

**Nuclear Regulatory Commission**

**§ 30.35**

a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (Bankruptcy) of the United States Code by or against:

- (i) The licensee;
- (ii) 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
- (iii) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

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**§30.35 Financial assurance and recordkeeping for decommissioning.**

(a) Each applicant for a specific license authorizing the possession and use of unsealed byproduct material of half-life greater than 120 days and in quantities exceeding 10<sup>5</sup> times the applicable quantities set forth in appendix B to part 30 shall submit a decommissioning funding plan as described in paragraph (e) of this section. The decommissioning funding plan must also be submitted when a combination of isotopes is involved if R divided by 10<sup>5</sup> is greater than 1 (unity rule), where R is defined here as the sum of the ratios of the quantity of each isotope to the applicable value in appendix B to part 30.

(b) Each applicant for a specific license authorizing possession and use of byproduct material of half-life greater than 120 days and in quantities specified in paragraph (d) of this section shall either—

(1) Submit a decommissioning funding plan as described in paragraph (e) of this section; or

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by paragraph (d) of this section using one of the methods described in paragraph (f) of this section. 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 (f) of this section must be submitted to NRC before receipt of licensed mate-

rial. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

(c)(1) Each holder of a specific license issued on or after July 27, 1990, which is of a type described in paragraph (a) or (b) of this section, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan as described in paragraph (e) of this section or a certification of financial assurance for decommissioning in an amount at least equal to \$750,000 in accordance with the criteria set forth in this section. 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 section shall submit, on or before July 27, 1990, a decommissioning funding plan as described, in paragraph (e) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with §30.37 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(d) Table of required amounts of financial assurance for decommissioning by quantity of material.

greater than 10<sup>4</sup> but less than or equal to 10<sup>5</sup> times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in §30.35(a), divided by 10<sup>4</sup> is greater than 1 but R divided by 10<sup>5</sup> is less than or equal to 1.) ..... \$750,000

§ 30.35

10 CFR Ch. I (1-1-01 Edition)

greater than 10 <sup>3</sup> but less than or equal to 10 <sup>4</sup> times the applicable quantities of appendix B to part 30 in unsealed form. (For a combination of isotopes, if R, as defined in §30.35(a), divided by 10 <sup>3</sup> is greater than 1 but R divided by 10 <sup>4</sup> is less than or equal to 1.) .....	\$150,000
greater than 10 <sup>10</sup> times the applicable quantities of appendix B to part 30 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in §30.35(a), divided by 10 <sup>10</sup> is greater than 1.)	\$75,000

(e) Each decommissioning funding plan must contain a cost estimate for decommissioning and 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. The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of paragraph (f) of this section.

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

(1) *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.

(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 A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the re-

quirements of this section. 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 this part. 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 this part. 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 this part. 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 section 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:

(i) 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 Commission, 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 Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. 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.

(iii) The surety method or insurance must remain in effect until the Commission 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 provisions must be as stated in paragraph (f)(2) of this section.

(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 the table in paragraph (d) of this section, 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.

(g) Each person licensed under this part or parts 32 through 36 and 39 of this chapter 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 § 30.34(b), 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 Commission 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 con-

tamination 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 only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated restricted areas as defined in 10 CFR 20.1003 (For requirements prior to January 1, 1994, see 10 CFR 20.3 as contained in the CFR edition revised as of January 1, 1993.);

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1).

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) 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 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

(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

### § 30.36

### 10 CFR Ch. I (1-1-01 Edition)

if either a funding plan or certification is used.

[53 FR 24044, June 27, 1988, as amended at 56 FR 23471, May 21, 1991; 58 FR 39633, July 26, 1993; 58 FR 67659, Dec. 22, 1993; 58 FR 68730, Dec. 29, 1993; 59 FR 1618, Jan. 12, 1994; 60 FR 38238, July 26, 1995; 61 FR 24673, May 16, 1996; 62 FR 39090, July 21, 1997; 63 FR 29541, June 1, 1998]

#### **§ 30.36 Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.**

(a)(1) Except as provided in paragraph (a)(2) of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under § 30.37 not less than 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph). If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license (or, for those licenses subject to paragraph (a)(2) of this section, 30 days before the deemed expiration date in that paragraph), the existing license expires at the end of the day on which the Commission makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

(2) Each specific license that has an expiration date after July 1, 1995, and is not one of the licenses described in paragraph (a)(3) of this section, shall be deemed to have an expiration date that is five years after the expiration date stated in the current license.

(3) The following specific licenses are not subject to, or otherwise affected by, the provisions of paragraph (a)(2) of this section:

(i) Specific licenses for which, on February 15, 1996, an evaluation or an emergency plan is required in accordance with § 30.32(i);

(ii) Specific licenses whose holders are subject to the financial assurance requirements specified in 10 CFR 30.35, and on February 15, 1996, the holders either:

(A) Have not submitted a decommissioning funding plan or certification of financial assurance for decommissioning; or

(B) Have not received written notice that the decommissioning funding plan or certification of financial assurance for decommissioning is acceptable;

(iii) Specific licenses whose holders are listed in the SDMP List published in NUREG 1444, Supplement 1 (November 1995);

(iv) Specific licenses whose issuance, amendment, or renewal, as of February 15, 1996, is not a categorical exclusion under 10 CFR 51.22(c)(14) and, therefore, need an environmental assessment or environmental impact statement pursuant to subpart A of part 51 of this chapter;

(v) Specific licenses whose holders have not had at least one NRC inspection of licensed activities before February 15, 1996;

(vi) Specific licenses whose holders, as the result of the most recent NRC inspection of licensed activities conducted before February 15, 1996, have been:

(A) Cited for a Severity Level I, II, or III violation in a Notice of Violation;

(B) Subject to an Order issued by the NRC; or

(C) Subject to a Confirmatory Action Letter issued by the NRC.

(vii) Specific licenses with expiration dates before July 1, 1995, for which the holders have submitted applications for renewal under 10 CFR 30.37 of this part.

(b) Each specific license revoked by the Commission expires at the end of the day on the date of the Commission's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by Commission Order.

(c) Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of byproduct material until the Commission notifies the licensee in writing that the license is terminated. During this time, the licensee shall—

(1) Limit actions involving byproduct material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable