

# Consolidated NMSS Decommissioning Guidance

Financial Assurance, Recordkeeping,  
and Timeliness

## Final Report

Manuscript Completed: September 2003  
Date Published: September 2003

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EXHIBIT 125-M  
SECY-02

U.S. NUCLEAR REGULATORY COMMISSION

In the Matter of Louisiana Energy Services, L.P.

Docket No. 70-3103-ML Official Exhibit No. LES 125-M

OFFERED by Applicant/Licensee Intervenor \_\_\_\_\_

NRC Staff

Other \_\_\_\_\_

IDENTIFIED on 3/16/06 Witness Panel LES Financial Assurance

Action Taken: ADMITTED REJECTED WITHDRAWN

Reporter/Clerk Bethany Engel

## **SPECIFIC REVIEW PROCESS GUIDELINES**

The license reviewer or licensing project manager will compare the wording of the certification of financial assurance to the recommended wording contained in Section A.2.4 of Appendix A. If the wording is identical, the certification of financial assurance is acceptable. If the wording is not identical, the license reviewer or licensing project manager will verify that the certification of financial assurance includes all necessary information, including the name of the licensee, the locations of the facilities for which financial assurance is provided, the amount and types of materials authorized for possession under the license, and the prescribed amount(s).

The reviewer will provide a memorandum documenting the review of the certification of financial assurance. If there are any deficiencies, the reviewer will provide specific comments for inclusion into a deficiency letter.

## **SAMPLE EVALUATION FINDINGS**

Documentation of the evaluation findings by NRC staff should include the following:

"NRC staff has reviewed the certification of financial assurance for the [*insert name and license number of facility*] located at [*insert location of facility*] according to NUREG-1757, Volume 3, "Financial Assurance, Recordkeeping, and Timeliness." Based on this review, NRC staff has determined that the certification of financial assurance submitted by the licensee [*specifies or does not specify*] the appropriate information and level of financial assurance coverage."

Note that the introduction to Chapter 4 of this volume contains a sample post-review letter from NRC to licensees for cases where no deficiencies are found in the submittal.

## **4.3 FINANCIAL ASSURANCE MECHANISMS**

The purpose of the review of the licensee's financial assurance mechanism is to ensure that sufficient funds will be available to carry out all required decommissioning activities prior to license termination and, if the license is being terminated under restricted conditions, to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

## **INFORMATION REQUIREMENTS**

The financial assurance mechanism supplied by the licensee or responsible party shall consist of one or more of the following instruments:

- trust fund,
- escrow account,

- government fund,
- certificate of deposit (CD),
- deposit of government securities,
- surety bond,
- letter of credit,
- line of credit,
- insurance policy,
- parent company guarantee,
- self-guarantee,
- external sinking fund,
- statement of intent, or
- special arrangements with a government entity that assumes custody and ownership of the site.

**Note that for DPs, external sinking funds may not be used to cover costs for site control and maintenance. Special arrangements with a government entity that assumes custody and ownership of the site may be used on only if the license is being terminated under restricted conditions.**

NRC staff will verify that the financial assurance mechanism for decommissioning and site maintenance and control meets the criteria summarized under "Evaluation Criteria," below.

Appendix A of this volume contains guidance—including recommended wording and checklists—to assist licensees in preparing financial mechanisms that will be acceptable to NRC. NRC staff should use this guidance to the extent necessary in reviewing financial mechanisms submitted by licensees.

## **EVALUATION CRITERIA**

NRC staff will verify that the financial assurance mechanism supplied by the licensee or responsible party meets the general requirements for all financial assurance mechanisms listed below *and* the applicable specific requirements listed in the following sections.

## FINANCIAL ASSURANCE OVERVIEW

### 4.3.1 GENERAL CRITERIA APPLICABLE TO ALL FINANCIAL ASSURANCE MECHANISMS

- The financial assurance mechanism is an originally signed duplicate; and
- The wording of the financial assurance mechanism and supporting documents is identical conforms exactly to the model documents provided in Appendix A of this volume (e.g., for a trust fund, refer to the section on trust funds).
- If the wording and supporting documents do not conform exactly to the model documents in Appendix A, NRC staff will follow the procedures outlined in Section 4.3.3.

### 4.3.2 SPECIFIC CRITERIA FOR ASSURANCE MECHANISMS

#### 4.3.2.1 TRUST FUNDS

In addition to the general criteria outlined in Section 4.3.1, a trust fund submission that meets the following *additional* criteria will be acceptable to NRC:

- The following items have been included in the submission:
  - trust agreement;
  - Schedule A;
  - Schedule B;
  - Schedule C;
  - specimen certificate of events;
  - specimen certificate of resolution;
  - letter of acknowledgment; and
  - receipt or statement from the trustee showing the trust's current market value.
- The trustee is an appropriate Federal or State government agency or a financial institution that has the authority to act as trustee and whose trust operations are regulated and examined by a Federal or State agency. If evidence of the trustee's qualifications is not provided in the submission, the reviewer will evaluate the trustee's qualifications as follows:
  - The word "National" in the title of a financial institution signals that the institution is *Federally regulated*, as do the words "National Association" or the initials "N.A." following its title. To determine whether such a financial institution qualifies as an acceptable trustee, the reviewer will access the Federal Financial Institutions Examination Council's (FFIEC) Trusts Institutions Search database on the World Wide Web at

<<http://www2.fdic.gov/structur/trust/index.html>>, and look to see that the bank branch has full trust powers.

Alternatively, the reviewer may contact the appropriate district office of the Office of the Comptroller of the Currency (OCC) and confirm that the institution (a) is Federally regulated *and* (b) has Federally regulated trust operations. The OCC's home page on the World Wide Web is located at <<http://www.occ.treas.gov>>. The six district offices of the OCC, along with the States and territories under their jurisdiction, are as follows:

- Northeastern District Office (Telephone: (212) 819-9860)—CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, District of Columbia, Puerto Rico, and Virgin Islands.
  - Southeastern District Office (Telephone: (404) 659-8855)—AL, FL, GA, MS, NC, SC, TN, VA, and WV.
  - Central District Office (Telephone: (312) 360-8800)—IL, IN, KY, MI, OH, and WI.
  - Midwestern District Office (Telephone: (816) 556-1800)—IA, KS, MN, MO, NE, ND, and SD.
  - Southwestern District Office (Telephone: (214) 720-0656)—AR, LA, OK, and TX.
  - Western District Office (Telephone: (415) 545-5900)—AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY, and Guam.
- The word "State" in the title of a financial institution signals that the institution is State regulated. U.S. branches of foreign banks are usually regulated by the State in which they are located. To determine whether a State-regulated financial institution qualifies as an acceptable trustee, the reviewer will access the FFIEC's Trusts Institutions Search database on the World Wide Web at <<http://www2.fdic.gov/structur/trust/index.html>>, and look to see that the bank branch has full trust powers.

Alternatively, the reviewer may contact the applicable State banking authority and confirm that the institution (a) is State regulated, *and* (b) has State-regulated trust operations.

- The titles of some financial institutions do not suggest that they are either Federally regulated or State regulated. In many such cases (but not all), these institutions are State regulated. This is also often true in the case of domestic branches of foreign banks.
- The licensee has not assumed any real rate of return on funds in the trust that apply to decommissioning.
  - The licensee has not assumed a real (i.e., inflation adjusted), after-tax rate of return greater than 2 percent per year on funds in the trust that apply to site control and maintenance.
  - Under the appropriate assumptions regarding earnings on the trust, the current market value of the trust is sufficient to pay for all required activities. **Exception:** If the trust is being used in combination with another financial assurance mechanism(s), the value of the trust (accounting for earnings on pre-paid funds for site control and maintenance activities, if applicable) must

## FINANCIAL ASSURANCE OVERVIEW

at least equal the difference between the cost estimate or prescribed amount and the sum of the coverages being provided by the other mechanism(s).

- The maximum withdrawal of funds at one time for a particular activity (i.e., decommissioning or site control/maintenance) is limited to 10 percent of the remaining funds available for that activity unless approval from the appropriate party (i.e., NRC, or the party responsible for site control and maintenance) is attached.
- Schedule A to the trust agreement allows the trustee to access the full amount of coverage (using multiple withdrawals as necessary) to conduct all decommissioning and/or site control and maintenance activities. The amount shown in Schedule A must be at least as great as the licensee's cost estimate or prescribed amount.

### 4.3.2.2 ESCROW ACCOUNTS

In addition to the general criteria outlined in Section 4.3.1, an escrow account submission that meets the following *additional* criteria will be acceptable to NRC:

- The following items have been included in the submission:
  - escrow agreement;
  - specimen certificate of events;
  - specimen certificate of resolution to commence decommissioning;
  - certified resolution authorizing the making and performance of the escrow agreement;
  - certificate of names and specimen signatures; and
  - receipt or statement from the escrow agent showing the escrow's current market value.
- The escrow agent is a financial institution whose operations are regulated and examined by a Federal or State agency. If evidence of the escrow agent's qualifications is not provided in the submission, NRC staff will evaluate the escrow agent's qualifications as follows:
  - The word "National" in the title of a financial institution signals that the institution is *Federally regulated*, as do the words "National Association" or the initials "N.A." following its title. To determine whether such a financial institution qualifies as an acceptable escrow agent, the reviewer will access the Federal Deposit Insurance Corporation's (FDIC) Institution Directory on the World Wide Web at <http://www2.fdic.gov/structur/search>.

Alternatively, the reviewer may contact the appropriate district office of the Office of the Comptroller of the Currency (OCC) and confirm that the institution is Federally regulated. The OCC's home page on the World Wide Web is located at <http://www.occ.treas.gov>. The six district offices of the OCC, along with the States and territories under their jurisdiction, are as follows:

- Federal National Mortgage Association bonds (FNMAs);
  - Federal Home Loan Mortgage Corporation (FHLM) bonds; and
  - State or municipal bonds rated BBB or higher by Standard & Poor's, or Baa or higher by Moody's Investment Services.
- Specification of the current market value of the securities deposited.
  - Specification of the date on which securities were transferred to the fund or account.
  - Specification of the licensee's prescribed amount or estimated cost of decommissioning (and, if applicable, site control and maintenance).
  - Letter from the State or State agency stating that use of funds will be restricted to covering the costs of decommissioning (and, if applicable, site control and maintenance) upon the licensee's default (needed *only* if a government fund is established to hold securities).
- The securities used in a deposit of government securities are backed by the Federal government or a State or local government.
  - The licensee has deposited the government securities into a trust fund, escrow account, or government fund that meets all applicable NRC requirements, as discussed in Sections 4.3.2.1, 4.3.2.2, and 4.3.2.3.
  - The licensee has not assumed any real rate of return on funds in the deposit of government securities that apply to decommissioning.
  - The licensee has not assumed a real (i.e., inflation adjusted), after-tax rate of return greater than 2 percent per year on funds in the deposit of government securities that apply to site control and maintenance.
  - Under the appropriate assumptions regarding earnings on the deposit of government securities, the current market value of the deposit is sufficient to pay for all required activities.  
**Exception:** If the deposit of government securities is being used in combination with another financial assurance mechanism(s), the value of the deposit (accounting for earnings on pre-paid funds for site control and maintenance activities, if applicable) must at least equal the difference between the cost estimate or prescribed amount and the sum of the coverages being provided by the other mechanism(s).

#### 4.3.2.6 SURETY BONDS

In addition to the general criteria outlined in Section 4.3.1, a surety bond submission that meets the following *additional* criteria will be acceptable to NRC:

- The following items have been included in the submission:
  - surety bond;



## FINANCIAL ASSURANCE OVERVIEW

- standby trust agreement and all supporting documentation (see Section 4.3.2.15); and
- copy of broker/agent's power of attorney authorizing the broker/agent to issue bonds.
- The company issuing the surety bond is listed in the most recent edition of the U.S. Department of the Treasury's *Circular 570* for the State where the surety bond was signed, and has an underwriting limitation greater than or equal to the level of coverage specified in the bond. If evidence of the issuing company's qualifications is not provided in the submission, the reviewer will consult the most recent edition of *Circular 570*, which is published annually on approximately July 1 and is updated periodically in the *Federal Register*. (*Circular 570* can also be found on the World Wide Web at <http://www.fms.treas.gov/c570/index.html>.)
- The surety bond is payable to a standby trust fund that meets all applicable NRC requirements, as discussed in the section on standby trust funds (Section 4.3.2.15).
- The broker/agent's power of attorney authorizes the broker or agent to issue bonds on behalf of the issuing company.
- The surety bond is in an amount that is at least as great as the licensee's cost estimate or prescribed amount—unless the surety bond is being used in combination with another financial assurance mechanism(s), in which case the amount of the surety bond must at least equal the difference between the cost estimate or prescribed amount and the sum of the coverages being provided by the other mechanism(s).
- No credit is taken for earnings on any financial assurance mechanism (e.g., a surety bond) that does not set aside actual funds as prepayment for site control and maintenance activities.

### 4.3.2.7 LETTERS OF CREDIT

In addition to the general criteria outlined in Section 4.3.1, a letter of credit submission that meets the following *additional* criteria will be acceptable to NRC:

- The following items have been included in the submission:
  - letter of credit; and
  - standby trust agreement and all supporting documentation (see Section 4.3.2.15).
- The bank issuing the letter of credit is a financial institution whose operations are regulated and examined by a Federal or State agency. If evidence of the issuer's qualifications is not provided in the submission, the reviewer will verify the qualifications of the issuer as follows:
  - The word "National" in the title of a financial institution signals that the institution is *Federally regulated*, as do the words "National Association" or the initials "N.A." following its title. To determine whether such a financial institution qualifies as an acceptable issuer of a letter of credit, the reviewer will access the Federal Deposit

## FINANCIAL ASSURANCE OVERVIEW

- documentation of the special arrangement.
- The government entity has the authority to receive and hold funds for specified purposes (e.g., site control and maintenance).
- The arrangement provides financial assurance in an amount at least as great as the licensee's cost estimate.
- No credit is taken for earnings on any special arrangement that does not set aside actual funds as prepayment for site control and maintenance activities.

### 4.3.2.15 STANDBY TRUST FUNDS

In addition to the general criteria outlined in Section 4.3.1, a standby trust fund submission that meets the following *additional* criteria will be acceptable to NRC:

- The following items have been included in the submission:
  - standby trust agreement;
  - Schedule A;
  - Schedule B;
  - Schedule C;
  - specimen certificate of events;
  - specimen certificate of resolution; and
  - letter of acknowledgment.
- The trustee is an appropriate Federal or State government agency or a financial institution that has the authority to act as trustee and whose trust operations are regulated and examined by a Federal or State agency. If evidence of the trustee's qualifications is not provided in the submission, the reviewer will evaluate the trustee's qualifications as follows:
  - The word "National" in the title of a financial institution signals that the institution is *Federally regulated*, as do the words "National Association" or the initials "N.A." following its title. To determine whether such a financial institution qualifies as an acceptable trustee, the reviewer will access the Federal Financial Institutions Examination Council's (FFIEC) Trusts Institutions Search database on the World Wide Web at <http://www2.fdic.gov/structur/trust/index.html>, and look to see that the bank branch has full trust powers.

Alternatively, the reviewer may contact the appropriate district office of the Office of the Comptroller of the Currency (OCC) and confirm that the institution (a) is Federally regulated *and* (b) has Federally regulated trust operations. The OCC's home page on the World Wide Web is located at <http://www.occ.treas.gov>. The six district offices of the OCC, along with the States and territories under their jurisdiction, are as follows:

- Northeastern District Office (Telephone: (212) 819-9860)—CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, District of Columbia, Puerto Rico, and Virgin Islands.
  - Southeastern District Office (Telephone: (404) 659-8855)—AL, FL, GA, MS, NC, SC, TN, VA, and WV.
  - Central District Office (Telephone: (312) 360-8800)—IL, IN, KY, MI, OH, and WI.
  - Midwestern District Office (Telephone: (816) 556-1800)—IA, KS, MN, MO, NE, ND, and SD.
  - Southwestern District Office (Telephone: (214) 720-0656)—AR, LA, OK, and TX.
  - Western District Office (Telephone: (415) 545-5900)—AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY, and Guam.
- The word “State” in the title of a financial institution signals that the institution is State regulated. U.S. branches of foreign banks are usually regulated by the State in which they are located. To determine whether a State-regulated financial institution qualifies as an acceptable trustee, the reviewer will access the FFIEC’s Trusts Institutions Search database on the World Wide Web at <<http://www2.fdic.gov/structur/trust/index.html>>, and look to see that the bank branch has full trust powers.
- Alternatively, the reviewer may contact the applicable State banking authority and confirm that the institution (a) is State regulated, *and* (b) has State-regulated trust operations.
- The titles of some financial institutions do not suggest that they are either Federally regulated or State regulated. In many such cases (but not all), these institutions are State regulated. This is also often true in the case of domestic branches of foreign banks.
- The licensee has not assumed any real rate of return on funds in the standby trust that apply to decommissioning.
  - The licensee has not assumed a real (i.e., inflation adjusted), after-tax rate of return greater than 2 percent per year on funds in the standby trust that apply to site control and maintenance.
  - In the event that funds from the licensee’s primary financial assurance mechanism(s) have been deposited into the standby trust fund, and under the appropriate assumptions regarding earnings on the trust, the current market value of the standby trust is sufficient to pay for all required activities.
  - The maximum withdrawal of funds at one time for a particular activity (i.e., decommissioning or site control/maintenance) is limited to 10 percent of the remaining funds available for that activity unless approval from the appropriate party (i.e., NRC or the party responsible for site control and maintenance) is attached.
  - Schedule A to the standby trust agreement allows the trustee to access the full amount of coverage (using multiple withdrawals as necessary) to conduct all decommissioning and/or

## FINANCIAL ASSURANCE OVERVIEW

site control and maintenance activities. The amount shown in Schedule A must be at least as great as the licensee's cost estimate or prescribed amount.

### 4.3.3 SPECIFIC REVIEW PROCESS GUIDELINES

#### GENERAL GUIDELINES

- On receipt of a licensee's financial assurance instrument, the license reviewer or licensing project manager will enter the financial assurance information (including type of mechanism, amount of mechanism, expiration date, and name and address of issuer) into the License Tracking System or other applicable license tracking database, and will update existing information as necessary. The license reviewer or licensing project manager will use standard Regional or division procedures for entering information into the License Tracking System.
- The license reviewer or licensing project manager will secure all financial assurance instruments in a safe in accordance with Management Directive 8.12, "Decommissioning Financial Assurance Instrument Security Program."
- The license reviewer or licensing project manager, in coordination with DCB, will use the specific guidelines below to perform an initial review of all parent company guarantees, self-guarantees, certificates of deposit, insurance policies, and special arrangements with a government entity. When the initial review determines that an in-depth review is needed, copies of the instruments should be sent to DCB for review via a TAR. DCB and, if necessary, both the Office of the General Counsel (OGC) and contractor staff will review these submittals to ensure (a) that the supporting financial information provided with the instrument is correct and complete and (b) that the instruments provide an adequate level of financial assurance. (See additional specific guidance below.)
- In all other cases, the license reviewer or licensing project manager will review the financial assurance instrument(s) submitted by the licensee to ensure that instrument(s) meets all applicable regulatory requirements. If the mechanism is identical to the recommended wording in Appendix A, the mechanism is acceptable. If there are only *minor* differences in the wording, the Region may forward the mechanism to its Regional Counsel for review. In all other cases, a TAR should be prepared for DCB review. If there are questions about the wording of financial instruments or about documentation, the reviewing staff will consult the appropriate NRC office for assistance.
- If requested, via a TAR, to review a submission, the DCB staff will provide a memorandum documenting the review of the financial assurance instrument(s) to the license reviewer or licensing project manager. The memorandum will identify any non-conforming language or documentation found in the licensee's submittal that does not provide a level of financial assurance equivalent to that provided by the model documentation illustrated in Appendix A to this volume. The license reviewer or licensing project manager will incorporate the comments into a letter directing the licensee to correct the non-conforming language or documentation and resubmit their financial assurance package.

**Appendix A**

**Standard Format and Content of  
Financial Assurance Mechanisms for  
Decommissioning**

The information in this appendix is taken from the Standard Review Plan (SRP) (NUREG-1727). The SRP was developed specifically for reviewing decommissioning plans (DPs) written to comply with the License Termination Rule (LTR). There has been some editing to remove redundancy and use consistent terminology in this document, but the essential information is the same.

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## APPENDIX A

### A.1 Introduction

#### Overview

Financial assurance requirements help ensure that adequate funds will be available to pay for certain costs (e.g., decommissioning) in a timely manner. Financial assurance is achieved through the use of financial instruments. Some financial instruments provide a special account into which the licensee may essentially prepay the applicable costs. Other financial instruments guarantee funding by a suitably qualified third party, thereby providing "defense in depth" in the event the licensee is unable or unwilling to pay these costs when they arise. Financial assurance for decommissioning must be obtained prior to the commencement of licensed activities or receipt of licensed material, and it must be maintained until termination of the license. If the license is being terminated under restricted conditions, then financial assurance for site control and maintenance must be obtained prior to license termination. The amount of financial assurance obtained is often based on a site-specific cost estimate and must be increased if the cost estimate increases. Under NRC regulations, a number of different types of financial instruments may be used to demonstrate financial assurance, including trusts, letters of credit, surety bonds, and guarantees.

#### Scope

The purpose of this appendix is to provide guidance to NRC licensees and license applicants on how to demonstrate financial assurance for decommissioning and, if applicable, for site control and maintenance following license termination. The appendix also establishes a standard format for presenting the information to NRC that will (1) aid the licensee or license applicant in ensuring that the information is complete, (2) help ensure that applicable requirements in 10 CFR Parts 30, 40, 70, and 72 have been met, and (3) help achieve the intent of the regulations, which is to ensure that the decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that licensees will provide adequate funds to cover all costs associated with decommissioning and, if applicable, with site control and maintenance.

This appendix applies only to licensees and license applicants covered under the following parts of 10 CFR:

- *Part 30—Byproduct Material.* Financial assurance requirements can be found in 10 CFR 30.35 and 30.36.
- *Part 40—Source Material (except uranium recovery facilities).* Financial assurance requirements can be found in 10 CFR 40.36 and 40.42.
- *Part 70—Special Nuclear Material.* Financial assurance requirements can be found in 10 CFR 70.25 and 70.38.
- *Part 72—Independent Spent Fuel Storage Installations.* Financial assurance requirements can be found in 10 CFR 72.30 and 72.54.

- *Part 20 (Subpart E)–License Termination.* Financial assurance requirements can be found in 10 CFR 20.1403.

Decommissioning financial assurance requirements for licensees not within the scope of this document are covered by other guidance documents. Guidance on uranium recovery facilities under Criteria 9 and 10 of Appendix A to 10 CFR Part 40 is provided in “Technical Position on Financial Assurances for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities” (October 1988). Information on low-level waste disposal facilities under 10 CFR Part 61 is provided in Revision 1 of NUREG-1199, “Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility” (January 1988), and Revision 3 of NUREG-1200, “Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility” (March 1994).

The information collections contained in this appendix are covered by the requirements of 10 CFR Parts 30, 40, 70, and 72, which were approved by the Office of Management and Budget, approval numbers 3150-0017, 3150-0020, 3150-0009, and 3150-0132, respectively. NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### **A.1.1 How to Use this Appendix**

This appendix is organized around the various components of a financial assurance demonstration (e.g., the cost estimate, the financial instrument). Each component of a financial assurance demonstration is addressed briefly in this introduction and then is addressed again in greater detail in its own section. Each subsequent section provides narrative guidance on a particular component and contains one or more checklists to help guide the reader. By completing the tasks on the checklists, a licensee or applicant can be sure that its financial assurance demonstration is complete and likely to be acceptable to NRC.

Licensees and applicants should read this Section A.1 in its entirety. It includes a “master” checklist that directs the reader to other relevant sections and checklists in this appendix. To prepare a financial assurance demonstration that is likely to be acceptable to NRC, a licensee or applicant simply should complete the following four steps:

1. Complete Checklist 1 (the master checklist).
2. Complete applicable checklists called for by Checklist 1.
3. Prepare any documentation called for in the completed checklists.
4. Submit the completed checklists and accompanying documentation to NRC for review and approval.



## APPENDIX A

## Checklist 1 Master Checklist for Decommissioning Financial Assurance

Name of Licensee/Applicant\_\_\_\_\_

**Mailing Address** \_\_\_\_\_

Facility Address \_\_\_\_\_

**License Number(s)** \_\_\_\_\_

Date of Submission \_\_\_\_\_

**Applicable Parts of 10 CFR (check all that apply):** ☐ Part 30 ☐ Part 40  
☐ Part 70 ☐ Part 72

**Type of Submission:**

- ☐ Certification of Financial Assurance → attach Checklist 2
- ☐ Decommissioning Funding Plan → attach Checklist 3
- ☐ Decommissioning Plan → attach Checklist 18

**Type of Mechanism:**

- Prepayment

- ☐ Trust → attach Checklist 4-A
- ☐ Escrow Account → attach Checklist 5-A
- ☐ Government Fund → attach Checklist 6
- ☐ Certificate of Deposit → attach Checklist 7-A
- ☐ Deposit of Government Securities → attach Checklist 8

☐ **Surety, Insurance, or Other Guarantee Method**

- ☐ Surety Bond → attach Checklist 9-A
- ☐ Letter of Credit → attach Checklist 10-A
- ☐ Line of Credit → attach Checklist 11-A
- ☐ Insurance → attach Checklist 12-A
- ☐ Parent Company Guarantee → attach Checklist 13-A
- ☐ Self-Guarantee → attach Checklist 14-A

☐ External Sinking Fund → attach Checklist 15

☐ **Statement of Intent** → attach Checklist 16-A

☐ Special Arrangement with a Government Entity → attach Checklist 18-B

To help licensees and applicants make the initial decisions called for in Checklist 1, this section discusses each of the three major decision points:

- Confirmation that financial assurance is required (see Section A.1.2)
- Use of a Certification of Financial Assurance or a Decommissioning Funding Plan (see Section A.1.3)
- Selection of a financial instrument (see Section A.1.4)

Finally, the section also explains applicable recordkeeping requirements (see Section A.1.5) and provides guidance for licensees who wish to cancel, replace, or transfer their financial assurance mechanisms (see Section A.1.6).

*Note that throughout the remainder of this appendix, the term "licensee" refers to both licensees and license applicants. This appendix also uses the terms "financial instrument," "financial mechanism," and "financial assurance mechanism" interchangeably.*

## **A.1.2 When Financial Assurance is Required**

This section provides guidance on when a licensee must demonstrate financial assurance for a particular license. Section A.1.2.1 below discusses financial assurance requirements for *decommissioning*, which apply at the time of license application or renewal and at the end of licensed operations. Section A.1.2.2 below discusses financial assurance requirements for *site control and maintenance*, which are triggered if the license is being terminated under restricted conditions.

### **A.1.2.1 Financial Assurance for Decommissioning**

NRC's financial assurance requirements for decommissioning apply only to licensees authorized to possess or use certain quantities and types of licensed materials. The minimum possession or use thresholds that trigger the requirements vary, depending on the type of license and the types and quantities of materials authorized under the particular license. Licensees authorized to possess only a single isotope may use the table in Attachment 1 to this appendix to determine whether financial assurance is required for a given activity level. Any license that authorizes the possession or use of types or quantities of materials exceeding these thresholds is subject to NRC's decommissioning financial assurance requirements. Note that the relevant quantities and types of materials are those authorized under a particular license, even if a licensee does not currently or usually possess or use these same quantities and types of materials.

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<u>Type of License</u>	<u>Minimum License Threshold Requiring Financial Assurance</u>
<b>PART 30</b>	<i>Unsealed byproduct material with a half-life greater than 120 days in amounts greater than <math>10^3</math> times the applicable quantities of Appendix B to Part 30 (reproduced as Attachment 2 to this appendix) or, for a combination of isotopes, if <math>R</math> divided by <math>10^4</math> is greater than 1 when <math>R</math> is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to Part 30</i>  <i>or</i>  <i>Sealed sources or plated foils with a half-life greater than 120 days in amounts greater than <math>10^{10}</math> times the applicable quantities of Appendix B to Part 30 (reproduced as Attachment 2 to this appendix) or, for a combination of isotopes, if <math>R</math> divided by <math>10^{10}</math> is greater than 1 when <math>R</math> is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to Part 30</i>
<b>PART 40</b>	<i>Source material in a readily dispersible form exceeding 10 millicuries (mCi)</i>
<b>PART 70</b>	<i>Unsealed special nuclear material in amounts greater than <math>10^3</math> times the applicable quantities of Appendix B to Part 30 (reproduced as Attachment 2 to this appendix) or, for a combination of isotopes, if <math>R</math> divided by <math>10^3</math> is greater than 1 where <math>R</math> is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to Part 30</i>
<b>PART 72</b>	<i>Any amount of spent fuel or high-level radioactive waste</i>

Licensees who exceed the minimum thresholds outlined above are required to demonstrate financial assurance for decommissioning that is acceptable to NRC until decommissioning has been completed and the license has been terminated. License applicants must have financial assurance in place prior to the receipt of licensed materials.

### **A.1.2.2 Financial Assurance for Site Control and Maintenance (License Termination Under Restricted Conditions)**

If the license is being terminated under restricted conditions pursuant to 10 CFR 20.1403, a licensee must provide financial assurance for site control and maintenance following license termination.<sup>1</sup> This assurance must be in place before the license is terminated, and must be sufficient to enable an independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site.

### A.1.3 Prescribed Amount or Decommissioning Funding Plan

*This section applies only to financial assurance demonstrations for decommissioning prepared as part of license applications or renewals. Licensees preparing or updating financial assurance demonstrations as part of DPs should skip this section, and should review Section A.18.*

If financial assurance is required for a particular license, a licensee must decide whether to provide a prescribed amount of financial assurance or a decommissioning funding plan (DFP), the only two options for demonstrating financial assurance.

#### **PRESCRIBED AMOUNT**

Where the licensee has authorized possession limits within certain bounds established by the regulations, it may provide financial assurance based on one or more of the prescribed amounts specified by 10 CFR 30.35(d), 40.36(b), or 70.25(d). (As of January 1, 2003, the regulations provided for three prescribed amounts of financial assurance—\$75,000, \$150,000, and \$750,000—however, the amounts may be revised from time to time and the regulations must be consulted to determine the currently applicable prescribed amounts when the licensee's financial assurance is reviewed.)

#### **DFP**

A DFP is a financial assurance demonstration that is based on a site-specific cost estimate for decommissioning the licensed facility. Any licensee may use a DFP, but certain licensees *must* use a DFP, as discussed below. The DFP must include a certification of financial assurance to be acceptable. (However, Part 72 licensees are not required to submit a certification of financial assurance.) The amount of the facility-specific cost estimate is the required level of financial assurance coverage for a licensee who uses a DFP.

Licensees may be *required* to prepare a DFP rather than a certification depending on the type of license and the types and quantities of materials authorized under the particular license. Any license authorizing the possession or use of types or quantities of materials exceeding the following thresholds must use a DFP.<sup>2</sup> Note that the relevant quantities and types of materials are those authorized under a particular license, even if a licensee does not currently or usually possess or use these same quantities and types of materials. Licensees whose possession limits are stated in general terms (e.g., up to 1 Ci of any nuclide having an atomic number from 1 to 83) should submit a DFP or commit to limiting material quantities below the applicable financial assurance thresholds. In addition, licensees authorized to possess an unlimited quantity of material must submit a DFP.

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<u>Type of License</u>	<u>Minimum License Threshold Requiring Financial Assurance</u>
<b>PART 30</b>	<i>Unsealed byproduct material with a half-life greater than 120 days in amounts greater than <math>10^5</math> times the applicable quantities of Appendix B to Part 30 (reproduced as Attachment 2 to this appendix) or, for a combination of isotopes, if R divided by <math>10^5</math> is greater than 1 when R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to Part 30</i>
<b>PART 40</b>	<i>Source material in a readily dispersible form exceeding 100 mCi</i>
<b>PART 70</b>	<i>Unsealed special nuclear material in amounts greater than <math>10^5</math> times the applicable quantities of Appendix B to Part 30 (reproduced as Attachment 2 to this appendix) or, for a combination of isotopes, if R divided by <math>10^5</math> is greater than 1 where R is defined as the sum of the ratios of the quantity of each isotope to the applicable value in Appendix B to Part 30</i>
<b>PART 72</b>	<i>Any amount of spent fuel or high-level radioactive waste</i>

Where the licensee is authorized to possess more than one radionuclide, the unity rule is applied to all radionuclides with a half life of greater than 120 days to determine if financial assurance is required.

Licensees who do *not* exceed the thresholds outlined above may use *either* a prescribed amount or a DFP. Such licensees may wish to elect use of a DFP if, for example, they wish to obtain the optimal amount of financial assurance, or because use of a site-specific cost estimate may result in a lower financial assurance coverage requirement than would use of a prescribed amount (as could happen if a single facility holds multiple licenses, each of which triggers its own prescribed amount).

- Licensees who elect to use a prescribed amount of financial assurance should refer to Section A.2 of this appendix for applicable guidance. Complete Checklist 2 (in Section A.2) if using a certification.
- Licensees who use DFPs should refer to Section A.3 of this appendix for applicable guidance. Complete Checklist 3 (in Section A.3) if using a DFP.

### **A.1.4 Selection of Financial Instrument**

Another major decision that a licensee must make is to identify the type of financial instrument it will use to demonstrate financial assurance. The choice of financial instrument typically depends on a number of factors, including the availability of the instrument to the licensee (i.e., whether or not the licensee is capable of obtaining it), the time and difficulty associated with establishing the instrument, the cost of the instrument, and the expected amount of time remaining before

decommissioning. Because these factors can differ for different licensees, each licensee will have to identify the financial instrument that best meets its particular needs.

#### **Summary of NRC Experience**

NRC's experience to date is that the majority of licensees have used a parent company guarantee, self-guarantee, letter of credit, or surety bond. Trust funds also have been used to a lesser extent, as have escrow accounts. In contrast, very few licensees have used government funds, deposits of government securities, lines of credit, insurance, or external sinking funds.

NRC regulations specify 13 allowable types of financial instruments that fall into 1 of 4 "methods."

#### **A.1.4.1 Method 1: Prepayment**

Under *prepayment*, the licensee provides advance decommissioning funding in full (i.e., in the applicable prescribed amount or in the amount of the facility-specific cost estimate) using an account segregated from licensee assets and outside the licensee's administrative control. Licensees who use prepayment mechanisms generally will not need to provide additional funds at the time of decommissioning unless decommissioning costs exceed the amount of financial assurance provided. Prior to decommissioning, the funds placed in prepayment instruments can be expected to generate earnings. These earnings are payable to the licensee as long as adequate funds remain in the financial mechanism. Upon completion of decommissioning, any funds remaining in the prepayment mechanism are returned to the licensee. Prepayment instruments include the following:

##### **TRUST**

A trust is analogous to a special bank account that is administered by a "trustee." Trusts can be readily established using an appropriately qualified financial institution as the trustee. Trustee fees are typically taken from the earnings on the trust.

- Licensees who elect to use a trust fund should refer to Section A.4 for applicable guidance.
- Licensees who use a trust fund should complete Checklist 4-A (in Section A.4).

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### ESCROW

An escrow is similar to a trust for practical purposes. Escrows should be established with a financial institution serving as the "escrow agent." Escrow fees are similar to those associated with trusts, and are also frequently taken from the earnings on the account.

—Licensees who elect to use an escrow account should refer to Section A.5 for applicable guidance.

—Licensees who use an escrow account should complete Checklist 5-A (in Section A.5).

### GOVERNMENT FUND

A government fund is simply a trust fund or escrow account for which a State is acting as trustee or escrow agent.

—Licensees who elect to use a government fund should refer to Section A.6 for applicable guidance.

—Licensees who use a government fund should complete Checklist 6 (in Section A.6).

### CERTIFICATE OF DEPOSIT

A certificate of deposit (CD) is a deposit of cash by a licensee into a bank for a pre-specified period of time. CDs must be accompanied by a trust, escrow, or government fund.

—Licensees who elect to use a CD should refer to Section A.7 for applicable guidance.

—Licensees who use a CD should complete Checklist 7-A (in Section A.7).

### DEPOSIT OF GOVERNMENT SECURITIES

A deposit of government securities is the deposit by a licensee (into an accompanying trust fund, escrow account, or government fund) of securities backed by the Federal government or a State or local government.

—Licensees who elect to use a deposit of government securities should refer to Section 8 for applicable guidance.

—Licensees who use a deposit of government securities should complete Checklist 8 (in Section A.8).

### A.1.4.2 Method 2: Surety, Insurance, or Guarantee

Under the surety, insurance, or guarantee method, an entity with adequate financial strength (e.g., bank, insurer or other financial institution) guarantees that the required amount of funds will be available whenever needed. Unlike prepayment, this method does *not* require the full amount of decommissioning funds to be set aside by the licensee in advance. Instead, the licensee typically pays an annual fee to the provider of the guarantee. Specific surety, insurance, or guarantee instruments include the following:

#### TRUST

A **trust** is analogous to a special bank account that is administered by a "trustee." Trusts can be readily established using an appropriately qualified financial institution as the trustee. Trustee fees are typically taken from the earnings on the trust.

- Licensees who elect to use a trust fund should refer to Section A.4 for applicable guidance.
- Licensees who use a trust fund should complete Checklist 4–A (in Section A.4).

#### ESCROW

An **escrow** is similar to a trust for practical purposes. Escrows should be established with a financial institution serving as the "escrow agent." Escrow fees are similar to those associated with trusts, and are also frequently taken from the earnings on the account.

- Licensees who elect to use an escrow account should refer to Section A.5 for applicable guidance.
- Licensees who use an escrow account should complete Checklist 5–A (in Section A.5).

#### GOVERNMENT FUND

A **government fund** is simply a trust fund or escrow account for which a State is acting as trustee or escrow agent.

- Licensees who elect to use a government fund should refer to Section A.6 for applicable guidance.
- Licensees who use a government fund should complete Checklist 6 (in Section A.6).



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### **SURETY BOND**

A surety bond is a guarantee by a company that it will fund decommissioning if the licensee fails to do so. Licensees must pay an annual fee to the issuing company to provide the bond and may have to provide substantial collateral, depending on the licensee's financial condition. Surety bonds must be accompanied by a standby trust.

—Licensees who elect to use a surety bond should refer to Section A.9 for applicable guidance.

—Licensees who use a surety bond should complete Checklist 9-A (in Section A.9).

### **LETTER OF CREDIT**

A letter of credit is a formalized line of credit extended by a bank on behalf of a licensee. The credit may be used only to fund decommissioning. As with a surety bond, licensees who use a letter of credit must pay an annual fee to the bank and may have to provide substantial collateral depending on the licensee's financial condition. Letters of credit must be accompanied by a standby trust.

—Licensees who elect to use a letter of credit should refer to Section A.10 for applicable guidance.

—Licensees who use a letter of credit should complete Checklist 10-A (in Section A.10).

### **LINE OF CREDIT**

A line of credit is similar in many respects to a letter of credit. NRC's experience is that lines of credit have been used by licensees very rarely. This is probably because, in order to be acceptable to NRC, a line of credit must be more formalized than is common practice for the banks that provide them.

—Licensees who elect to use a line of credit should refer to Section A.11 for applicable guidance.

—Licensees who use a line of credit should complete Checklist 11-A (in Section A.11).

**INSURANCE**

An insurance policy is a guarantee by an insurance company that it will fund decommissioning activities, whenever needed, if a licensee does not do so. Insurance must be accompanied by a standby trust.

- Licensees who elect to use insurance should refer to Section A.12 for applicable guidance.
- Licensees who use insurance should complete Checklist 12-A (in Section A.12).

**PARENT COMPANY  
GUARANTEE**

A parent company guarantee is a guarantee from a licensee's corporate parent that it will fund or carry out decommissioning activities if the licensee fails to do so. The corporate parent must pass a financial test to demonstrate that it has adequate financial strength to provide the guarantee. Because of its very low cost, the parent company guarantee is usually the financial instrument of choice for licensees with corporate parents willing and able to provide such a guarantee for decommissioning.

- Licensees who elect to use a parent company guarantee should refer to Section A.13 for applicable guidance.
- Licensees who use a parent company guarantee should complete Checklist 13-A (in Section A.13).

**SELF-GUARANTEE**

A self-guarantee is a guarantee by the licensee itself that it will fund and carry out decommissioning activities. The licensee must pass a financial test to demonstrate that it has adequate financial strength to provide the guarantee. Self-guarantees may not be used by licensees who have a corporate parent. Because of its very low cost, the self-guarantee is usually the financial instrument of choice to assure decommissioning for licensees who are able to provide such a guarantee.

- Licensees who elect to use a self-guarantee should refer to Section A.14 for applicable guidance.
- Licensees who use a self-guarantee should complete Checklist 14-A (in Section A.14).

### **A.1.4.3 Method 3: External Sinking Fund**

An **external sinking fund** allows a licensee to *gradually* prepay for decommissioning by combining the use of a partially funded prepayment instrument (e.g., a trust or escrow) with a surety bond, letter of credit, or insurance covering the unfunded balance. As the licensee gradually funds the prepayment instrument over time, the licensee is allowed to reduce by a corresponding amount the coverage provided by the surety bond, letter of credit, or insurance.

- Licensees who elect to use an external sinking fund should refer to Section A.15 for applicable guidance.
- Licensees who use an external sinking fund should complete Checklist 15 (in Section A.15).

### **A.1.4.4 Method 4: Statement of Intent**

A **statement of intent** is a commitment by a Federal, State, or local government licensee to request and obtain decommissioning funds from its funding body when necessary. Because of its very low cost, the statement of intent is usually the financial instrument of choice to assure decommissioning for government licensees. This method (and instrument) is available only to licensees who are government entities.

- Licensees who elect to use a statement of intent should refer to Section A.16 for applicable guidance.
- Licensees who use a statement of intent should complete Checklist 16-A (in Section A.16).

### **A.1.4.5 Standby Trust Funds**

As noted earlier, funds drawn from a surety bond, letter of credit, line of credit, or insurance policy must be placed directly into a **standby trust fund** if the licensee fails to conduct decommissioning as required. A standby trust fund is simply a trust fund that is not yet funded but is otherwise ready to accept monies in the event they are received from a particular source. Funds in the standby trust would then be available to pay the costs of decommissioning, just as they would with an ordinary trust fund. Standby trusts are necessary because, if the funds from surety or insurance mechanisms were paid directly to NRC rather than to a standby trust fund, NRC would be required to deposit the funds in the U.S. Treasury as general revenue. Consequently, the funds would not be available to pay for decommissioning costs.

- Licensees who elect to use a standby trust fund should refer to Section A.17 for applicable guidance.
- Licensees who use a standby trust fund should complete Checklist 17-A (in Section A.17).

#### **A.1.4.6 Special Arrangements with a Government Entity**

In cases where the license is being terminated under restricted conditions, licensees may provide financial assurance through a special arrangement deemed acceptable by a governmental entity when the governmental entity assumes custody and ownership of a site.<sup>3</sup>

- Licensees who elect to use a special arrangement with a government entity should refer to Section A.18.2.2 for applicable guidance.
- Licensees who use a special arrangement with a government entity should complete Checklist 18-B (in Section A.18).

#### **A.1.5 Recordkeeping**

The recordkeeping requirements for licensees are in 10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d). At a minimum, licensees must keep records of the following:

- Spills or other unusual occurrences if contamination remains after any cleanup procedure or if contaminants may have spread to inaccessible areas. These records must include information on nuclides, quantities, forms, and concentrations.
- As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored.
- Records of the cost estimate performed for the DFP or of the amount certified for decommissioning, as well as records of the funding methods used for assuring funds.
- A copy of the financial assurance mechanism and other supporting documentation.

Timely notification should be given to NRC in the following situations:

- Any proposed changes, revisions, and adjustments to the underlying cost estimates and to the financial mechanisms, including a change from one mechanism to another.
- Commencement of bankruptcy action involving the licensee. Written notification of commencement of bankruptcy proceedings is to be submitted, as required by 10 CFR 30.34(h), 40.41(f), 70.32(a)(9), and 72.44(b)(6).<sup>4</sup>
- Reports that certify completion of the activities for which financial assurance is provided must be submitted before the financial assurance mechanism may be canceled.

#### **A.1.6 Canceling, Replacing, or Transferring Financial Instruments**

The financial assurance mechanisms outlined in this appendix are designed so that licensees may not cancel them without NRC's approval, even if a replacement instrument is being established. Licensees who wish to cancel their existing financial mechanisms must first submit a

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replacement to NRC for review and approval or notify NRC that decommissioning has been completed. If a replacement mechanism is provided to NRC for review, the current mechanism will *not* be canceled or released before NRC's review and approval of the replacement mechanism. Licensees should provide NRC with adequate time to review proposed replacement mechanisms. Upon NRC's approval of the replacement mechanism (or termination of the license if decommissioning has been completed), the applicable NRC Branch Chief will stamp the current mechanism as "canceled," sign it, and release it to the licensee.

If the license holder is expected to change as a result of a corporate acquisition or divestiture, the licensee must obtain NRC's approval before an existing financial instrument may be transferred or released. If the new license holder intends to establish a new financial instrument to replace the existing one, NRC must approve the replacement before NRC will release the existing mechanism. NRC recommends that the licensee communicate with NRC staff concerning any replacement instrument well in advance (at least 60 days) of the scheduled change in licensee or in corporate ownership.

## **A.2 Certification of Financial Assurance**

All licensees required to provide financial assurance under 10 CFR Parts 30, 40, and 70 must submit a Certification of Financial Assurance. (Part 72 licensees are not required to submit a certification of financial assurance.) The following sections describe the use of the Certification of Financial Assurance when using a prescribed amount of financial assurance or when using a DFP. A Model Certification of Financial Assurance is presented to illustrate a format acceptable to the NRC.

### **A.2.1 Certification of Financial Assurance Using a Prescribed Amount**

For licensees that are not required to submit a DFP, the regulations prescribe three levels of financial assurance—\$75,000, \$150,000, and \$750,000. (As of January 1, 2003, the regulations provided for three prescribed amounts of financial assurance—\$75,000, \$150,000, and \$750,000—however, the amounts may be revised from time to time, and the regulations must be consulted to determine the currently applicable prescribed amounts when the licensee's financial assurance is reviewed. The dollar amounts shown in this guidance document are for illustrative purposes and must be revised as necessary to meet regulatory requirements.) A combination of these amounts is required for licensees authorized to possess more than one type of radioactive material. For example, a licensee authorized to possess sealed sources containing byproduct material (\$75,000) and 20 mCi of source material in readily dispersible form (\$150,000) would be required to submit financial assurance for the sum of the prescribed amounts, or \$225,000. The prescribed amount specified in the regulations becomes the required level of financial assurance coverage. Licensees who use prescribed amount must undertake the following actions, as summarized in Checklist 2.

- Determine the appropriate prescribed amount (see Section A.2.1)
- Prepare a certification of financial assurance (see Section A.2.2)
- Submit the required documentation (see Section A.2.3)

Licensees using prescribed amounts eventually may have to adjust their financial assurance coverage levels (and update their financial instruments) for one of three reasons:

- NRC adjusts the prescribed amount specified in the regulations.
- The licensee submits a DFP containing a site-specific cost estimate instead of using a prescribed amount.
- The licensee prepares a DP with a site-specific cost estimate.<sup>5</sup>

Also, regardless of a particular licensee's eligibility to use a prescribed amount, any licensee may elect instead to use a DFP based on a site-specific cost estimate to determine the required level of

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financial assurance coverage. Licensees may wish to use a DFP if, for example, they wish to obtain the optimal amount of financial assurance, or because use of prescribed amounts may overstate a facility's decommissioning costs. Guidance on preparing DFPs is presented in Section A.3 of this appendix.

Licensees may be eligible to use a particular prescribed amount depending on the type of license and the types and quantities of materials authorized under the particular license, as summarized below.<sup>6</sup> Note that the relevant quantities and types of materials are those *authorized* under a particular license, even if a licensee does not currently or usually possess or use these same quantities and types of materials. The following discussion of applicable prescribed amounts is organized into three parts corresponding to the three general license types:

- Part 30—Byproduct Material
- Part 40—Source Material
- Part 70—Special Nuclear Material

Only radionuclides with a half life of greater than 120 days are included in the determination of financial assurance requirements.

### Checklist 2 Certifications of Financial Assurance

License Number(s): \_\_\_\_\_

Applicable Parts of 10 CFR (check all that apply):  
☐ Part 30      ☐ Part 40  
☐ Part 70

☐ Determine the appropriate prescribed amount(s) (see Section A.2.1)

- Amount required under Part 30 for sealed sources: \_\_\_\_\_
- Amount required under Part 30 for unsealed sources: \_\_\_\_\_
- Amount required under Part 40: \_\_\_\_\_
- Amount required under Part 70: \_\_\_\_\_
- *Total of all prescribed amounts for all licenses:* \_\_\_\_\_

☐ Prepare certification statement (see Section A.2.2)

☐ Include the necessary documentation (see Section A.2.3):

- ☐ Certification statement (see Section A.2.4)
- ☐ Financial instrument and supporting documentation

## A.9 Surety Bonds

A *payment surety bond* (or *surety bond*) is a guarantee by a surety company (or surety) that it will fund decommissioning activities if the principal (i.e., the licensee) fails to do so. In issuing a surety bond, the surety company becomes "jointly and severally" liable for the guaranteed payment, meaning that the surety assumes the licensee's obligation to fund decommissioning as its own and can be sued jointly with the licensee for the obligation. Consequently, most surety bonds include an indemnification provision that requires the principal to reimburse the surety for costs incurred in satisfaction of the principal's obligations.

