

WASTE MANAGEMENT AND RADIATION CONTROL BOARD
 Executive Summary
 Amendments to Rules R313-15, R313-19, R313-22, and R313-24
 December 10, 2015

<p>What is the issue before the Board?</p>	<p>This proposed change amends the appropriate sections of R313-15, <i>Standards for Protection Against Radiation</i>, R313-19, <i>Requirements of General Applicability to Licensing of Radioactive Material</i>, R313-22, <i>Specific Licenses</i>, and R313-24, <i>Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements</i>, by incorporating the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011 (76 FR 35512).</p>
<p>What is the historical background or context for this issue?</p>	<p>On June 17, 2011, the Nuclear Regulatory Commission adopted changes to 10 CFR Parts 20, 30 and 40. These regulations were adopted to improve decommissioning planning and thereby reduce the likelihood that any current operating facility will become a legacy site. The amended regulations require licensees to conduct their operations to minimize the introduction of residual radioactivity into the site, which includes the site's subsurface soil and groundwater.</p> <p>Licensees also may be required to perform site surveys to determine whether residual radioactivity is present in subsurface areas and to keep records of these surveys with records important for decommissioning. The amended regulations require licensees to report additional details in their decommissioning cost estimate, eliminate the escrow account and line of credit as approved financial assurance mechanisms and modify other financial assurance requirements. Changes to Utah rules are required to maintain compatibility with NRC rules and status as an Agreement State.</p>
<p>What is the governing statutory or regulatory citation?</p>	<p>The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain primacy from the federal government. The draft rule has also met all of the Department of Environmental Quality rulemaking procedures.</p>
<p>Is Board action required?</p>	<p>Yes, Board action is required to publish the draft rule in the <i>Utah State Bulletin</i> and start a 30-day public comment period.</p>
<p>What is the Division Director's recommendation?</p>	<p>The Director recommends that the Board approve the rule for publication in the <i>Utah State Bulletin</i> and commencement of a 30-day public comment period.</p>
<p>Where can more information be obtained?</p>	<p>For questions or additional information, please call Rusty Lundberg at (801) 536-4257.</p>

R313. Environmental Quality, Radiation Control.

R313-15. Standards for Protection Against Radiation.

R313-15-403. Criteria for License Termination Under Restricted Conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Section R313-15-402 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal; and

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) per year; and

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are:

(a) Funds placed into an account segregated from the licensee's assets outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment[as described in Subsection R313-22-35(6)(a)];

(b) ~~[Surety method, insurance, or other guarantee method as described in Subsection R313-22-35(6)(b);~~

~~—(e)—~~A statement of intent in the case of Federal, State, or local Government licensees, as described in Subsection R313-22-35(6)(d); or

~~(c)(d)~~ When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity; and

(4) The licensee has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4) and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee;

(A) Will provide reasonable assurance that the total effective dose equivalent from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (0.025 rem) total effective dose equivalent per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties; and

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; and

(b) In seeking advice on the issues identified in Subsection R313-15-403(4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the total effective dose equivalent from residual radioactivity

distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

- (a) one mSv (0.1 rem) per year; or
- (b) five mSv (0.5 rem) per year provided the licensee:
 - (i) Demonstrates that further reductions in residual radioactivity necessary to comply with the one mSv (0.1 rem) per year value of Subsection R313-15-403(5)(a) are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;
 - (ii) Makes provisions for durable institutional controls; and
 - (iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Subsection R313-15-403(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in Subsection R313-15-403(3).

R313-15-404. Alternate Criteria for License Termination.

(1) The Director may terminate a license using alternative criteria greater than the dose criterion of Section R313-15-402, and Subsections R313-15-403(2) and R313-15-403(4)(a)(i)(A), if the licensee:

- (a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the one mSv (0.1 rem) per year limit of Subsection R313-15-301(1)(a), by submitting an analysis of possible sources of exposure; and
- (b) Has employed, to the extent practical, restrictions on site use according to the provisions of Section R313-15-403 in minimizing exposures at the site; and
- (c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and
- (d) Has submitted a decommissioning plan or license termination plan to the Director indicating the licensee's intent to decommission in accordance with Subsection R313-22-36(4), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking such advice, the licensee shall provide for:
 - (i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning; and
 - (ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and
 - (iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(e) Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(2) The use of alternate criteria to terminate a license requires the approval of the Director after consideration of recommendations from the Division's staff, comments provided by federal, state and local governments, and any public comments submitted pursuant to Section R313-15-405.

