

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Directive 8.12, "Decommissioning Financial Assurance Instrument Security Program"

Purpose: Directive and Handbook 8.12 have been revised to reflect Commission organizational changes involving the Chief Financial Officer and to clarify the types of safes that can be used for storage of financial assurance instruments.

Office and Division of Origin: Office of Nuclear Material Safety and Safeguards

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Directive: 8.12 Decommissioning Financial Assurance Instrument Security Program

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Decommissioning Financial Assurance Instrument Security Program

**Directive
8.12**

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U. S. Nuclear Regulatory Commission

Volume: 8 Licensee Oversight Programs

NMSS

Decommissioning Financial Assurance Instrument Security Program Directive 8.12

Policy

(8.12-01)

It is the policy of the U.S. Nuclear Regulatory Commission to establish and implement a process for the security of and delegation of signature authority for drawing on decommissioning financial assurance instruments, submitted in accordance with applicable rules in Title 10 of the *Code of Federal Regulations* (10 CFR), and to perform periodic evaluations of these instruments, in its possession, to ensure they are safeguarded and complete.

Objectives

(8.12-02)

- To ensure that the accepted originally signed decommissioning financial assurance instruments, submitted in accordance with 10 CFR 30.35, 40.36, Appendix A to Part 40, 50.75, 61.63, 70.25, and 72.30, are safeguarded and to ensure their use is only for the purposes intended. (021)
- To ensure that decommissioning financial assurance instruments are readily available in the event that NRC must draw on them. (022)
- To ensure that the NRC signature authority for drawing on a decommissioning financial assurance instrument is unambiguously determined and, when needed, the appropriate individuals sign the needed documents. (023)
- To ensure that monies drawn on decommissioning financial assurance instruments are placed in standby trust accounts and not transferred directly to the NRC or other parties. (024)

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Objectives

(8.12-02) (continued)

- To ensure that decommissioning financial assurance instrument evaluations are performed to ascertain that the instruments are properly secured and are complete. (025)

Organizational Responsibilities and Delegations of Authority

(8.12-03)

Executive Director for Operations (EDO)

(031)

Establishes a process for decommissioning financial assurance instrument security and implements it by the decommissioning financial assurance instrument security (DFAIS) program. The program will include a process for evaluating the security and completeness of the instruments submitted.

Chief Financial Officer (CFO)

(032)

Approves the process established for decommissioning financial assurance instrument security.

Director, Office of Nuclear Material Safety and Safeguards (NMSS)

(033)

- Establishes the DFAIS program and jointly administers the program with the regional administrators. (a)
- Develops, approves, and maintains procedures governing the DFAIS program as it relates to licenses administered by NMSS. (b)
- Safeguards decommissioning financial assurance instruments for licenses managed within NMSS and is authorized to sign documents for drawing on instruments. This signature authority may not be delegated below the deputy office director level. (c)
- Designates decommissioning financial assurance instrument custodians (FAICs), alternate custodians (AFAICs), and FAIC managers, and ensures performance of appropriate program verifications. (d)

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**Director, Office of Nuclear Material
Safety and Safeguards (NMSS)**
(033) (continued)

- Provides guidance to decommissioning FAICs, AFAICs, and FAIC managers to ensure that instrument evaluations are properly performed. (e)

**Director, Office of Nuclear Reactor
Regulation (NRR)**
(034)

For licenses managed within NRR, is authorized to sign documents for drawing on instruments. This signature authority may not be delegated below the deputy office director level.

Regional Administrators
(035)

- Jointly administer the DFAIS with the Director, NMSS. (a)
- Maintain procedures governing the DFAIS program as it relates to the licenses administered by the respective regions. (b)
- Safeguard decommissioning financial assurance instruments for licenses managed within their region. The regional administrator is authorized to sign documents for drawing on instruments. This signature authority may not be delegated below the deputy regional administrator level. (c)
- Designate decommissioning FAICs, AFAICs, and FAIC managers, and ensure performance of appropriate program verifications. (d)
- Provide guidance to regional FAICs, AFAICs, and FAIC managers to ensure that instrument evaluations are properly performed. (e)

Applicability
(8.12-04)

The policy and guidance in this directive and handbook apply to all NRC employees.

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Handbook
(8.12-05)

Handbook 8.12 contains procedures for implementing decommissioning financial assurance instrument security. This document is not intended to deal with the mechanics of drawing on instruments.

References
(8.12-06)

Atomic Energy Act, Section 161.b, General Provisions.

—, Section 161.x.

Code of Federal Regulations, Energy, U.S. Government Printing Office, Washington: 1996 (See 10 CFR 30.35, 40.36, Appendix A to Part 40, 50.75, 61.63, 70.25 and 72.30).

Management Directive 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)."

Nuclear Waste Policy Act, Section 151, Financial Arrangements for Low-Level Radioactive Waste Site Closure.

NUREG-1199, "Standard Format and Content of a License Application for a Low-Level Radioactive Waste Disposal Facility," Chapter 10 (10 CFR Part 61), Rev. 1, January 1988.

NUREG-1200, "Standard Review Plan for the Review of a License Application for a Low-Level Radioactive Waste Disposal Facility," Chapter 10 (10 CFR Part 61), Rev. 3, April 1994.

NUREG-1337, "Standard Review Plan for the Review of Financial Assurance Mechanisms for Decommissioning under 10 CFR Parts 30, 40, 70, and 72," Rev. 1, August 1989.

Regulatory Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning under 10 CFR Parts 30, 40, 70, and 72," June 1990.

Technical Position on Financial Assurances for Reclamation, Decommissioning, and Long-Term Surveillance and Control of Uranium Recovery Facilities, October 1988 (10 CFR Part 40, Criteria 9 and 10 of Appendix A).

Decommissioning Financial Assurance Instrument Security Program

**Handbook
8.12**

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Decommissioning Financial Assurance Instrument Security Program

Purpose (A)

The U.S. Nuclear Regulatory Commission established technical and financial regulations for decommissioning licensed nuclear facilities (53 FR 24018; June 27, 1988) to ensure that the decommissioning of all licensed facilities will be accomplished in a safe and timely manner and that licensees will provide adequate funds to cover all costs associated with decommissioning. The regulations (10 CFR 30.35, 40.36, Appendix A to Part 40, 50.75, 61.63, 70.25, and 72.30) address decommissioning planning needs, timing, funding methods, and environmental requirements for public and private facilities. They further specify what financial instruments licensees may use to provide financial assurance. As a result of these regulations, the NRC receives financial assurance instruments that require safeguarding to permit ready retrieval when needed and to prevent unauthorized use. (1)

The decommissioning financial assurance instrument security (DFAIS) program provides procedures for the security of instruments submitted by materials and reactor licensees. The procedures prescribe the positions of specific individuals authorized to sign documents for drawing on decommissioning financial assurance instruments. They also address the transfer of monies drawn on instruments so that monies are placed in standby trusts or escrows, and are not transferred directly to the NRC or other parties. (2)

The program also provides for the designation of financial assurance instrument custodians (FAICs), alternate custodians (AFAICs), and FAIC managers to perform annual evaluations of financial assurance instruments. (3)

Security of Decommissioning Financial Assurance Instrument (B)

The Director of the Office of Nuclear Material Safety and Safeguards (NMSS) and the regional administrators have responsibility for safeguarding decommissioning financial assurance instruments submitted by licensees managed under their programs. These individuals shall designate in writing the decommissioning FAICs, AFAICs, and FAIC managers within their office or region. (1)

No one shall have access to the records other than through the FAICs, AFAICs, and FAIC managers. Their responsibilities follow. (2)

- **Decommissioning Financial Assurance Instrument Custodian (a)**

The FAIC is responsible for (i) ensuring that decommissioning financial assurance instruments are properly secured and (ii) maintaining instrument inventories and logs and performing annual verifications of instrument inventories (see Section (E) of this handbook).

- **Alternate Decommissioning Financial Assurance Instrument Custodian (b)**

The AFAIC is responsible for assisting the FAIC in maintaining instrument inventories and logs and performing annual verifications of instrument inventories (see Section (E) of this handbook).

- **FAIC Managers (c)**

Managers of FAICs are responsible for performing annual verifications of the DFAIS program and reporting the results to the office director or applicable regional administrator (see Section (E) of this handbook).

Licensing project managers or license reviewers are responsible for ensuring that the licensees they manage have submitted required decommissioning financial assurance instruments and that the instruments are acceptable to NRC. The licensing project managers or license reviewers will provide the originally signed decommissioning financial assurance instruments to the FAIC or AFAIC. The instruments must be stored in—(3)

Security of Decommissioning Financial Assurance Instrument (B) (continued)

- A fire-rated safe, defined as having at least a fire rating of 350 degrees for 1 hour (a)
- A fire-rated box, defined as having at least a fire rating of 350 degrees for 1 hour, and placed in a safe (b)
- In a security container (safe) for classified information as approved by the NRC Division of Facilities and Security (see Management Directive 12.1, "NRC Facility Security Program," handbook Part II(H)) (c)

Instruments must be stored in an organized manner so that instruments can be readily retrieved. (4)

Licensing project managers or license reviewers also shall provide a copy of the instrument for the licensing file. The file copies will be stamped "nonnegotiable" and the identification number of the instrument will be blacked-out. (5)

The Office Director, NMSS, and regional administrators shall designate in writing those individuals authorized to have access to the safe. (6)

Verification of the Decommissioning Financial Assurance Inventory (C)

The FAIC or AFAIC shall perform verifications annually of the decommissioning financial assurance inventory to ensure that none of the instruments has been removed from the safe without being properly accounted for. After the verification, the FAIC or AFAIC will prepare a report to the FAIC manager, providing the results of the verification, identifying any discrepancies, and recommending actions to correct the discrepancies.

Inventory List (1)

The FAIC or AFAIC shall maintain an inventory list of the decommissioning financial assurance instruments held in the safe. The inventory list must include—(a)

- The licensee name and license number (i)
- The type of instrument submitted (ii)

Verification of the Decommissioning Financial Assurance Inventory (C) (continued)

- The name of the entity issuing the instrument (iii)
- The issuer's designation of the instrument (usually a number) (iv)
- The amount of the instrument (v)
- The date of the instrument issuance, expiration date, and any amendments made to the original instrument (vi)

An example of an acceptable inventory list is provided in Exhibit 1. The inventory list must be controlled and must be so labeled. (b)

Inventory Log (2)

The FAIC or AFAIC shall maintain an inventory log of instrument removals from, and returns to, the safe. Removal of instruments from the safe must be for official use only (e.g., review by project manager, replacement). The inventory log must indicate the licensee, specifics about the instrument removed from or returned to the safe, the date and the signature of the person handling the inventory change, and reasons for the change. An example of an acceptable inventory log is provided in Exhibit 2.

Changed or Cancelled Financial Instruments (3)

When licensees change financial assurance instruments, licenses are terminated, or licensees fall below the possession limit thresholds requiring financial assurance, instruments must be returned to the licensee. When instruments are removed from the safe to be returned to the licensee, the licensing project manager or licensee reviewer shall be responsible for returning it to the licensee and documenting the transaction for the licensing file. (a)

A branch chief is the appropriate level of signature authority for returning financial assurance documents. A cancelled notation or stamp may be used with the appropriate signature affixed below it. All original, executed copies of the applicable financial assurance instrument that are no longer valid must be returned to the licensee. Copies of the transmittal letter also must be sent to the issuer of the instrument with copies in the licensing file. Inventory logs must be modified, as appropriate. When a licensee replaces one instrument with another, the new instrument must be fully reviewed and approved before returning the old instrument to the licensee. (b)

Signature for Decommissioning Financial Assurance Instrument (D)

The Directors, NMSS and NRR, and the regional administrators are authorized to sign documents for drawing on decommissioning financial assurance instruments for licenses under their program responsibilities. This signature authority may not be delegated below the deputy office director or deputy regional administrator level.

Annual Evaluations (E)

Evaluation of the Security of Decommissioning Financial Assurance Instruments (1)

The FAICs, or AFAICs, and FAIC managers shall verify that the financial assurance instruments are safeguarded in a container meeting the requirements specified in Section (B)(3) and that none of the instruments has been removed without being properly accounted for. The financial assurance inventory log will be used to identify any instruments that were not in the safe at the time of the evaluation. (a)

The evaluation will verify that access to the safe is limited and the names of the persons who have access to the safe. The evaluation will verify that the safe has a "security container check sheet" (SF 702), or equivalent, documenting that the safe is checked at least daily. (b)

Two evaluations will be conducted annually, one by the FAIC or AFAIC and one by the FAIC manager. This will constitute a portion of the evaluation report that the FAIC manager will provide to the applicable office director or regional administrator. (c)

Evaluation of the Decommissioning Financial Assurance Inventory (2)

The FAICs, or AFAICs, and FAIC managers will use the financial assurance inventory-controlled list to systematically verify whether the instruments provided on the controlled list are in the safe and whether the information related to the instruments is correct, up to date, and complete. (a)

A 100-percent evaluation will be performed of each financial assurance instrument in the safe to—(b)

- Ensure that the current inventory list is up to date and verify the complete instrument is in the safe (i)

Annual Evaluations (E) (continued)

Evaluation of the Decommissioning Financial Assurance Inventory (2) (continued)

- Ensure that the corporation name is correct and current on the inventory list (ii)
- Verify the instrument type and issue date is correct on the inventory list (iii)
- Verify the instrument amount is correct on the inventory list (iv)
- Verify the instrument amendments are present and the issue dates are correctly listed on the inventory list (v)
- Verify that all instrument documents that accompany the instrument are in the safe (vi)
- Verify that the instruments in the safe are the original executed documents or there is an acceptable replacement copy (vii)
- Verify that the name of the instrument issuer is correctly listed on inventory list (viii)
- Verify that the instrument number is correctly listed on inventory list (ix)
- Verify that a standby trust instrument has been submitted for all letters of credit and surety bonds (x)
- Verify the name of the standby trust trustee (xi)
- Verify that the certificate of events, certificate of resolution, trust agreement schedules, and letter of acknowledgment are included with the standby trust (xii)
- Verify that parent company guarantees include the parent guarantee, a letter from Chief Executive Officer of the licensee, a letter from Chief Financial Officer (CFO) of the corporate parent, a financial test using either Alternative I or Alternative II (see 10 CFR Part 30, Appendix A), and an auditor's special report by a certified public accountant reconciling amounts contained in the CFO's letter (xiii)

Annual Evaluations (E) (continued)

Evaluation of the Decommissioning Financial Assurance Inventory (2) (continued)

- Review the licensing tracking system (LTS) listing of licenses requiring decommissioning financial assurance (xiv)
- Ensure that there is a financial assurance instrument for all licenses required to have financial assurance (xv)
- Verify that the LTS has correct, updated information (xvi)

The results and any discrepancies in the financial assurance inventory also will constitute a portion of the evaluation report. (c)

Evaluation Report (3)

The FAIC manager shall prepare a report providing the results of the evaluation, identifying any discrepancies, and recommending actions to correct the discrepancies. A copy of the report must be provided to the office director or applicable regional administrator. All FAIC reports and management reviews must be provided to the Director, NMSS.

External Evaluations (4)

NRR shall evaluate the files of the Division of Waste Management and Division of Fuel Cycle Safety and Safeguards, NMSS, every 2 years. Results of the reviews must be provided to division management with copies to the Director, NMSS. (a)

The Division of Waste Management, NMSS, shall evaluate the regional programs every 2 years through the integrated materials performance evaluation process (IMPEP, see Management Directive 5.6). (b)

Types of Instruments (F)

The following are examples of the types of decommissioning financial assurance instruments the NRC accepts.

Letter of Credit. In an NRC letter of credit, the licensee is the account party, the financial institution is the issuer, and the NRC is the beneficiary. The issuer allows the beneficiary to draw funds upon presentation of the letter of credit in accordance with its terms. The

Types of Instruments (F) (continued)

purpose of an NRC letter of credit is to guarantee the availability of funds for certain activities. In general, these funds are deposited into a standby trust fund under the terms of the letter of credit. (1)

Surety Bond. A surety bond is a contract providing for monetary compensation or performance should there be a failure to perform any specific act within a specific period. Under the NRC regulations, a surety bond is a contract in which a surety company is liable for the default or debts of a licensee on certain responsibilities, such as for decommissioning. The surety agrees to satisfy these responsibilities if the licensee does not. In general, these funds are deposited into a standby trust fund under the terms of the bonds. (2)

Performance Bond. A performance bond is a type of surety bond under which the surety agrees either to pay the penal sum of the bond or to perform the required actions if the licensee fails to fulfill its obligation. (3)

Standby Trust Fund. Under NRC regulations, a standby trust fund is established to receive funds from a surety bond or letter of credit in the event that NRC draws on such instruments. A standby trust fund must accompany each surety bond or letter of credit because NRC lacks the authority to retain funds directly from a surety or bank. Instead, the funds are deposited in the standby trust fund and used at the direction of the NRC. (4)

Parent Company Guarantee. This is a document stating that the guarantor—the parent corporation—guarantees that it will meet all financial assurance obligations specified in the regulations. (5)

Trust Fund. A trust is a three-party agreement whereby one party, called the grantor (sometimes also called the trustor), transfers assets (often money) to a second party, called the trustee, to hold on behalf of a third party, called the beneficiary. In an NRC trust fund, the licensee is the grantor, a bank or other financial institution that fulfills the NRC requirements is the trustee, and NRC is the beneficiary. The licensee, as grantor, pays into the trust fund resources (such as cash or securities acceptable to the trustee) that are managed by the trustee and will be used to pay for the applicable activities. The licensee usually pays a fee for the trust services provided by the trustee. The arrangement is governed by a trust agreement that sets out the responsibilities and rights of each party. (6)

Types of Instruments (F) (continued)

Self-Guarantee. This is a document stating that the guarantor—the licensee itself—has demonstrated that it possesses the necessary financial strength and will meet all financial assurance obligations specified in the regulations. (7)

Statement of Intent. This document is allowed for use only by Federal, State, or local government licensees who may certify that the entity will request funds for decommissioning costs sufficiently in advance of decommissioning to prevent the delay of the required activities. This is not a commitment of funds, but rather a commitment to request decommissioning funds from the funding government body when necessary. The statement of intent is supported by the government's underlying ability to raise the funds necessary to pay for decommissioning costs. In some cases, commercial licensees may rely on government statements of intent where there are contractual commitments from government entities to fund decommissioning. (8)

Certificate of Deposit (CD). These certificates are deposits of cash made into a bank for a prespecified time. CDs can be negotiable or nonnegotiable. If a CD is negotiable, the issuing bank is obligated to pay the holder, whoever it is, when the CD falls due. If a CD is nonnegotiable, the bank is obligated to pay the designated payee identified on the CD. CDs may be used as an instrument, if accompanied by an escrow account, trust fund, or standby trust agreement. (9)

Government Securities. These securities may be used as an instrument if deposited into a trust fund or escrow account. Acceptable government securities include those backed by the Federal, State, or local government, and include the following: U.S. Treasury bills, notes, and bonds; Government National Mortgage Association and Federal National Mortgage Association bonds and certificates; State or municipal bonds rated BBB or higher by Standard and Poor's or Baa or higher by Moody's Investors Service. (10)

External Sinking Fund. This fund allows a licensee to periodically place funds into a trust fund or escrow account so that the total amount of funds would be sufficient to pay for decommissioning at the time termination of operations is expected. For materials licensees and nonelectric utility reactor licensees, a sinking fund must be combined

Types of Instruments (F) (continued)

with a surety, insurance, or guarantee instrument so that the decommissioning can be fully funded at any time. As the value of the sinking fund increases with time, the coverage under the surety, insurance, or guarantee instrument may be decreased. (11)

Exhibit 1

Financial Assurance Inventory – Controlled List

Licensee; License No. & Amendments if any	Instrument Type and No.	Provider	Issuance Date	Expiration Date	Amount	Date Placed in Safe	Notes
XYZ Corporation; Lic. No. ZZZZZZZZ	Letter of Credit (LOC); No. AAAAAAA AA	First Security Bank of Ohio	9-25-90	Until cancelled	\$2,046,384	9-25-90	
	Standby Trust	Same as above	2-25-95	Until cancelled	Same as above	9-25-90	
	LOC Amendment	Same as above	2-25-92	Until cancelled	\$2,069,008	2-25-92	
	LOC Amendment	Same as above	12-14-94	Until cancelled	Adds \$60,655	12-14-94	New total amount \$2,129,663
John Doe, Inc. Lic. No. YYYYYYYY	Bond; No. AAAAA	Reliance Insurance & United Pac. Insurance	10-31-90	Until cancelled	\$43,000,000	10-31-90	
	Standby Trust	Corestates Bank	11-16-90	Until cancelled	\$31,200,000	11-16-90	
	Bond Amendment; No. AAAAAA	Reliance Insurance & United Pac. Insurance	11-5-92	Until cancelled	\$13,630,000	11-5-92	
Home Inc.	Parent Guarantee	Giant Home Co.	1-25-91	Until cancelled	\$20,000,000	1-25-91	
	Chief Financial Officer's letter		1-25-91	Until cancelled			
	Auditor's letter		1-30-91	Until cancelled			
	Chief Executive Officer's letter		1-25-91	Until cancelled			

