

in the comments will be considered as part of the Commission's review of alternative approaches.

8. Finality of Releases

Comment: A reactor licensee commented that, after the Commission has released the property, its jurisdiction should end. The commenter recommended that in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

Response: The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in § 20.1401(c) by stating these provisions are important in providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) point out that, under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the dose criterion. Because of the surveys performed by the licensee and confirmatory surveys routinely performed by NRC, the chances of discovering previously unidentified contamination exceeding the dose criteria would be very small.

9. State Regulatory Agency Participation

Comment: A State commenter noted that the proposed rule is silent with regard to participation by State regulatory agencies. Although there are general provisions for stakeholder input and public participation, notification,

meetings and hearings, there is no explicit provision for "hands-on" involvement by State regulators. The commenter suggested the rule be amended to include explicit provisions for State participation. The commenter also stated that, in their experience, the role of the State in Federally regulated site clearance processes has historically been that of "independent verification." This role assures that the site release process is in compliance with applicable State regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the State is also important in the event that portions of the property to be released would be transferred to State ownership and/or control. For these reasons, amending the rule to provide for independent verification by State regulators makes good sense.

Response: The Commission has published the policy statement "Cooperation With States at Commercial Nuclear Production or Utilization Facilities" (54 FR 7530; February 22, 1989, as amended at 57 FR 6462; February 25, 1992) which the NRC believes provides an adequate mechanism for State regulatory agencies to participate in the release process. The policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials of host and adjacent States to accompany the NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which could allow States to directly participate in the NRC inspection activities at operating facilities as well as at those undergoing decommissioning.

The interest of the States with regard to the scope of the partial site release rule is expected to be primarily concerned with licensee demonstrations of compliance with the radiological release criteria for unrestricted use. In addition to any direct or independent participation agreed to between the State and the NRC, or between the State and the licensee, it is anticipated that the States will continue to participate in the public meetings held prior to NRC approval of partial site releases, and will continue to coordinate with licensees and the NRC in evaluating proposed partial site releases with regard to the release criteria. Therefore, explicit provisions for direct State participation are not being incorporated into the partial site release rule.

10. Radiological Surveys of Non-Impacted Sites

Comment: A State commenter stated that, rather than require the performance of radiological surveys for non-impacted areas, the rule defers to the guidance contained in MARSSIM for demonstrating that a proposed release area is non-impacted. The MARSSIM guidance calls for the performance of a historical site assessment (HSA). The HSA is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information. The assessment results in a classification of areas according to their potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas, and no surveys are required. The commenter feels that relying on a historical site assessment without the benefit of an up-to-date-radiation survey leads to results which are less reliable and more difficult to defend, and is contrary to the rule's stated purposes related to the assurance of meeting the radiological release criteria and of increasing public confidence.

Additionally, the commenter stated that the NRC supports its position that the rule should not require surveys for non-impacted areas by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. The commenter also states that the NRC has further supported this position in the Statements of Consideration by stating that, because it has not established a minimum value above mean background to compare survey results, surveying these areas is not feasible.

Response: The NRC believes that the rule should not specifically require the performance of radiological surveys for non-impacted areas. However, the rule does not preclude the collection and use of such surveys by the licensee. The MARSSIM provides adequate guidance acceptable to the NRC for determining when additional surveys are appropriate, and for demonstrating that a proposed release area is non-impacted. The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions