office of the General Counsel, United States Department of Agriculture, Room 2332, South Building, 14th Street and Independence Avenue SW., Washington, DC (202) 720–5824.

SUPPLEMENTARY INFORMATION: Public Law No. 103–211 requires that funds appropriated by Public Law No. 103–111 for the functions of the Human Nutrition Information Service be available only to the Agricultural Research Service. These amendments to the delegations of authority are necessary in order for the Agricultural Research Service to carry out the functions of the Human Nutrition Information Service. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is exempt from the notice and comment procedures of the Administrative Procedure Act, and this rule may be effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and thus is exempt from its provisions. This rule is also exempt from the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), and requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICES OF THE DEPARTMENT

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.15 is amended by revising the section heading and by removing and reserving paragraph (b) to read as follows:

§ 2.15 Assistant Secretary for Food and Consumer Services.

* * * * *

3. Section 2.30 is amended by adding a new paragraph (h) to read as follows:

§ 2.30 Assistant Secretary for Science and Education.

* * * * *

(h) *Related to national food and human nutrition research and information.* (1) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(2) The authority in paragraph (h)(1) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(3) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(4) Conduct a program of nutrition education research.

(5) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Public Law No. 101–445.

Subpart L—Delegations of Authority by the Assistant Secretary for Food and Consumer Services

4. Section 2.92 is removed and reserved.

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education

5. Section 2.106 is amended by adding new paragraphs (a)(65) through (a)(69) to read as follows:

§2.106 Administrator, Agricultural Research Service.

(a) * * *

(65) Administer a national food and human nutrition research program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term "research" includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department;

(iii) Research on the factors affecting food preference and habits; and

(iv) The development of techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet (7 U.S.C. 3171–3175, 3177).

(66) The authority in paragraph (a)(65)(i) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels;

(iv) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions;

(v) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy;

(vi) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs;

(vii) Coordinate nutrition education research and professional education projects within the Department; and

(viii) Maintain data generated on food composition in a National Nutrient Data Bank.

(67) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups;

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) Analyze data from such surveys to provide a basis for evaluating dietary adequacy; and

(v) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies.

(68) Conduct a program of nutrition education research.

(69) Provide staff support to the Assistant Secretary for Science and Education related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Public Law No. 101–445.

* * * * *

For Subparts C and L.

Dated: July 5, 1994.

Mike Espy,

Secretary of Agriculture.

For Subpart N.

R.D. Plowman,

Acting Assistant Secretary, Science and Education.

[FR Doc. 94–16757 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–03–M

Agricultural Marketing Service

7 CFR Part 929

[FV94–929–1IFR]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to the Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the rules and regulations under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the marketing order completed in 1992. This rule will make the order's rules and regulations consistent with the current marketing order language.

DATES: Effective July 15, 1994; comments received by August 15, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Mark Hessel, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3923.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the order completed in 1992. This rule makes the order's rules and regulations consistent with current order language. These changes were unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 1, 1994, meeting.

In 1992, the cranberry marketing order was amended [57 FR 38748, August 27, 1992] to change, among other provisions, the volume control features of the order. Prior to the amendment, the order authorized a base quantity program in which each producer received a base quantity calculated by the Committee from a representative period in the order. Base quantity was annually distributed to existing producers and new producers based on a formula in the order. The 1992 order amendments authorized a volume control program to be based on the sales history of each producer. The Committee now calculates a sales history for each producer based on the average of sales for a specified period for each producer or, in the case of a new producer, sales history is based on a State's average yield per acre. Other order amendments were made to reflect current industry practices.

The first change revises section 929.107 which currently provides the basis for determining established cranberry acreage. The section is revised by deleting various terms, dates, and section references. The term "established" cranberry acreage and the reference to section 929.16 are no longer applicable since they were removed by the 1992 amendment. The reference to growing cranberries during a specified period of time (i.e., 1965–66 through 1967–68) and other similar date references are removed since producers are no longer required to produce during this period to have a commercial crop of cranberries. Other modifications are made in the section for clarity.

The second change deletes section 929.108 which provides for procedures to substantiate a firm and substantial commitment for use in determining base quantities. This section is no longer applicable since the order amendments authorize a sales history to be computed for every producer. New or existing producers no longer have to show a firm and substantial commitment to receive base quantity.

The third change revises section 929.110 which provides for transfers or sales of cranberry acreage during the representative period. This section is revised by deleting the term "representative period." This term is no longer applicable since all reference to a representative period for computing base quantities was removed by the 1992 amendment. Producers must inform the Committee at any time when transfers or sales of acreage are made. Also, the term "base quantity" is deleted and replaced with the term "sales history." Other minor changes are made to the section to make it consistent with the order amendment.

The fourth change deletes section 929.148 which provides factors to be considered when assigning or adjusting base quantities for producers. This section is no longer applicable since the order amendment authorizes the computation of a sales history for each producer. These factors are not used when calculating sales history.

The fifth change revises section 929.150(a) which provides for the transfer or assignment of base quantities. This section is revised by deleting the term "base quantity" and replacing it with the term "sales history." The term base quantity is no longer applicable since the order amendment authorizes a sales history to be calculated for each producer.

The last change deletes section 929.153 which provides for the establishment and distribution of a base quantity reserve. This section is no longer applicable since the 1992 order amendment provides for a volume control program to be based on sales histories of producers. A producer's sales history is updated annually based on the highest four out of six years' sales. Therefore, a base quantity reserve is not necessary for updating producers' sales histories or for allowing entry of new growers.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0103.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The rules and regulations need to be consistent with the marketing order to allow the order to operate efficiently; (2) the Committee unanimously recommended this rule at a public meeting and all interested persons had an opportunity to provide input; (3) this rule is administrative in nature and provides no new restriction on handlers; (4) cranberry handlers are aware of this rule and need no additional time to comply with its requirements; and (5) this rule provides a 30-day comment period and any comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.107 is revised to read as follows:

§ 929.107 Basis for determining cranberry acreage.

(a) To be classified as cranberry acreage pursuant to section 929.48, all such acreage must be producing cranberries on a commercial basis or planted, in accordance with order provisions, so as to produce cranberries on a commercial basis. Commercial crop is synonymous with commercial basis and shall mean acreage that has a sufficient density of growing vines to show that such acreage can produce a commercial crop of at least 15 barrels per acre without replanting or renovation of any kind.

(b) So that the committee may properly identify cranberry acreage, the grower shall furnish, upon request, on forms furnished by the committee, information sufficient for the committee to establish that such grower is the grower for the acreage involved. It shall be the responsibility of the committee to determine by physical inspection or other means whether there is sufficient vine density as to qualify as "cranberry acreage" in accordance with paragraph (a) of this section. In making such determination, the committee shall be guided by standards of comparison between the potential bog and existing bogs in the same area.

(c) If the determination were that all or part of the acreage eligible under paragraph (a) of this section does not have sufficient vine coverage to produce 15 barrels per acre, that portion without sufficient vine coverage will not qualify as cranberry acreage under this section. In the event only a portion of an acreage has sufficient vine population and density to produce 15 barrels of cranberries per acre, such portion will qualify as cranberry acreage pursuant to this section. Since such qualified portion of the acreage would be eligible for a sales history, it must be definitely and permanently delineated.

(d) It shall be the responsibility of the grower to maintain adequate sales records to show actual sales from their cranberry acreage and submit such records to the committee separately from sales records pertaining to any other acreage. The report of sales must be filed by the grower no later than January 15 of the calendar year succeeding the crop year to which such sales pertain.

3. Section 929.108 is removed.

4. Section 929.110 is revised to read as follows:

§ 929.110 Transfers or sales of cranberry acreage.

(a) Sales or transfers of cranberry acreage shall be reported by the transferor and transferee to the committee, in writing, on forms provided by the committee. Completed forms shall be sent to the committee office not later than 30 days after the transaction has occurred.

(b) Upon transfer of all or a portion of a growers' acreage, the committee shall be provided with certain information on the forms it will provide to the parties. The transferor and transferee must provide the following information:

(1) Crop records for the acreage involved;

(2) Annual production and sales for each crop year on the acreage involved, either in total, or for each individual parcel; and

(3) Such other information as the committee deems necessary.

(c) Cranberry acreage sold or transferred shall be recognized in connection with the issuance of sales history as follows:

(1) If a grower sells all of the acreage comprising the entity, all prior sales history shall accrue to the purchaser;

(2) If a grower sells only a portion of the acreage comprising the entity from which prior sales have been made, the purchaser and the seller must agree as to the amount of sales history attributed to each portion and shall provide, on a form provided by the committee, sufficient information so that sales are shown separately by crop year. However, the sales history attributed to each portion shall not exceed the total sales history, as determined by the committee, for such acreage at the time of transfer.

5. Section 929.148 is removed.

6. In § 929.150, the section heading and paragraph (a) are revised to read as follows:

§ 929.150 Transfer or assignment of sales history.

(a) If indebtedness is incurred with regard to the acreage to which the cranberries are attributed, and on which a sales history is established, the sales history holder may transfer or assign the sales history solely as security for the loan. During the existence of such indebtedness no further transfer or assignment of sales history by the sales history holder shall be recognized by the committee unless the lender agrees thereto: Provided, That a copy of such loan agreement or assignment shall be filed with the committee before any right expressed therein, with regard to the sales history, shall be recognized by the committee under this paragraph (a).

* * * * *

7. Section 929.153 is removed.

Dated: July 11, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–17240 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 94–008–2]

Brucellosis in Cattle; State and Area Classifications; Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Texas from Class B to Class A. We have determined that Texas meets the standards for Class A status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Texas.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on March 28, 1994 (59 FR 14359–14360, Docket No. 94–008–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Texas from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b).

Comments on the interim rule were required to be received on or before May 27, 1994. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.41 and that was published at 59 FR 14359–14360 on March 28, 1994.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17247 Filed 7–14–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 92

[Docket No. 94–014–1]

Ports Designated for Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds. This action will add another port through which certain pet birds from Canada, certain pet birds that originated in the United States, and performing or theatrical birds may be offered for entry into the United States. We are also making several nonsubstantive changes to correct errors in the regulations concerning importation of birds.

DATES: This rule will be effective on September 13, 1994 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before August 15, 1994. If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the **Federal Register** withdrawing this rule before the effective date.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your submission refers to Docket No. 94–014–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Tracye Butler, Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5097.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart A—Birds, §§ 92.100 through 92.107 of the regulations, regulates the importation of pet birds, commercial birds, zoological birds, research birds, and performing or theatrical birds into the United States.

This direct final rule will add the Greater Cincinnati International Airport, which is located in Covington, KY, as a limited port of entry for certain birds that are not required to be quarantined upon arrival at the port of entry. The Greater Cincinnati International Airport has no quarantine or holding facilities for birds. Under §§ 92.101(c)(1) and (c)(2) and 92.101(f) of the regulations, certain pet birds from Canada, certain U.S.-origin pet birds, and performing or theatrical birds are not required to be quarantined upon arrival at the port of entry, and so may be offered for entry at a limited port.

In the past, limited ports of entry for certain pet birds and performing or theatrical birds have been listed in § 92.203(d) of the regulations, which is part of Subpart B—Poultry. Limited ports were listed in § 92.203(d) because those ports were also designated as ports of entry for performing or theatrical poultry and certain other poultry and poultry products, such as poultry test specimens, hatching eggs, and day-old chicks, none of which require restraint or holding facilities.

There has been an increasing number of pet birds arriving at the Greater Cincinnati International Airport; there have not, however, been any poultry or poultry products offered for entry at the airport. For this reason, the Animal and Plant Health Inspection Service (APHIS) intends that the Greater Cincinnati International Airport be designated as a limited port of entry for certain birds only. Therefore, in this direct final rule, the list of limited ports in § 92.203(d) will be reproduced in § 92.102, "Ports designated for the importation of birds." The list will be part of a new paragraph that states that the ports listed in the paragraph are designated as ports of entry for pet birds imported under the provisions of § 92.101(c)(1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f). This new paragraph will serve only as a means for APHIS to add the Greater Cincinnati International Airport as a limited port of entry for certain birds; its addition will have no substantive effect on any other provisions of the regulations.

Miscellaneous

This direct final rule will also make several corrections to the regulations.

Under § 92.101(c)(3), certain pet birds are required to be quarantined upon arrival at the port of entry. Section 92.103(c) states that these birds may be offered for entry at one of the ports listed in § 92.102(a), which are the special ports for pet birds. However, in § 92.101(c)(3)(ii), there are three references to such birds being offered for entry at a port of entry designated in §§ 92.102 or 92.203. This direct final rule will correct § 92.101(c)(3)(ii) by removing the three references to § 92.203 and, because we will be adding a second list of ports to § 92.102, changing the three references to that section to specify the special ports listed in § 92.102(a). We will also correct a misspelling in paragraph § 92.101(c)(3)(ii).

In a final rule published in the Federal Register on July 13, 1993 (58 FR 37642, Docket No. 92–103–2), we added Port Canaveral, FL, as a port of entry for pet birds, performing or theatrical birds, performing or theatrical poultry, and certain other poultry and poultry products such as poultry test specimens, hatching eggs, and day-old chicks. As discussed above, such birds, poultry, and poultry products are not required to be quarantined at the port of entry. We stated in the July 1993 final rule that the port of entry at Port Canaveral, FL, has facilities only for those birds, poultry, and poultry products that do not appear to require restraint and holding facilities, so we added Port Canaveral, FL, to the list of limited ports in § 92.203(d). We also, however, mistakenly added Port Canaveral, FL, to the list of special ports in § 92.102(a), which are the special ports for pet birds that are required to be quarantined upon arrival at the port of entry. This direct final rule will correct that error by removing Port Canaveral, FL, from the list of special ports in § 92.102(a).

In § 92.105(b), the first sentence refers to the limited ports listed in § 92.203(d) when the reference should actually be to the special ports listed in § 92.102(a). The error dates back to 1980, before part 92 was reorganized into its present format, when the limited ports and the special ports were listed in the same section (the former § 92.3). The special ports were listed in § 92.3(e) until the publication of a final rule in the February 22, 1980, Federal Register (45 FR 11796–11797) that redesignated § 92.3(e) as § 92.3(f) and added the list of limited ports as the new § 92.3(e). When paragraph (e) was redesignated, we inadvertently failed to reflect that change in § 92.8(c), which contained a reference to § 92.3(e). Not correcting that reference had the effect of changing the meaning of § 92.8(c) so that the paragraph stated that pet birds requiring quarantine at the port of entry must be presented for entry at ports that have no facilities for quarantine. The error was repeated when part 92 was reorganized into its present format by a final rule published in the Federal Register on August 2, 1990 (55 FR 31484–31562, Docket No. 90–023), and § 92.8(c) became § 92.105(b). This direct final rule will, therefore, correct the reference so the regulations in § 92.105(b) regain their intended meaning.

In § 92.106(a), this direct final rule will restore one sentence and delete another to correct an error that resulted from an earlier final rule. A final rule published in the Federal Register on January 6, 1982 (47 FR 591–596, Docket No. 81–071), directed the revision of the seventh and eighth sentences in § 92.106(a), but the sixth and seventh sentences were the ones actually revised in the regulations. As a result of that error, the sentence "The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine" was deleted and the sentence that begins "During the quarantine period, the importer shall * * *" was left in the text. The former sentence will be restored and the latter sentence deleted.

This direct final rule will amend §§ 92.101, 92.102, 92.105, and 92.106 in accordance with the procedures explained below. The amendments will add the Greater Cincinnati International Airport as a limited port, add a list of limited ports to § 92.102, and correct several errors in the regulations.

Effective Date

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a document in the Federal Register withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments or written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a document to this effect in the Federal Register, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This direct final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This direct final rule will add the Greater Cincinnati International Airport in Covington, KY, as a limited port of entry for certain birds. The Greater Cincinnati International Airport has seen a steady increase in the number of international arrivals, especially from Europe. The airport is a hub for at least one major airline and receives flights from London, Zurich, Paris, Frankfort, and Munich. The increase in international arrivals is expected to continue.

