

OCT 16 1996

Robert M. Quillin, Director
Radiation Control Division
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80222-1530

Dear Mr. Quillin:

We have reviewed the proposed revisions to Colorado rules, Part 3, Licensing of Radioactive Materials, dated July 17, 1996, and received by memorandum dated August 20, 1996. The proposed rules were reviewed by comparison to the equivalent NRC regulations in 10 CFR Parts 30, 40, and 70. We acknowledged receipt of the proposed rules on August 30, 1996. Dennis Sollenberger and Thomas J. O'Brien of this office telephonically notified Mr. Don Simpson of our comments, (as enclosed), on September 10, 1996.

Under our current procedure, a finding that a rule meets the compatibility requirements may only be made based on a review of the final text of the rule. However, we have determined that if the proposed rules were adopted (incorporating the comments) and without other significant change, they would be compatible.

We request that when the proposed rules are adopted and published as final rules, a copy of the "as published" rules be provided to us for review. As requested in our All Agreement States Letter SP-96-027, "Request to Highlight Changes to Agreement State Regulations Submitted to NRC for Compatibility Review" (March 1, 1996), please highlight the final changes and send one copy in a computer readable format, if possible.

If you have any questions regarding the comments or any of the NRC rules used in the review, please contact me or Mr. Tom O'Brien of my staff at (301) 415-2308.

Sincerely,

Original Signed By:

PAUL H. LOHAUS

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

Distribution:

DIR RF (6S-223)
RLBangart
PLohaus
SDroggitis
TJO'Brien
Colorado File

DCD (SP08)
PDR (YES X NO)

220050

DOCUMENT NAME: G:\TJO\COLO.REG

*See previous concurrence.

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OFFICE	OSP	OSP:DD	OGC	OSP:D	
NAME	TJO'Brien:kk	PHLohaus	FCameron	RLBangart	
DATE	10/2/96*	10/3/96*	10/15/96*	10/16/96	

OSP FILE CODE: SP-AG-5

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NRC FILE CENTER COPY

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PDR STPRG ESGCD
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OFFICE	OSP	OSP:DD	OGC <i>NLO</i>	OSP:D	
NAME	TJO'Brien:kk	PHLohaus	FCameron <i>THN</i> to	RLBangart	
DATE	10/2/96*	10/3/96*	10/15/96	10/ /96	

OSP FILE CODE: SP-AG-5

Subject to comments

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OFFICE	OSP <u>103</u>	OSP <u>DD</u>	OGC	OSP:D	
NAME	TJO'Brien:kk	PHLohaus	FCameron	RLBangart	
DATE	10/2/96	10/3/96	10/ /96	10/ /96	



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 16, 1996

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Radiation Control Division
Department of Public Health and Environment
4300 Cherry Creek Drive South
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Sincerely,

A handwritten signature in dark ink, reading "Paul H. Lohaus", is written over the typed name.

Paul H. Lohaus, Deputy Director
Office of State Programs

Enclosure:
As stated

COMMENTS ON PROPOSED COLORADO REGULATIONS

Colorado Section

Comment

3.9.5.1.2.5.1

The 10 mCi amount specified in 40.36(a) for source material is not included and needs to be added to be compatible with 40.36(a). We also note, for your information, that your stated value of 10^3 times the applicable quantity of Schedule B is more restrictive than that specified in 10 CFR 30.35(a).

3.9.5.2

Colorado has chosen to combine all financial surety requirements for all licenses into this section. This causes a conflict in that NRC prohibits self insurance in Criterion 9 of Appendix A to 10 CFR 40 which states that self insurance does not satisfy the surety requirement for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling. Your revisions delete this prohibition for source material licenses which must be maintained to be compatible with 10 CFR 40.36. It is not required for the byproduct or special nuclear materials licenses.

3.16.6.8

It is our understanding that your wording to maintain records until the site has been released for unrestricted use was meant to be more restrictive than the NRC wording that records will be kept until the license is terminated as specified in 10 CFR 30.35(g). This would be acceptable if that is the case.

3.16.6.8.3

It is our understanding that you do not want the depleted uranium exception stated in 10 CFR 40.36(f)(3). This would be acceptable if that is the case.

Part 3, Appendix A, III

Appendix A III appears to be missing paragraphs C and D which need to be added to be compatible with Appendix A to 10 CFR Part 30.

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

TASK # - 6S223

DATE- 08/30/96

MAIL CTRL. - 1996

TASK STARTED - 08/30/96

TASK DUE - / /

TASK COMPLETED - / /

TASK DESCRIPTION - COLORDAO DRAFT PART 3 REGS "LICENSING OF RADIOACTIVE MATERIALS" FOR REVIEW

REQUESTING OFF. - CO

REQUESTER - D. SIMPSON

WITS - 0 FYP - N

PROG. -

PERSON -

STAFF LEAD -

PROG. AREA -

PROJECT STATUS -

DUE DATE:

8/20/96 SENT TO C. HACKNEY FROM M. MOORE

PLANNED ACC. - N

LEVEL CODE - 1

Assigned to: T. O'Brien 9-9-96

Due Date: ~~9-10-96~~ 10-4-96

10-18-96

2 weeks for OGC

MEMO

Date 8-20

TO: Chuck Shackney-NRC
FROM: Michael Davis Moore

Attached is a draft Part 3 of the Colorado Radiation Regs. The changes which vary from the regs have been highlighted. The contact for this regulatory revision is Don Simpson (303) 692-3066.

Please call if you have questions/comments

Colorado Department of Public Health & Environment
Radiation Control Division
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530
(303) 692-3030

Please forward to
Mr. R. S. Bangert
OSR - Washington D.C.

Thank you
David

Telcar 4 Dan 9-10
DS, Taz
1500

DRAFT

REGULATORY ANALYSIS
FOR
COLORADO RULES AND REGULATIONS
PERTAINING TO RADIATION CONTROL
6 CCR 1007

Part 3

LICENSING OF RADIOACTIVE MATERIALS

July 17, 1996

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OSP

The Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes 1989 (Act) requires the Colorado Department of Public Health and Environment (Department) to license radioactive materials and to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.

Section 25-11-104 of the Act requires the state Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control, and that "all such regulations shall be modeled after and shall be neither more nor less stringent than those proposed by the Conference of Radiation Control Program Directors, Inc... under the title *Suggested State Regulations for Control of Radiation* (SSRCR); except that, in the event said board concludes on the basis of detailed findings that a substantial deviation from any said suggested state regulations is warranted..."

In 1968 the State of Colorado entered into an agreement with the federal government whereby the State assumed the responsibility for the regulation of certain types of radioactive materials. These are source material, byproduct material and special nuclear material. Because of this agreement between the state and the federal government for the State to assume authority over certain types of radioactive materials, the State regulations must be compatible with regulations of the U.S. Nuclear Regulatory Commission (NRC). Were the State not to have compatible regulations, the majority of our licensees would have to meet the same regulatory requirements under licenses issued by the NRC.

Part 3 of the *Colorado Rules and Regulations Pertaining to Radiation Control* (Regulations), which establishes requirements for the licensing of radioactive material, was adopted by the Board of Health in 1978. The Department is revising Part 3 so that State Regulations are compatible with NRC Regulations.

This Regulatory Analysis provides the background information relative to the action. This analysis is prepared in fulfillment of section 24-04-103 (4.5) (a) of the Colorado Administrative Procedures Act.

The proposed changes to the Regulations are fourfold:

1. Adoption of this rule will clarify decommissioning financial assurance arrangement requirements, by removing ambiguity in the Regulations with regard to cost estimates and the ability of the licensee to reduce financial surety once cleanup is completed.
2. By allowing Self-Assurance under certain conditions, this rule will allow qualifying radioactive materials licensees flexibility to reduce the cost burden of financial assurance while providing the State sufficient assurance that decommissioning costs will be funded.
3. The proposed changes amend the regulations to require licensees to prepare and maintain additional documentation that identifies all restricted areas and all areas outside of restricted areas where documentation is required for unusual occurrences or spills, all areas outside of restricted areas where waste has been buried and all areas outside the restricted areas containing material that would require decontamination or special approval for disposal. The proposed change also requires specific information on decontaminated equipment that will remain on site after license termination.
4. The proposed changes amend the regulations to specify the method for the disposition of records concerning decommissioning, offsite releases and waste disposal when a licensee terminates licensed activities or when licensed activities are transferred to another licensee. The regulation also requires forwarding of these same records to the Department before the license is terminated.

Regulatory Analysis of Financial Assurance Regulations

1. A description of the classes of persons who will bear the costs and/or benefits from the action.

All licensees will benefit from having available straightforward criteria for financial assurance arrangements. The persons who will primarily receive the benefits of the action are licensees who possess sufficient financial assets that they may meet minimum qualifications of the rule. These persons meeting qualifications of the rule will be permitted to use self-guarantee as a financial assurance mechanism, reducing their regulatory burden for meeting financial assurance requirements while still providing the State with sufficient assurance that decommissioning costs will be funded. All licensees will benefit from clarified funding requirements.

Without controls, persons can unknowingly be exposed to radiation from radioactive materials. Health impacts can be calculated by estimating radiation exposure from radioactive materials. These risk analyses, based on several pathways for exposure, for individuals of both the regulated community and general population show a broad range of risks.

2. A description of the probable quantitative and qualitative impacts of the proposed rule, economic and otherwise, upon the affected classes.

Quantitative:

Revision of Part 3 will reduce overall costs associated with these regulations. The net benefit of self-guarantee will equal the savings to licensees resulting from the use of the self-guarantee mechanism (rather than a more expensive third party mechanism) minus an increase in public costs. The overall savings would more than off-set some increase in financial assurance review costs. Colorado requires the State to bill licensees rather than pass this cost on to the public. The NRC estimates a savings of \$731 per year per licensee qualified to use the self assurance mechanism, with a cost increase of \$63 per year per such licensee to the public.

Estimated Average Cost Associated with Compliance with Revised Rules

Financial Assurance Option	No. of Affected Licensees	Private Costs (per licensee)	Public Costs (billable to licensee)	Total Costs (per licensee)
Licensee uses Third Party Guarantor	28	\$3060	\$26	\$3086
Licensee uses Self-Assurance	2 (estimate)	\$2329	\$89	\$2418
difference	26	\$ 731 Savings	\$63 (billable cost)	\$ 668 Savings

Qualitative:

There will be no adverse impacts to public health and safety associated with this action. Relevant, more specific requirements already exist for financial assurance arrangements. However, the existing requirements are somewhat ambiguous. Adoption of these streamlined requirements should increase the likelihood licensees will have adequate financial guarantees. Therefore, the adoption of these proposed regulations will reduce

the potenial for radiation exposures. This will reduce the risk of adverse health effects in those exposed and consequently reduce the liability of regulated industries and operations.

3. Probable costs to the Department and to local health departments. Anticipated effects on state revenues.

No additional staff will be needed to complete this action. There will be no effect on the Department, local health departments or on state revenues.

The cost of processing license applications and amendments and conducting inspections is not expected to change. Costs will continue to be billed to the licensees. No additional staff are anticipated at this time to implement these regulations. Any costs to the Department due to minor increases in review time for this purpose should be offset by fees/billing to licensees.

Local health departments are not impacted as they do not regulate sources of ionizing radiation.

4. A comparison of the probable costs and benefits of the proposed rule and probable costs and benefits of inaction.

There are no significant costs to the licensees or the public if revisions to Part 3 are adopted.

Based upon some amount of additional record keeping and review time, the NRC estimates an additional estimated cost of \$63 per eligible licensee will be incurred annually to comply with these regulations. The State is required to bill this additional review cost to the licensees.

There are benefits of adoption of the proposed regulations. The Department, the regulated community and general public will have a set of simplified standards as guidance for financial assurance arrangements for licensees.

Inaction in adoption of the proposed regulations could result in the Department's not maintaining State's agreement with the federal government, resulting in the reversion of the regulatory program to the federal government. Health risks could be increased without local involvement in this program. Were this to be the case, radiation safety could be compromised and could result in unnecessary radiation exposure to both the regulated community and general public. Potentially, an increased health care cost could

not
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better than risk

be incurred by the State in the future due to the risks of unnecessary radiation exposures.

Regulated industries and operations will also receive benefits from these regulations in that there will be uniform standards which they must meet. Most industries and operations already meet these standards on an unofficial basis. This will assure that these industries and operations will uniformly meet these health protective standards.

5. A determination of whether there are less costly or less intrusive means to achieve the purpose of the proposed rule.

There are no less costly or less intrusive means available to meet the requirements as stated in the Act. Adoption of these measures should decrease overall costs to licensees and risk to the State. The proposed regulation addresses the concerns of the public and regulated community and establishes rules that are necessary yet reasonable to protect the environment, the public and radiation workers.

6. A description of alternative methods for achieving the purpose of the proposed rule.

The alternative method to the action would be to not adopt these measures.

The proposed regulations provide the necessary standards, technical guidance and procedures to carry out the intent of the Act. There are no alternative methods available to meet the requirements of the Act and provide the specifics and definition necessary to provide reasonable radiation protection to the environment, the public and to radiation workers.

Failure to adopt these revisions may result in the loss of the State's agreement with the federal government. Loss of this status will result in loss of local control over local affairs, potentially leading to increased health risk and costs as a result of more distant and expensive management under a federally managed program.

bad inference *+1/20*

Regulatory Analysis of Decommissioning Recordkeeping and Disposition of Records Prior to License Termination

1. A description of the classes of persons who will bear the costs and/or benefits from the action.

The amendments to the regulations pertaining to decommissioning recordkeeping and

check out — disposition of records prior to license termination would currently apply to an estimated 28 radioactive material licensees. Of the 28 licensees, 22 have financial assurance agreements covering the cost of decommissioning and long-term care and six are State Institutions with exemption to financial agreement requirements. The costs of implementation of the regulation apply to both the licensee and the State.

The beneficiaries of these amendments are the State and individuals living near facilities with radioactive materials. Continued retention of the required records will ensure their availability in the event safety concerns are identified in the future and will be available to the State to provide information needed to assess possible risks associated with licensed activities once a license has been terminated. In addition, the proposed amendments will improve the regulatory framework relating to facilities where licensed activities will continue after license transfer or re-assignment and will ensure that adequate information to effectively decommission the facility is available to the new licensee.

2. A description of the probable quantitative and qualitative impacts of the proposed rule, economic and otherwise, upon the affected classes.

