

105 CMR: DEPARTMENT OF PUBLIC HEALTH

120.100: LICENSING OF RADIOACTIVE MATERIAL

120.125: General Requirements for the Issuance of Specific Licenses

- (A) A license application will be approved only if the Agency determines that:
- (1) the applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with 105 CMR 120.000 in such a manner as to minimize danger to public health and safety or property;
 - (2) the applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property;
 - (3) the issuance of the license will not be inimical to the health and safety of the public; and,
 - (4) the applicant satisfies any applicable special requirements in 105 CMR 120.126, 120.127, 120.128, 120.300, 120.500, 120.620 120.800, 120.890 or 120.900.
- (B) Environmental Report, Commencement of Construction.
- (1) In the case of an application for a license to receive and possess radioactive material for commercial waste disposal, or for the conduct of any other activity which the Agency determines will significantly affect the quality of the environment, a license application shall be reviewed and approved by the Agency before commencement of construction of the plant or facility in which the activity will be conducted. Issuance of the license shall be based upon a consideration by the Agency of the environmental, economic, technical and other benefits in comparison with the environmental costs and available alternatives and a determination that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values;
 - (2) Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess radioactive material in such plant or facility. As used in 105 CMR 120.125(B) the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.
- (C) Financial Surety Arrangements and Recordkeeping for Decommissioning.
- (1) Unless exempted by 105 CMR 120.125(C)(3), issuance, renewal or amendment of a license shall be dependent upon satisfactory financial surety arrangements to ensure the protection of the public health and safety in the event of abandonment, default or other inability of the licensee to meet the requirements of M.G.L. c. 111H, § 9 and 105 CMR 120.000.

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- (2) Each applicant for a specific license authorizing the possession and use of unsealed radioactive material with a half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in 105 CMR 120.196: *Appendix B*, Table II shall submit a decommissioning funding plan as described in 105 CMR 120.125(C)(1)(e). The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10^5 is greater than 1 (unity rule), where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in 105 CMR 120.196: *Appendix B*, Table II.
- (3) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in 105 CMR 120.125(C)(5) shall either:
- (a) submit a decommissioning funding plan as described in 105 CMR 120.125(C)(6); or
 - (b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by 105 CMR 120.125(C)(5) using one of the methods described in 105 120.125(C)(7). 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 prior to the receipt of licensed material. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of 105 CMR 120.125(C)(7) is to be submitted to the Agency.
- (4) (a) Each holder of a specific license issued on or after March 11, 1994, which is of a type described in 105 CMR 120.125(C)(2) or (3), shall provide financial assurance for decommissioning in accordance with the criteria set forth in 105 CMR 120.125(C)(1) through 120.125(C)(8).
- (b) Each holder of a specific license issued before March 11, 1994, and of a type described in 105 CMR 120.125(C)(2) shall submit, on or before March 11, 1995, a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000, in accordance with the criteria set forth in this part. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this time, the licensee shall include a decommissioning funding plan in any application for license renewal.
 - (c) Each holder of a specific license issued before March 11, 1994, and of a type described in 105 CMR 120.125(C)(3) shall submit, on or before March 11, 1995, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in 105 CMR 120.125(C)(1) through 120.125(C)(8).
 - (d) Waste collectors and waste processors, as defined in 10 CFR part 20, Appendix G must establish an Agency-approved decommissioning funding plan to assure the availability of funds for decommissioning activities conducted over the life of the licensed facility. The decommissioning funding plan must include the cost of disposal of the maximum radioactivity (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material that could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 105 CMR 120.200. The decommissioning funding plan must be submitted by April 6, 2007.

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(5) Table of Required Amounts of Financial Assurance for Decommissioning by Quantity of Material:

| | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| -1 | Greater than 10^4 but less than or equal to 10^5 times the applicable quantities in 105 CMR 120.196: <i>Appendix B</i> , Table II in unsealed form. (For a combination of isotopes, if R, as defined in 105 CMR 120.125(C)(2), divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1.) | \$1,125,000 |
| -2 | Greater than 10^3 but less than or equal to 10^4 times the applicable quantities in 105 CMR 120.196: <i>Appendix B</i> , Table II in unsealed form. (For a combination of isotopes, if R, as defined in 105 CMR 120.125(C)(2), divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1.) | \$225,000 |
| -3 | Greater than 10^{10} times the applicable quantities in 105 CMR 120.196: <i>Appendix B</i> , Table II in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in 105 CMR 120.125(C)(2), divided by 10^{10} is greater than 1.) | \$113,000 |

(a) Licensees required to submit the \$1,125,000 amount must do so by October 6, 2006.

(b) Licensees required to submit the \$113,000 or \$225,000 amount must do so by April 6, 2007.

(6) Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from 105 CMR 120.125(C)(7), including means of adjusting cost estimates and associated funding levels periodically over the life of the facility.

(7) Financial assurance for decommissioning must be provided by one or more of the following methods:

(a) Prepayment. 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.

(b) A Surety Method. A surety method, insurance or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default.

1. A surety method may be in the form of a surety bond, issued by a corporate surety company authorized to transact business in the commonwealth; or

2. An irrevocable letter of credit, or line of credit; or

3. A parent company guarantee of funds for decommissioning costs may be used if the guarantee and test are as contained in 105 CMR 120.198: *Appendix D*. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of 105 CMR 120.125(C).

a. 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 105 CMR 120.198: *Appendix E*.

b. 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 105 CMR 120.198: *Appendix F*.

c. 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 105 CMR 120.198: *Appendix G*.

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4. 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 90 days or more prior to the renewal date, the issuer notifies the Agency, 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 Agency within 30 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 Agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that 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 Agency has terminated the license.
- (c) An External Sinking Fund. 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 provisions must be as stated in 105 CMR 120.125(C)(7)(b).
- (d) Statement of Intent. In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount pursuant to 105 CMR 120.125(C)(5), and indicating that funds for decommissioning will be obtained when necessary.
- (8) Each person licensed under 105 CMR 120.100 shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the Agency considers important to decommissioning consists of:
 - (a) 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.
 - (b) 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 that 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.
 - (c) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:
 1. all areas designated and formerly designated restricted areas as defined in 105 CMR 120.005;
 2. all areas outside of restricted areas that require documentation under 105 CMR 120.125(C)(8)(a);
 3. all areas outside of restricted areas where current and previous wastes have been buried as documented under 105 CMR 120.269; and,

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4. all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 105 CMR 120.252.
- (d) 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.
- (9) The following specific licensees are required to make financial surety arrangements:
 - (a) major processors;
 - (b) waste handling licensees;
 - (c) former U.S. Atomic Energy Commission or NRC licensed facilities; and,
 - (d) all others except persons exempt pursuant to 105 CMR 120.125(C)(10).
- (10) The following persons are exempt from the requirements of 105 CMR 120.125(C)(1):
 - (a) persons authorized to possess no more than 1,000 times the quantity specified in 105 CMR 120.196: *Appendix B, Table 1* or combination of radioactive material listed therein as given in 105 CMR 120.196: *Appendix B, Table I, Note 1*;
 - (b) persons authorized to possess radioactive noble gases in sealed sources with no radioactive daughter product with half-life greater than 30 days.

120.131: Specific Terms and Conditions of Licenses

- (A) Each license issued pursuant to 105 CMR 120.+000 shall be subject to all the provisions of M.G.L. c. 111, §§ 3, 5M, 5N, 5O and 5P, and to all rules, regulations, orders of the Agency and license conditions as provided for in 105 CMR 120.130(B).
- (B) No license issued or granted under 105 CMR 120.+000 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, and to all valid rules, regulations, and orders of the Agency, and shall give its consent in writing.
- (C) Each person licensed by the Agency pursuant to 105 CMR 120.+000 shall confine use and possession of the material licensed to the locations and purposes authorized in the license. **Preparation for shipment and transport of byproduct material shall be in accordance with the provisions of 10 CFR part 71 and 105 CMR 120.770.**
- (D) Each licensee shall notify the Agency in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license.
- (E) Each licensee shall notify the Agency in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:
 - (1) the licensee;
 - (2) an entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or
 - (3) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

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(F) The notification specified in 105 CMR 120.131(E) shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

(G) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

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120.198: Appendix D: Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This appendix establishes criteria for passing the financial test and for obtaining the parent company guarantee.

II. Financial Test.

(A) To pass the financial test, the parent company must meet the criteria of either II.A.1 or II.A.2:

(1) The parent company must have:

- (a) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and,
- (b) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used); and,
- (c) Tangible net worth of at least \$10 million; and,
- (d) Assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used).

(2) The parent company must have:

- (a) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and,
- (b) Tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used); and,
- (c) Tangible net worth of at least \$10 million; and,
- (d) Assets located in the United States amounting to at least 90% of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if certification is used).

(B) The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statement. In connection with that procedure, the licensee shall inform the Agency within 90 days of any matters coming to the auditor's attention that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(C) (1) After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

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(2) If the parent company no longer meets the requirements of II.A, the licensee must send notice to the Agency of intent to establish alternate financial assurance as specified in the Commission's regulations. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

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III. Parent Company Guarantee. The terms of a parent company guarantee that an applicant or licensee obtains must provide that:

(A) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Agency, as evidenced by the return receipts.

(B) If the licensee fails to provide alternate financial assurance as specified in the Agency's regulations within 90 days after receipt by the licensee and the Agency of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(C) The parent company guarantee and financial test provisions must remain in effect until the Agency has terminated the license.

(D) If a trust is established for decommissioning costs, the trustee and trust must be acceptable to the Agency. An acceptable trustee includes an appropriate state or federal government agency or an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

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120.198: Appendix E: Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of 105 CMR 120.198: *Appendix E*, Section II. The terms of the self-guarantee are in 105 CMR 120.198: *Appendix E*, Section III. 105 CMR 120.198: *Appendix E* establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test.

(A) To pass the financial test, a company must meet all of the following criteria:

- (1) Tangible net worth at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.
- (2) Assets located in the United States amounting to at least 90% of total assets or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.
- (3) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), Aaa, As, or A as issued by Moodys.

(B) To pass the financial test, a company must meet all of the following additional requirements:

- (1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.
- (2) The company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.
- (3) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(C) If the licensee no longer meets the requirements of 105 CMR 120.198: *Appendix E*, Section II.(A), the licensee must send immediate notice to the Agency of its intent to establish alternate financial assurance as specified in the Agency's regulations within 120 days of such notice.

III. Company Self-Guarantee. The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

(A) The parent company guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Agency, as evidenced by the return receipts.

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(B) The licensee shall provide alternative financial assurance as specified in the Agency's regulations within 90 days following receipt by the Agency of a notice of cancellation of the guarantee.

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(C) The guarantee and financial test provisions must remain in effect until the Agency has terminated the license or until another financial assurance method acceptable to the Agency has been put in effect by the licensee.

(D) The licensee will promptly forward to the Agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(E) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the Agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of 105 CMR 120 198: *Appendix E*, Section II.(A).

(F) The applicant or licensee must provide to the Agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

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120.198: Appendix F: Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have No Outstanding Rated Bonds

I. Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of 105 CMR 120.198: *Appendix F*, Section II. The terms of the self-guarantee are in 105 CMR 120.198: *Appendix F*, Section III. 105 CMR 120.198: *Appendix F* establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test.

(A) To pass the financial test, a company must meet all of the following criteria:

- (1) Tangible net worth greater than \$10 million, or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used) whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.
- (2) Assets located in the United States amounting to at least 90% of total assets or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.
- (3) A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

(B) In addition, to pass the financial test, a company must meet all of the following additional requirements:

- (1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.
- (2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.
- (3) If the licensee no longer meets the requirements of 105 CMR 120.198: *Appendix F*, Section II.(A), the licensee must send immediate notice to the Agency of its intent to establish alternate financial assurance as specified in 105 CMR 120.125(C). The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

III. Company Self-guarantee. The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

(A) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the Agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

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(B) The licensee shall provide alternative financial assurance as specified in the Agency's regulations within 90 days following receipt by the Agency of a notice of cancellation of the guarantee.

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(C) The guarantee and financial test provisions must remain in effect until the Agency has terminated the license or until another financial assurance method acceptable to the Agency has been put in effect by the licensee.

(D) The applicant or licensee must provide to the Agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

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120.198: Appendix G: Criteria Relating to Use of Financial Tests and Self Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals

I. Introduction. An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of 105 CMR 120.198: *Appendix G*, Section II. The terms of the self-guarantee are in 105 CMR 120.198: *Appendix G*, Section III. 105 CMR 120.198: *Appendix G* establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test.

(A) For colleges and universities, to pass the financial test a college or university must meet either the criteria in 105 CMR 120.198: *Appendix G*, Section II.(A)(1) or the criteria in 105 CMR 120.198: *Appendix G*, Section II.(A)(2).

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

(B) For hospitals, to pass the financial test a hospital must meet either the criteria in 105 CMR 120.198: *Appendix G*, Section II.(B)(1) or the criteria in 105 CMR 120.198: *Appendix G*, Section II.(B)(2):

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

(C) In addition, to pass the financial test, a licensee must meet the following requirements: (for institutions using 105 CMR 120.198: *Appendix G*: Section II, (A)(2) method of qualifying; for a self-guarantee 105 CMR 120.198: *Appendix G*: Sections II(C)(1) and II(C)(2) will apply.

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the

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financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

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(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of 105 CMR 120.198: *Appendix G*: Section I, the licensee must send notice to the Agency of its intent to establish alternative financial assurance as specified in Agency regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-guarantee. The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

(A) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Agency. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(B) The licensee shall provide alternative financial assurance as specified in 105 CMR 120.125(C) within 90 days following receipt by the Agency of a notice of cancellation of the guarantee.

(C) The guarantee and financial test provisions must remain in effect until the Agency has terminated the license or until another financial assurance method acceptable to the Agency has been put in effect by the licensee.

(D) The applicant or licensee must provide to the Agency a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(D) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Agency within 20 days after publication of the change by the rating service.

(C) The guarantee and financial test provisions must remain in effect until the Agency has terminated the license or until another financial assurance method acceptable to the Agency has been put in effect by the licensee.

(D) The licensee will promptly forward to the Agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(E) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the Agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of 105 CMR 120 199: *Appendix E*, Section II.(A).

(F) The applicant or licensee must provide to the Agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