When a traveler with a pet bird arrives at the Greater Cincinnati International Airport without advance notice, APHIS inspectors at the airport must contact APHIS Veterinary Services (VS) personnel in Kentucky to arrange for an inspection. The traveler then must wait at the airport for an APHIS veterinarian to arrive. In order to streamline this process, the APHIS Area Veterinarian in Charge in Kentucky has requested that the Greater Cincinnati International Airport be designated as a limited port of entry for pet birds. Such a designation will enable travelers to contact APHIS in advance to schedule an inspection to coincide with their arrival, and APHIS/VS personnel will have the necessary forms and equipment on hand to conduct those inspections. This will allow a more orderly approach to the inspection of pet birds arriving at the Greater Cincinnati International Airport from foreign countries.

We believe that designating the Greater Cincinnati International Airport as a limited port of entry for birds will have no economic impact on domestic or foreign consumers or producers, large or small, because the designation will not have any effect on commercial imports of birds. No additional cost is expected for APHIS because no new personnel will have to be hired, nor will any additional hours have to be worked by the APHIS/VS personnel already on staff who currently perform the required inspections for arriving pet birds without the benefit of prior notice.

The remaining changes contained in this document are administrative in nature and, therefore, will have no economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.101 [Amended]

2. Section 92.101 is amended as follows:

a. In paragraph (c)(3)(ii), in the second sentence, the words "as provided, in § 92.102 or 92.203" are removed and the words "in § 92.102(a)" are added in their place, and the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place.

b. In paragraph (c)(3)(ii), in the third sentence, the reference "§ 92.102 or 92.203" is removed and the reference "§ 92.102(a)" is added in its place, and the word "Newberg" is removed and the word "Newburgh" is added in its place.

3. In § 92.102, paragraph (a) is revised as set forth below and a new paragraph (d) is added to read as follows:

§ 92.102 Ports designated for the importation of birds.

(a) *Special ports for pet birds.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) and performing or theatrical birds imported under the provisions of § 92.101(f): Los Angeles and San Ysidro, CA; Miami, FL; Honolulu, HI; New York, NY; and Hidalgo, TX.

* * * * *

(d) *Limited ports.* The following ports are designated as ports of entry for pet birds imported under the provisions of § 92.101(c) (1) or (2) and performing or theatrical birds imported under the provisions of § 92.101(f): Anchorage and Fairbanks, AK; San Diego, CA; Denver, CO; Jacksonville, Port Canaveral, St. Petersburg-Clearwater, and Tampa, FL; Atlanta, GA; Chicago, IL; New Orleans, LA; Boston, MA; Baltimore, MD; Portland, ME; Minneapolis, MN; Great Falls, MT; Covington, KY (Greater Cincinnati International Airport); Portland, OR; San Juan, PR; Galveston and Houston, TX; and Seattle, Spokane, and Tacoma, WA.

§ 92.105 [Amended]

4. In § 92.105, paragraph (b), the reference "§ 92.203(d)" is removed and the reference "§ 92.102(a)" is added in its place.

§ 92.106 [Amended]

5. In § 92.106, paragraph (a), the eighth sentence, which reads "During the quarantine period, the importer shall comply with handling procedures (including inspection and testing) as provided in paragraph (c) of this section.", is removed.

6. In § 92.106, paragraph (a), a new sentence is added after the fifth sentence to read as follows: "The daily log and the identification record shall be maintained for 12 months following the date of the release of the bird from quarantine".

Done in Washington, DC, this 11th day of July 1994.

William S. Wallace,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–17246 Filed 7–14–94; 8:45 am]
BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 30, 40, 70, and 72

RIN 3150–AD85

Timeliness in Decommissioning of Materials Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require timely decontamination and decommissioning by nuclear material licensees. These amendments establish specific time periods for decommissioning unused portions of operating nuclear materials facilities and for decommissioning the entire site upon termination of operations. The rule is intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased.

EFFECTIVE DATE: August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6230.

SUPPLEMENTARY INFORMATION:

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I. Background

In 1990, the NRC implemented the Site Decommissioning Management Plan (SDMP) to identify and resolve issues associated with the timely cleanup of a number of sites where buildings, soil, and ground water are contaminated. The SDMP contaminated sites are symptomatic of the need for definitive NRC regulations that specify acceptable time periods for decommissioning nuclear material facilities when licensed activities have ceased.

When decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. In addition, bankruptcy, corporate takeover, or other unforeseen changes in the company's financial status may complicate and perhaps further delay decommissioning.

The NRC published a proposed rule addressing timeliness of decommissioning for public comment in the **Federal Register** on January 13, 1993, (58 FR 4099). The public comment period for the proposed rule expired on March 29, 1993. The NRC is issuing this final rule to establish timeliness criteria for decommissioning nuclear materials facilities to avoid future problems resulting from delayed actions on the cleanup of contaminated inactive facilities and to avoid the occurrence of difficulties associated with a case-by-case approach to requiring timely decontamination and decommissioning.

II. Need for a Rule

The lack of definitive criteria as to when licensees should commence and complete decommissioning their facilities has resulted in instances where the NRC has had to issue orders to establish schedules for timely decommissioning. Because timeliness in decommissioning is a generic issue, the NRC is amending its regulations to clearly delineate the licensee's responsibility for timely decommissioning.

In developing details of these requirements, the NRC considered whether to impose them on all licensees, or to limit the requirements only to those licensees who, because of the size of their operations, had greater potential for needing significant cleanup before their sites could be fully decommissioned; i.e., those licensees covered by the financial assurance requirements for decommissioning in 10 CFR 30.35, 40.36, 70.25, and 72.30. Because the regulatory problems in delaying decommissioning apply to all licensees, regardless of size, the NRC has determined that the provisions of the rule should apply to all 10 CFR Parts 30, 40, 70, and 72 licensees.

Under existing regulations in, § 72.42(b), ISFSI and MRS licensees are required to file applications for renewal of their licenses at least 2 years prior to expiration of the existing license. This final rule requires licensees to notify the NRC (at least 2 years prior to license expiration) if an application for renewal will not be filed. The notification requirement, coupled with the 12-month time period for preparation of the final decommissioning plan, is equivalent to the current requirement in § 72.54(a) for submittal of a plan 1 year before expiration of the license. This requirement also has the effect of clearly documenting the licensee's decision on the future of the site 2 years before license termination.

This final rule does not define radiological criteria for release for unrestricted use, but states that licenses will be terminated in accordance with NRC requirements. The NRC is in the process of establishing these levels in an enhanced participatory rulemaking that will be noticed in the **Federal Register**. Pending promulgation of the new radiological criteria, licensees are expected to comply with current criteria and practices as described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP Sites (57 FR 13389; April 16, 1992). Further information on acceptable criteria may be obtained through the NRC regional or headquarters offices. Once the radiological criteria are finalized, licenses would be terminated in accordance with those criteria.

The final rule also clarifies requirements for radiological surveys performed as part of the license termination process. This rule clarifies that licensees need only submit the final survey showing that the site or area is suitable for release in accordance with NRC requirements after decommissioning has been completed. Some licensees have questioned whether existing requirements may be construed to require two surveys. In order to adequately review and approve a decommissioning plan the NRC must be aware of the conditions at the site. Therefore, a new item was included in the proposed rule that added to the contents of a proposed decommissioning plan a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan. This description may be a preliminary radiation survey or other type of documentation which characterizes the conditions of the site. No comments were received on this item in the proposed rule.

III. Summary of Requirements and Discussion of Comments

Seventeen comment letters were received on the proposed rule. Nine letters were received from licensees, three from public interest groups, four from industry organizations, and one from a State government. All of the comments were considered with respect to possible revision of the proposed rule. This discussion summarizes the major requirements in the regulation by section and discusses the significant issues raised by public comment and how they were resolved. The bases and origins of the requirements are also explained. Copies of the public comments received on the proposed rule are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C. 20036.

Sections 30.4, 40.4, 70.4, and 72.3—Definitions

These sections define terms that are used in the amended Parts 30, 40, 70 and 72. Of particular relevance to this rulemaking is the definition of principal activities. The final rule defines principal activities as those activities that are essential to achieving the purpose for which the license was issued or amended. Principal activities are commonly listed or described in the license under the Authorized Use heading. Principal activities are defined in the regulation to prevent licensees from avoiding end-of-use decommissioning. For example, a licensee could not store licensed radioactive material in an otherwise unused building to avoid end-of-use decommissioning. Storage of licensed material is not a principal activity unless it is specifically authorized for waste (such as greater than class C) that cannot currently be accepted at available disposal facilities, or it is the primary purpose for which the license was issued (such as, spent fuel storage in an ISFSI).

Some commenters suggested that definitions for the terms "uranium recovery facility" and "characterization of the site" be added to the proposed rule. The NRC did not adopt these suggestions with this rulemaking. First, the term "uranium recovery facility" does not appear in this rule; hence no definition is needed. Second, whether there is a need to define "site characterization" is better determined by the nature of the criteria for decommissioning and will be addressed upon completion of that rulemaking.

Sections 30.36(a)–(c), 40.42 (a)–(c), 70.38(a)–(c) and 72.54(a)–(c)

These sections of the regulations address license termination, expiration, revocation, denial of renewal, and their relationship to each other. A license "expires" when: (1) the expiration date stated in the license is reached (unless the licensee has appropriately filed for renewal), (2) the NRC revokes the license, or (3) the NRC formally denies an application to renew the license. "Expiration" of a license, whether voluntary or involuntary, refers to the end of a licensee's authorization to perform activities licensed under the Atomic Energy Act of 1954, as amended, with the exception of a licensee's continuing authorization to perform licensed activities incident to and necessary for site decontamination and decommissioning. Licensees with expired licenses must then decommission pursuant to the time limits and other requirements stated in the regulations. The final rule makes clear that the decommissioning and timeliness criteria apply to all licensees for whom the authorization to perform licensed activities has expired, regardless of whether the expiration was voluntary or involuntary. When the NRC has determined that decommissioning has been completed in a satisfactory manner, the NRC will relieve the licensee of license obligations by terminating the license. All licenses remain in effect until formally terminated by the NRC. One commenter suggested revising the language to clarify that licensees were not required to control access to areas within their facility once they are decontaminated. The language in the final rule was revised to state that licensees were required to control access to restricted areas until they were suitable for release in accordance with NRC requirements.

Sections 30.36(d), 40.42(d), 70.38(d), and 72.54(d)—Submittal of Decommissioning Plan (if Required) Within 12 Months of Notification

The final rule establishes specific requirements for: (1) timely decommissioning of the entire site at the end of all licensed activity at the site, thereby allowing license termination and release of the site in accordance with NRC requirements (i.e., "end-of-license" decommissioning); and (2) timely decommissioning of separate buildings and outdoor areas where licensed activities have ceased while licensed activities continue to be conducted at other site locations (i.e., "end-of-use" decommissioning). Licenses will be amended to exclude decommissioned buildings or outdoor areas as authorized places of use following satisfactory completion of end-of-use decommissioning.

The final rule requires licensees to submit notification of the existence of inactive buildings or outdoor areas but does not require them to provide notification of the existence of inactive parts of buildings, such as rooms or laboratories. To include parts of buildings in the regulation was seen as a cumbersome regulatory requirement both for licensees and the NRC without sufficient resultant benefit. In addition to notification, licensees will be required to initiate decommissioning, or submit a decommissioning plan for NRC approval within 12 months of the notification.

A commenter noted that the 12-month period allowed by the proposed rule for submittal of a decommissioning plan fails to recognize the scope of work necessary to characterize a site prior to preparing a plan. This commenter suggested that consistent with other licensing actions, scheduling commitments should be developed on a site-specific basis. A second commenter also felt that the 12-month period was unrealistic because of the need to obtain other agency approvals and those agencies are not subject to NRC schedules or under the licensee's control. This commenter suggested that, rather than requiring that a decommissioning plan be submitted within 12 months, the rule should require submission of a proposed schedule taking into account the requirements of other affected regulatory bodies.

The NRC did not extend the 12-month period for submittal of a decommissioning plan. The NRC notes that flexibility has been included in the final rule. The NRC may approve alternate schedules as indicated in §§ 30.36(f)(2), 40.42(f)(2), 70.38(f)(2) and 72.52(e)(2). The final rule requires the decommissioning plan to be submitted within 12 months from:

(1) The notification of license expiration,

(2) A decision by the licensee to permanently cease "principal activities," or

(3) When there are no "principal activities" for 24 months.

Sections 30.36(d) (2), (3), and (4), 40.42(d) (2), (3), and (4), 70.38 (d) (2), (3), and (4), 72.54(d) (2) and (3)—Notification of Inactivity for 24 Months and Begin Decommissioning or Submit Plan, as Appropriate.

Sixteen of the 17 commenters foresaw major difficulties with having to begin decommissioning within 24 months of inactivity. They stated that it may not be in the licensee's best interest to decommission unattached buildings because of the additional manpower involved and that future business that would require use of the buildings may be unknown.

The time required for completing decommissioning consists of the periods both for initiating the decommissioning process and for subsequently completing decommissioning activities. In determining the appropriate time period for initiating decommissioning, the NRC considered the health and safety benefits to be obtained by allowing short-lived isotopes to decay before beginning decommissioning operations and the licensee's need to make business decisions concerning future use of inactive buildings or outdoor areas. In determining the appropriate time period for the completion of subsequent decommissioning activities, the NRC considered the time needed to plan and safely carry out decommissioning operations based on previous experience.

With regard to initiation of the decommissioning process, the background information developed for the rulemaking on general requirements for decommissioning (53 FR 24018; June 27, 1988) included an evaluation of decommissioning planning and preparation requirements for the wide variety of different sized operations licensed under 10 CFR Parts 30, 40, and 70. The evaluation indicated that, in general, for materials license facilities, further benefits derived from radiological decay are not likely to be gained by delaying decommissioning beyond approximately 3 years from the date that operations cease. The NRC considers a period of approximately 24 months for making business decisions on further use of inactive facilities to be reasonable. This permits licensees sufficient time to make decisions concerning future use of an inactive facility, while accommodating periods of inactivity due to normal operations, testing, or routine business cycles.

Based on the 24-month time period considered reasonable for making business decisions and considering that the incremental benefits due to radioactive decay between the second and third years of inactivity are small, the NRC considers a period of approximately 24 months to be a reasonable time period to permit a building or outdoor area to remain inactive without undergoing decommissioning. Therefore, the final rule stipulates that licensees must notify NRC if they have buildings or outdoor areas where no principal activities have been conducted for 24 months. Notification is also required when the license has expired or when the licensee has decided to permanently cease principal activities and begin the formal process leading to license termination. The rule allows licensees 60 days to provide notification. The rule requires licensees that are not required to submit decommissioning plans to begin decommissioning within the 60-day period provided for notification unless the NRC has granted a delay or postponement. Licensees required to submit decommissioning plans will be required to submit final decommissioning plans within 12 months following notification to cease principal activities.

Based on its analysis of the situation, the NRC arrived at a 24-month period as being a reasonable time period for a facility, building or outside area to remain inactive without undergoing decommissioning. Licensees may file for exemption if they feel they will exceed the 24-month inactivity period.

Sections 30.36(e) and (h), 40.42(e) and (h), 70.38(e) and (h), and 72.54(e) and (j)—Submittal of Request to Delay Initiation of the Decommissioning Process and Submittal of Alternate Decommissioning Schedules.

The NRC recognizes that licensees may not wish to decommission the site or separate buildings or outdoor areas when submitting the notification of inactivity for 24 months. Thus, the rule permits licensees to make a request and justify delay or postponement. Licensees will be required to submit the request with justification 30 days prior to the time notification would have been required under paragraph (d). In practical terms, this means:

(1) 30 days after the license expiration date,

(2) 30 days following the decision to permanently cease principal activities at the site or in separate buildings or outdoor areas, or

(3) 30 days following the end of the 24-month time period of inactivity for the site or in separate buildings or outdoor areas.

Five commenters expressed opinions against the provision for granting an extension of time for submitting a decommissioning plan. A commenter recommended that an additional factor be included under paragraph (h), in each of the affected sections in the regulation as a reason to delay decommissioning—the future availability of emerging technologies which would enable more thorough or efficient decontamination. The NRC did not adopt this recommendation because this additional factor, as worded, appears to be too general to be used as a basis for delaying decommissioning. If some particular emerging technology could be identified which would offer more thorough or efficient decontamination on a definite time scale, it could form the basis of a request to the NRC by a licensee for a delay in beginning decommissioning.

Some commenters expressed the opinion that 30 days is not enough time for the licensee to perform a proper analysis and prepare a meaningful submittal. They proposed allowing 90 days for submitting a schedule for preparation, submittal and review of a site characterization plan, site characterization report, and site decommissioning plan and elimination of the 30-day notice. The commenters appeared to misunderstand the purpose of the 30-day notice. The 30-day notice is not for a request to extend the time for submittal of a decommissioning plan but applies to a request and justification for postponement of the initiation of the decommissioning process. For those licensees required to submit decommissioning plans, the regulation allows licensees 12 months, not 30 days, to prepare the decommissioning plan.

A commenter expressed concern with the provision which puts the decommissioning timetable "on hold" until the NRC makes a determination on the extension request. To make the NRC accountable, the commenter strongly urged that the NRC modify the rule to place a reasonable time limit on NRC determinations regarding extension requests (i.e., 30 days). The NRC did not adopt this comment because a 30-day time period for evaluating a request for an extension of the 24-month decommissioning period would be difficult to adhere to due to the complexity involved in evaluation of non-routine factors such as extensive ground-water contamination and because the NRC may have to request further information from the licensee.

Sections 30.36(e), 40.42(e), 70.38(e), and 72.54 (e)(1)—Inclusion of Specific Information to Support a Request to Delay or Postpone Initiation of Decommissioning

Three commenters stated that the wording of the extension request provision failed to define specific standards to be met by a licensee or to describe how the NRC will evaluate requests. It was noted that the term "otherwise in the public interest" was not precisely defined and could be interpreted in a variety of ways. Two commenters noted that the rule states that the NRC may grant a request to delay or postpone decommissioning if NRC determines the relief "is not detrimental to public health and safety and is otherwise in the public interest." In addition, these commenters felt that this section was unnecessary for uranium recovery licensees because the NRC already knows the safety status of the facilities through various periodic reports that must be submitted.

The NRC did not adopt these suggestions. Sections 30.36(h), 40.42(h), 70.38(h) and 72.54(j) of the final rule contain five criteria the NRC will evaluate in reaching a decision on the merits of the licensee's request. Guidance on techniques used by the staff to evaluate requests is typically provided in regulatory guides and other guidance documents. The NRC will issue additional guidance as necessary after the final rule is issued.

Sections 30.36 (e) and (h), 40.42 (e) and (h), 70.38 (e) and (h), and 72.54 (e) and (j)—Public Participation

One commenter suggested that the public would like to be given a role in evaluating the merits of requests for extensions of the decommissioning schedules. This commenter stated that the rule should provide for hearings for any variation in the rule conditions, including granting of an extension.

In most cases, when an extension is granted the license would be amended. Since current NRC rules (§ 2.1205) provide individuals that could be affected the right to request a hearing whenever a license amendment is issued, there does not appear to be a need for any additional rule changes to accommodate this concern.

Sections 30.36(f)(4)(vi), 30.36(g), 30.36(h), 40.42(f)(4)(vi), 40.42(g), 40.42(h), 70.38(f)(4)(vii), 70.38(g), 70.38(h), 72.54(i), and 72.54(j)(1) and (2)—Decommissioning Period

Six of the 17 comment letters on the proposed rule questioned the practicability of the 18-month period for the completion of decommissioning for various reasons. Several commenters felt that the 18-month limit was premature because NRC has not yet established the acceptance criteria, which may affect cost and scheduling of decommissioning. Other commenters stated that most fuel facilities require significantly more time than 18 months and the rule should recognize this. A commenter expressed the view that the 18-month period should not apply to uranium recovery facilities because portions of the milling facility may need to remain under license for ground-water remediation and tailings closure. The commenter suggested modifying the rule to state that decommissioning would be completed as soon as practicable after a final decision to cease operations. This commenter also suggested extending the period for decommissioning to make scheduling more realistic for major materials licensees. In addition, this commenter suggested that the NRC request strict compatibility for Agreement States to preclude imposition of more restrictive standards than those imposed by NRC.

The NRC has concluded that an 18-month period for completion of decommissioning may not be adequate for many major materials licensees. In response to the comments received, the NRC has decided to increase the time limit to complete decommissioning. This change is expected to have the effect of reducing the number of requests for extensions of the time period without having a significant impact on public health and safety. Following initiation of decommissioning activities, licensees would have a maximum of 24 months to complete decommissioning.

The amended regulations permit licensees to request the NRC to consider extending the 24-month time limit for decommissioning. The NRC will consider site-specific factors on a case-by-case basis. Factors that the NRC may consider to be appropriate include:

(1) Availability of waste disposal facilities;

(2) Reductions in dose or waste volume due to radioactive decay;

(3) Technical feasibility of decommissioning;

(4) Regulatory requirements of other government agencies;

(5) Lawsuits;

(6) Ground-water treatment activities;

(7) Monitored natural ground-water restoration; or

(8) Other factors that could result in more environmental harm than deferred clean-up or that are beyond the control of the licensee.

Based on these time periods the NRC estimates that licensees who are not required to submit decommissioning plans will complete their decommissioning activities in approximately 50 months or less after cessation of operations (i.e., 24 months of inactivity, 60 days for notification, and 24 months to complete decommissioning). Licensees who are required to submit decommissioning plans would be expected to complete their decommissioning activities in approximately 62 months or less (i.e., 24 months of inactivity, 60 days for notification, 12 months to submit a decommissioning plan, and 24 months to complete decommissioning). NRC review and approval of decommissioning plans (estimated to be 6 months or less) will be in addition to the 62-month total.

Sections 30.36(f)(1) and (3), 40.42(f)(1) and (3), 70.38(f)(1) and (3)—Activities Permitted Prior to Approval of a Decommissioning Plan

Three commenters stated that the rule should clearly specify what decontamination and decommissioning activities are permitted without approval of a decommissioning plan. They also stated that there should be specific wording that permits the licensee to proceed with certain activities pending approval of the plan. They believed that decommissioning activities covered under existing authorizations and procedures should be able to proceed pending approval of the plan. In addition, one commenter believed that those activities which would not increase health and safety impacts to workers and the public should be permitted pending approval of the plan. A commenter noted that license amendments could be considered for specific activities while the plan is under NRC review.

The NRC did not adopt these suggestions because sufficient latitude currently exists for licensees to carry out decommissioning activities in the absence of an approved decommissioning plan provided the procedures used are approved under existing licensing conditions and do not increase the potential for health and safety impacts to workers or to the public or result in significantly greater release of radioactive material to the environment.

Sections 30.36(i), 40.42(i), 70.38(i), and 72.54(k)—Radiation Surveys

The comments on this subject were concerned with radiation survey measurements and radiation units to be used. Three commenters questioned the practical value of the required measurement of beta/gamma radiation levels at one centimeter from the surface. The commenters noted that this measurement was not included in NUREG/CR–5849. Four commenters objected to the requirement in the proposed rule to use SI units. They believed that this proposal was in conflict with Part 20 and would be confusing to all concerned. Here again, the commenters suggested that the results of radiation measurement be specified elsewhere, such as in the rule dealing with residual radiation standards.

The NRC has decided to delete the requirement for beta/gamma radiation levels at 1 centimeter from the surface since sufficient guidance exists in NUREG/CR–5849. The provision in the final rule that requires that radiation levels be reported in SI units reflects NRC policy on metrication which was published in the **Federal Register** on October 7, 1991 (57 FR 46202). In keeping with this policy, levels of gamma radiation will be expressed in units of millisieverts. The millisievert was chosen over Coulomb/kilogram to convert from Roentgen because expressing in units of absorbed dose allows easy conversion. The values only differ with respect to orders of magnitude. The staff notes that using absorbed dose to express levels gamma radiation is the approach adopted in Europe and will foster international consistency.

Sections 30.36(j)(2), 40.42(j)(2), 70.38(j)(2), and 72.54(l)(2)—Delay for Radiation Criteria Rule

Five commenters expressed opposition to or concern with the NRC's plans to proceed with the timeliness in decommissioning rulemaking separate from and in advance of the EPR currently underway. The main points made by the commenters in support of either delaying the timeliness rulemaking or combining the two rulemakings were:

(1) Proceeding with the timeliness rulemaking separately constrains the public's ability to influence the radiological-standards rulemaking and weakens the NRC's stated commitment to greater public participation;

(2) The timeliness rulemaking is isolated from the enhanced public participation of the radiological-standards rulemaking;

(3) It is inconsistent to define the length of time decommissioning will require when it is not known what the extent of decommissioning will be (the timeliness rulemaking is based on the premise of decommissioning for release

in accordance with NRC requirements). The results of the radiological standards rulemaking may provide for alternative approaches to decommissioning, such as continual remediation or long-term monitoring, restricted use, and continued institutional care, perhaps through the transfer of the property to a governmental entity; and

(4) Because decommissioning should be done correctly and is expensive, its scheduling and implementation should be accomplished with the benefit of final residual radiation criteria.

The comments regarding the desirability of either delaying the timeliness in decommissioning rulemaking until the rulemaking on decommissioning criteria is completed or combining the two rulemakings have merit. Ideally, the two subjects could be addressed in a single rulemaking because of their strong interdependence. However, the NRC has determined that, pending promulgation of the new decommissioning criteria, adequate criteria exist to conduct decommissioning and are described in the NRC Action Plan Ensuring Timely Decommissioning of SDMP sites (57 FR 13389; April 16, 1992). Because having these new timeliness requirements in the regulations is expected to improve the NRC's ability to see that timely decommissioning is accomplished, the NRC did not adopt the commenters' suggestion. Adoption of the suggestions of the commenters on this point would result in either the continuation of the "status quo", i.e., establishment of time schedules for decommissioning on a case-by-case basis through license condition or order, or postponement of all decommissioning of materials facilities until the rulemaking on decommissioning criteria has been completed.

Section 70.38(f)(4)(vi)

A commenter suggested deleting the requirements to submit updated descriptions of physical security plans and material control and accountability plans. This comment was not adopted because this information is likely to be different from the plans designed to cover routine operations. As noted in the comment, the licensee may be in a position where the possession limit for special nuclear material can be reduced below the threshold for the plans, then the information would not be required in the decommissioning plan.

Viability of Uranium Recovery Industry

Uranium recovery licensees consist of conventional mills, commercial, research and development in situ facilities, ore buying stations, and heap-leach facilities. These sites may contain processing facilities and waste disposal areas. All of the sites, other than the tailings impoundments and waste disposal areas, are to be decommissioned and released in accordance with NRC requirements under NRC's present regulations. The waste disposal areas are reclaimed and, when the specific license is terminated, they are licensed for long-term care under the general license in § 40.28.

The current requirements for decommissioning and reclamation of these sites are contained primarily in Appendix A to 10 CFR Part 40. In particular, Criterion 9 of Appendix A requires that prior to commencement of operations, there must be a NRC-approved plan for:

(1) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and

(2) The reclamation of tailings and/or waste disposal areas in accordance with technical criteria presented in Section I of Appendix A.

Nonetheless, § 40.42 applies to the uranium processing facilities. The effect of the final rule is to require the uranium recovery licensees to notify the NRC within 60 days when they have permanently ceased operations or have not conducted operations for 24 months (§ 40.42(d)) and to submit an updated decommissioning plan within 12 months of this notification or license expiration. The provisions in the amended § 40.42(g) on the content of a decommissioning plan are consistent with the decommissioning plan required in Criterion 9 of Appendix A to 10 CFR Part 40. The decommissioning plan submitted at the end of operations is intended to better describe the actual conditions of the site at that time.

Some uranium recovery licensees may require additional time to conduct final decommissioning and site survey in order to support the reclamation of waste disposal areas. Section 40.42(k) provides for an exemption for the waste disposal areas at uranium recovery facilities.

Disposal areas (as defined in Appendix A to 10 CFR Part 40) are reclaimed and ownership is eventually transferred to the Department of Energy. Criterion 6A of Appendix A to 10 CFR Part 40 and Subpart D of 40 CFR Part 192 specifically require the submittal and approval of a timely reclamation plan. For these reasons, the provisions in the final rule in § 40.42(f) for the content of a plan and § 40.42(g) for the timing of completion of the plan do not apply to the reclamation of the waste disposal areas at uranium recovery facilities and thorium mills.

To coordinate decommissioning of uranium recovery facilities and reclamation of disposal areas, the NRC may need to extend the date for completion of decommissioning including the final radiological survey until the reclamation of the disposal area has been completed. Typically, the reclamation of a disposal area may require several years of drying, several construction seasons, and a period of stability monitoring prior to the licensee proposing to terminate the license. Requests for delay in completion of the final aspects of decommissioning can be accommodated through the provisions in § 40.42(h).

The NRC recognizes the fluctuation that has occurred in the uranium industry. The amended regulation allows the NRC to extend the 24-month period of inactivity if the NRC determines, based on a request by the licensee, that this relief is not detrimental to the public health and safety and is otherwise in the public interest. Commenters stated that the proposed rule threatens future energy security of the United States by forcing decommissioning of uranium production facilities. According to the commenters, the proposed timetables failed to take into account site-specific circumstances, factors beyond the control of the licensee, and the problematic nature of the international marketplace. Two commenters stated that their suggestion of exempting uranium recovery facilities from the rule would allow the United States to maintain its domestic uranium producing industry rather than forcing its demise with every downturn in the market and thereby help limit U.S. dependence on foreign energy sources. They also stated that such an exemption would be consistent with NRC Chairman Selin's written testimony before the Senate Committee on Energy and Natural Resources during hearings on the then proposed National Energy Act on June 26, 1992.

What the commenters are referring to is not written testimony but NRC's June 26, 1992, comments to Congress on provisions of the proposed National Energy Policy Act of 1992 relating to mill tailings cleanup funding. The NRC is not exempting uranium recovery facilities from decommissioning. There is no policy justification for concluding that once a uranium recovery facility has ceased operations, decommissioning should not commence promptly. In fact, prompt decommissioning is consistent with this agency's mandate to protect public health and safety. Commenters have misconstrued the Commission's June 26, 1992, letter to Congress. In that letter, the Commission urged Congress to modify the legislation to provide that uranium mills could be eligible for reimbursements for some of their cleanup costs even if the mills were still operating in 2002. The legislation then pending provided that decommissioning of a mill had to be completed by the end of 2002 in order to receive Federal funding. The legislation ultimately enacted included the modifications recommended by the NRC. Nowhere in NRC's correspondence did the Commission suggest that decommissioning be deferred once a facility has ceased operations. In addition, flexibility has been built into the final rule so that a licensee can file for an exemption from having to commence decommissioning following 24 months of inactivity.

Inclusion of QA Plan in the Decommissioning Plan

One commenter suggested that the content of the decommissioning plan be augmented to include a quality assurance program description, a description of the manner in which the characterization of the site was performed and assurance that the characterization was performed in accordance with a quality assurance program and implementing procedures. This commenter pointed out that the QA program is currently only discussed in Part 72. Because it is especially important to assure high quality data in conducting various tests (e.g., analysis of soil, water, air, contamination), requirements for QA programs should be added to the other sections as well.

The NRC believes that the QA programs incorporated into existing licenses apply to decommissioning as well.

IV. Other Issues

10 CFR Part 2, Appendix C, Supplement VI—Enforcement

Four commenters expressed disagreement with the enforcement policy stated in the Supplementary Information of the proposed rule. They believed that a Severity Level 3 enforcement category seemed harsh or excessive in view of the subjective and unpredictable character of many factors that will influence determinations and actions regarding decommissioning. They also noted that the one-level approach does not seem to recognize the wide range of situations or interpretations that could result in citations. They suggested that the enforcement policy be consistent with the complexities and uncertainties involved.

This comment was not adopted because the NRC considers timely decommissioning of materials facilities an important regulatory issue. Thus, violations involving a failure to notify the NRC as required by regulation or license condition or to complete decommissioning activities in accordance with regulation or license condition normally will be classified at Severity Level III and will result in consideration of monetary civil penalties or other enforcement action as appropriate.

Environmental Assessment

A commenter disagreed with the NRC Finding of No Significant Environmental Impact for the proposed rule and believed that it represented an inadequate consideration of potential environmental effects. The commenter noted that NRC has indicated its intention to prepare a GEIS for the residual radiological standards rulemaking and because the timeliness rulemaking has such a strong link to it that the timeliness rulemaking also logically requires a GEIS.

As noted in the Supplementary Information with the proposed rule, the NRC staff prepared an Environmental Assessment which found that, if adopted, the proposed rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. As discussed in the Environmental Assessment, the NRC had previously prepared a Generic Environmental Impact Statement on Decommissioning (GEIS). For licensees covered by this regulation, the GEIS found that either immediate decommissioning or short-term storage to allow short-lived radionuclides to decay is the preferred decommissioning strategy. Delayed decommissioning for an extended period of time would only rarely be justified for these types of facilities. The GEIS concluded that the overall impact of decommissioning existing nuclear materials facilities is small. Because these regulatory changes specifically lean in the direction of the preferred decommissioning strategies, immediate decommissioning or short-term storage, it can be concluded that this rulemaking will have no adverse impact on the environment. A more detailed rationale is given in the environmental assessment published with the notice of proposed rulemaking on Timeliness in Decommissioning of Materials Facilities (58 FR 4099; January 13, 1993).

Economic Impacts

Several commenters stated that the proposed rule represents gross interference with the licensee's right to operate a business within applicable regulations and within the framework of normal business and economic cycles. They believed that licensees must be given the option to "wait out" downturns in the market by idling facilities and placing them under long term care and maintenance until operations can be profitably restarted. They believed that the proposed rule would deprive the licensees of the ability to obtain future financial return on investment.

The NRC agrees that licensees should have flexibility with regard to business decisions, and this sensitivity resulted in specific provisions and exemptions to account for the special circumstances where the rule might work a hardship on a particular licensee. The NRC does not believe that further considerations are necessary.

License Fees

A commenter suggested that the timeliness rule should recognize the diminished risk and regulatory effort associated with a license during the decommissioning process and the NRC fee structure adjusted accordingly.

In response, there does not appear to be any need to change the fee structure for decommissioning. It is noted that fees for license amendments for major materials or fuel cycle facilities are on a full cost recovery basis and the cost, therefore, would depend upon the amount of effort expended by the NRC staff on any given case. Once a licensee enters a possession-only status the option is available of qualifying for a different fee category due to a change in the nature of the licensed activities.

V. Enforcement

Concurrent with the publication of the final rule, the Commission is modifying Supplement VI of the Enforcement Policy to provide that violations involving a failure to notify the NRC as required by regulation or license condition, failure to meet decommissioning standards, failure to complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification may be classified as Severity Level III and may result in consideration of monetary civil penalties or other enforcement action as appropriate.

VI. Agreement State Compatibility

The final rule is a matter of compatibility between the NRC and the Agreements States, thereby providing consistency between Federal and State safety requirements. This rule is assigned a Division 2 compatibility. Under this level of compatibility, the Agreement States would be expected to adopt a timeliness in decommissioning rule but would be permitted flexibility to apply more stringent requirements if deemed appropriate by the State.

VII. Implementation

The timing provisions of this rule begin on the effective date. Thus, licensees that currently have unused facilities at the time of publication of the final rule would not need to submit notifications required by this rule earlier than 2 years after the rule becomes effective. This provides those licensees with same period of time (2 years) in which to determine whether the unused facility would be put into use again or to submit notification as required by the rule.

VIII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The action establishes specific requirements for timeliness of decommissioning of nuclear materials facilities. The action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these facilities and does not change the underlying fundamental requirement to decommission facilities to levels acceptable for release. Thus, this action will not adversely affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from Mary L. Thomas, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

IX. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0009, –0017, –0020, –0028, and –0132.

The public reporting burden for this collection of additional information is estimated to average 0.5 hours per response, to prepare and submit a notification of intent to terminate licensed activities. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (T6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0009, 3150–0017, 3150–0020, 3150–0028, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the requirements in the rule. The analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

XI. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule imposes requirements for timely decommissioning of a site. Although the rule includes all materials licensees regulated by the NRC and the Agreement States, decommissioning efforts for licensees that possess and use only materials with short half-lives or materials only in sealed sources are simple and require only that enough time be permitted to either allow short-lived materials to decay or to enable them to properly dispose of their sealed sources. Therefore, the impact of the rule on these licensees is not significant. The net cost to the remaining licensees, estimated to number 3,300, is expected to be small based on an analysis of the costs of decommissioning, including waste disposal. The analysis indicates that in nearly all cases, the cost of decommissioning (which includes the costs of waste disposal) will increase if decommissioning is delayed. Complete details of the cost analysis are contained in Section 6.2 of the Regulatory Analysis. However, these remaining 3,300 licensees are not likely to be small entities and, in addition, there actually may be significant costs of cleanup of secondary contamination if decommissioning is delayed.

XII. Backfit Analysis

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

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex Discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

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

10 CFR Part 40

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

10 CFR Part 70

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

10 CFR Part 72

Independent storage of spent fuel and high level waste, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, and Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 2, 30, 40, 70, and 72.

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

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

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 30.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license 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.

* * * * *

3. Section 30.36 is revised to read as follows:

§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

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

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

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

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

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 30.6, each licensee shall provide notification to the NRC in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

(2) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to extend the time periods established in paragraph (d) if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

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

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

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

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

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

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

(3) Procedures such as those listed in paragraph (f)(1) of this section with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

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

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

(ii) A description of planned decommissioning activities;

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

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

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

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in paragraph (h) of this section.

(5) The proposed decommissioning plan will be approved by the Commission if the information therein demonstrates that the decommissioning

will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

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

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

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

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

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

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

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

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

(1) Byproduct material has been properly disposed;

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

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

4. Section 30.37 is revised to read as follows:

§ 30.37 Application for renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 30.32.

(b) [Reserved]

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

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

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat 3123, (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license 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.

* * * * *

7. Section 40.42 is revised to read as follows:

§ 40.42 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 40.43 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

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

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

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

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

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 40.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

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

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that such relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

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

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

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

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

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

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

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

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

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

(ii) A description of planned decommissioning activities;

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

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

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

(vi) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

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

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

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

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

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

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

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

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

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

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

(1) Source material has been properly disposed;

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

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements.

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

(k) Specific licenses for uranium and thorium milling are exempt from paragraphs (d)(4), (f) and (g) of this section with respect to reclamation of tailings impoundments and/or waste disposal areas.

8. Section 40.43 is revised to read as follows:

§ 40.43 Renewal of licenses.

(a) Application for renewal of a specific license must be filed on NRC Form 314 and in accordance with § 40.31.

(b) [Reserved]

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

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

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

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In Section 70.4 a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license 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.

* * * * *

§ 70.33 [Amended].

11. Section 70.33 is amended by removing and reserving paragraph (b).

12. Section 70.38 is revised to read as follows:

§ 70.38 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 70.33 not less than 30 days before the expiration of the existing license. If an application for renewal has been filed, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

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

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

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

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

(d) Within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 70.5, each licensee shall provide notification to the NRC in writing and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity, so that the building or outdoor area is suitable for release in accordance with NRC requirements, or submit within 12 months of notification a decommissioning plan, if required by paragraph (f)(1) of this section, and begin decommissioning upon approval of that plan if—

(1) The license has expired pursuant to paragraph (a) or (b) of this section; or

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

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

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

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

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

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

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

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

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

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

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

(ii) A description of planned decommissioning activities;

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

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

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

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning.

(vii) For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in paragraph (h) of this section.

