

4731.3080 FINANCIAL ASSURANCE AND RECORD KEEPING FOR DECOMMISSIONING.

Subpart 1. Decommissioning funding plan required.

A. An applicant for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities under part 4731.3160 must submit a decommissioning funding plan according to subpart 5. A decommissioning funding plan must also be submitted when a combination of isotopes is involved, if R divided by 10^5 is greater than one (unity rule), where R is the sum of the ratios of the quantity of each isotope to the applicable value under part 4731.3160.

B. A holder of or an applicant for a specific license authorizing possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in part 4731.3160 or, when a combination of isotopes is involved, if R, as defined in subpart 1, divided by 10^{12} is greater than 1, must submit a decommissioning funding plan as described in subpart 5.

Subp. 2. Plan or financial assurance required.

A. A holder of or an applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in subpart 4 must:

- (1) submit a decommissioning funding plan as described in subpart 5; or
- (2) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by subpart 4, using one of the methods described in subpart 6. The 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.

B. 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 subpart 6 must be submitted to the commissioner before receipt of licensed material.

C. If the applicant does not defer execution of the financial instrument, the applicant must submit to the commissioner, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of subpart 6.

Subp. 3. Date-specific requirements.

A. A holder of a specific license issued on or after July 27, 1990, which is of a type described in subpart 1 or 2, must provide financial assurance for decommissioning according to this subpart.

B. A holder of a specific license issued before July 27, 1990, and of a type described in subpart 1, must submit, on or before July 27, 1990, a decommissioning funding plan according to subpart 5 or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 according to this part. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee must include a decommissioning funding plan in any application for license renewal.

C. A holder of a specific license issued before July 27, 1990, and of a type described in subpart 2, must submit, on or before July 27, 1990, a decommissioning funding plan as described in subpart 5 or a certification of financial assurance for decommissioning according to this part.

D. A licensee who has submitted an application before July 27, 1990, for renewal of a license according to part 4731.3090, must provide financial assurance for decommissioning according to subparts 1 and 2.

E. Waste collectors and waste processors, as defined under part 4731.2950, must provide financial assurance in an amount based on a decommissioning funding plan as described in subpart 5. The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by 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 parts 4731.2000 to 4731.2950. The decommissioning funding plan must be submitted by December 2, 2005.

Subp. 4. **Financial assurance; amounts.** The following amounts of financial assurance are required for decommissioning by quantity of material. Licensees required to submit the \$113,000 or \$225,000 amount must do so by June 2, 2005. Licensees having possession limits exceeding the upper bounds of this subpart must base financial assurance on a decommissioning funding plan:

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of part 4731.3160 in unsealed form. For a combination of isotopes, if R, as defined in subpart 1, divided by 10^4 is greater than 1 but R divided by 10^5 is less than or equal to 1. \$1,125,000

Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of part 4731.3160 in unsealed form. For a combination of isotopes, if R, as defined in subpart 1, divided by 10^3 is greater than 1 but R divided by 10^4 is less than or equal to 1. \$225,000

Greater than 10^{10} times but less than or equal to 10^{12} times the applicable quantities of part 4731.3160 in sealed sources or plated foils. For a combination of isotopes, if R, as defined in subpart 1, divided by 10^{10} is greater than 1, but R divided by 10^{12} is less than or equal to 1.

\$113,000

Subp. 5. Funding plan requirements.

A. Each decommissioning funding plan must be submitted for review and approval and must contain:

(1) 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 criteria in part 4731.2100, subpart 2, for unrestricted use, provided that, if the applicant or licensee can demonstrate the ability to meet the provisions of part 4731.2100, subpart 3, the cost estimate may be based on meeting the criteria in part 4731.2100, subpart 3;

(c) the volume of on-site subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination; and

(d) an adequate contingency factor;

(2) identification of and justification for using the key assumptions contained in the DCE;

(3) a description of the method of assuring funds for decommissioning under subpart 6, including the means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(4) a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(5) a signed original of the financial instrument obtained to satisfy the requirements of subpart 6, unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning.

B. 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 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:

- (1) spills of radioactive material producing additional residual radioactivity in on-site subsurface material;
- (2) waste inventory increasing above the amount previously estimated;
- (3) waste disposal costs increasing above the amount previously estimated;
- (4) facility modifications;
- (5) changes in authorized possession limits;
- (6) actual remediation costs that exceed the previous cost estimate;
- (7) on-site disposal; and
- (8) use of a settling pond.

Subp. 6. Financial assurance requirements.

A. Financial assurance for decommissioning must be provided by one or more of the methods described in items B to F.

B. 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.

C. A surety method, insurance, or other guarantee method guarantees 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 comply with part 4731.3155, but may not be used in combination with other financial methods to satisfy the requirements of this part. 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 comply with part 4731.3165. For commercial corporations 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 comply with part 4731.3170. 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 comply with part 4731.3175. A guarantee by the applicant or licensee may not be used in combination with other financial methods used to satisfy this part 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:

(1) be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more before the renewal date, the issuer notifies the commissioner, the beneficiary, and the licensee of its intention not to renew;

(2) provide that the full face amount be paid to the beneficiary automatically before the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the commissioner within 30 days after receipt of notification of cancellation;

(3) be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the commissioner. An acceptable trustee includes an appropriate state or federal government agency or an entity that has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency; and

(4) remain in effect until the commissioner terminates the license.

D. 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, may be used as a method of financial assurance. The surety or insurance provisions must be as stated in item C. An external sinking fund:

(1) 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; and

(2) may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

E. In the case of federal, state, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount according to subpart 4 and indicating that funds for decommissioning will be obtained when necessary may be used as a method of financial assurance.

F. When a governmental entity assumes custody and ownership of a site, an arrangement that is deemed acceptable by the governmental entity may be used as a method of financial assurance.

Subp. 7. Record keeping.

A. A person issued a license under parts 4731.3000 to 4731.7280 must keep records of information important to the decommissioning of the facility in an identified location until the site is released for unrestricted use.

B. Before licensed activities are transferred or assigned according to part 4731.3075, subpart 2, a licensee must transfer all records described in this subpart to the new licensee. The new licensee is responsible for maintaining the records until the license is terminated.

C. If records important to the decommissioning of a facility are kept for other purposes, reference to the records and their location may be used.

D. Information the commissioner considers important to decommissioning are:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site, which:

(a) must include any known information on identification of involved nuclides, quantities, forms, and concentrations; and

(b) may be limited to instances when contamination remains after 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;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used 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 must substitute appropriate records of available information concerning these areas and locations;

(3) except for areas containing only sealed sources, if the sources have not leaked or if no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list of the following, contained in a single document and updated every two years:

(a) all areas designated and formerly designated as restricted areas;

(b) all areas outside of restricted areas that require documentation under subitem (1);

(c) all areas outside of restricted areas where current and previous wastes have been buried as documented under part 4731.2560; 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 under part 4731.2100 or apply for approval for disposal under part 4731.2410; and

(4) records of:

(a) the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning; and

(b) the funding method used for assuring funds if either a funding plan or certification is used.

Statutory Authority: *MS s 144.1201; 144.1202; 144.1203; 144.1204; 144.1205*

History: *29 SR 755; 32 SR 831; 40 SR 145*

Published Electronically: *August 27, 2015*