

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

July 14, 1998

NRC ADMINISTRATIVE LETTER 96-05, REVISION 1: COMPLIANCE WITH THE RULE
"TIMELINESS IN
DECOMMISSIONING OF
MATERIAL FACILITIES"

Addressees

All material and fuel cycle licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this administrative letter to inform addressees of their responsibility to comply with the requirements of the Rule, "Timeliness in Decommissioning of Material Facilities" (59 FR 36026-36040, July 15, 1994). This administrative letter highlights applicable compliance dates for many licensees (August 15, 1996, September 15, 1996, and October 15, 1996) and does not transmit any new requirements or staff positions. No specific action or written response is required.

Background

The previously published Administrative Letter on the Timeliness Rule, dated November 5, 1996, is being re-issued as Revision 1 to incorporate three changes. The first change in this new version is the deletion of Paragraph 2 of Section 2, "DECOMMISSIONING PLAN REQUIREMENTS" of Attachment 1. This paragraph stated that: "The decommissioning work scope at a limited number of sites may necessitate the preparation of an Environmental Impact Statement (EIS) per 10 CFR 51.20, as required by the National Environmental Policy Act of 1969. The extensive analyses essential for the preparation of an EIS can result in an unavoidable delay in the submittal of a decommissioning plan, because it would not be prudent to develop a decommissioning plan until the EIS is completed and a record of decision has been issued by the Commission. The licensee is still required to submit a request for an alternative schedule for submittal of the decommissioning plan, however, which must justify the delay."

However, the staff has recently determined that it is inappropriate to prepare an EIS unless a formal request for a licensing action is before the NRC. Thus, the NRC staff will refrain from preparing any EIS until the licensee has submitted a formal license amendment request. This request should follow the provisions of the recently promulgated license termination criteria rule which allows licensees to follow one of several different approaches to decommissioning (see e.g., 10 CFR §§ 20.1401(b), 20.1402, 20.1403, and 20.1404.)

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Enclosure

The second change is a revision to clarify that the decommissioning plan should be submitted in conjunction with a request to amend the license to approve the plan.

The third change modifies Attachment 1 to clarify how the Timeliness Rule applies to "storage-only" or "possession-only" licensees.

The Rule, "Timeliness in Decommissioning of Material Facilities" (known hereafter as Timeliness Rule) amended 10 CFR Parts 2, 30, 40, 70, and 72, and established definitive criteria for timely decommissioning upon termination of operations. The Timeliness Rule establishes requirements for notifying the NRC of pending decommissioning actions and cessations in licensee operations, establishes requirements for when decommissioning plans need to be submitted, and establishes requirements for completing decommissioning activities. The regulations also allow licensees to request relief from the timing requirements where justified.

The Timeliness Rule applies to decommissioning of the entire site at the end of all licensed activities at the site (i.e., "end-of-license" decommissioning) as well as of separate buildings and outdoor areas (including inactive burial grounds) where licensed activities have ceased (i.e., "end-of-use") while licensed activities continue to be conducted at other site locations. Section 5.2 of Attachment 1 contains a discussion on the applicability of the Timeliness Rule to inactive burial grounds.

The purpose of the Timeliness Rule is to avoid future problems and reduce potential risk, to the public and environment, that may result from delayed decommissioning of inactive facilities and sites. Specific concerns that prompted the decommissioning Timeliness Rule include the potential risk of safety practices becoming lax because of attrition of key personnel, and lack of management interest at facilities once operations cease, as well as the potential for bankruptcy, corporate takeover, or other unforeseen changes, in a company's financial status, that may complicate or delay decommissioning.

NRC is issuing this letter to ensure that licensees are aware of their responsibilities, under the Timeliness Rule, and are aware of methods of fulfilling their responsibilities, that NRC finds acceptable.

Discussion

The decommissioning and timeliness criteria apply to certain situations where: (1) the licensee has decided to permanently cease principal activities at the entire site, or at any separate building or outdoor area; or (2) no principal activities have been conducted in such areas for a period of 24 months. Further, the criteria apply to all licensees for whom the authorization to perform licensed activities has expired or been revoked.

Attachment 1 to this letter provides a discussion of the Timeliness Rule requirements and addresses special cases, including possession-only licenses, onsite disposals, broad-scope licenses, uranium and thorium milling, and temporary job sites. Flowcharts to assist in determining compliance with the Timeliness Rule are provided as Attachments 2, 3, and 4.

However, because of the wide variability in licensing situations covered by this rule, the attachments should not be considered all-inclusive. This administrative letter requires no specific action nor written response. If you have any questions about this letter, please contact the Division of Waste Management staff person listed below, or the appropriate Regional Office.



Michael F. Weber, Deputy Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Contact: John T. Buckley, NMSS
301-415-6607
E-mail: jtb@nrc.gov

Attachments:

1. Summary of Timeliness Rule Requirements
2. Compliance with Decommissioning - Timeliness Rule, Case 1
3. Compliance with Decommissioning - Timeliness Rule, Case 2
4. Compliance with Decommissioning - Timeliness Rule, Case 3
5. List of Recently Issued NRC Administrative Letters

SUMMARY OF TIMELINESS RULE REQUIREMENTS

1.0 INITIATION OF THE DECOMMISSIONING PROCESS

There are three occurrences that lead to the requirement for licensees to notify the U.S. Nuclear Regulatory Commission (NRC) and to initiate the decommissioning process.

These occurrences are:

(1) The license to conduct a principal activity has expired or been revoked. (A principal activity is one that is essential to achieving the purpose for which a 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).

(2) The licensee has made the decision to permanently cease principal activities, 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, including inactive burial grounds (land used for waste disposal under 10 CFR 20.302, 20.304, or the current 20.2002).

(3) There has been a 24-month duration in which no principal activities have been conducted under the license (regardless of the level of contamination), or at any separate building or outdoor area (including inactive burial grounds) that is unsuitable for release in accordance with NRC requirements.

The licensee must provide written notification to NRC, per 10 CFR 30.36, 40.42, 70.38, and 72.54, within 60 days of the occurrence of any of the above. When a decommissioning plan is required, the written notification serves to initiate the decommissioning process and decommissioning must begin upon approval of the decommissioning plan. If no decommissioning plan is needed, the licensee is to begin decommissioning within the 60-day notification period. The licensee may request to delay initiation of the decommissioning process. This request must be provided to the NRC within 30 days of the occurrence of any of the above and contain justification for the proposed delay. Per 10 CFR 30.36(f), 40.42(f), 70.38(f), and 72.54(f)(1), NRC may grant a request to delay or postpone initiation of the decommissioning process if the Commission determines that the relief is not detrimental to the public health and safety and is otherwise in the public interest. The decommissioning process is not initiated until NRC makes a determination on the request.

If there are multiple licenses at a site, the requirements of the Timeliness Rule apply to each individual license. In situations where a license has expired, but principal activities will continue under other licenses in the same building or outdoor area, the licensee would need to submit an alternative schedule request to delay decommissioning until all licensed activities are terminated in that building or outdoor area. NRC may find this delay acceptable provided that the radioactive material from the expired license is not significantly migrating, the licensee has

sufficient financial assurance for decommissioning, and adequate controls are in place to ensure protection of the public and the environment.

If there are multiple activities authorized under the same license, the requirements of the Timeliness Rule apply to the license and not each individual activity, provided all licensed activities occur in the same separate building or outdoor area.

The effective date of the Timeliness Rule was August 15, 1994. If principal activities ceased and written notification was made to NRC before the effective date of the Timeliness Rule, then August 15, 1994, is considered to be the date for initiating the decommissioning process (date of notification), and no additional notification is required from the licensee. If principal activities ceased before the effective date of the Timeliness Rule, but no written notification was submitted to the NRC, then the 24-month period of inactivity is considered to begin on August 15, 1994, and the licensee should have provided written notification to NRC by October 15, 1996. Any licensee that decided to permanently cease principal activities after August 15, 1994, should have notified NRC within 60 days of the decision. If a licensee has missed one of these notification deadlines, it should immediately notify the appropriate NRC regional office.

2.0 DECOMMISSIONING PLAN REQUIREMENTS

If the licensee is required to submit a decommissioning plan per license condition or per 10 CFR 72.54, 30.36(g), 40.42(g), or 70.38(g), then the plan must be submitted to NRC within 12 months of the notification date, unless the licensee has submitted an alternate schedule request. Per 10 CFR 30.36(g)(2), 40.42(g)(2), 70.38(g)(2), and 72.54(f)(2), NRC may approve an alternate schedule for the initiation of decommissioning, and thus for submittal of a decommissioning plan, if it determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to public health and safety and is otherwise in the public interest. The decommissioning process is not initiated until NRC makes a determination on the request.

In addition, a site may require complex characterization, before a decommissioning plan can be prepared, and a licensee may not be able to meet the requirement for submittal within 12 months of notification. This situation would therefore be used as justification by the licensee when requesting an alternative schedule for submittal of the decommissioning plan.

3.0 DECOMMISSIONING SCHEDULE REQUIREMENTS

If the licensee is required to submit a decommissioning plan, then decommissioning must be initiated upon NRC approval of the plan. Decommissioning must be completed, including the submittal of a complete final survey report, and a request for license termination submitted as

soon as practicable but no later than 24 months after the initiation of decommissioning, unless a delay or postponement has been requested by the licensee and granted by NRC. (Note: The fee schedule for NRC review of decommissioning plans is presented in 10 CFR 170.31.) Decommissioning by a licensee not required to submit a decommissioning plan must also be completed and a request for license termination submitted within 24 months of the initiation of decommissioning, unless a delay or postponement has been requested by the licensee and granted by NRC.

NRC may approve a request for an alternative schedule for the completion of decommissioning of the site or separate building or outdoor area, if it determines the alternative is warranted by consideration of: technological feasibility; existing waste disposal capacity; potential waste volume reduction; or reduction in worker radiation exposure; by allowing decay of short-lived radionuclides. Additionally, other site-specific factors that may be taken into consideration include: regulatory requirements of other government agencies; lawsuits; groundwater 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.

4.0 COMPLETION OF THE DECOMMISSIONING PROCESS

As the final step in decommissioning, the licensee shall certify the disposition of all licensed material, including accumulated wastes, and conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey or demonstrate that the premises are suitable for release in some other manner. This information must be submitted within the 24-month period after notification or approval of the decommissioning plan, if required, unless an alternate schedule has been approved. Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the Commission determines that radioactive material has been properly disposed of, reasonable effort has been made to eliminate residual radioactive contamination, and a radiation survey has been performed, or other information is submitted, by the licensee, that demonstrates that the premises are suitable for release in accordance with NRC requirements.

5.0 APPLICATION OF THE TIMELINESS RULE TO SPECIAL CASES

5.1 Storage Only Licenses

There are two different types of licenses where the authorized activity is "storage only":

(1) Storage historically was not a principal activity of the licensee, but rather has been authorized as a result of some hindrance or preference regarding the transfer or disposal of the material. Storage under these circumstances is not a "principal activity" as defined in 10 CFR 30.4. Therefore, the requirements to notify NRC and undertake decommissioning in 10 CFR 30.36(d)(2)-(4) are not applicable because NRC does not consider there to be any principal activity for the licensee to cease. For these licensees, any decommissioning issues will be addressed by NRC when the license comes up for renewal.

(2) Storage of material historically has been the principal activity conducted by the licensee who did not engage in the activity that produced or used the material in storage (e.g., spent fuel storage under 10 CFR Part 72). In such cases, storage should be treated as the principal activity under the license. Thus, the notification and decommissioning requirements in 10 CFR 30.36(d)(2)-(4) would apply, but would be applicable only if the licensee ceases storage (i.e., transfers the material).

5.2 On-Site Disposals

Disposal sites approved under former 10 CFR 20.304, 20.302 and the current 20.2002 at facilities licensed under 10 CFR Parts 30, 40, 70, and 72 are required to comply with the requirements of the Timeliness Rule. Licensees with burial sites closed and unused since August 15, 1994, were required to notify NRC no later than October 15, 1996, that they had an outdoor area unused for the last 24 months. Licensees will then need to demonstrate the acceptability of the burial sites or begin remediating the sites. For additional information regarding compliance for on-site disposals see NRC Information Notice No. 96-47, entitled, "Record Keeping, Decommissioning Notifications for Disposals Authorized Under Former 10 CFR 20.304, 20.302, and Current 20.2002." NRC is implementing the Timeliness Rule to burial sites in conjunction with the license termination rule (Subject E, 10 CFR Part 20; July 1997, 62 FR 39058-39092).

5.3 Broad-Scope Licenses

The requirements of the Timeliness Rule apply to broad-scope licensees regulated by 10 CFR Part 33, "Specific Licenses of Broad Scope for Byproduct Material." The permanent cessation of principal activities in an individual room or laboratory may require the licensee to notify NRC if no other licensed activities are being performed in the building. Licensees should note even if licensed activities are being performed in other parts of the building that, they are required to keep lists of restricted (and formerly restricted) areas pursuant to 10 CFR 30.35(g)(3). Inspectors will review these lists to identify individual rooms that have been released, and verify that the rooms have been properly decommissioned.

5.4 Uranium and Thorium Milling

10 CFR 40.42(l) incorrectly states that uranium and thorium milling are exempt from 10 CFR 40.42(f) and 40.42(g) with respect to reclamation of tailings impoundments and/or waste disposal areas. These references should actually be 10 CFR 40.42(g) and 40.42(h), respectively. Conforming changes to the rule will be used to correct these typographical errors. Per 10 CFR 40.42(l), specific licenses for uranium and thorium milling are exempt from the provisions in the Timeliness Rule in: 10 CFR 40.42(d)(4), for the 24-month period of inactivity; 10 CFR 40.42(g), for the content of the decommissioning plan; and 10 CFR 40.42(h), for the timing of completion of the plan, with respect to the reclamation of tailings impoundments and/or disposal areas. The Timeliness Rule applies to the buildings and onsite areas other than the impoundment.

5.5 Temporary Job Sites

The Timeliness Rule applies to licensees who conduct licensed activities at temporary job sites (e.g., reactor component repair service; well logging; radiography; portable gauge use; mobile nuclear medicine service; field flood studies) and are licensed pursuant to 10 CFR Parts 30, 40, and 70. The rule also applies to Agreement State licensees conducting licensed activities at temporary job sites pursuant to the provisions for reciprocity in 10 CFR Part 150. Generally, operations conducted at temporary job sites do not result in site contamination and all radioactive materials are required to be removed at the completion of the licensed work. Hence, such operations, conducted in compliance with NRC regulations and license conditions, do not typically involve site decommissioning and, therefore, the Timeliness Rule provisions will not apply.

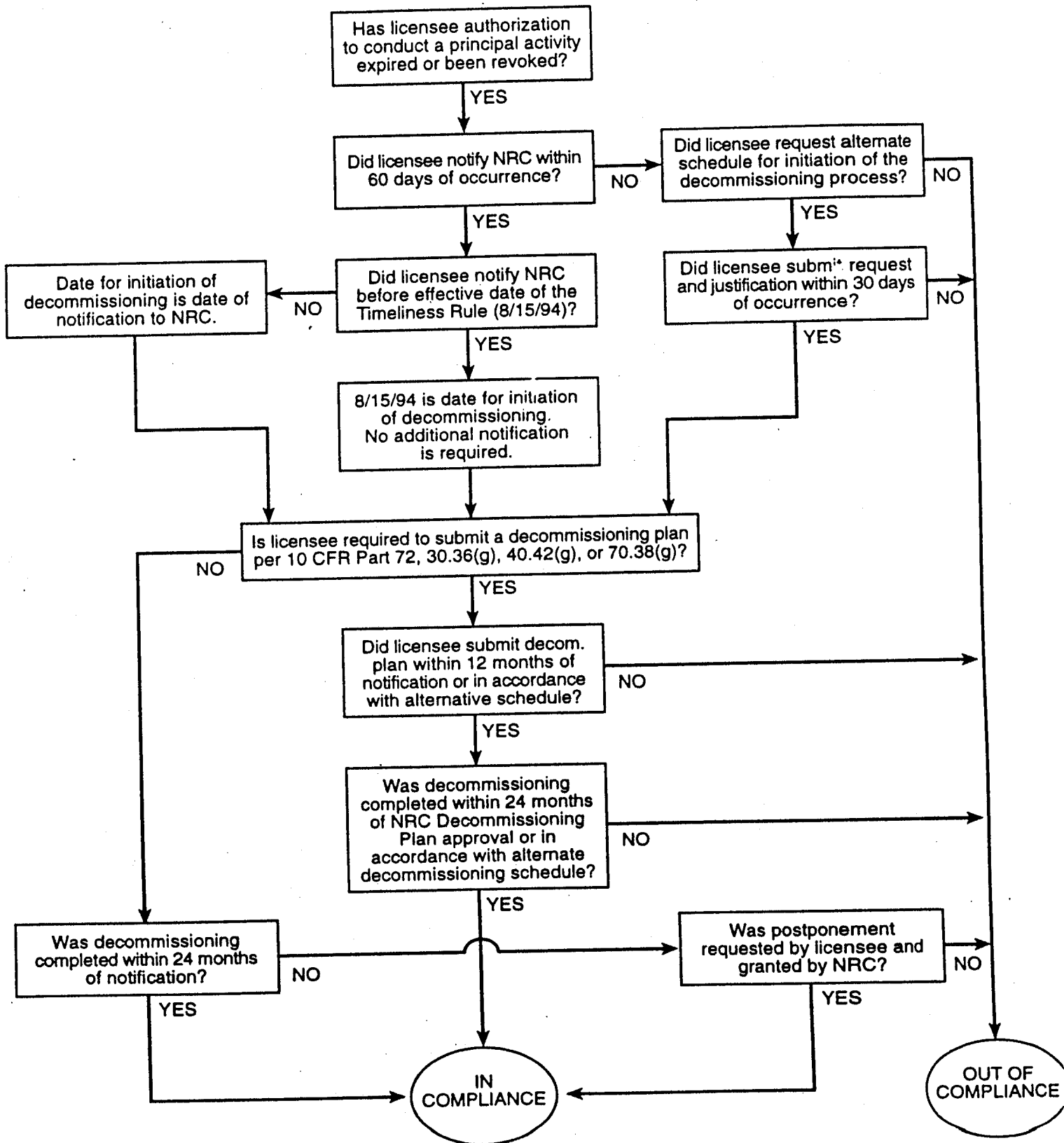
Further, NRC or Agreement State licensees conducting licensed activities at temporary job sites are not expected to notify NRC upon release of each job site under normal operations. These licensees are, however, expected to comply with applicable notification requirements, if significant contamination does occur (e.g., 10 CFR 30.50 and 39.77). In case of site contamination, decommissioning may be required and compliance with the Timeliness Rule may be applicable. Such occurrences will, in general, be reviewed on a case-by-case basis.