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

(g)(1) Except as provided in paragraph (h) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in paragraph (h) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

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

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

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

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

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

(i) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

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

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

(1) Special nuclear material has been properly disposed;

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

(3)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

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

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

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and Sec. 218(a) 96 Stat. 2252 (42 U.S.C. 10198).

14. In § 72.3, a definition of the term *principal activities* is added in alphabetical order to read as follows:

§ 72.3 Definitions.

* * * * *

Principal activities, as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended, excluding activities incidental to decontamination or decommissioning.

* * * * *

15. Section 72.54 is revised to read as follows:

§ 72.54 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.

(a) Each specific license expires at the end of the day on the expiration date stated in the license except when a licensee has filed an application for renewal pursuant to § 72.42 not less than 24 months before the expiration of the existing license. If an application for renewal has been filed at least 24 months prior to the expiration date stated in the existing license, the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

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

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

(1) Limit actions involving spent fuel or other licensed material to those related to decommissioning; and

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

(d) As required by § 72.42(d), or within 60 days of the occurrence of any of the following, consistent with the administrative directions in § 72.4, each licensee shall notify the NRC in writing, and submit within 12 months of this notification, a final decommissioning plan and begin decommissioning upon approval of the plan if—

(1) The licensee has decided to permanently cease principal activities, as defined in this part, at the entire site or any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements; or

(2) No principal activities under the license have been conducted for a period of 24 months; or

(3) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with NRC requirements.

(e)(1) The Commission may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to paragraph (d) of this section. The schedule for decommissioning set forth in paragraph (d) of this section may not commence until the Commission has made a determination on the request.

(2) The Commission may approve an alternate schedule for submittal of the final decommissioning plan required pursuant to paragraph (d) of this section if the Commission determines that the alternate schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety, and is otherwise to the public interest.

(f) The proposed final decommissioning plan must include—

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

(2) The choice of the alternative for decommissioning with a description of the activities involved;

(3) A description of controls and limits on procedures and equipment to protect occupational and public health and safety;

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

(5) An updated detailed cost estimate for the chosen alternative for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and plan for assuring the availability of adequate funds for completion of decommissioning including means for adjusting cost estimates and associated funding levels over any storage or surveillance period; and

(6) A description of technical specifications and quality assurance provisions in place during decommissioning.

(g) For final decommissioning plans in which the major dismantlement activities are delayed by first placing the ISFSI or MRS in storage, planning for these delayed activities may be less detailed. Updated detailed plans must be submitted and approved prior to the start of these activities.

(h) If the final decommissioning plan demonstrates that the decommissioning will be completed as soon as practicable, performed in accordance with the regulations in this chapter, and will not be inimical to the common defense and security or to the health and safety of the public, and after notice to interested persons, the Commission will approve the plan subject to any appropriate conditions and limitations and issue an order authorizing decommissioning.

(i)(1) Except as provided in paragraph (j) of this section, each licensee shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

(2) Except as provided in paragraph (j) of this section, when decommissioning involves the entire site, each licensee shall request license termination as soon as practicable but no later than 24 months following approval of the final decommissioning plan by the Commission.

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

(1) Whether it is technically feasible to complete decommissioning within the allotted 24-month period;

(2) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

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

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

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

(k) As the final step in decommissioning, the licensee shall—

(1) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed NRC Form 314 or equivalent information; and

(2) Conduct a final radiation survey of the premises where the licensed activities were conducted and submit a report of the results of this survey, unless the licensee demonstrates that the premises are suitable for release in some other manner. The licensee shall, as appropriate—

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters removable and fixed for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

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

(l) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that—

(1) The decommissioning has been performed in accordance with the approved final decommissioning plan and the order authorizing decommissioning; and

(2)(i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with NRC requirements; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with NRC requirements.

16. In § 72.86, paragraph (b), is revised to read as follows:

§ 72.86 Criminal penalties.

* * * * *

(b) The regulations in this Part 72 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 72.1, 72.2, 72.3, 72.4, 72.5, 72.7, 72.8, 72.9, 72.16, 72.18, 72.20, 72.22, 72.24, 72.26, 72.28, 72.32, 72.34, 72.40, 72.46, 72.56, 72.58, 72.60, 72.62, 72.84, 72.86, 72.90, 72.96, 72.108, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.182, 72.194, 72.200, 72.202, 72.204, 72.206, 72.210, 72.214, 72.220, 72.230, 72.236, 72.238, and 72.240.

Conforming Amendment

The following amendment to Chapter I of Title 10 generally updates citations to 10 CFR Parts 30, 40, 70 and 72 and is found in Part 2 of the NRC regulations. This amendment is particularly important as it goes beyond updating cross-reference citations. The amendment to 10 CFR Part 2, Appendix C updates and modifies the examples of severity levels. Because Appendix C is a policy statement of the Commission and not a regulation, the Commission is issuing the amendment to the Commission's enforcement policy in 10 CFR Part 2, Appendix C in final form without public comment.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

17. The authority citation for Part 2 continues in part to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)

* * * * *

18. In Appendix C to 10 CFR Part 2, Supplement VI, Section C is amended by revising paragraphs 9, and 10, and by adding a new paragraph 11, as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

Supplement VI—Fuel Cycle and Materials Operations

C. Severity Level III—Violations involving for example:

* * * * *

9. A failure to submit an NRC Form 241 in accordance with the requirements in § 150.20 of 10 CFR part 150;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do no meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance; or

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification.

Dated at Rockville, Maryland, this 11th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–17206 Filed 7–14–94; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 709, 745, 747, 790, 791, 792, 793 and 794

Change of Addresses and Redesignation of Offices

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: NCUA moved the location of its central office from Washington, DC to Alexandria, VA in September, 1993. This document updates various sections of NCUA's Rules and Regulations to reflect the agency's current address. Several additional changes are made. First, a correction to a referenced subpart in the regulations is made. Second, NCUA's Administrative Office was renamed the Office of Administration several years ago. References to the Administrative Office are changed to the Office of Administration. Third, in 1990 NCUA switched from the government wide GS pay system to its own CU (credit union) system. References to GS pay are changed to CU pay. Fourth, in February, 1994, NCUA established two new offices, the Office of Community Development Credit Unions and the Office of Chief Economist and Policy Analysis, and placed the Central Liquidity Facility within the Office of Examination and Insurance. In addition, in May, 1994, the Office of Training and Development was established and certain functions were moved from one office to another as a result of streamlining studies done both by agency staff and an outside consulting firm. Descriptions of these changes as well as some minor changes in other office descriptions are made to the appropriate regulation.

EFFECTIVE DATE: July 15, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at 703–518–6540.

SUPPLEMENTARY INFORMATION: NCUA's central office location changed from 1776 G Street, NW., Washington, DC 20456 to 1775 Duke Street, Alexandria, VA 22314–3428 in September, 1993. The change in address is made in parts 701, 709, 745, 747, 791, 792, 793 and 794 of NCUA's Regulations. In July of 1991, NCUA revised part 747 of the Regulations (*see* 56 FR 37828, 8/9/91). This part sets forth procedures for various administrative actions. Under the earlier version of part 747, subpart L (12 CFR § 747.1201 et seq.) described the procedures for appeal of a notice of disapproval of a change in senior executive officers. These procedures are found in subpart J of the current version of part 747. Section 701.14(f) refers to the now nonexistent subpart L. A correction is made to this reference in § 701.14(f). NCUA's Office of Administration was previously titled the Administrative Office. Parts 792 and 794 contain several references to the Administrative Office. These have all been changed to the Office of Administration. Section 792.5(b) contains several references to GS pay. In 1990, NCUA switched from the GS pay system to its own CU pay system. The references in § 792.25(b) are changed from GS to CU.

In February, 1994, the NCUA Board established two new offices, the Office of Community Development Credit Unions and the Office of the Chief Economist and Policy Analysis. The Board also placed the Central Liquidity Facility within the Office of Examination and Insurance. The Office of Community Development Credit Unions will administer the Community Development Revolving Loan Program. This Program is currently described in paragraph 790.2(e). Paragraph 790.2(e) is deleted and the information is moved to the new description of the Office of Community Development Credit Unions in new paragraph 790.2(b)(13). Description of the Office of the Chief Economist and Policy Analysis is found