R313-15-406. Minimization of Contamination.

(1) Applicants for licenses, other than renewals, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of waste.

(2) Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection

requirements in Section R313-15-101 and radiological criteria for license termination in Sections R313-15-1401 through R313-15-1406.

R313-15-501. Surveys and Monitoring - General.

(1) Each licensee or registrant shall make, or cause to be made, surveys of areas, including the subsurface, that:

- (a) ~~Are~~ May be necessary for the licensee or registrant to comply with Rule R313-15; and
- (b) Are ~~necessary~~ reasonable under the circumstances to evaluate:
 - (i) The magnitude and the extent of radiation levels; and
 - (ii) Concentrations or quantities of residual radioactive material; and
 - (iii) The potential radiological hazards of the radiation levels and residual radioactivity detected.

(2) Notwithstanding R313-15-1103(1), records from surveys describing the location and amount of subsurface residual radioactivity identified at the site shall be kept with records important for decommissioning, and such records shall be retained in accordance with R313-22-35(7), as applicable.

~~(2)~~(3) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated at intervals not to exceed 12 months for the radiation measured, except when a more frequent interval is specified in another applicable part of these rules or a license condition.

~~(3)~~(4) All personnel dosimeters, except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees and registrants to comply with Section R313-15-201, with other applicable provisions of these rules, or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

- (a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and
- (b) Approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

~~(4)~~(5) The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

KEY: radioactive materials, contamination, waste disposal, safety
Date of Enactment or Last Substantive Amendment: March 17, 2015
Notice of Continuation: December 3, 2012
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

NOTICE OF
PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 156913
 Utah Admin. Code ref. (R no.): R313-15

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Radiation Control
 Room no.: Third Floor
 Building:
 Street address 1: 195 N 1950 W
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84116-3085
 Mailing address 1: PO BOX 144850
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Standards for Protection Against Radiation.

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:
 As an agreement state Utah is required to have rules that are compatible with NRC rules. The rule changes are required to maintain compatibility.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

No Yes

Rule Summary

6. Summary of the rule or change:

Sets the assumed annual rate of return to be used in assessing sufficiency of financial assurance of trust funds. removes insurance or other guarantees as financial assurance options. Adds a condition for termination of having sufficient financial assurance. Adds an operating standard that requires that operations will be conducted to minimize introduction of residual radioactivity to the site. Requires site surveys to include the subsurface. Changes "necessary" to "reasonable." Sets recording keeping requirements for site surveys.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

The rule changes will not require any state resources above that already required to review licenses.

B) Local government:

Affected: No Yes

No local governments will be affected by the rule change

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

The rule change will not affect small business as they do not handle radioactive material of the type covered by the rule. The NRC in its rulemaking that necessitated the change in Utah rule noted that small business were not affected.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The rule change will not affect persons other than businesses.

Compliance Cost Information

8. Compliance costs for affected persons:

Changes in this rule along with changes in R313-19, R313-22, and R313-24 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,00 over a 15 year period or \$1,333 per year.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

Changes in this rule along with changes in R313-19, R313-22, and R313-24 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,00 over a 15 year period or \$1,333 per

year. The number of businesses affected in Utah is unknown but is estimated to be less than 10 for a total cost per year of \$13,333.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
 State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601 (3); Article IV) :
 19-6-107, 19-3-104

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

<p style="text-align: center;">Official Title of Materials Incorporated (from title page)</p> <p style="text-align: center;">Publisher</p> <p style="text-align: center;">Date Issued (mm/dd/yyyy)</p> <p style="text-align: center;">Issue, or version (including partial dates)</p> <p style="text-align: center;">ISBN Number</p> <p style="text-align: center;">ISSN Number</p> <p style="text-align: center;">Cost of Incorporated Reference</p> <p style="text-align: center;">Adds, updates, removes-- SELECT ONE --</p>

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 02/01/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 02/08/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative

Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
radioactive materials, contamination, safety, waste disposal

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Alan Matheson Executive Director	Date (mm/dd/yyyy): 11/04/2015
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R313. Environmental Quality, Radiation Control.

R313-19. Requirements of General Applicability to Licensing of Radioactive Material.

R313-19-34. Terms and Conditions of Licenses.

(1) Licenses issued pursuant to Rule R313-19 shall be subject to provisions of the Act, now or hereafter in effect, and to all rules, and orders of the Director.

(2) (a) Licenses issued or granted under Rules R313-21 and R313-22 and rights to possess or utilize radioactive material granted by a license issued pursuant to Rules R313-21 and R313-22 shall not be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of a license to a person unless the Director shall, after securing full information find that the transfer is in accordance with the provisions of the Act now or hereafter in effect, and to all rules, and orders of the Director, and shall give his consent in writing.

(b) An application for transfer of license shall include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by R313-22-35.

(3) Persons licensed by the Director pursuant to Rules R313-21 and R313-22 shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(4) Licensees shall notify the Director in writing and request termination of the license when the licensee decides to terminate activities involving materials authorized under the license.

(5) Licensees shall notify the Director in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11, Bankruptcy, of the United States Code by or against:

(a) the licensee;

(b) an entity, as that term is defined in 11 USC 101(15), controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate, as that term is defined in 11 USC 101(2), of the licensee.

(6) The notification specified in Subsection R313-19-34(5) shall indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

(7) Licensees required to submit emergency plans pursuant to Subsection R313-22-32(8) shall follow the emergency plan approved by the Director. The licensee may change the approved plan without the Director's approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Director and to affected off-site response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the Director.

(8) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with Rule R313-32 (incorporating 10 CFR 35.204 by reference). The licensee shall record the results of each test and retain each record for three years after the record is made.

(9) Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(10) (a) Authorization under Subsection R313-22-32(9) to produce Positron Emission Tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, other Federal, and State requirements governing radioactive drugs.

(b) A licensee authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in Subsection R313-22-75(9)(a)(iv) for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in Subsection R313-22-75(9)(c).

(c) A licensee that is a pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(i) an authorized nuclear pharmacist that meets the requirements in Subsection R313-22-75(9)(b)(ii); or

(ii) an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(d) A pharmacy authorized under Subsection R313-22-32(9) to produce PET radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subsection R313-22-75(9)(b)(v).

KEY: license, reciprocity, transportation, exemptions

Date of Enactment or Last Substantive Amendment: Jun 16, 2015

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

NOTICE OF
PROPOSED RULE AMENDMENT

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- Please address questions regarding information on this notice to the agency.
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Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 156884
 Utah Admin. Code ref. (R no.): R313-19-34

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Radiation Control
 Room no.: Third Floor
 Building:
 Street address 1: 195 N 1950 W
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84116-3085
 Mailing address 1: PO BOX 144850
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Terms and Conditions of Licenses.

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:
 Incorporate changes to the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011 (76 FR 35512). As an agreement state Utah is required to have rules that are compatible with corresponding NRC regulations. The rule changes are required to maintain compatibility.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

No Yes

Rule Summary

6. Summary of the rule or change:

The changes add requirements for license transfer including technical and financial qualifications.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

The rule changes will not require any state resources above that already required to review licenses.

B) Local government:

Affected: No Yes

No local governments will be affected by the rule change.

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

The rule change will not affect small business as they do not handle radioactive material of the type covered by the rule. The NRC in its rulemaking that necessitated the change in Utah rule noted that small businesses were not affected.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

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Compliance Cost Information

8. Compliance costs for affected persons:

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Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

Changes in this rule along with changes in R313-15, R313-22, and R313-24 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,000 over a 15 year period or \$1,333 per year. The number of businesses affected in Utah is unknown but is estimated to be less than 10 for a total cost per year of \$13,333.

B) Name and title of department head commenting on the fiscal impacts:
 Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
 State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601 (3); Article IV) :
 19-6-107, 19-3-104

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page) Publisher Date Issued (mm/dd/yyyy) Issue, or version (including partial dates) ISBN Number ISSN Number Cost of Incorporated Reference Adds, updates, removes-- SELECT ONE --
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Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 02/01/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 02/08/2016

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Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
license, decommissioning, transportation, radiation

File Information

15. Attach an RTF document containing the text of this rule change (filename):
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To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 10/21/2015
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R313. Environmental Quality, Radiation Control.

R313-22. Specific Licenses.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, [2010]2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

~~(g)~~(g) Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)~~(g)~~(h), shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)~~(g)~~(h), shall submit a decommissioning funding plan to the Director as a part of the license application.

~~(h)~~(h) Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

~~(i)~~(i) Documents provided to the Director under Subsection R313-22-35(3)~~(g)~~(h) shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one: \$1,125,000

Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R

divided by 10^4 is less than or equal to one: \$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one: \$113,000

~~[(5) A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed 3 years. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).]~~

(5) (a) Each decommissioning funding plan shall be submitted for review and approval and shall contain -

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

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

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6) (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(b) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

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

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. 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 Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 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 Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

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

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

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

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) 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.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) 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 a ratio of current assets to current liabilities greater than 1.5;

(B) 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;

(C) Tangible net worth of at least \$10 million; and

(D) 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; or

(ii) The parent company shall have all of the following:

(A) 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;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least \$10 million; and

(D) 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 shall have compared the data used by the parent company in the financial test, which is derived from the 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 Director 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)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall 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 shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth 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-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or 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-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of 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; and

(iii) After the initial financial test, the company shall 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 Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: October 21, 2014

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

NOTICE OF
PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 156920
 Utah Admin. Code ref. (R no.): R313-22

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Radiation Control
 Room no.: Third Floor
 Building:
 Street address 1: 195 N 1950 W
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84116-3085
 Mailing address 1: PO BOX 144850
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Specific Licenses

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:
 As an agreement state Utah is required to have rules that are compatible with NRC rules. The rule changes are required to maintain compatibility.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

No Yes

Rule Summary

6. Summary of the rule or change:

Clarify the conditions under which a licensee must submit a decommissioning funding plan.
Clarify the contents of a decommissioning plan.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

The rule changes will not require any state resources above that already required to review licenses.

B) Local government:

Affected: No Yes

No local governments will be affected by the rule change

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

The rule change will not affect small business as they do not handle radioactive material of the type covered by the rule. The NRC in its rulemaking that necessitated the change in Utah rule noted that small business were not affected.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The rule change will not affect persons other than businesses.

Compliance Cost Information

8. Compliance costs for affected persons:

Changes in this rule along with changes in R313-15, R313-19, and R313-24 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,00 over a 15 year period or \$1,333 per year.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

Changes in this rule along with changes in R313-15, R313-19, and R313-24 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,00 over a 15 year period or \$1,333 per year. The number of businesses affected in Utah is unknown but is estimated to be less than 10 for a total cost per year of \$13,333.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
 State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601 (3); Article IV) :
 19-6-107, 19-3-104

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

<p style="text-align: center;">Official Title of Materials Incorporated (from title page) Publisher Date Issued (mm/dd/yyyy) Issue, or version (including partial dates) ISBN Number ISSN Number Cost of Incorporated Reference Adds, updates, removes-- SELECT ONE --</p>

Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 02/01/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 02/08/2016
 NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
specific licenses, decommissioning, radioactive material, broad scope

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee,
and title:

Alan Matheson
Executive Director

Date 11/04/2015
(mm/dd/yyyy):

R313. Environmental Quality, Radiation Control.

R313-24. Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.

R313-24-1. Purpose and Authority.

(1) The purpose of this rule is to prescribe requirements for possession and use of source material in milling operations such as conventional milling, in-situ leaching, or heap-leaching. The rule includes requirements for the possession of byproduct material, as defined in Section R313-12-3 (see "byproduct material" definition (b)), from source material milling operations, as well as, possession and maintenance of a facility in standby mode. In addition, requirements are prescribed for the receipt of byproduct material from other persons for possession and disposal. The rule also prescribes requirements for receipt of byproduct material from other persons for possession and disposal incidental to the byproduct material generated by the licensee's source material milling operations.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-24 are in addition to, and not substitution for, the other applicable requirements of Title R313. In particular, the provisions of Rules R313-12, R313-15, R313-18, R313-19, R313-21, R313-22, and R313-70 apply to applicants and licensees subject to Rule R313-24.

(4) See R313-17-4 for special procedures for decisions associated with licenses for activity which results in the production or disposal of byproduct material.

R313-24-2. Scope.

(1) The requirements in Rule R313-24 apply to source material milling operations, byproduct material, and byproduct material disposal facilities.

R313-24-3. Environmental Analysis.

(1) Each new license application, renewal, or major amendment shall contain an environmental report describing the proposed action, a statement of its purposes, and the environment affected. The environmental report shall present a discussion of the following:

(a) An assessment of the radiological and nonradiological impacts to the public health from the activities to be conducted pursuant to the license or amendment;

(b) An assessment of any impact on waterways and groundwater resulting from the activities conducted pursuant to the license or amendment;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to the license or amendment; and

(d) Consideration of the long-term impacts including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to the license or amendment.

(2) Commencement of construction prior to issuance of the license or amendment shall be grounds for denial of the license or amendment.

(3) The Director shall provide a written analysis of the environmental report which shall be available for public notice and comment pursuant to R313-17-2.

R313-24-4. Clarifications or Exceptions.

For the purposes of Rule R313-24, 10 CFR 40.2a through 40.4; 40.12; 40.20(a); 40.21; 40.26(a) through (c); 40.31(h); the introductory paragraph of 40.36 and 40.36(a),(b),(d) and (f); 40.41(c); the introduction to 40.42(k) and 40.42(k)(3)(i); ~~40.46~~; 40.61(a) and (b); 40.65; and Appendix A to Part 40 (2015) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion and substitution of the following:

(a) Exclude 10 CFR 40.26(c)(1) and replace with "(1) The provisions of Sections R313-12-51, R313-12-52, R313-12-53, R313-19-34, R313-19-50, R313-19-61, R313-24-1, Rules R313-14, R313-15, R313-18, and R313-24 (incorporating 10 CFR 40.2a, 40.3, 40.4, and 40.26 by reference)";

(b) In Appendix A to 10 CFR 40, exclude Criterion 5B(1) through 5H, Criterion 7A, Criterion 13, and replace the excluded Criterion with "Utah Administrative Code, R317-6, Ground Water Quality Protection"; and

(c) In Appendix A to 10 CFR 40, exclude Criterion 11A through 11F and Criterion 12;

- (2) The substitution of the following:
- (a) "10 CFR 40" for reference to "this part" as found throughout the incorporated text;
 - (b) "Director" for reference to "Commission" in the first and fourth references contained in 10 CFR 40.2a, in 10 CFR 40.3, 40.20(a), 40.26, 40.36(f), 40.41(c), 40.46 (a), 40.61, and 40.65; and "Director" for reference to "NRC" in 10 CFR 40.36(b);
 - (c) "Rules R313-19, R313-21, or R313-22" for "Section 62 of the Act" as found in 10 CFR 40.12(a);
 - (d) "Rule R313-15-402" for reference to "10 CFR 20.1402" and "Rule R313-15-403" for reference to "10 CFR 20.1403" in 10 CFR 40.36(d);
 - (e) "Rule R313-15-1109" for reference to "10 CFR 20.2108" in 10 CFR 40.36(f);
 - ~~(f)~~(f) "Rules R313-21 or R313-22" for reference to "the regulations in this part" in 10 CFR 40.41(c);
 - ~~(e)~~(g) "Section R313-19-100" for reference to "part 71 of this chapter" as found in 10 CFR 40.41(c);
 - ~~(f)~~(h) In 10 CFR 40.42(k)(3)(i), "R313-15-401 through R313-15-406" for reference to "10 CFR part 20, subpart E";
 - ~~(g)~~(i) "source material milling" for reference to "uranium milling, in production of uranium hexafluoride, or in a uranium enrichment facility" as found in 10 CFR 40.65(a);
 - ~~(h)~~(j) "Director" for reference to "appropriate NRC Regional Office shown in Appendix D to 10 CFR part 20 of this chapter, with copies to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in 10 CFR 65(a)(1);
 - ~~(i)~~(k) "require the licensee to" for reference to "require to" in 10 CFR 40.65(a)(1); and
 - ~~(j)~~(l) In Appendix A to 10 CFR part 40, the following substitutions:
 - (i) "R313-12-3" for reference to "Sec. 20.1003 of this chapter" as found in 10 CFR 40.36(f) and in the first paragraph of the introduction to Appendix A;
 - (ii) "Utah Administrative Code, Rule R317-6, Ground Water Quality Protection" for ground water standards in "Environmental Protection Agency in 40 CFR part 192, subparts D and E" as found in the Introduction, paragraph 4; or "Environmental Protection Agency in 40 CFR part 192, subparts D and E (48 FR 45926; October 7, 1983)" as found in Criterion 5;
 - (iii) "Director as defined in Subsection 19-5-102(6)" for reference to "Commission" in the definition of "compliance period," in paragraph five of the introduction and in Criterion 5A(3);
 - (iv) "Director" for reference to "Commission" in the definition of "closure plan", in paragraph five of the introduction, and in Criteria 6(2), 6(4), 6(6), 6A(2), 6A(3), 9, and 10 of Appendix A;
 - (v) "license issued by the Director" for reference to "Commission license" in the definition of "licensed site," in the introduction to Appendix A;
 - (vi) "Director" for reference to "NRC" in Criterion 4D;
 - (vii) "representatives of the Director" for reference to "NRC staff" in Criterion 6(6);
 - (viii) "Director-approved" for reference to "Commission-approved" in Criterion 6A(1) and Criterion 9;
 - (ix) "Director" for reference to "appropriate NRC regional office as indicated in Criterion 8A" as found, Criterion 8, paragraph 2 or for reference to "appropriate NRC regional office as indicated in Appendix D to 10 CFR part 20 of this chapter, or the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555," as stated in Criterion 8A; and
 - (x) "Director" for reference to "the Commission or the State regulatory agency" in Criterion 9, paragraph 2.

KEY: environmental analysis, uranium mills, tailings, byproduct material

Date of Enactment or Last Substantive Amendment: June 16, 2015

Notice of Continuation: May 24, 2012

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

NOTICE OF
PROPOSED RULE AMENDMENT

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information

DAR file no: _____ Date filed: _____
 State Admin Rule Filing Key: 156980
 Utah Admin. Code ref. (R no.): R313-24

Agency Information

1. Agency: ENVIRONMENTAL QUALITY - Radiation Control
 Room no.: Third Floor
 Building:
 Street address 1: 195 N 1950 W
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84116-3085
 Mailing address 1: PO BOX 144850
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84114-4850

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Ralph Bohn	801-536-0212	801-536-0222	rbohn@utah.gov	

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements.

Notice Type

3. Type of notice: Amendment

Rule Purpose

4. Purpose of the rule or reason for the change:
 Incorporate changes to the federal decommissioning planning regulations promulgated by the Nuclear Regulatory Commission on June 17, 2011 (76 FR 35512). As an agreement state Utah is required to have rules that are compatible with corresponding NRC regulations. The rule changes are required to maintain compatibility.

Response Information

5. This change is a response to comments by the Administrative Rules Review Committee.

No Yes

Rule Summary

6. Summary of the rule or change:

The changes add requirements for license transfer including technical and financial qualifications.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

The rule changes will not require any state resources above that already required to review licenses.

B) Local government:

Affected: No Yes

No local governments will be affected by the rule change.

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

The rule change will not affect small business as they do not handle radioactive material of the type covered by the rule. The NRC in its rulemaking that necessitated the change in Utah rule noted that small businesses were not affected.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The rule change will not affect persons other than businesses.

Compliance Cost Information

8. Compliance costs for affected persons:

Changes in this rule along with changes in R313-15, R313-19, and R313-22 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,000 over a 15 year period or \$1,333 per year.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

Changes in this rule along with changes in R313-15, R313-19, and R313-22 are considered as one. Financial analysis done by the NRC for the federal rule that the Utah changes are based on stated that the cost to a affected person would be \$20,000 over a 15 year period or \$1,333 per year. The number of businesses affected in Utah is unknown but is estimated to be less than 10 for a total cost per year of \$13,333.

B) Name and title of department head commenting on the fiscal impacts:

Alan Matheson

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.
 State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601 (3); Article IV) :
 19-3-104, 19-6-107

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

Official Title of Materials Incorporated (from title page) Publisher Date Issued (mm/dd/yyyy) Issue, or version (including partial dates) ISBN Number ISSN Number Cost of Incorporated Reference Adds, updates, removes-- SELECT ONE --
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Comments

12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) : 02/01/2016

B) A public hearing (optional) will be held:

On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):

Proposed Effective Date

13. This rule change may become effective on (mm/dd/yyyy): 02/08/2016

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Indexing Information

14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
environmental analysis, uranium mills, byproduct material

File Information

15. Attach an RTF document containing the text of this rule change (filename):
There is a document associated with this rule filing.

To the Agency

Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.

Agency Authorization

Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 12/02/2015
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10 CFR Part 40

DOMESTIC LICENSING OF SOURCE MATERIAL

§40.36 Financial assurance and recordkeeping for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in appendix A of this part, criteria for providing financial assurance for decommissioning are as follows:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (d) of this section.

(b) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either—

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

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by June 2, 2005 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

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

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal. Licensees required to submit the \$1,125,000 amount must do so by December 2, 2004.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with §40.43 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(5) If, in surveys made under 10 CFR 20.1501(a), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the 10 CFR 20.1402 criteria for unrestricted use, the licensee must submit a decommissioning funding plan within one year of when the survey is completed.

(d)(1) Each decommissioning funding plan must be submitted for review and approval and must contain—

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the DCE;

(iii) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

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

(v) A signed original, or if permitted, a copy, of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this can not be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan, and must specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

- (vi) Actual remediation costs that exceed the previous cost estimate;
- (vii) Onsite disposal; and
- (viii) Use of a settling pond.

(e) The financial instrument must include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. When any of the foregoing information changes, the licensee must, within 30 days, submit financial instruments reflecting such changes. The financial instrument submitted must be a signed original or signed original duplicate, except where a copy is specifically permitted. Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit before the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment must be made into a trust account, and the trustee and the trust must be acceptable to the Commission.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30 of this chapter. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30 of this chapter. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30 of this chapter. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30 of this chapter. Except for an external sinking fund, a parent company guarantee or guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) *An external sinking fund in which deposits are made at least annually, coupled with a surety method, insurance, or other guarantee method, the value of which may decrease by the amount being accumulated in the sinking fund.* An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's

administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund must be in the form of a trust. If the other guarantee method is used, no surety or insurance may be combined with the external sinking fund. The surety, insurance, or other guarantee provisions must be as stated in paragraph (e)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (b) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a government entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such government entity.

(f) Each person licensed under this part 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 §40.41(b) licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when 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.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.1003;

(ii) All areas outside of restricted areas that require documentation under §40.36(f)(1);

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

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar quarter.

(2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days of the occurrence.

(3) Within 30 days of taking the actions required by paragraph (g)(1) or (g)(2) of this section, the licensee must provide a written report of such actions to the Director, Office of Nuclear Material Safety and Safeguards, and state the new balance of the fund.

[53 FR 24047, June 27, 1988, as amended at 58 FR 39633, July 26, 1993; 58 FR 67661, Dec. 22, 1993; 58 FR 68731, Dec. 29, 1993; 59 FR 1618, Jan. 12, 1994; 60 FR 38238, July 26, 1995; 61 FR 24674, May 16, 1996; 62 FR 39090, July 21, 1997; 63 FR 29543, June 1, 1998; 68 FR 57336, Oct. 3, 2003; 76 FR 35568, June 17, 2011; 78 FR 34247, June 7, 2013; 78 FR 75450, Dec. 12, 2013]

§40.46 Inalienability of licenses.

(a) No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of this act, and shall give its consent in writing.

(b) An application for transfer of license must include:

(1) The identity, technical and financial qualifications of the proposed transferee; and

(2) Financial assurance for decommissioning information required by §40.36 or Appendix A to this part, as applicable.

[26 FR 284, Jan. 14, 1961, as amended at 76 FR 35569, June 17, 2011]

10 CFR Part 40

DOMESTIC LICENSING OF SOURCE MATERIAL

§40.36 Financial assurance and recordkeeping for decommissioning.

Except for licenses authorizing the receipt, possession, and use of source material for uranium or thorium milling, or byproduct material at sites formerly associated with such milling, for which financial assurance requirements are set forth in appendix A of this part, criteria for providing financial assurance for decommissioning are as follows:

(a) Each applicant for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in paragraph (d) of this section.

(b) Each applicant for a specific license authorizing possession and use of quantities of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either—

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

(2) Submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by June 2, 2005 using one of the methods described in paragraph (e) of this section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section must be submitted to NRC prior to receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to NRC, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section.

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

(2) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (a) of this section shall submit a decommissioning funding plan as described in paragraph (d) of this section or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in this section. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal. Licensees required to submit the \$1,125,000 amount must do so by December 2, 2004.

(3) Each holder of a specific license issued before July 27, 1990, and of a type described in paragraph (b) of this section shall submit, on or before July 27, 1990, a decommissioning funding plan, as described in paragraph (d) of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in this section.

(4) Any licensee who has submitted an application before July 27, 1990, for renewal of license in accordance with §40.43 shall provide financial assurance for decommissioning in accordance with paragraphs (a) and (b) of this section. This assurance must be submitted when this rule becomes effective November 24, 1995.

(5) If, in surveys made under 10 CFR 20.1501(a), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the 10 CFR 20.1402 criteria for unrestricted use, the licensee must submit a decommissioning funding plan within one year of when the survey is completed.

