

4731.2100 RADIOLOGICAL CRITERIA FOR LICENSE TERMINATION.**Subpart 1. General provisions and applicability.**

A. This part applies to the decommissioning of facilities licensed under this chapter and to facilities subject to the NRC's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. This part does not apply to uranium and thorium recovery facilities already subject to Code of Federal Regulations, title 10, part 40, Appendix A, or to uranium solution extraction facilities.

B. This part does not apply to sites that:

(1) have been decommissioned before January 3, 2005, according to criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan of April 16, 1992, as listed in the Federal Register, volume 57, page 13389;

(2) have previously submitted and received the commissioner's approval on a license termination plan or decommissioning plan that is compatible with the SDMP Action Plan criteria; or

(3) submit a sufficient license termination plan or decommissioning plan before August 20, 1998, that is approved by the commissioner before August 20, 1999, and is according to the criteria identified in the SDMP Action Plan, except that if an environmental impact statement is required in the submittal, there will be a provision for day-for-day extension.

C. After a site has been decommissioned and the license terminated according to this part, the commissioner shall require additional cleanup only if, based on new information, the commissioner determines that the criteria of this part were not met and residual radioactivity remaining at the site could result in a significant threat to public health and safety.

D. When calculating the TEDE to the average member of the critical group, the licensee must determine the peak annual TEDE expected within the first 1,000 years after decommissioning.

Subp. 2. Radiological criteria for unrestricted use. A site is considered acceptable for unrestricted use if:

A. the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 millirems (0.25 mSv) per year, including that from groundwater sources of drinking water; and

B. the residual radioactivity has been reduced to levels that are ALARA. Determination of levels that are ALARA must take into account consideration of any

detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

Subp. 3. **Criteria for termination under restricted conditions.** A site is considered acceptable for license termination under restricted conditions, if the licensee:

A. can demonstrate that further reductions in residual radioactivity necessary to comply with subpart 2:

(1) would result in net public or environmental harm; or

(2) are not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels that are ALARA must take into account consideration of any detriment, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

B. has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity, distinguishable from background radiation, will not exceed 25 millirems (0.25 mSv) per year to the average member of the critical group;

C. has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(1) funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment;

(2) a statement of intent, in the case of federal, state, or local government licensees, as described under part 4731.3080, subpart 6, item E; or

(3) when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by the governmental entity;

D. has submitted a decommissioning plan or a license termination plan to the commissioner indicating the licensee's intent to decommission according to part 4731.0600, subpart 2, 4731.0790, subpart 4, or 4731.3085, subpart 4, or Code of Federal Regulations, title 10, section 50.82, paragraphs (a) and (b), or 72.54, and specifying that the licensee intends to decommission by restricting use of the site. The licensee must document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community has been sought according to items E and F and incorporated, as appropriate, following analysis of that advice;

E. if proposing to decommission by restricting use of the site, seeks advice from individuals and institutions in the community who may be affected by the decommissioning regarding whether:

(1) institutional controls proposed by the licensee:

(a) will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background radiation to the average member of the critical group will not exceed 25 millirems (0.25 mSv) TEDE per year;

(b) will be enforceable; and

(c) will not impose undue burdens on the local community or other affected parties; and

(2) the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site;

F. while seeking advice under item E, provides for:

(1) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(2) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(3) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

G. reduces residual radioactivity at the site so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background radiation to the average member of the critical group is as low as reasonably achievable and would not exceed:

(1) 100 millirems (1 mSv) per year; or

(2) 500 millirems (5 mSv) per year, if the licensee:

(a) demonstrates that further reductions in residual radioactivity necessary to comply with subitem (1) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(b) makes provisions for durable institutional controls; and

(c) provides sufficient financial assurance, according to item C, to enable a responsible governmental entity or independent third party, including a governmental custodian of a site, to carry out periodic rechecks of the site no less

frequently than every five years to ensure that the institutional controls remain in place as necessary to meet the criteria of item B and to assume and carry out responsibilities for any necessary control and maintenance of those controls.

Subp. 4. Alternative criteria for license termination.

A. The commissioner may terminate a license using alternative criteria greater than the dose criterion of subparts 2 and 3, items B and E, subitem (1), unit (a), if the licensee:

(1) provides assurance that public health and safety would continue to be protected and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 100 millirems per year (1 mSv per year) limit under part 4731.2090, by submitting an analysis of possible sources of exposure;

(2) employs, to the extent practical, restrictions on site use according to subpart 3, in minimizing exposures at the site;

(3) reduces doses to ALARA levels, taking into consideration any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(4) submits a decommissioning plan or license termination plan to the commissioner indicating the licensee's intent to decommission according to part 4731.0600, subpart 2; 4731.0790, subpart 4; or 4731.3085, subpart 4, or Code of Federal Regulations, title 10, section 50.82, paragraphs (a) and (b), or 72.54, and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee must document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee must provide for:

(a) participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(b) an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(c) a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a government custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

B. The use of alternate criteria to terminate a license requires the approval of the commissioner after consideration of staff recommendations of the Radioactive Materials Unit of the Department of Health that address any comments provided by the Environmental Protection Agency or the Pollution Control Agency and any public comments submitted under subpart 5.

Subp. 5. **Public notification and public participation.** Upon receipt of a license termination plan or decommissioning plan from a licensee or a proposal by a licensee for release of a site according to subpart 3 or 4, or whenever the commissioner deems such notice to be in the public interest, the commissioner must:

A. notify and solicit comments from:

(1) local and state governments in the vicinity of the site and any Indian nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(2) the Environmental Protection Agency for cases when the licensee proposes to release a site according to subpart 4; and

B. publish a notice in the State Register and in a forum, such as local newspapers, letters to state and local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site and solicit comments from affected parties.

Statutory Authority: *MS s 144.1201; 144.1202; 144.1203; 144.1204; 144.1205*

History: *29 SR 755; 40 SR 145*

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