

Decommissioning Planning, Parts 20, 30, 40, and 70
(76 FR 35512, Published June 17, 2011) RATS ID # 2011-1 Effective date 12/17/2012
Date Due for State Adoption 12/17/2015

Change to NRC Section	Title	State Section 105 CMR	Compatibility Category	Summary of Change to CFR	Difference Yes/No	Significant Yes/No	If Difference, Why or Why Not Was a Comment Generated
§20.1403	Criteria for license termination under restricted conditions	120.246	C	<p>In § 20.1403, paragraph (c)(1) is revised to read as follows:</p> <p>(c) *** (1) Funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1 percent real rate of return on investment;</p>			
§20.1403	Criteria for license termination under restricted conditions	<p>120.246</p> <p>Note: Also incorrect 125(C)(1)(f)4 reference in redesignated 120.246 (C)(2) corrected to be 125(C)(7)(d)</p>	C	<p>In §20.1403, paragraph (c)(2) is removed:</p> <p>(c)*** (2) Surety method, insurance, or other guarantee method as described in §30.35(f)(2) of this chapter;</p> <p>[paragraph (c)(3) is redesignated as paragraph (c)(2), and paragraph (c)(4) is redesignated as paragraph (c)(3)]</p>			

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§20.1404(a)	Alternate criteria for license termination	120.247 (A)	C	<p>In § 20.1404, paragraph (a)(5) is added to read as follows:</p> <p>(a) *** (5) Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.</p>			
§20.1406(c)	Minimization of contamination	120.249	C	<p>In § 20.1406, paragraph (c) is added to read as follows:</p> <p>(c) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in Subpart B and radiological criteria for license termination in Subpart E of this part.</p>			
§20.1501(a)	General	120.225 (A)	H&S	<p>In § 20.1501, paragraphs (b) and (c) are redesignated as paragraphs (c) and(d), paragraphs (a) introductory text,(a)(2)(ii) and (a)(2)(iii) are revised, and a new paragraph (b) is added to read as follows:</p>			

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				<p>a) Each licensee shall make or cause to be made, surveys of areas, including the subsurface, that --</p> <p>(2) *** (ii) Concentrations or quantities of residual radioactivity; and (iii) The potential radiological hazards of the radiation levels and residual radioactivity detected.</p>			
§20.1501(b)	General	120.225 (B)	H&S	<p>In § 20.1501, paragraphs (b) and (c) are redesignated as paragraphs (c) and(d), paragraphs (a) introductory text,(a)(2)(ii) and (a)(2)(iii) are revised, and a new paragraph (b) is added to read as follows::</p> <p>(b) Notwithstanding § 20.2103(a) of this part, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with §§ 30.35(g), 40.36(f), 50.75(g), 70.25(g), or 72.30(d), as applicable.</p>			
§ 30.34(b)	Terms and conditions of licenses	120.131 (B)	C	In § 30.34, paragraph (b) is redesignated as paragraph (b)(1) and a new paragraph			

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				<p>(b)(2) is added to read as follows:</p> <p>(b) *** (2) An application for transfer of license must include: (i) The identity, technical and financial qualifications of the proposed transferee; and (ii) Financial assurance for decommissioning information required by § 30.35.</p>			
§30.35(c)(6)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(4)(e)	D	N/A			
§30.35(d)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(5) No Change	D (***please note 10 CFR 30.35(d) was changed from a Compatibility Category H&S to a Compatibility Category D)	No Change to the text of §30.35(d)	N/A		
§ 30.35(e)	Financial assurance and recordkeeping for	120.125 (C)(6)	H&S (***please note 10 CFR	In § 30.35, paragraphs (e), is revised:			

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	decommissioning.		30.35(e) was changed from a Compatibility Category D to a Compatibility Category H&S)	(e)(1) Each decommissioning funding plan must be submitted for review and approval and must contain – (i) A detailed cost estimate for decommissioning, in an amount reflecting: (A) The cost of an independent contractor to perform all decommissioning activities; (B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria; (C) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination; and (D) An adequate contingency factor. (ii) Identification of and justification for using the key assumptions contained in the DCE; (iii) A description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and			

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				<p>associated funding levels periodically over the life of the facility;</p> <p>(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and</p> <p>(v) A signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).</p> <p>(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this can not 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</p>			

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				decommissioning costs: (i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material; (ii) Waste inventory increasing above the amount previously estimated; (iii) Waste disposal costs increasing above the amount previously estimated; (iv) Facility modifications; (v) Changes in authorized possession limits; (vi) Actual remediation costs that exceed the previous cost estimate; (vii) Onsite disposal; and (viii) Use of a settling pond.			
§ 30.35(f)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(7)	D	N/A	N/A		
§ 30.35(h)	Financial assurance and recordkeeping for decommissioning.	N/A	D	N/A	N/A		
Appendix A to Part 30	Criteria Relating to Use of Financial Tests and Parent Company Guarantees for	120.198 Appendix D	D	N/A	N/A		

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	Providing Reasonable Assurance of Funds for Decommissioning						
Appendix C to Part 30	Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning	120.198 Appendix E	D	N/A	N/A		
Appendix D to Part 30	Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds	120.198 Appendix F	D	N/A	N/A		
Appendix E to Part 30	Criteria Relating to Use of Financial Tests	120.198 Appendix G	D	N/A	N/A		

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	and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals						
§40.36(c)(5)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(4)(e)	D	N/A	N/A		
§ 40.36(d)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(6)	H&S	<p>In § 40.36, paragraph (d) is revised to read as follows:</p> <p>(d)(1) Each decommissioning funding plan must be submitted for review and approval and must contain –</p> <p>(i) A detailed cost estimate for decommissioning, in an amount reflecting:</p> <p>(A) The cost of an independent contractor to perform all decommissioning activities;</p> <p>(B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the</p>			

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				<p>provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria;</p> <p>(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and</p> <p>(D) An adequate contingency factor.</p> <p>(ii) Identification of and justification for using the key assumptions contained in the DCE;</p> <p>(iii) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;</p> <p>(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and</p> <p>(v) A signed original, or if permitted, a copy, of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section (unless a previously submitted and accepted financial</p>			

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				<p>instrument continues to cover the cost estimate for decommissioning).</p> <p>(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this can not 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:</p> <ul style="list-style-type: none"> (i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material; (ii) Waste inventory increasing above the amount previously estimated; (iii) Waste disposal costs increasing above the amount previously estimated; (iv) Facility modifications; (v) Changes in authorized possession limits; 			

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				(vi) Actual remediation costs that exceed the previous cost estimate; (vii) Onsite disposal; and (viii) Use of a settling pond.			
§40.36(e)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(7)	D	N/A	N/A		
§40.36(g)	Financial assurance and recordkeeping for decommissioning.	N/A	D	N/A	N/A		
§ 40.46	Inalienability of licenses.	120.131 (B)	C	In § 40.46, the current paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows: (b) An application for transfer of license must include: (1) The identity, technical and financial qualifications of the proposed transferee; and (2) Financial assurance for decommissioning information required by § 40.36 or Appendix A to this part, as applicable.			
Appendix A to Part 40 Criterion 9	Criteria Relating to the Operation of Uranium Mills and the Disposition of	N/A	C for States with authority to regulate uranium mill activities	In Appendix A to Part 40, Section II, Criterion 9 is revised to read as follows: (a) Financial surety arrangements must be established by each mill			

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	Tailings or Wastes Produced by the Extraction or Concentration of Source Material from Ores Processed Primarily for Their Source Material Content		D- States without authority	operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on Commission-approved cost estimates in a Commission-approved plan, or a proposed revision to the plan submitted to the Commission for approval, if the proposed revision contains a higher cost estimate, for (1) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning, and (2) The reclamation of tailings and/or waste areas in accordance with technical criteria delineated in Section I of this appendix. (b) Each cost estimate must contain – (1) A detailed cost estimate for decontamination, decommissioning, and reclamation, in an amount reflecting:			

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				<p>(i) The cost of an independent contractor to perform the decontamination, decommissioning and reclamation activities; and</p> <p>(ii) An adequate contingency factor;</p> <p>(2) An estimate of the amount of radioactive contamination in onsite subsurface material;</p> <p>(3) Identification of and justification for using the key assumptions contained in the DCE; and</p> <p>(4) A description of the method of assuring funds for decontamination, decommissioning, and reclamation.</p> <p>(c) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The plan must include a signed original of the financial instrument obtained to satisfy the surety arrangement requirements of this criterion (unless a previously submitted and</p>			

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				<p>approved financial instrument continues to cover the cost estimate for decommissioning). The surety arrangement must also cover the cost estimate and the payment of the charge for long-term surveillance and control required by Criterion 10 of this section.</p> <p>(d) To avoid unnecessary duplication and expense, the Commission may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.</p> <p>(e) The licensee's surety mechanism will be reviewed</p>			

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				<p>annually by the Commission to assure, that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor.</p> <p>(f) The amount of surety liability should be adjusted to recognize any increases or decreases resulting from:</p> <ul style="list-style-type: none"> (1) Inflation; (2) Changes in engineering plans; (3) Activities performed; (4) Spills, leakage or migration of radioactive material producing additional contamination in onsite subsurface material that must be remediated to meet applicable remediation criteria; (5) Waste inventory increasing above the amount previously estimated; (6) Waste disposal costs increasing above the amount previously estimated; (7) Facility modifications; (8) Changes in authorized possession limits; (9) Actual remediation costs that exceed the previous cost estimate; (10) Onsite disposal; and 			

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				<p>(11) Any other conditions affecting costs.</p> <p>(g) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined.</p> <p>(h) The appropriate portion of surety liability retained until final compliance with the reclamation plan is determined will be at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (e.g., 5 years) and which must be automatically renewed unless the surety notifies the beneficiary (the Commission or the State regulatory agency) and the principal (the licensee) with reasonable time (e.g., 90 days)</p>			

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				<p>before the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief time to allow at least 60 days for the regulatory agency to collect.</p> <p>(i) Proof of forfeiture must not be necessary to collect the surety. In the event that the licensee cannot provide an acceptable replacement surety within the required time, the surety shall be automatically collected before its expiration. The surety instrument must provide for collection of the full face amount immediately on demand without reduction for any reason, except for trustee fees and expenses provided for in a trust agreement, and that the surety will not refuse to make full payment. The conditions described previously would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Commission are:</p> <p>(1) Trust funds;</p>			

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				<p>(2) Surety bonds; (3) Irrevocable letters of credit; and (4) Combinations of the financial surety arrangements or other types of arrangements as may be approved by the Commission. If a trust is not used, then a standby trust must be set up to receive funds in the event the Commission or State regulatory agency exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the Commission. Self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a State or Federal agency), will not satisfy the surety requirement because this provides no additional assurance other than that which already exists through license requirements.</p>			
§70.25(c)(5)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(4)(e)	D	N/A	N/A		
§70.25(d)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(5) No	D (**please note 10 CFR 70.25(d) was	No Change to the text of §70.25(d)			

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		Change	changed from a Compatibility Category H&S to a Compatibility Category D)				
§ 70.25(e)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(6)	H&S (**please note 10 CFR 70.25(e) was changed from a Compatibility Category D to a Compatibility Category H&S)	In § 70.25, paragraph (e) is revised as follows: (e)(1) Each decommissioning funding plan must be submitted for review and approval and must contain – (i) A detailed cost estimate for decommissioning, in an amount reflecting: (A) The cost of an independent contractor to perform all decommissioning activities; (B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria; (C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and (D) An adequate contingency factor.			

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				<p>(ii) Identification of and justification for using the key assumptions contained in the DCE;</p> <p>(iii) A description of the method of assuring funds for decommissioning from paragraph (f) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;</p> <p>(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and</p> <p>(v) A signed original, or, if permitted, a copy, of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).</p> <p>(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will</p>			

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				<p>be adjusted downward, this can not 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:</p> <ul style="list-style-type: none"> (i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material; (ii) Waste inventory increasing above the amount previously estimated; (iii) Waste disposal costs increasing above the amount previously estimated; (iv) Facility modifications; (v) Changes in authorized possession limits; (vi) Actual remediation costs that exceed the previous cost estimate; (vii) Onsite disposal; and (viii) Use of a settling pond. 			
§70.25(f)	Financial assurance and recordkeeping for decommissioning.	120.125 (C)(7)	D	N/A	N/A		
§70.25(h)	Financial	N/A	D	N/A	N/A		

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	assurance and recordkeeping for decommissioning.						
§ 70.36	Inalienability of licenses	120.131 (B)	C	<p>In § 70.36, the current paragraph is designated as paragraph (a) and a new paragraph (b) is added to read as follows:</p> <p>(b) An application for transfer of license must include: (1) The identity, technical and financial qualifications of the proposed transferee; and (2) Financial assurance for decommissioning information required by § 70.25.</p>			