(d)(1) Each decommissioning funding plan must be submitted for review and approval and must contain—

(i) A detailed cost estimate for decommissioning, in an amount reflecting:

(A) The cost of an independent contractor to perform all decommissioning activities;

(B) The cost of meeting the 10 CFR 20.1402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 10 CFR 20.1403, the cost estimate may be based on meeting the 10 CFR 20.1403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the DCE;

(iii) A description of the method of assuring funds for decommissioning from paragraph (e) of this section, including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

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

(v) A signed original, or if permitted, a copy, of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(2) At the time of license renewal and at intervals not to exceed 3 years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this can not be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan, and must specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

- (vi) Actual remediation costs that exceed the previous cost estimate;
- (vii) Onsite disposal; and
- (viii) Use of a settling pond.

(e) The financial instrument must include the licensee's name, license number, and docket number; and the name, address, and other contact information of the issuer, and, if a trust is used, the trustee. When any of the foregoing information changes, the licensee must, within 30 days, submit financial instruments reflecting such changes. The financial instrument submitted must be a signed original or signed original duplicate, except where a copy is specifically permitted. Financial assurance for decommissioning must be provided by one or more of the following methods:

(1) *Prepayment.* Prepayment is the deposit before the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment must be made into a trust account, and the trustee and the trust must be acceptable to the Commission.

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to part 30 of this chapter. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30 of this chapter. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30 of this chapter. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to part 30 of this chapter. Except for an external sinking fund, a parent company guarantee or guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(iii) The surety method or insurance must remain in effect until the Commission has terminated the license.

(3) *An external sinking fund in which deposits are made at least annually, coupled with a surety method, insurance, or other guarantee method, the value of which may decrease by the amount being accumulated in the sinking fund.* An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's

administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund must be in the form of a trust. If the other guarantee method is used, no surety or insurance may be combined with the external sinking fund. The surety, insurance, or other guarantee provisions must be as stated in paragraph (e)(2) of this section.

(4) In the case of Federal, State, or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on paragraph (b) of this section, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a government entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such government entity.

(f) Each person licensed under this part 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 §40.41(b) licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Commission considers important to decommissioning consists of—

(1) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when 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.

(2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.1003;

(ii) All areas outside of restricted areas that require documentation under §40.36(f)(1);

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

(iv) All areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in 10 CFR part 20, subpart E, or apply for approval for disposal under 10 CFR 20.2002.

(4) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(g) In providing financial assurance under this section, each licensee must use the financial assurance funds only for decommissioning activities and each licensee must monitor the balance of funds held to account for market variations. The licensee must replenish the funds, and report such actions to the NRC, as follows:

(1) If, at the end of a calendar quarter, the fund balance is below the amount necessary to cover the cost of decommissioning, but is not below 75 percent of the cost, the licensee must increase the balance to cover the cost, and must do so within 30 days after the end of the calendar quarter.

(2) If, at any time, the fund balance falls below 75 percent of the amount necessary to cover the cost of decommissioning, the licensee must increase the balance to cover the cost, and must do so within 30 days of the occurrence.

(3) Within 30 days of taking the actions required by paragraph (g)(1) or (g)(2) of this section, the licensee must provide a written report of such actions to the Director, Office of Nuclear Material Safety and Safeguards, and state the new balance of the fund.

[53 FR 24047, June 27, 1988, as amended at 58 FR 39633, July 26, 1993; 58 FR 67661, Dec. 22, 1993; 58 FR 68731, Dec. 29, 1993; 59 FR 1618, Jan. 12, 1994; 60 FR 38238, July 26, 1995; 61 FR 24674, May 16, 1996; 62 FR 39090, July 21, 1997; 63 FR 29543, June 1, 1998; 68 FR 57336, Oct. 3, 2003; 76 FR 35568, June 17, 2011; 78 FR 34247, June 7, 2013; 78 FR 75450, Dec. 12, 2013]

§40.46 Inalienability of licenses.

(a) No license issued or granted pursuant to the regulations in this part shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the Commission shall after securing full information, find that the transfer is in accordance with the provisions of this act, and shall give its consent in writing.

(b) An application for transfer of license must include:

(1) The identity, technical and financial qualifications of the proposed transferee; and

(2) Financial assurance for decommissioning information required by §40.36 or Appendix A to this part, as applicable.

[26 FR 284, Jan. 14, 1961, as amended at 76 FR 35569, June 17, 2011]