A surety bond used for decommissioning financial assurance must be open-ended or, if written for a specified term (such as 5 years), must be renewed automatically unless, 90 days or more prior to the renewal date, the surety notifies both NRC and the licensee of its intention not to renew. A surety bond must also provide that the full face amount of the bond be paid to the beneficiary automatically prior to expiration, without proof of forfeiture, if the licensee fails to provide a replacement mechanism acceptable to NRC within 30 days after receipt of notification of cancellation.

Funds drawn from a surety bond must be placed directly into a "standby trust fund" if the licensee fails to conduct decommissioning as required. A standby trust fund is simply a trust fund that is not yet funded but is otherwise ready to accept monies in the event they are received from a particular source (such as a surety bond). Funds in the standby trust would then be available to pay the costs of decommissioning, just as they would with an ordinary trust fund. (See Section A.17 for more information on standby trust funds.)

The remainder of this section discusses the primary criteria that determine whether particular surety bond submissions will be acceptable to NRC.

- Section A.9.1 describes qualifications required of the issuer (the surety company).
- Section A.9.2 addresses the adequacy of coverage.
- Section A.9.3 discusses the documentation that supports a surety bond.
- Section A.9.4 presents a model surety bond that NRC has found to be acceptable.

This section also contains two checklists that are designed to assist licensees who wish to use surety bonds. Checklist 9-A summarizes the primary criteria used by NRC to evaluate surety bonds. Checklist 9-B (which should be used only by licensees who revise or do not use the model wording for surety bonds) presents terms and conditions that are recommended for surety bonds.



**Checklist 9-A Surety Bonds**

- ☐ Documentation is complete when the following are included:
  - ☐ 1. surety bond (originally signed duplicate),
  - ☐ 2. standby trust agreement and all supporting documentation (see Section A.17 and attach Checklist 17-A),
  - ☐ 3. copy of broker/agent's power of attorney authorizing the broker/agent to issue bonds, and
  - ☐ 4. Checklist 9-B (if model surety bond wording is modified or not used).
- ☐ The company issuing the surety bond is listed in the most recent edition of *Circular 570* for the State in which the bond was signed and has an underwriting limitation greater than or equal to the amount of the bond being used for decommissioning.
- ☐ The amount of the surety bond equals or exceeds the required coverage level.

**A.9.1 Qualifications of the Issuer**

To determine whether a company issuing the surety bond is qualified, licensees should consult the most recent edition of the U.S. Department of the Treasury's *Circular 570*, which is published annually on approximately July 1 and is updated periodically in the *Federal Register*. (*Circular 570* can also be found on the World Wide Web at <http://www.fms.treas.gov/c570/index.html>.) The company issuing the surety bond must be listed in *Circular 570* as qualified in the State where the surety bond was signed, and the company's underwriting limitation (also specified in *Circular 570*) must be at least as great as the level of coverage required for the license.<sup>18</sup>

Also, as noted above, a surety bond must be payable to a standby trust fund. Information on the qualifications of trustees of standby trusts is provided in Section A.17.

**A.9.2 Level of Coverage**

A surety bond must be in an amount that is at least equal to the licensee's prescribed amount or estimated cost of decommissioning.<sup>19</sup> If the licensee's prescribed amount or estimated decommissioning cost increases to a level above the amount assured by the surety bond, the licensee must either (1) revise the surety bond to assure the higher amount or (2) obtain another financial assurance mechanism to make up the difference between the new coverage level and the amount of the surety bond.

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### A.9.3 Recommended Documentation

As summarized in Checklist 9-A,<sup>20</sup> licensees who wish to use surety bonds to provide financial assurance for decommissioning submit a copy of the surety bond and other documentation as discussed below.

- The *surety bond* (along with any riders or amendments) signed by an authorized representative from the issuing company. The wording of a surety bond may vary, but Section A.9.4 of this appendix is a model surety bond that would meet NRC's requirements and is recommended by NRC. Licensees who wish to use other wording should refer to Checklist 9-B to be sure that the alternative wording contains all the necessary terms and conditions.
- A *copy of the broker/agent's power of attorney* authorizing the broker/agent to issue bonds on behalf of the issuing company. The power of attorney ensures that the surety bond is enforceable.
- A *standby trust fund* must be established to receive funds from the surety bond. The standby trust fund should satisfy the criteria described in Section A.17 and in Checklist 17-A of this appendix.

### Checklist 9-B      Terms and Conditions Needed in Decommissioning Surety Bonds

*Use this checklist only if deviating from the wording recommended in Section A.9.4.*

- ☐ Date of execution of bond and effective date.
- ☐ Name and address of licensee.
- ☐ Type of business organization and State of incorporation (if appropriate).
- ☐ NRC license number, identification of licensed facility(ies) (name and address), costs or required decommissioning activities.
- ☐ Identification of company issuing the surety(ies) includes the following:
  - ☐ 1. name,
  - ☐ 2. state of incorporation, and
  - ☐ 3. qualification in jurisdiction where facility covered by the surety bond is located.
- ☐ Designation of obligee (NRC).
- ☐ Recitation of consideration (fee paid for surety bond).
- ☐ Liability of company issuing the surety includes the following:
  - ☐ 1. penal sum,
  - ☐ 2. limitation of liability,
  - ☐ 3. condition(s) of liability, and
  - ☐ 4. statement of joint and several liability.
- ☐ Statement of licensee's regulatory obligations as reason for bond.
- ☐ Scope and duration of bond includes the following:
  - ☐ 1. restricted to single obligation,
  - ☐ 2. continuing,
  - ☐ 3. provisions for renewal, and
  - ☐ 4. payable to a standby trust fund.
- ☐ Termination includes the following:
  - ☐ 1. by company issuing the surety,
  - ☐ 2. by principal, and
  - ☐ 3. effective date of termination or revocation.
- ☐ The company issuing the surety must notify the licensee and NRC by certified mail at least 90 days prior to cancellation or nonrenewal.

**Checklist 9-B      Terms and Conditions Needed in Decommissioning  
Surety Bonds (continued)**

- ☐ An automatic payment provision must be included that, if the licensee is unable to secure alternative financial assurance to replace the bond within 30 days of notification of cancellation, NRC may draw upon the bond prior to cancellation.
- ☐ Adjustment of penal sum.
- ☐ Severability provision.
- ☐ Liability limit of the bond.
- ☐ Date.
- ☐ Signatures.
- ☐ Premium

**A.9.4 Model Surety Bond****PAYMENT SURETY BOND**

Date bond executed: \_\_\_\_\_

Effective date: \_\_\_\_\_

Principal: *[Insert legal name and business address of licensee]*Type of organization: *[Insert "proprietorship," "partnership," or "corporation"]*

State of incorporation: \_\_\_\_\_ (if applicable)

NRC license number, name and address of facility, and amount for decommissioning activities guaranteed by this bond: \_\_\_\_\_

Surety: *[Insert name and business address]*Type of organization: *[Insert "proprietorship," "partnership," or "corporation"]*

State of incorporation: \_\_\_\_\_ (if applicable)

Surety's qualification in jurisdiction where licensed facility is located.

Surety's bond number: \_\_\_\_\_

Total penal sum of bond: \$\_\_\_\_\_

Know all persons by these presents, that we, the Principal and Surety hereto, are firmly bound to the U.S. Nuclear Regulatory Commission (hereinafter called NRC) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety; but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the U.S. Nuclear Regulatory Commission, an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in title 10, Chapter I of the *Code of Federal Regulations*, Part *[insert 30, 40, or 70]*, applicable to the Principal, which require that a license holder or an

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applicant for a facility license provide financial assurance that funds will be available when needed for facility decommissioning;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of decommissioning of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility;

Or, if the Principal shall fund the standby trust fund in such amount(s) after an order to begin facility decommissioning is issued by NRC or a U.S. District Court or other court of competent jurisdiction;

Or, if the Principal shall provide alternative financial assurance, and obtain NRC's written approval of such assurance, within 30 days after the date a notice of cancellation from the Surety is received by both the Principal and NRC, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by NRC that the Principal has failed to perform as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of said penal sum.

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to NRC provided, however, that cancellation shall not occur during the 90 days beginning on the date of receipt of the notice of cancellation by both the Principal and NRC, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to NRC and to the Surety 90 days prior to the proposed date of termination, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond from NRC.

The Principal and Surety hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year and no decrease in the penal sum takes place without the written permission of NRC.

If any part of this agreement is invalid, it shall not affect the remaining provisions that will remain valid and enforceable.

In Witness Whereof, the Principal and Surety have executed this financial guarantee bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety.

Principal

[Signatures]

[Names]

[Titles]

[Corporate seal]

Corporate Surety

[Name and address]

State of incorporation: \_\_\_\_\_

Liability limit: \$\_\_\_\_\_

[Signatures]

[Names and titles]

[Corporate seal]

*[For every co-surety, provide signatures, names and titles, corporate seal, and other information in the same manner as for the Sureties above.]*

Bond Premium: \$\_\_\_\_\_

## A.17 Standby Trust Funds

A *standby trust fund* is simply a trust fund that is not yet funded but is otherwise ready to accept monies in the event they are received from a particular source (such as a surety bond, letter of credit, line of credit, or insurance). Once a standby trust is funded, the funds would then be available to pay the costs of decommissioning, just as they would with an ordinary trust fund. As in the case of an ordinary trust fund, monies in a standby trust fund are legally segregated for a specific purpose and are administered by a trustee with a fiduciary responsibility to keep or use the property in the fund for the benefit of the beneficiary.

Under NRC's decommissioning financial assurance regulations (10 CFR 30.35(f)(2)(ii), 40.36(e)(2)(ii), and 70.25(f)(2)(ii)), a standby trust agreement must be established to receive funds from a surety method (i.e., surety bond, letter of credit, line of credit) or insurance. If the funds from these mechanisms were paid directly to NRC rather than to a standby trust fund, NRC would be required to deposit the funds in the U.S. Treasury as general revenue. Consequently, the funds would not be available to pay for decommissioning costs.

The remainder of this section discusses the primary criteria that determine whether particular standby trust fund submissions will be acceptable to NRC.

- Section A.17.1 describes qualifications required of the trustee.
- Section A.17.2 addresses funding and the adequacy of coverage.
- Section A.17.3 discusses the documentation that supports a standby trust fund.
- Section A.17.4 presents a model standby trust fund submission that NRC has found to be acceptable.

This section also contains two checklists designed to assist licensees in preparing acceptable decommissioning standby trusts. Checklist 17-A summarizes the primary criteria used by NRC to evaluate standby trust funds. Checklist 17-B (which should be used only by licensees who revise or do not use the model wording for standby trust agreements) presents terms and conditions that are recommended for standby trust agreements.



### Checklist 17-A Standby Trust Funds

- ☐ Documentation is complete when the following are included:
  - ☐ 1. standby trust agreement (originally signed duplicate),
  - ☐ 2. Schedule A,
  - ☐ 3. Schedule B,
  - ☐ 4. Schedule C,
  - ☐ 5. specimen certificate of events,
  - ☐ 6. specimen certificate of resolution,
  - ☐ 7. letter of acknowledgment, and
  - ☐ 8. Checklist 17-B (if model standby trust wording is modified or not used).
- ☐ The trustee is qualified when the following conditions are true:
  - ☐ The financial institution is regulated by a Federal or State agency.
  - ☐ The financial institution has authority to act as a trustee and has trust operations that are regulated and examined by a Federal or State agency.

### A.17.1 Qualifications of the Trustee

The decommissioning financial assurance regulations (10 CFR 30.35(f)(2)(ii), 40.36(e)(2)(ii), and 70.25(f)(2)(ii)) require that the trustee be acceptable to NRC. Acceptable trustees include appropriate Federal or State government agencies and financial institutions that have the authority to act as trustees and whose trust operations are regulated and examined by a Federal or State agency. Trust operations are regulated separately from other banking operations, and it is very common for a regulated bank not to have the authority to act as a trustee. In addition, NRC's requirement for trustees is not usually met by individuals who are not acting as a representative of a financial institution.

- The word "National" in the title of a financial institution signals that the institution is *Federally regulated*, as do the words "National Association" or the initials "N.A." following its title. To determine whether such a financial institution qualifies as an acceptable trustee, licensees should access the Federal Financial Institutions Examination Council's (FFIEC) Trusts Institutions Search database on the World Wide Web at <http://www2.fdic.gov/structur/trust/index.html>, and look to see that the bank branch has full trust powers.

Alternatively, licensees may contact the appropriate district office of the Office of the Comptroller of the Currency (OCC) and confirm that the institution (1) is Federally regulated *and* (2) has Federally regulated trust operations. (The OCC's home page on the World Wide Web is located at <http://www.occ.treas.gov>.) The six district offices of the OCC, along with the States and territories under their jurisdiction, are as follows:

- Northeastern District Office (Telephone: (212) 819-9860)—CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, District of Columbia, Puerto Rico, and Virgin Islands.
  - Southeastern District Office (Telephone: (404) 659-8855)—AL, FL, GA, MS, NC, SC, TN, VA, and WV.
  - Central District Office (Telephone: (312) 360-8800)—IL, IN, KY, MI, OH, and WI.
  - Midwestern District Office (Telephone: (816) 556-1800)—IA, KS, MN, MO, NE, ND, and SD.
  - Southwestern District Office (Telephone: (214) 720-0656)—AR, LA, OK, and TX.
  - Western District Office (Telephone: (415) 545-5900)—AK, AZ, CA, CO, HI, ID, MT, NM, NV, OR, UT, WA, WY, and Guam.
- The word “State” in the title of a financial institution signals that the institution is *State regulated*. U.S. branches of foreign banks are usually regulated by the State in which they are located. To determine whether a State-regulated financial institution qualifies as an acceptable trustee, licensees should access the FFIEC’s Trusts Institutions Search database on the World Wide Web at <<http://www2.fdic.gov/structur/trust/index.html>>, and look to see that the bank branch has full trust powers.
- Alternatively, licensees may contact the applicable State banking authority and confirm that the institution (1) is State regulated, *and* (2) has State-regulated trust operations.
- The titles of some financial institutions do not suggest that they are either Federally regulated or State regulated. In many such cases (but not all), these institutions are State regulated, as are many domestic branches of foreign banks.

The licensee may need or choose to replace the current trustee with a new trustee. To be acceptable to NRC, any successor trustee must meet the same standard as the original trustee (i.e., must be an appropriate Federal or State 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). To ensure that the change in trustee does not negatively impact the standby trust, the licensee should replace the trustee only after sufficient notification (i.e., 90 days or more) has been provided to both NRC and the current trustee.

### **A.17.2 Level of Coverage**

Standby trusts generally do not need to contain any money or property at the time they are established.<sup>40</sup> The standby trust should, however, anticipate that it will or may be funded in the full prescribed amount or estimated decommissioning cost. For example, the standby trust agreement should allow the trustee to access the full level of coverage as appropriate to complete decommissioning activities. (In the model wording for a standby trust agreement, for example, the trustee is authorized to make decommissioning payments only up to the amount listed in Schedule A to the standby trust agreement. If the amount listed in Schedule A is not at least as

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great as the NRC-approved cost estimate or prescribed amount, the trustee may not be able to make sufficient payments to complete decommissioning, even if there are sufficient monies in the standby trust.)

If the funds from the licensee's primary financial assurance mechanism are deposited into a standby trust fund, the trust must at all times contain sufficient assets, valued at their *current market value*, to complete decommissioning activities.

### A.17.3 Recommended Documentation

The terms and conditions of a standby trust are governed by a written standby trust agreement. The wording of a standby trust agreement may vary, but Section A.17.4 of this appendix is a model standby trust agreement that would meet NRC's requirements and is recommended by NRC. In addition to the standby trust agreement, other documentation is to be submitted with a standby trust, as summarized in Checklist 17-A,<sup>41</sup> including the following:

- The *standby trust agreement* (along with any amendments) is the written document that specifies the terms and conditions of the standby trust. The wording contained in the model standby trust in Section A.17.4 is acceptable to NRC. Licensees who use other wording should refer to Checklist 17-B to be sure that the alternative wording contains all the necessary terms and conditions.
- *Schedule A* (Section A.17.5) identifies the name and address of the licensee, the NRC license numbers covered by the standby trust, the addresses of the licensed activity, the amount of regulatory assurances demonstrated by the standby trust agreement, and the date on which these amounts were last adjusted and approved by NRC.
- *Schedule B* (Section A.17.5) lists the property (i.e., cash, securities, or other liquid assets) initially used to establish the standby trust fund.<sup>42</sup>
- *Schedule C* (Section A.17.5) specifies the compensation to be paid by the licensee to the trustee for its services.
- The *specimen certificate of events* (Section A.17.6) and the *specimen certificate of resolution* (Section A.17.7) provide the required format for instructing the trustee to release monies from the standby trust in order to fund decommissioning activities at the licensee's facility. When submitted as part of a financial assurance package, the specimen certificates should be unexecuted drafts. (Actual authorization to release funds from the standby trust is accomplished when completed and notarized versions of these certificates are signed by the secretary of the licensee and presented to the trustee.)
- The notarized *letter of acknowledgment* (Section A.17.8) verifies the execution of the standby trust agreement and certifies the trustee's signature and authority to enter into the agreement.

### Checklist 17-B Terms and Conditions Needed in Decommissioning Standby Trust Agreements

*Use this checklist only if deviating from the wording recommended in Section A.17.4.*

- ☐ Execution date of standby trust.
- ☐ Purpose of standby trust ("whereas" clauses).
- ☐ Statement of licensee's regulatory obligations as reason for the standby trust fund.
- ☐ Grantor or grantors (introductory paragraph).
- ☐ Trustee or trustees (introductory paragraph):
  - ☐ 1. names and addresses, and
  - ☐ 2. bank or corporate trustee.
- ☐ Identification of facilities (name, address, and license number) and cost estimates or prescribed amount (Section A.2 and Schedule A).
- ☐ Words of transfer, conveyance, and delivery in trust (Section A.3).
- ☐ Description of trust property (Section A.4 and Schedule B):
  - ☐ 1. cash,
  - ☐ 2. securities, and
  - ☐ 3. other liquid assets.
- ☐ Additions to trust (Section A.4).
- ☐ Distribution of trust principal (Section A.5) when the following conditions are met:
  - ☐ 1. disbursement to licensee upon proper certification;
  - ☐ 2. payment for activities at NRC's direction in writing;
  - ☐ 3. refund to grantor at NRC's written specification upon completion of decommissioning; and
  - ☐ 4. maximum withdrawal of funds at one time for a particular license is limited to 10 percent of the remaining funds available for that license unless NRC written approval is attached.
- ☐ Trust management (Sections A.6–A.8):
  - ☐ 1. discretionary powers,
  - ☐ 2. fiduciary duty,
  - ☐ 3. commingling and investment,
  - ☐ 4. sale or exchange of trust property,
  - ☐ 5. scope of investments,
  - ☐ 6. express powers of trustee,
  - ☐ 7. borrowing money and encumbering trust assets,

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**Checklist 17-B      Terms and Conditions Needed in Decommissioning Standby Trust Agreements (continued)**

- ☐ 8.          insurance (optional),
- ☐ 9.          operation of business (optional), and
- ☐ 10.        compromise of claims (optional).
- ☐ Taxes and expenses (Section A.9).
- ☐ Annual valuation (Section A.10).
- ☐ Advice of counsel (Section A.11).
- ☐ Authority, compensation, and tenure of trustees (Sections A.12–A.14):
  - ☐ 1.          trustee compensation (Schedule C),
  - ☐ 2.          successor trustee, and
  - ☐ 3.          instructions to trustee.
- ☐ Amendment of agreement (Section A.15).
- ☐ Irrevocability and termination (Section A.16).
- ☐ Immunity and indemnification (Section A.17).
- ☐ Law to govern construction and operation of trust (Section A.18).
- ☐ Interpretation and severability (Section A.19).
- ☐ Signatures and titles.
- ☐ Acknowledgments, seals, or attestations, if necessary or desired (witness by notary public).
- ☐ Acceptance of standby trust by trustee or trustees (acknowledgment).

## A.17.4 Model Standby Trust Agreement

### STANDBY TRUST AGREEMENT

TRUST AGREEMENT, the Agreement entered into as of *[insert date]* by and between *[insert name of licensee]*, a *[insert name of State]* *[insert "corporation," "partnership," or "proprietorship"]*, herein referred to as the "Grantor," and *[insert name and address of a trustee acceptable to NRC]*, the "Trustee."

WHEREAS, the U.S. Nuclear Regulatory Commission (NRC), an agency of the U.S. Government, pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, has promulgated regulations in title 10, Chapter I, of the *Code of Federal Regulations*, Part *[insert 30, 40, or 70]*. These regulations, applicable to the Grantor, require that a holder of, or an applicant for, a materials license issued pursuant to 10 CFR Part *[insert 30, 40, or 70]* provide assurance that funds will be available when needed for required decommissioning activities.

WHEREAS, the Grantor has elected to use a *[insert "letter of credit," "line of credit," "surety bond," "insurance policy," "parent company guarantee," or "self-guarantee"]* to provide *[insert "all" or "part"]* of such financial assurance for the facilities identified herein; and

WHEREAS, when payment is made under a *[insert "letter of credit," "line of credit," "surety bond," "insurance policy," "parent company guarantee," or "self-guarantee"]*, this standby trust shall be used for the receipt of such payment; and

WHEREAS, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee;

NOW, THEREFORE, the Grantor and the Trustee agree as follows:

**Section 1. Definitions.** As used in this Agreement:

- (a) The term "Grantor" means the NRC licensee who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the trustee who enters into this Agreement and any successor trustee.

**Section 2. Costs of Decommissioning.** This Agreement pertains to the costs of decommissioning the materials and activities identified in License Number *[insert license number]* issued pursuant to 10 CFR Part *[insert 30, 40, 70, or 72]*, as shown in Schedule A.

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**Section 3. Establishment of Fund.** The Grantor and the Trustee hereby establish a standby trust fund (the Fund) for the benefit of NRC. The Grantor and the Trustee intend that no third party shall have access to the Fund except as provided herein.

**Section 4. Payments Constituting the Fund.** Payments made to the Trustee for the Fund shall consist of cash, securities, or other liquid assets acceptable to the Trustee. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee are referred to as the "Fund," together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount of, or adequacy of the Fund, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by NRC.

**Section 5. Payment for Required Activities Specified in the Plan.** The Trustee shall make payments from the Fund to the Grantor upon presentation to the Trustee of the following:

- (a) A certificate duly executed by the Secretary of the Grantor attesting to the occurrence of the events, and in the form set forth in the attached Certificate of Events, and
- (b) A certificate attesting to the following conditions:
  - (1) that decommissioning is proceeding pursuant to an NRC-approved plan;
  - (2) that the funds withdrawn will be expended for activities undertaken pursuant to that plan; and
  - (3) that NRC has been given 30 days prior notice of *[insert name of licensee]*'s intent to withdraw funds from the trust fund.

No withdrawal from the Fund for a particular license can exceed 10 percent of the remaining funds available for that license unless NRC written approval is attached.

In addition, the Trustee shall make payments from the Fund as NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by NRC from the Fund for expenditures for required activities in such amounts as NRC shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as NRC specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

**Section 6. Trust Management.** The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee

shall discharge its duties with respect to the Fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a-2(a)), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal government, and in obligations of the Federal government such as GNMA, FNMA, and FHLM bonds and certificates or State and Municipal bonds rated BBB or higher by Standard & Poor's or Baa or higher by Moody's Investment Services; and
- (c) For a reasonable time, not to exceed 60 days, the Trustee is authorized to hold uninvested cash, awaiting investment or distribution, without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), including one that may be created, managed, underwritten, or to which investment advice is rendered, or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale, as necessary to allow duly authorized withdrawals at the joint request of the Grantor and NRC or to reinvest in securities at the direction of the Grantor;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name, or in the name of a nominee, and to hold any security in bearer form or in book entry, or to combine certificates



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representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, to reinvest interest payments and funds from matured and redeemed instruments, to file proper forms concerning securities held in the Fund in a timely fashion with appropriate government agencies, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee or such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the U.S. Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. After payment has been made into this standby trust fund, the Trustee shall annually, at least 30 days before the anniversary date of receipt of payment into the standby trust fund, furnish to the Grantor and to NRC a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and NRC shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to the matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting on the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing with the Grantor. (See Schedule C.)

Section 13. Successor Trustee. Upon 90 days notice to NRC and the Grantor, the Trustee may resign; upon 90 days notice to NRC and the Trustee, the Grantor may replace the Trustee; but

such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, the successor accepts the appointment, the successor is ready to assume its duties as trustee, and NRC has agreed, in writing, that the successor is an appropriate Federal or State 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. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. When the resignation or replacement is effective, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor Trustee shall specify the date on which it assumes administration of the trust, in a writing sent to the Grantor, NRC, and the present Trustee, by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are signatories to this Agreement or such other designees as the Grantor may designate in writing. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. If NRC issues orders, requests, or instructions to the Trustee these shall be in writing, signed by NRC or its designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NRC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or NRC, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and NRC, or by the Trustee and NRC if the Grantor ceases to exist. All amendments shall meet the relevant regulatory requirements of NRC.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and NRC, or by the Trustee and NRC if the Grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor or its successor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this trust, or in carrying out any directions by the Grantor or NRC issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

APPENDIX A

Section 18. This Agreement shall be administered, construed, and enforced according to the laws of the State of *[insert name of State]*.

Section 19. Interpretation and Severability. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement. If any part of this Agreement is invalid, it shall not affect the remaining provisions which will remain valid and enforceable.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by the respective officers duly authorized and the incorporate seals to be hereunto affixed and attested as of the date first written above.

*[Insert name of licensee (Grantor)]*  
*[Signature of representative of Grantor]*  
*[Title]*

ATTEST:  
*[Title]*  
*[Seal]*

*[Insert name and address of Trustee]*  
*[Signature of representative of Trustee]*  
*[Title]*

ATTEST:  
*[Title]*  
*[Seal]*

### A.17.5 Model Standby Trust Agreement Schedules

#### Schedule A

This Agreement demonstrates financial assurance for the following cost estimates or prescribed amounts for the following licensed activities:

U.S. NUCLEAR REGULATORY COMMISSION LICENSE <u>NUMBER(S)</u>	NAME AND ADDRESS OF <u>LICENSEE</u>	ADDRESS OF LICENSED <u>ACTIVITY</u>	COST ESTIMATES FOR REGULATORY ASSURANCES DEMONSTRATED BY <u>THIS AGREEMENT</u>
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The cost estimates listed here were last adjusted and approved by NRC on *[insert date]*.

#### Schedule B

DOLLAR AMOUNT \_\_\_\_\_  
AS EVIDENCED BY \_\_\_\_\_

#### Schedule C

*[Insert name, address, and phone number of Trustee.]*  
Trustee's fees shall be \$ \_\_\_\_\_ per year.

APPENDIX A

**A.17.6 Model Specimen Certificate of Events**

*[Insert name and address of trustee]*

Attention: Trust Division

Gentlemen:

In accordance with the terms of the Agreement with you dated \_\_\_\_\_, I, \_\_\_\_\_, Secretary of *[insert name of licensee]*, hereby certify that the following events have occurred:

1. *[Insert name of licensee]* is required to commence the decommissioning of its facility located at *[insert location of facility]* (hereinafter called the decommissioning).
2. The plans and procedures for the commencement and conduct of the decommissioning have been approved by the United States Nuclear Regulatory Commission, or its successor, on \_\_\_\_\_ (copy of approval attached).
3. The Board of Directors of *[insert name of licensee]* has adopted the attached resolution authorizing the commencement of the decommissioning.

\_\_\_\_\_  
Secretary of *[insert name of licensee]*

\_\_\_\_\_  
Date

**A.17.7 Model Specimen Certificate of Resolution**

I, \_\_\_\_\_, do hereby certify that I am Secretary of [*insert name of licensee*], a [*insert State of incorporation*] corporation, and that the resolution listed below was duly adopted at a meeting of this Corporation's Board of Directors on \_\_\_\_\_, 20\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the seal of this Corporation this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

Secretary

RESOLVED, that this Board of Directors hereby authorizes the President, or such other employee of the Company as he may designate, to commence decommissioning activities at [*insert name of facility*] in accordance with the terms and conditions described to this Board of Directors at this meeting and with such other terms and conditions as the President shall approve with and upon the advice of Counsel.

APPENDIX A

**A.17.8 Model Letter of Acknowledgment**

STATE OF \_\_\_\_\_

To Wit: \_\_\_\_\_

CITY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, before me, a notary public in and for the city and State aforesaid, personally appeared \_\_\_\_\_, and she/he did depose and say that she/he is the [insert title] of \_\_\_\_\_ [if applicable, insert ", national banking association" or ", State banking association"], Trustee, which executed the above instrument; that she/he knows the seal of said association; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the association; and that she/he signed her/his name thereto by like order.

\_\_\_\_\_  
[Signature of notary public]

My Commission Expires: \_\_\_\_\_  
[Date]