Quantitative:

The cost of the revised rule will be incurred for transferring records to a new licensee or forwarding records to the Department prior to decommissioning. Records included in the revised rulemaking are already required to be maintained until license termination.

In assessing these costs, a conservative assumption was made that 28 licensees possessing unsealed source material or unsealed by-product material with half-lives greater than 120 days would be affected by the amended rule. Half this number, or 14 licensees, would be affected by transfer or forwarding of records pertaining to offsite releases and waste disposal sections of the rule. All 28 licensees would be affected by the transfer or forwarding of records pertaining to decommissioning sections of the rule. The cost would be a one time occurrence to the licensee. The Department would not accrue costs for these actions.

There is no direct cost to the Department for permanent archiving of the records. However, if a decision was made in the future to microfilm the records, the Department would accrue the additional cost for this service.

The estimated cost associated with compliance with revised recordkeeping and record disposition rules is shown in the following table.

Estimated Cost Associated with Compliance with Revised Recordkeeping and Record Disposition Rules

Licensee Action	No. of Licensees Affected By Rule	Cost Per Licensee	Total Cost
Transfer of records of offsite releases and records of waste disposal to new licensee	1 (estimated)	\$125	\$125
Transfer of decommissioning records to new licensee	1 (estimated)	\$248	\$248
Forwarding records of offsite releases and records of waste disposal to the Dept.	14	\$72	\$1008
Forwarding decommissioning records to the Dept.	28	\$144	\$4032
Transfer of records to the Dept. pursuant to RH 4.40	28	\$25/box	\$700
Total			\$6113

Qualitative:

The present rules are unclear with regard to the final disposition of required records when licensed activities have ceased and the license is terminated. In order for the Department to assure availability of certain records once licensed activities have ceased and the license is terminated there is a need to require the forwarding of these records to the Department prior to license termination. Continued retention of the required records will ensure their availability in the event safety concerns are identified in the future and will be available to the State to provide information needed to assess possible risks associated with licensed activities once a license has been terminated.

3. Probable costs to the Department and to local health departments. Anticipated effects on state revenues.

No additional staff will be needed to complete this action. There will be no effect on the Department, local health departments or on state revenues.

4. A comparison of the probable costs and benefits of the proposed rule and probable costs and benefits of inaction.

The cost of not changing the regulations would be minimal since records that would be needed by the Department or the new licensee should not be difficult to obtain. Without a consistent approach some of the needed records could be lost or destroyed inadvertently, resulting in additional costs to the Department or new licensee to make determinations of public risk. If decommissioning records are not retained and readily available in the future, there may be substantial costs of re-investigating sites.

5. A determination of whether there are less costly or less intrusive means to achieve the purpose of the proposed rule.

There are no less costly or less intrusive means to achieve the purpose of this rule.

6. A description of alternative methods for achieving the purpose of the proposed rule.

The alternative method to the action would be to not amend the changes to the Regulations. Without the action, the final disposition of licensee records when licensed activities have ceased and the license is terminated, is unclear.

In addition, failure to adopt these parts could result in the loss of State's agreement with the federal government. Loss of this status will result in loss of local control over local affairs, potentially leading to increased health risks and costs as a result of more distant and expensive management under a federally managed program.

STATEMENT OF BASIS AND PURPOSE
FOR
COLORADO RULES AND REGULATIONS
PERTAINING TO RADIATION CONTROL
6 CCR 1007

PART 3
LICENSING OF RADIOACTIVE MATERIALS

July 17, 1996

OVERVIEW

In 1968 the State of Colorado entered into an agreement with the federal government whereby the State assumed the responsibility for the regulation of certain types of radiation and radioactive materials.

The Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes 1989 (Act) requires the Colorado Department of Public Health and Environment (Department) to license radioactive materials and to develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.

Section 25-11-104 of the Act requires the state Board of Health to formulate, adopt, and promulgate rules and regulations pertaining to radiation control, and that "all such regulations shall be modeled after and shall be neither more or less stringent than those proposed by the Conference of Radiation Control Program Directors, Inc. (CRCPD) under the title of *Suggested State Regulations for Control of Radiation*; (SSRCR) except that, in the event said board concludes on the basis of detailed findings that a substantial deviation from any said suggested state regulations is warranted...".

The revisions to the Colorado *Rules and Regulations Pertaining to Radiation Control* (Regulations) proposed herein are not presently included in the SSRCR. The proposed changes are a matter of compatibility with the U.S. Nuclear Regulatory Commission (NRC) and are needed to maintain the State's agreement with the federal government.

The proposed changes to the Regulations are fourfold:

1. Adoption of this rule will clarify decommissioning financial assurance arrangement requirements by removing ambiguity in the Regulations with regard to cost estimates and the ability of the licensee to reduce financial surety once cleanup is completed.
2. By allowing Self-Assurance under certain conditions, this rule will allow qualifying Radioactive Materials licensees flexibility to reduce the cost burden of financial assurance while providing the State sufficient assurance that decommissioning costs will be funded.

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3. The proposed changes amend the regulations to require licensees to prepare and maintain additional documentation that identifies all restricted areas and all areas outside of restricted areas where documentation is required for unusual occurrences or spills, all areas where waste has been buried and all areas containing material that would require decontamination or special approval for disposal. The proposed change also requires specific information on decontaminated equipment that will remain on site after license termination.
4. The proposed changes amend the regulations pertaining to the transfer of records concerning decommissioning, offsite releases and waste disposal when a licensee terminates licensed activities, or when licensed activities are transferred to another licensee. The regulation also requires forwarding of these same records to the Department before the license is terminated.

BASIS AND PURPOSE OF PROPOSED AMENDMENTS

Financial Assurance Arrangements

These rule changes are required to incorporate in regulations items that presently exist only in policy, or are needed to make the Colorado regulations compatible with NRC requirements. In 1978, the Board of Health adopted Part 3 of the Radiation Regulations. Part 3 establishes requirements for the licensing of radioactive material. The provisions of the regulation were taken, in part, from the NRC Document on this subject. In order to maintain the State's agreement with the federal government, subsequent revisions to NRC Financial Assurance Arrangements requirements have necessitated the adoption of compatible measures in the Regulations. Adoption of this rule will allow qualifying Radioactive Materials licensees to reduce the cost burden of financial assurance while providing the State sufficient assurance that decommissioning costs will be funded. This rule will have a beneficial effect in protecting public health and environment.

The rule provides a minimum requirement for the amount of decommissioning financial assurance funds for certain licensees and requires that the funds be provided by one of the prescribed methods stated in the regulations.

The rule will also require a signed original of the financial instrument be submitted to the Department prior to receipt of licensed material.

The rule will add requirements that the decommissioning funding plan must contain a cost estimate for decommissioning, including provisions for adjusting cost estimates and associated funding levels periodically over the life of the facility. The decommissioning funding plan must also include a certification by the licensee that financial assurance has

been provided for in the amount of the cost estimate for decommissioning.

The rule will add the requirement that the licensee shall maintain in effect all decommissioning financial assurance arrangements established by the licensee through license amendments and renewals through termination of the license, and that the amount of financial assurance must be increased or decreased, as appropriate, to cover the detailed cost estimate for decommissioning. This rule change clarifies that following approval of the decommissioning plan, a licensee may reduce the amount of financial assurance as decommissioning proceeds and radiological contamination is reduced at the site, with the approval of the Department. Also any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective. The above elements were not explicit in the Regulations, but only present in policy or less formal means. Now the State and licensees will benefit from having clearly stated requirements.