6.0 ENFORCEMENT

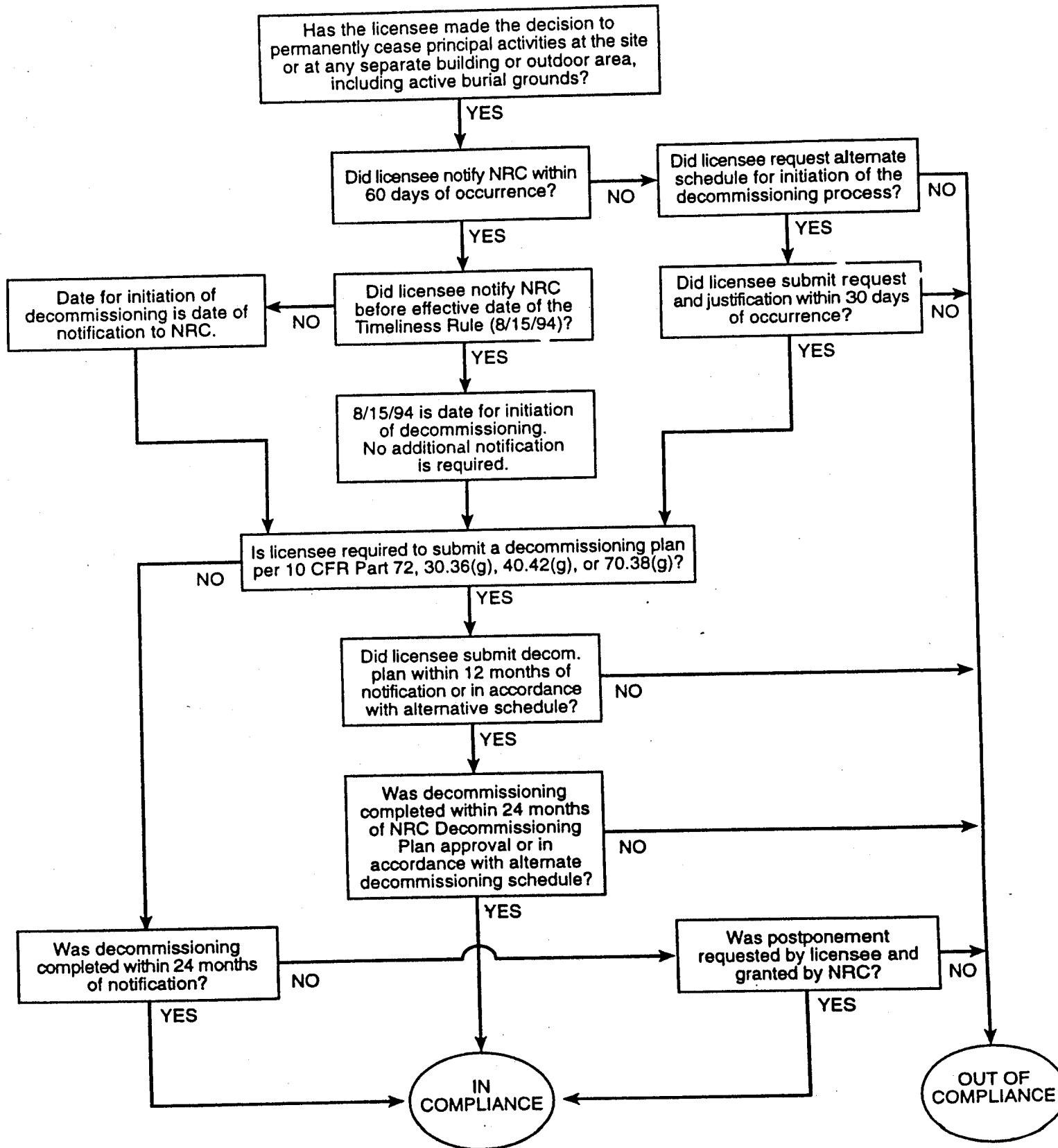
Failure to comply with the Timeliness Rule may be classified as a Severity Level III violation and may result in consideration of monetary civil penalties or other enforcement action, as appropriate. Examples of noncompliance are: failure to notify NRC as required by regulation or license condition; failure to meet decommissioning standards; failure to complete decommissioning activities in accordance with regulation or license condition; and failure to meet required schedules without adequate justification. NRC's enforcement policies are described in NUREG-1600, Rev 1, "General Statement of Policy and Procedures for NRC Enforcement Actions," published in May, 1998.

Licensees currently out of compliance should take immediate corrective actions. For guidance on corrective action, see Information Notice 96-28, "Suggested Guidance Related to Development and Implementation of Corrective Action," dated May 1, 1996.

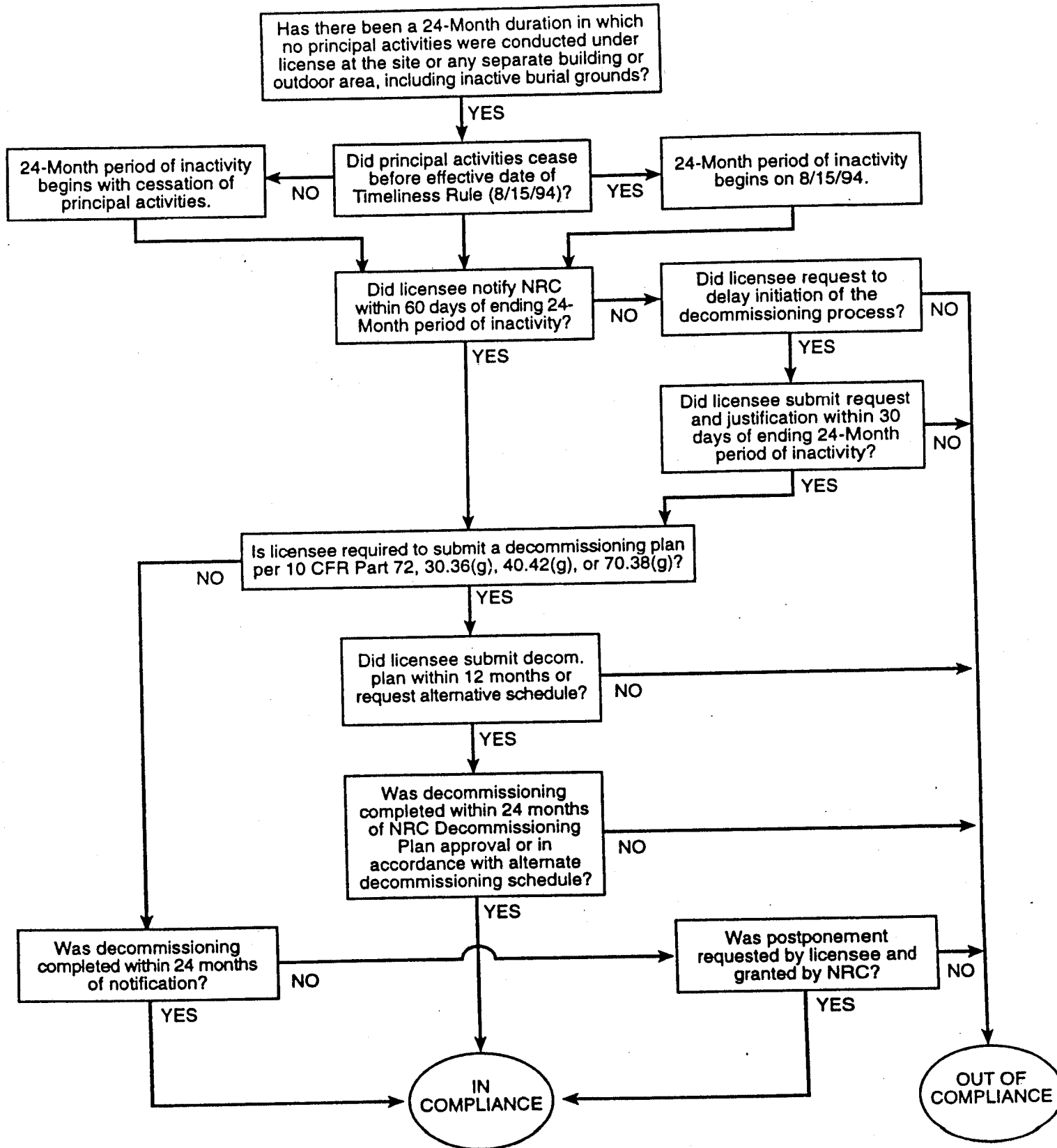
COMPLIANCE WITH DECOMMISSIONING TIMELINESS RULE, CASE 1



COMPLIANCE WITH DECOMMISSIONING TIMELINESS RULE, CASE 2



COMPLIANCE WITH DECOMMISSIONING TIMELINESS RULE, CASE 3



LIST OF RECENTLY ISSUED
 NRC ADMINISTRATIVE LETTERS

Administrative Letter No.	Subject	Date of Issuance	Issued to
98-03	Operating Reactor Licensing Action Estimates	5/06/98	All power reactor licensees
98-02	Revision of Event Reporting Guidelines for Power Reactors	03/17/98	All holders of operating licenses for nuclear reactors
98-01	Maintenance Rule Information Available on the NRC Home Page	02/20/98	All holders of operating licenses for nuclear reactors.
97-04	NRC Staff Approval for Changes to 10 CFR, Part 50, Appendix H, Reactor Vessel Surveillance Specimen Withdrawal Schedules	09/30/97	All holders of operating licenses for nuclear power reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel
97-03	Plant Restart Discussions Following Natural Disasters	03/28/97	All holders of OLs or CPs for nuclear power reactors
97-02	Elimination of National Examination Schedule for Operator Licensing	03/06/97	All holders of OLs or CPs for nuclear power reactors
97-01	State Initiatives to Legalize Schedule 1 Drugs	01/17/97	All holders of OLs or for nuclear power reactors and all licensees authorized to possess or transport Category 1 nuclear material
96-05	Compliance with the Rule "Timeliness in Decommissioning of Material Facilities"	11/05/96	All material and fuel cycle licensees

OL = Operating License
 CP = Construction Permit