

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
RADIATION CONTROL PROGRAM

December 14, 1998

AGENCY INFORMATION NOTICE 98-02: GUIDELINES FOR MATERIAL LICENSING
CASES INVOLVING CHANGE OF OWNERSHIP

Addressees

All radioactive material licensees

Purpose

The Radiation Control Program (the Agency) is issuing this information notice to provide guidance to licensees on the type of information the Agency requires to make a determination of what licensing action may be necessary in response to an application from a licensee to transfer control of a license.

It is expected that recipients will review the information for applicability to their facilities and consider appropriate actions. However, this information notice does not contain any new requirements; therefore, no specific action nor written response is required.

Description of Circumstances

Recently, the Agency has noticed an increasing trend to transfer ownership of businesses that control the use of licensed materials. Such changes in ownership are usually the results of mergers, buy-outs, or majority stock transfers. These actions appear to be occurring at a greater frequency because of the present economic environment. Although it is not the intent of the Agency to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to the Agency whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials. The purpose of such notification is to allow the Agency to assure that: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid Agency licenses; (2) materials are properly handled and secured; (3) persons using such materials are capable, competent, and committed to implement appropriate radiological controls; (4) requirements, and public health and safety are not compromised by the use of such materials.

Discussion

It is stated in Massachusetts Regulations for the Control of Radiation (MRCR) under 105 CMR 120.131 (B) that "No license issued or granted under 105 CMR 120.100 and no right to possess or

utilize radioactive material granted by any license issued pursuant to this Part shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Agency shall, after securing full information find that the transfer is in accordance with the provisions of M.G.L. c. 111, §§ 3, 5M, 5N, 5O and 5P, now or hereafter in effect, and to all valid rules, regulations, and orders of the Agency, and shall give its consent in writing.”

Note that should a change of ownership occur without written consent from the Agency, it is a violation of Massachusetts Radiation Control Program regulations and may warrant escalated enforcement action, including civil penalties and orders against one or both of the parties involved.

Requirements.

Any notification to the Agency of a change of name by a licensee needs to state clearly whether or not a change in the control of license is implied. The regulations are very clear that control of licenses cannot be transferred without written permission from the Agency. The burden of adhering to this requirement is on the existing licensee; however, it may be necessary for the transferee to provide supporting information.

Information Needed for Change-of-Ownership Applications

The applicant (transferor and/or transferee, as appropriate) should address the following:

- (1) Provide the new name of the licensed organization, and if there will be no change, so state.
- (2) Provide the new licensee contact and telephone numbers(s) to facilitate communications.
- (3) Identify any changes in personnel named in the license, including any required information on personnel qualifications.
- (4) Indicate whether the seller/transferor will remain in business (as a separate entity) without the license.
- (5) Provide a complete, clear description of the transaction, including information regarding transfer of stocks or assets.
- (6) Indicate and fully describe any planned changes in organization, location, facilities, equipment, procedures, or personnel. For example, indicate if the names of the Radiation Protection Officer, authorized users, or any person identified in previous license applications as responsible for radiation safety or use of licensed material will change and the qualifications of any new individuals.

- (7) Indicate and fully describe any changes in use, possession, or storage of the licensed materials, or any changes in operating and/or emergency procedures.
- (8) Indicate whether all surveillance items and records, including radioactive material inventory and accountability requirements of the seller, will be current at the time of transfer. A description of the status of these requirements and records, (e.g., calibrations, leak tests, surveys, etc.) should be provided to us.
- (9) If applicable, please describe the status of the facility in terms of the presence or absence of contamination. If contamination is present, please indicate whether decontamination is to occur before the transfer, or does the buyer/transferee agree to assume full liability for decontaminating the site.
- (10) If applicable, please describe any decontamination plans, including financial assurance arrangements of the transferee as specified in 105 CMR 120.125 (C). This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.
- (11) Indicate explicitly whether the buyer/transferee will agree to abide by all commitments and representations previously made to the Agency by the seller/transferor.
- (12) Provide documentation that the seller and buyer agree to the change in ownership and licensed operation(s) and the conditions of transfer.
- (13) The buyer must either (1) make the commitment, in writing, to abide by all constraints, conditions, requirements, representations and commitments identified in the seller's radioactive material license, or (2) provide a description of its program to assure compliance with the license and regulations.

This information notice requires no specific action or written response. If you have questions about the information in this notice, please contact the technical contact listed below.

Sincerely,

Robert M. Hallisey, Director
Radiation Control Program

Technical contact: Radioactive Material Section 617-727-6214