Self-Guarantee as an Additional Financial Assurance Mechanism

The prohibition of Self Insurance (Assurance) as a financial assurance mechanism is deleted from this section. A new section has been added allowing for Self Assurance as a financial assurance mechanism, provided the licensee has a tangible net worth in the United States of at least ten times decommissioning costs, and an "A" or better bond rating. With this rule qualifying licensees will be able to reduce the cost burden of financial assurance while providing the State sufficient assurance that decommissioning costs will be funded.

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Decommissioning Recordkeeping

In order for the Department to confirm cleanup of land or facilities as part of the decommissioning and license termination activities, there is a need to know of the existence and location of relevant areas of possible contamination. At present the licensee is not specifically required to list: (1) all areas designated and formerly designated as restricted areas; (2) all areas outside of restricted areas that require documentation under current decommissioning rules; (3) all areas outside the restricted areas where radioactive waste has been buried and require documentation under the current rules; (4) all areas outside the restricted areas which contain radioactive material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval of disposal; and (5) the location and description of equipment and materials to remain onsite after license termination that was considered to be radioactively contaminated when final decommissioning was initiated.

The present rules are not sufficiently explicit to ensure that all relevant areas of possible contamination will be identified at the actual time of decommissioning. The Department

will need to know of the existence and location of these areas and equipment in order to perform confirmatory surveys.

Disposition of Records Prior to License Termination or Transfer

These rule changes are required to incorporate in regulations items that presently exist only in policy, or are needed to make the Colorado regulations compatible with NRC requirements. In order for the Department to assure availability of certain records once licensed activities have ceased and the license is terminated, there is a need to require the forwarding of these records to the Department prior to license termination. In the case of a license transfer, there is also a need to have the same records transferred or assigned to the new licensee who will then be responsible for maintaining these records until the license is terminated.

In order for the Department to determine that a licensee has effectively decommissioned its facility, and to authorize license termination, the Department will review the licensee's evaluation of previous releases to the environment and waste disposal to determine whether there is a need for the licensee to remediate significant offsite contamination as a result of past licensed activities prior to license termination. Licensees are already required to keep these records until license termination.

The present rules are unclear with regard to the final disposition of required records when licensed activities have ceased and the license is terminated.

PART 3

LICENSING OF RADIOACTIVE MATERIAL

3.1.2 In addition to the requirements of this part, all licensees are subject to the requirements of Parts 1, 4, 10, 12 and 17 of these regulations. Furthermore, licensees engaged in industrial radiographic operations are subject to the requirements of Part 5 of these regulations, licensees using radionuclides in the healing arts are subject to the requirements of Part 7 of these regulations, licensees engaged in land disposal of radioactive material are subject to the requirements of EITHER Part 14 OR PART 18 of these regulations, licensees engaged in source material milling are subject to the requirements of Part 18 of these regulations, and licensees engaged in wireline and subsurface tracer studies are subject to the requirements of Part 16 of these regulations.

3.9.5 Financial assurance requirements, as described below, have been met:

3.9.5.1 Financial Requirements.

The Department will require financial assurance arrangements as follows:

3.9.5.1.1 A license applicant may be required to furnish financial assurance arrangements to ensure decontamination and decommissioning of the facility for the protection of the public health and safety and the environment in the event of abandonment, default or inability of the licensee to meet the requirements of the Act, these regulations, and the license.

3.9.5.1.2 The following specific licensees are required to furnish financial assurance arrangements:

3.9.5.1.2.1 Reserved.

3.9.5.1.2.2 Commercial waste handling licensees;

3.9.5.1.2.3 Reserved.

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3.9.5.1.2.4

Source material mills; and

3.9.5.1.2.5

Each applicant for a specific license
authorizing the possession and use of licensed
radioactive material with a half life greater
than 120 days in quantities: and in ... ^{30.35 a}

3.9.5.1.2.5.1

greater than 10^3 times the applicable
quantity of Schedule B of Part 3 unsealed
form. For a combination of isotopes if R
divided by 10^3 is greater than 1 (unity
rule), where R is defined here as the sum
of the ratios of the quantity of each
isotope in the applicable value in
Schedule B.

*more restrictive**> 30.35 a*

3.9.5.1.2.5.2

greater than 10^{10} times the applicable
quantity of Schedule B of Part 3 in sealed
sources or plated foils. For a
combination of isotopes if R divided by
 10^{10} is greater than 1 (unity rule), where
R is defined in RH 3.9.5.1.2.5.1.

3.9.5.1.3

Reserved.

~~3.9.5.1.3.1~~~~Reserved.~~~~3.9.5.1.3.2~~~~Reserved.~~

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~~3.9.5.1.3.3~~ ~~Reserved.~~

~~3.9.5.1.3.4~~ ~~Reserved.~~

~~3.9.5.1.3.5~~ ~~Reserved.~~

3.9.5.2 The financial assurance arrangements required by
RH 3.9.5.1.1 shall be furnished to, and in a form approved
by, the Department prior to the issuance of a license, or
any amendment or renewal of an existing license, as required
by the Department. The applicant shall furnish evidence of
initial and continued financial responsibility sufficient to
maintain the financial assurance arrangement in force, as
required by and acceptable to the Department. The amount of
funds to be provided by such financial assurance
arrangements shall be based on Department-approved cost
estimates.

> not
30.35 (d)
issues
and
70.25

~~Self insurance, or any arrangement which essentially
constitutes self insurance (e.g., a contract with a State or
Federal agency), will not satisfy the financial assurance
requirement since this provides no additional assurance
other than that which already exists through license
requirements.~~

Acceptable financial assurance arrangements include:

3.9.5.2.1 A bond issued by a fidelity or surety company with
provisions and for a term and amount acceptable to the
Department;

3.9.5.2.2 An irrevocable "letter of credit" or "line of credit" issued by a recognized financial institution whose financial condition and commitment are established to the satisfaction of the Department;

3.9.5.2.3 A cash deposit, certificate of deposit, or deposit of government securities posted by the licensee with provisions and for a term and amount acceptable to the Department; or

3.9.5.2.4 SELF ASSURANCE TEST

3.9.5.2.4.1 A PARENT COMPANY GUARANTEE OF FUNDS FOR DECOMMISSIONING COSTS BASED ON A FINANCIAL TEST MAY BE USED IF THE GUARANTEE AND TEST ARE AS CONTAINED IN APPENDIX A OF THIS PART. A PARENT COMPANY GUARANTEE MAY NOT BE USED IN COMBINATION WITH OTHER FINANCIAL METHODS TO SATISFY THE REQUIREMENTS OF THIS SECTION.

3.9.5.2.4.2 A GUARANTEE OF FUNDS BY THE APPLICANT OR LICENSEE FOR DECOMMISSIONING COSTS BASED ON A FINANCIAL TEST MAY BE USED IF THE GUARANTEE AND TEST ARE AS CONTAINED IN APPENDIX B OF THIS PART. A GUARANTEE BY THE APPLICANT OR LICENSEE MAY NOT BE USED IN COMBINATION WITH ANY OTHER FINANCIAL METHODS TO SATISFY THE REQUIREMENTS OF THIS SECTION OR IN ANY SITUATION WHERE THE APPLICANT OR LICENSEE HAS A PARENT COMPANY HOLDING MAJORITY CONTROL OF THE VOTING STOCK OF THE COMPANY.

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3.9.5.2.4 5

EXCEPT FOR THE FINANCIAL ASSURANCE TESTS NOTED IN RH

3.9.5.2.4, Combinations of the above ^{or} such other evidence of initial and continued financial responsibility as may be required by the Department, including financial assurance arrangements previously provided to any State, Federal and/or local governing bodies concerning activities subject to license under these regulations, where the amount, terms, and conditions of such financial assurance arrangements have been established to the satisfaction of the Department, provided such arrangements are considered by the Department to be adequate to satisfy the requirements of RH 3.9.5 and provided that the portion of the financial assurance arrangement which covers the decommissioning and reclamation of the facility and associated areas, and the long-term site surveillance and control funding charge, are clearly identified and committed for use in accomplishing these activities. → major decision

3.9.5.3

The amount of funds to be provided by such financial assurance arrangements shall be based on Department-approved cost estimates in an approved DECOMMISSIONING plan for (1) decontamination and decommissioning of buildings, facilities and the site to levels which would allow unrestricted use of these areas upon decommissioning, and (2) for the reclamation of tailings and/or waste disposal areas in accordance with technical criteria delineated in Part 14 and/or Part 18 as appropriate. The licensee shall submit this plan and complete proposed financial assurance arrangements in conjunction with the environmental report

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1 required by RH 3.8.8 that addresses the expected
2 environmental impacts of the operation, decommissioning and
3 reclamation, and evaluates alternatives for mitigating these
4 impacts. In establishing specific financial assurance
5 arrangements, the cost estimates shall take into account
6 total costs that would be incurred if an independent
7 contractor were hired to perform the decommissioning and
8 reclamation work, and long-term care if included. *required*

9
10 3.9.5.3.1

EACH DECOMMISSIONING FUNDING PLAN MUST CONTAIN A COST
11 ESTIMATE FOR DECOMMISSIONING, REQUIRED IN THIS
12 SECTION, INCLUDING MEANS FOR ADJUSTING COST ESTIMATES
13 AND ASSOCIATED FUNDING LEVELS PERIODICALLY OVER THE
14 LIFE OF THE FACILITY. THE DECOMMISSIONING FUNDING
15 PLAN MUST ALSO INCLUDE A CERTIFICATION BY THE LICENSEE
16 THAT FINANCIAL ASSURANCE DECOMMISSIONING HAS BEEN
17 PROVIDED FOR IN THE AMOUNT OF THE COST ESTIMATE FOR
18 DECOMMISSIONING OR A SIGNED ORIGINAL OF THE FINANCIAL
19 INSTRUMENT OBTAINED TO SATISFY THE REQUIREMENTS OF
20 THIS SECTION.

21
22 3.9.5.3.2

A SIGNED EXECUTED ORIGINAL COPY OF THE FINANCIAL
23 INSTRUMENT OBTAINED TO SATISFY THE REQUIREMENTS OF
24 THIS SECTION SHALL BE SUBMITTED TO THE DEPARTMENT
25 PRIOR TO RECEIPT, USE, POSSESSION, STORAGE OR DISPOSAL
26 OF LICENSED MATERIAL.

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3.9.5.4

The licensee shall provide in writing to the Department, no later than June 30th of each calendar year, any licensee proposed changes, including updated plans, costs or surety mechanisms, for consideration by the Department.

3.9.5.5

The licensee's financial assurance arrangements will be reviewed annually by the Department to assure that sufficient funds would be available for completion of the plans if the work had to be performed by an independent contractor and shall be adjusted to recognize any increases or decreases resulting from inflation or deflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether the work is phased through the life of the operation or takes place at the end of the operation, an appropriate portion of financial assurance liability shall be retained by the licensee until final compliance with the reclamation plan is determined by the Department.

40.362

infers specific to mills

This will yield a financial assurance **ARRANGEMENTS** that are at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal.

30.35(F)(2)(i)

The term of the surety mechanism shall be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified period of time (e.g., 5 years) yet which must be automatically renewed unless the surety notifies the

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1 Department and the principal (the licensee) some reasonable
2 time (e.g. 90 days) prior to the renewal date of their
3 intention not to renew. In such a situation
4 the surety requirement still exists and the licensee would
5 be required to submit an acceptable replacement surety
6 within a brief period of time to allow at least 60 days for
7 the regulatory agency to collect.

8
9 Proof of forfeiture shall not be necessary to collect the
10 surety so that in the event that the licensee could not
11 provide an acceptable replacement surety within the required
12 time, the surety shall be automatically collected prior to
13 its expiration. The conditions described above would have
14 to be clearly stated on any surety instrument which is not
15 open-ended and must be agreed to by all parties.

16
17 3.9.5.6

18 The term of the financial assurance arrangement shall be for
19 the period from issuance of the license until termination of
20 the license by the Department, unless it can be demonstrated
21 that another arrangement would provide an equivalent level
22 of assurance. THE LICENSEE SHALL MAINTAIN IN EFFECT ALL
23 DECOMMISSIONING FINANCIAL ASSURANCES ESTABLISHED BY THE
24 LICENSEE, PURSUANT TO SECTION 3.9.5 OF THIS PART, IN
25 CONJUNCTION WITH A LICENSE ISSUANCE, AMENDMENT OR RENEWAL.
26 THE AMOUNT OF FINANCIAL ASSURANCE MUST BE INCREASED OR
27 DECREASED, AS APPROPRIATE, TO COVER THE DETAILED COST
28 ESTIMATE FOR DECOMMISSIONING ESTABLISHED PURSUANT TO SECTION
29 3.9.5.3 OF THIS PART. ANY LICENSEE WHO

D R A F T

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40. 9207
1 HAS NOT PROVIDED FINANCIAL ASSURANCE TO COVER THE DETAILED
2 COST ESTIMATE SUBMITTED WITH THE DECOMMISSIONING PLAN SHALL
3 DO SO WHEN THIS RULE BECOMES EFFECTIVE ~~JANUARY 1, 1997~~.
4 FOLLOWING APPROVAL OF THE DECOMMISSIONING PLAN, A LICENSEE
5 MAY REDUCE THE AMOUNT OF FINANCIAL ASSURANCE AS
6 DECOMMISSIONING PROCEEDS AND WITH THE APPROVAL OF THE
7 DEPARTMENT.
8
9
10
11
12
13

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3.15.4 NOTICE AND DISPOSITION OF RECORDS PRIOR TO LICENSE TERMINATION.

Each licensee shall notify the Department in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license.

3.15.4.1 PRIOR TO LICENSE TERMINATION, EACH LICENSEE AUTHORIZED TO POSSESS RADIOACTIVE MATERIAL WITH A HALF-LIFE GREATER THAN 120 DAYS, IN AN UNSEALED FORM, SHALL FORWARD THE FOLLOWING RECORDS TO THE DEPARTMENT.

3.15.4.1.1 RECORDS OF DISPOSAL OF LICENSED MATERIAL MADE UNDER RH 4.34, 4.35, 4.36, 4.37; AND

3.15.4.1.2 RECORDS REQUIRED BY RH 4.42.

3.15.4.2 IF LICENSED ACTIVITIES ARE TRANSFERRED OR ASSIGNED IN ACCORDANCE WITH RH 3.15.2, EACH LICENSEE AUTHORIZED TO POSSESS RADIOACTIVE MATERIAL, WITH A HALF-LIFE GREATER THAN 120 DAYS, IN AN UNSEALED FORM, SHALL TRANSFER THE RECORDS

(REQUIRED IN RH 3.15.4.1 TO THE NEW LICENSEE AND THE NEW LICENSEE WILL BE RESPONSIBLE FOR MAINTAINING THESE RECORDS UNTIL THE LICENSE IS TERMINATED.

3.15.4.3 PRIOR TO LICENSE TERMINATION, EACH LICENSEE SHALL FORWARD THE RECORDS REQUIRED BY RH 3.16.6.8 TO THE DEPARTMENT.

3.16.6.8

DECOMMISSIONING RECORDKEEPING

ref 30.35(g)

*vs
license
terminated*

THE LICENSEE SHALL KEEP RECORDS OF INFORMATION IMPORTANT TO THE DECOMMISSIONING OF A FACILITY IN AN IDENTIFIED LOCATION UNTIL THE SITE IS RELEASED FOR UNRESTRICTED USE. BEFORE LICENSED ACTIVITIES ARE TRANSFERRED OR ASSIGNED IN ACCORDANCE WITH RH 3.15.2, LICENSEES SHALL TRANSFER ALL RECORDS DESCRIBED IN THIS PARAGRAPH TO THE NEW LICENSEE. IN THIS CASE, THE NEW LICENSEE WILL BE RESPONSIBLE FOR MAINTAINING THESE RECORDS UNTIL THE LICENSE IS TERMINATED. IF RECORDS IMPORTANT TO THE DECOMMISSIONING OF A FACILITY ARE KEPT FOR OTHER PURPOSES, REFERENCE TO THESE RECORDS AND THEIR LOCATIONS MAY BE USED. INFORMATION CONSIDERED IMPORTANT TO DECOMMISSIONING CONSISTS OF:

3.16.6.8.1

RECORDS OF SPILLS OR OTHER UNUSUAL OCCURRENCES INVOLVING THE SPREAD OF CONTAMINATION IN AND AROUND THE FACILITY, EQUIPMENT, OR SITE. THESE RECORDS MAY BE LIMITED TO INSTANCES WHEN CONTAMINATION REMAINS AFTER ANY CLEANUP PROCEDURES OR WHEN THERE IS REASONABLE LIKELIHOOD THAT CONTAMINANTS MAY HAVE SPREAD TO INACCESSIBLE AREAS AS IN THE CASE OF POSSIBLE SEEPAGE INTO POROUS MATERIALS SUCH AS CONCRETE. THESE RECORDS MUST INCLUDE ANY KNOWN INFORMATION ON IDENTIFICATION OF INVOLVED NUCLIDES, QUANTITIES, FORMS AND CONCENTRATIONS.

3.16.6.8.2

AS-BUILT DRAWINGS AND MODIFICATIONS OF STRUCTURES AND EQUIPMENT IN RESTRICTED AREAS WHERE RADIOACTIVE MATERIALS ARE USED AND/OR STORED, AND OF LOCATIONS OF POSSIBLE

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1 INACCESSIBLE CONTAMINATION SUCH AS BURIED PIPES WHICH MAY BE
2 SUBJECT TO CONTAMINATION. IF REQUIRED DRAWINGS ARE
3 REFERENCED, EACH RELEVANT DOCUMENT NEED TO BE INDEXED
4 INDIVIDUALLY. IF DRAWINGS ARE NOT AVAILABLE, THE LICENSEE
5 SHALL SUBSTITUTE APPROPRIATE RECORDS OF AVAILABLE
6 INFORMATION CONCERNING THESE AREAS AND LOCATIONS.
7

8 3.16.6.8.3 EXCEPT FOR AREAS CONTAINING ONLY SEALED SOURCES (PROVIDED
9 THE SOURCES HAVE NOT LEAKED OR NO CONTAMINATION REMAINS
10 AFTER ANY LEAK) OR BYPRODUCT MATERIALS HAVING ONLY HALF-
11 LIVES OF LESS THAN 65 DAYS, A LIST CONTAINED IN A SINGLE
12 DOCUMENT AND UPDATED EVERY 2 YEARS, OF THE FOLLOWING:
13

*need
equivalent
for 40.36
(FX)(3)
added*

14 3.16.6.8.3.1 ALL AREAS DESIGNATED AND FORMERLY DESIGNATED
15 RESTRICTED AREAS AS DEFINED IN RH 1.4;
16

17 3.16.6.8.3.2 ALL AREAS OUTSIDE OF RESTRICTED AREAS THAT
18 REQUIRE DOCUMENTATION UNDER RH 3.16.6.8.1;
19

20 3.16.6.8.3.3 ALL AREAS OUTSIDE OF RESTRICTED AREAS WHERE CURRENT
21 AND PREVIOUS WASTES HAVE BEEN BURIED AS DOCUMENTED
22 UNDER RH 4.48; AND
23

24 3.16.6.8.3.4 ALL AREAS OUTSIDE OF RESTRICTED AREAS WHICH CONTAIN
25 MATERIAL SUCH THAT, IF THE LICENSE EXPIRED, THE
26 LICENSEE WOULD BE REQUIRED TO EITHER DECONTAMINATE THE
27 AREA TO UNRESTRICTED RELEASE LEVELS OR APPLY FOR
28 APPROVAL FOR DISPOSAL UNDER RH 4.34.
29
30

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3.16.6.8.3.5 A LIST CONTAINING THE LOCATION AND DESCRIPTION OF ALL
EQUIPMENT TO REMAIN ONSITE AFTER LICENSE TERMINATION
THAT WAS CONTAMINATED WHEN FINAL DECOMMISSIONING WAS
INITIATED; AND

3.16.6.8.3.6 ANY OTHER INFORMATION NOT REQUIRED BY RH 3.16.6.8.3
THAT IS CONSIDERED NECESSARY TO SUPPORT THE ADEQUACY
OF THE DECOMMISSIONING PLAN FOR APPROVAL.

3.16.6.8.4 RECORDS OF THE COST ESTIMATE PERFORMED FOR THE DECOMMISSIONING
FUNDING PLAN OR OF THE AMOUNT CERTIFIED FOR DECOMMISSIONING, AND
RECORDS OF THE FUNDING METHOD USED FOR ASSURING FUNDS IF EITHER A
FUNDING PLAN OR CERTIFICATION IS USED.

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ref. Part 30, Appendix A

PART 3

APPENDIX A

CRITERIA RELATING TO USE OF FINANCIAL
TESTS AND PARENT COMPANY GUARANTEES FOR
PROVIDING REASONABLE ASSURANCE
OF FUNDS FOR DECOMMISSIONING

I. INTRODUCTION

AN APPLICANT OR LICENSEE MAY PROVIDE REASONABLE ASSURANCE OF THE
AVAILABILITY OF FUNDS FOR DECOMMISSIONING BASED ON OBTAINING A PARENT
COMPANY GUARANTEE THAT FUNDS WILL BE AVAILABLE FOR DECOMMISSIONING COSTS
AND ON A DEMONSTRATION THAT THE PARENT COMPANY PASSES A FINANCIAL TEST.
THIS APPENDIX ESTABLISHES CRITERIA FOR PASSING THE FINANCIAL TEST AND
FOR OBTAINING THE PARENT COMPANY GUARANTEE.

II. FINANCIAL TEST

A. TO PASS THE FINANCIAL TEST, THE PARENT COMPANY MUST MEET THE
CRITERIA OF EITHER PARAGRAPH A.1. OR A.2. OF THIS SECTION:

1. THE PARENT COMPANY MUST HAVE:

(I) TWO OF THE FOLLOWING THREE RATIOS: A RATIO OF TOTAL
LIABILITIES TO NET WORTH LESS THAN 2.0; A RATIO OF THE

SUM OF NET INCOME PLUS DEPRECIATION, DEPLETION, AND
AMORTIZATION TO TOTAL LIABILITIES GREATER THAN 0.1;
AND RATIO OF CURRENT ASSETS TO CURRENT LIABILITIES
GREATER THAN 1.5; AND

(II) NET WORKING CAPITAL AND TANGIBLE NET WORTH EACH AT
LEAST SIX TIMES THE CURRENT DECOMMISSIONING COST
ESTIMATES (OR PRESCRIBED AMOUNT IF A CERTIFICATION IS
USED); AND

(III) TANGIBLE NET WORTH OF AT LEAST \$10 MILLION; AND

(IV) ASSETS LOCATED IN THE UNITED STATES AMOUNTING TO AT
LEAST 90 PERCENT OF TOTAL ASSETS OR AT LEAST SIX TIMES
THE CURRENT DECOMMISSIONING COST ESTIMATES (OR
PRESCRIBED AMOUNT IF A CERTIFICATION IS USED).

2. THE PARENT COMPANY MUST HAVE:

(I) A CURRENT RATING FOR ITS MOST RECENT BOND ISSUANCE OF
AAA, AA, A, OR BBB AS ISSUED BY STANDARD AND POOR'S OR
AAA, AA, A, OR BAA AS ISSUED BY MOODY'S; AND

(II) TANGIBLE NET WORTH AT LEAST SIX TIMES THE CURRENT
DECOMMISSIONING COST ESTIMATE (OR PRESCRIBED AMOUNT IF
A CERTIFICATION IS USED); AND

(III) TANGIBLE NET WORTH OF AT LEAST \$10 MILLION; AND

(IV) ASSETS LOCATED IN THE UNITED STATES AMOUNTING TO AT
LEAST 90 PERCENT OF TOTAL ASSETS OR AT LEAST SIX TIMES
THE CURRENT DECOMMISSIONING COST ESTIMATES (OR
PRESCRIBED AMOUNT IF CERTIFICATION IS USED).

B. THE PARENT COMPANY'S INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT MUST
HAVE COMPARED THE DATA USED BY THE PARENT COMPANY IN THE FINANCIAL
TEST, WHICH IS DERIVED FROM INDEPENDENTLY AUDITED, YEAR END
FINANCIAL STATEMENTS FOR THE LATEST FISCAL YEAR, WITH THE AMOUNTS
IN SUCH FINANCIAL STATEMENT. IN CONNECTION WITH THAT PROCEDURE
THE LICENSEE SHALL INFORM THE DEPARTMENT WITHIN 90 DAYS OF ANY
MATTERS COMING TO THE AUDITOR'S ATTENTION WHICH CAUSE THE AUDITOR
TO BELIEVE THAT THE DATA SPECIFIED IN THE FINANCIAL TEST SHOULD BE
ADJUSTED AND THAT THE COMPANY NO LONGER PASSES THE TEST.

C. 1. AFTER THE INITIAL FINANCIAL TEST, THE PARENT COMPANY MUST
REPEAT THE PASSAGE OF THE TEST WITHIN 90 DAYS AFTER THE
CLOSE OF EACH SUCCEEDING FISCAL YEAR.

2. IF THE PARENT COMPANY NO LONGER MEETS THE REQUIREMENTS OF
PARAGRAPH A OF THIS SECTION, THE LICENSEE MUST SEND NOTICE
TO THE DEPARTMENT OF INTENT TO ESTABLISH ALTERNATE FINANCIAL
ASSURANCE AS SPECIFIED IN THE DEPARTMENT'S REGULATIONS. THE
NOTICE MUST BE SENT BY CERTIFIED MAIL WITHIN 90 DAYS AFTER
THE END OF THE FISCAL YEAR FOR WHICH THE YEAR END FINANCIAL
DATA SHOW THAT THE PARENT COMPANY NO LONGER MEETS THE
FINANCIAL TEST REQUIREMENTS. THE LICENSEE MUST PROVIDE
ALTERNATE FINANCIAL ASSURANCE WITHIN 120 DAYS AFTER THE END
OF SUCH FISCAL YEAR.

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1 III. PARENT COMPANY GUARANTEE

2
3 THE TERMS OF A PARENT COMPANY GUARANTEE WHICH AN APPLICANT OR LICENSEE
4 OBTAINS MUST PROVIDE THAT:

5
6 A. THE PARENT COMPANY GUARANTEE WILL REMAIN IN FORCE UNLESS THE
7 GUARANTOR SENDS NOTICE OF CANCELLATION BY CERTIFIED MAIL TO THE
8 LICENSEE AND THE DEPARTMENT. CANCELLATION MAY NOT OCCUR, HOWEVER,
9 DURING THE 120 DAYS BEGINNING ON THE DATE OF RECEIPT OF THE NOTICE
10 OF CANCELLATION BY BOTH THE LICENSEE AND THE DEPARTMENT, AS
11 EVIDENCED BY THE RETURN RECEIPTS.

12
13 B. IF THE LICENSEE FAILS TO PROVIDE ALTERNATE FINANCIAL ASSURANCE AS
14 SPECIFIED IN THE DEPARTMENT'S REGULATIONS WITHIN 90 DAYS AFTER
15 RECEIPT BY THE LICENSEE AND DEPARTMENT OF A NOTICE OF CANCELLATION
16 OF THE PARENT COMPANY GUARANTEE FROM THE GUARANTOR, THE GUARANTOR
17 WILL PROVIDE SUCH ALTERNATIVE FINANCIAL ASSURANCE IN THE NAME OF
18 THE LICENSEE.

19
*No C or D here
needed?
This was done for App B*

PART 3

APPENDIX B

ref. Part 30 Appendix B

CRITERIA RELATING TO USE OF
FINANCIAL TESTS AND SELF GUARANTEES FOR
PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING

I. INTRODUCTION

AN APPLICANT OR LICENSEE MAY PROVIDE REASONABLE ASSURANCE OF THE
AVAILABILITY OF FUNDS FOR DECOMMISSIONING BASED ON FURNISHING ITS OWN
GUARANTEE THAT FUNDS WILL BE AVAILABLE FOR DECOMMISSIONING COSTS AND ON
A DEMONSTRATION THAT THE COMPANY PASSES THE FINANCIAL TEST SECTION II OF
THIS APPENDIX. THE TERMS OF THIS SELF-GUARANTEE ARE IN SECTION III OF
THIS APPENDIX. THIS APPENDIX ESTABLISHES CRITERIA FOR PASSING THE
FINANCIAL TEST FOR THE SELF-GUARANTEE AND ESTABLISHES THE TERMS FOR A
SELF-GUARANTEE.

ok

II. FINANCIAL TEST

A. TO PASS THE FINANCIAL TEST, A COMPANY MUST MEET THE ALL OF THE
FOLLOWING CRITERIA:

1. A TANGIBLE NET WORTH OF AT LEAST TEN TIMES THE TOTAL CURRENT
DECOMMISSIONING COST ESTIMATE (OR THE CURRENT AMOUNT
REQUIRED IF CERTIFICATION IS USED) FOR ALL DECOMMISSIONING
ACTIVITIES FOR WHICH THE COMPANY IS RESPONSIBLE AS SELF-

1 GUARANTEEING LICENSEE AND AS PARENT-GUARANTOR.

2
3 2. ASSETS LOCATED IN THE UNITED STATES AMOUNTING TO AT LEAST 90
4 PERCENT OF TOTAL ASSETS OR AT LEAST TEN TIMES THE CURRENT
5 DECOMMISSIONING COST ESTIMATES (OR THE CURRENT AMOUNT
6 REQUIRED IF CERTIFICATION IS USED) FOR ALL DECOMMISSIONING
7 ACTIVITIES FOR WHICH THE COMPANY IS RESPONSIBLE AS SELF-
8 GUARANTIZING LICENSEE AND AS PARENT-GUARANTOR.

9
10 3. A CURRENT RATING FOR ITS MOST RECENT BOND ISSUANCE OF AAA,
11 AA, OR A AS ISSUED BY STANDARD AND POOR'S OR AAA, AA, OR A
12 AS ISSUED BY MOODY'S; AND

13
14 B. TO PASS THE FINANCIAL TEST, A COMPANY MUST MEET ALL OF
15 THE FOLLOWING ADDITIONAL REQUIREMENTS:

16
17 (1) THE COMPANY MUST HAVE AT LEAST ONE CLASS OF
18 EQUITY SECURITIES REGISTERED UNDER THE
19 SECURITIES EXCHANGE ACT OF 1934.

20
21 (2) THE COMPANY'S INDEPENDENT CERTIFIED PUBLIC
22 ACCOUNTANT MUST HAVE COMPARED THE DATA USED BY
23 THE COMPANY IN THE FINANCIAL TEST WHICH IS
24 DERIVED FROM THE INDEPENDENTLY AUDITED, YEAR END
25 FINANCIAL STATEMENTS FOR THE LATEST FISCAL YEAR,
26 WITH THE AMOUNTS IN SUCH FINANCIAL STATEMENT.
27 IN CONNECTION WITH THAT PROCEDURE, THE LICENSEE
28 SHALL INFORM THE DEPARTMENT WITHIN 90 DAYS OF
29 ANY MATTERS COMING TO THE ATTENTION OF THE

AUDITOR THAT CAUSE THE AUDITOR TO BELIEVE THAT
THE DATA SPECIFIED IN THE FINANCIAL TEST SHOULD
BE ADJUSTED AND THAT THE COMPANY NO LONGER
PASSES THE TEST.

- (3) AFTER THE INITIAL FINANCIAL TEST, THE COMPANY
MUST REPEAT PASSAGE OF THE TEST WITHIN 90 DAYS
AFTER THE CLOSE OF EACH SUCCEEDING FISCAL YEAR.

C. IF THE LICENSEE NO LONGER MEETS THE REQUIREMENTS OF SECTION
II.A. OF THIS APPENDIX, THE LICENSEE MUST SEND IMMEDIATE
NOTICE TO THE DEPARTMENT OF ITS INTENT TO ESTABLISH
ALTERNATE FINANCIAL ASSURANCE AS SPECIFIED IN THE
DEPARTMENT'S REGULATIONS WITHIN 120 DAYS OF SUCH NOTICE.

III. COMPANY SELF-GUARANTEE

THE TERMS OF A SELF-GUARANTEE WHICH AN APPLICANT OR LICENSEE FURNISHES
MUST PROVIDE THAT:

- A. THE GUARANTEE WILL REMAIN IN FORCE UNLESS THE LICENSEE SENDS
NOTICE OF CANCELLATION BY CERTIFIED MAIL TO THE DEPARTMENT.
CANCELLATION MAY NOT OCCUR, HOWEVER, DURING THE 120 DAYS BEGINNING
ON THE DATE OF RECEIPT OF THE NOTICE OF CANCELLATION BY THE
DEPARTMENT, AS EVIDENCED BY THE RETURN RECEIPT.
- B. THE LICENSEE SHALL PROVIDE ALTERNATIVE FINANCIAL ASSURANCE AS
SPECIFIED IN THE DEPARTMENT'S REGULATIONS WITHIN 90 DAYS FOLLOWING
RECEIPT BY THE DEPARTMENT OF A NOTICE OF CANCELLATION OF THE

1 GUARANTEE.

2
3 C. THE GUARANTEE AND FINANCIAL TEST PROVISIONS MUST REMAIN IN EFFECT
4 UNTIL THE DEPARTMENT HAS TERMINATED THE LICENSE OR UNTIL ANOTHER
5 FINANCIAL ASSURANCE METHOD ACCEPTABLE TO THE DEPARTMENT HAS BEEN
6 PUT IN EFFECT BY THE LICENSEE.

7
8 D. THE LICENSEE WILL PROMPTLY FORWARD TO THE DEPARTMENT AND THE
9 LICENSEE'S INDEPENDENT AUDITOR ALL REPORTS COVERING THE LATEST
10 FISCAL YEAR FILED BY THE LICENSEE WITH THE SECURITIES AND EXCHANGE
11 COMMISSION PURSUANT TO THE REQUIREMENTS OF SECTION 13 OF THE
12 SECURITIES AND EXCHANGE ACT OF 1934.

13
14 E. IF, AT ANY TIME, THE LICENSEE'S MOST RECENT BOND ISSUANCE CEASES
15 TO BE RATED IN ANY CATEGORY OF "A" OR ABOVE BY EITHER STANDARD AND
16 POORS AND MOODYS, THE LICENSEE WILL PROVIDE NOTICE IN WRITING OF
17 SUCH FACT TO THE DEPARTMENT WITHIN 20 DAYS AFTER PUBLICATION OF
18 THE CHANGE BY THE RATING SERVICE. IF THE LICENSEE'S MOST RECENT
19 BOND ISSUANCE CEASES TO BE RATED IN ANY CATEGORY OF A OR ABOVE BY
20 BOTH STANDARD AND POORS AND MOODYS, THE LICENSEE NO LONGER MEETS
21 THE REQUIREMENTS OF SECTION II.A. OF THIS APPENDIX.

22
23 F. THE APPLICANT OR LICENSEE MUST PROVIDE TO THE DEPARTMENT A WRITTEN
24 GUARANTEE (A WRITTEN COMMITMENT BY A CORPORATE OFFICER) WHICH
25 STATES THAT THE LICENSEE WILL FUND AND CARRY OUT THE REQUIRED
26 DECOMMISSIONING ACTIVITIES OR, UPON ISSUANCE OF AN ORDER BY THE
27 DEPARTMENT, THE LICENSEE WILL SET UP AND FUND A TRUST IN THE
28 AMOUNT OF THE CURRENT COST ESTIMATES FOR DECOMMISSIONING.