

3701:1-44-18 Financial assurance and recordkeeping for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in the appendix to rule 3701:1-44-14 of the Administrative Code, criteria for providing financial assurance for decommissioning are as follows:

- (A) Each applicant for a specific license authorizing the possession and use of more than 3.7 gigabecquerels (one hundred millicuries) of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (D) of this rule.
- (B) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 0.37 gigabecquerels (ten millicuries) but less than or equal to 3.7 gigabecquerels (one hundred millicuries) in a readily dispersible form shall either:
 - (1) Submit a decommissioning funding plan as described in paragraph (D) of this rule; or
 - (2) Submit a certification that financial assurance for decommissioning has been provided in the amount of two hundred twenty-five thousand dollars using one of the methods described in paragraph (E) of this rule. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule must be submitted to the director prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule.
- (C)
 - (1) Each holder of a specific license issued on or after July 27, 1990, which is covered by paragraph (A) or (B) of this rule, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this rule.
 - (2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (A) of this rule shall submit a decommissioning funding plan as described in paragraph (D) of this rule or a certification of financial assurance for decommissioning in an amount at least equal to one million one hundred twenty-five thousand dollars in accordance with the criteria set forth in this rule. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.
 - (3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (B) of this rule shall submit a decommissioning funding plan, as described in paragraph (D) of this rule, or a certification of financial

assurance for decommissioning in accordance with the criteria set forth in this rule.

- (4) Any licensee who has submitted an application for renewal of license in accordance with rule 3701:1-38-02 of the Administrative Code shall provide financial assurance for decommissioning in accordance with paragraphs (A) and (B) of this rule.

(D)

- (1) Each decommissioning funding plan must be submitted for review and approval and must contain:
 - (a) A detailed cost estimate for decommissioning, in an amount reflecting:
 - (i) The cost of an independent contractor to perform all decommissioning activities;
 - (ii) The cost of meeting the criteria specified in paragraph (B) of rule 3701:1-38-22 of the Administrative Code for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of paragraph (D) of rule 3701:1-38-22 of the Administrative Code, the cost estimate may be based on meeting this criteria;
 - (iii) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and
 - (iv) An adequate contingency factor.
 - (b) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;
 - (c) A description of the method of assuring funds for decommissioning from paragraph (E) of this rule, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;
 - (d) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and
 - (e) A signed original of the financial instrument obtained to satisfy the requirements of paragraph (E) of this rule (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).
- (2) At the time of license renewal and at intervals not to exceed three years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for the changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan, and must specifically consider the effect of the following events on decommissioning costs:
 - (a) Spills of radioactive material producing additional residual radioactivity in

- onsite subsurface material;
 - (b) Waste inventory increasing above the amount previously estimated;
 - (c) Waste disposal costs increasing above the amount previously estimated;
 - (d) Facility modifications;
 - (e) Changes in authorized possession limits;
 - (f) Actual remediation costs that exceed the previous cost estimate;
 - (g) Onsite disposal; and
 - (h) Use of a settling pond.
- (E) Financial assurance for decommissioning must be provided by one or more of the following methods:
- (1) Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.
 - (2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix B to rule 3701:1-40-17 of the Administrative Code. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this rule. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to rule 3701:1-40-17 of the Administrative Code. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to rule 3701:1-40-17 of the Administrative Code. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to rule 3701:1-40-17 of the Administrative Code. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this rule or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:
 - (a) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be

paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the director within thirty days after receipt of notification of cancellation.

- (b) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.
 - (c) The surety method or insurance must remain in effect until the director has terminated the license.
- (3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provision must be as stated in paragraph (E)(2) of this rule.
- (4) In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (B) of this rule, and indicating that funds for decommissioning will be obtained when necessary.
- (5) When a government entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such government entity.
- (F) Each person licensed under Chapter 3701:1-44 of the Administrative Code shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with paragraph (B) of rule 3701:1-44-19 of the Administrative Code licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the director considers important to decommissioning consists of:
- (1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.
 - (2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of

possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

- (3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every two years, of the following:
- (a) All areas designated and formerly designated as restricted areas as defined in rule 3701:1-38-01 of the Administrative Code;
 - (b) All areas outside of restricted areas that require documentation under paragraph (F)(1) of this rule;
 - (c) All areas outside of restricted areas where current and previous wastes have been buried as documented under paragraph (K) of rule 3701:1-38-20 of the Administrative Code; and
 - (d) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in rule 3701:1-38-22 of the Administrative Code, or apply for approval for disposal under paragraph (C) of rule 3701:1-38-19 of the Administrative Code.
- (4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

Five Year Review (FYR) Dates: 09/22/2015 and 09/15/2020

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Certification

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Date

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