

April 30, 1996

FOR: The Commissioners
 FROM: James M. Taylor, Executive
 Director for Operations /s/
 SUBJECT: RULEMAKING PLAN: SELF-GUARANTEE FOR NON-PROFIT AND NON-BOND ISSUING LICENSEES

- [PURPOSE:](#)
- [CATEGORY:](#)
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PURPOSE:

To inform the Commission that the EDO intends to sign the Rulemaking Plan to amend [10 CFR Parts 30, 40, 50, 70, and 72](#), "Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees."

CATEGORY:

This paper covers a policy question requiring Commission consideration.

ISSUE:

Whether the attached rulemaking plan is acceptable to the Commission under the terms expressed in the Staff Requirements Memorandum (SRM) issued on February 5, 1996, for SECY-95-278.

BACKGROUND:

In SECY-95-278, dated November 28, 1995, the staff forwarded the results of a study, "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges and Universities and Hospitals and by Business Firms that do not Issue Bonds," ICF Report, 1995, and recommended allowing these additional categories of licensees to use self-guarantee. In an SRM responding to SECY-95-278, the Commission approved the staff's proposal and directed the staff to develop a rulemaking plan for extending the option of self-guarantee to non-profit and non-bond issuing licensees. The SRM also directed that the rulemaking plan be forwarded for Commission review by negative consent prior to proceeding with the rulemaking.

DISCUSSION:

The attached rulemaking plan would amend 10 CFR Parts 30, 40, 50, 70, and 72 to allow non-profit licensees such as colleges, universities, and hospitals and also non-bond issuing industrial licensees to use self-guarantee as an additional mechanism for financial assurance. Self-guarantee would result in significant cost savings for those licensees able to meet appropriate financial criteria.

RECOMMENDATION:

Unless the Commission directs otherwise, 10 days from the date of this paper, the draft Rulemaking Plan will be provided to the Agreement States for a period of 45 days to obtain their input. After incorporating Agreement State input, the revised plan, including the disposition of the Agreement State suggestions, will again be provided to the Commission prior to the staff beginning development of a proposed rule. However, if the Agreement States suggestions are not substantive, I will approve the Rulemaking Plan without resubmitting it to the Commission.

COORDINATION:

The Office of the General Counsel has no legal objection to the actions proposed in the Rulemaking Plan. The Offices of Nuclear Reactor Regulation, Nuclear Materials Safety and Safeguards, State Programs, and Enforcement have concurred in the Rulemaking Plan.

Attachment: [Rulemaking plan](#)

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[ATTACHMENT](#)

Rulemaking Plan

Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees 10 CFR Parts 30, 40, 50, 70, and 72

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Regulatory Issue

Licensees subject to 10 CFR Parts 30, 40, 50, 70, and 72, whose operations involve use of substantial amounts of nuclear materials, must provide financial assurance for decommissioning funding. Licensees who are non-profit and non-bond issuing are currently precluded from self-guarantee even though they may be capable of demonstrating the requisite financial strength.

The use of self-guarantee, currently limited to bond-issuing industrial corporations, should be available to additional categories of licensees without jeopardizing the present high level of financial assurance that decommissioning obligations require. Allowing qualified licensees to use self-guarantee would reduce the costs of complying with NRC financial assurance requirements.

Current Rule Requirements

Financial assurance for decommissioning funding can be provided by a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance (pursuant to 10 CFR 50.75(e) (3)), an electric utility can satisfy the decommissioning funding requirements by an external sinking fund, standing alone), parent company guarantee for licensees having a qualifying corporate parent (financial criteria for parent guarantee are in 10 CFR Part 30, Appendix A), and for certain financially strong corporations, self-guarantee. Licensees using self-guarantee must pass a stringent financial test in 10 CFR Part 30, Appendix C. Self-guarantee is presently not available to non-profit licensees, such as hospitals and universities, and also to for-profit licensees who do not issue bonds (the financial test for self-guarantee requires a bond rating and the issuance of securities).

Background

On December 29, 1993 (58 FR 68726), as corrected at 59 FR 1618 (January 12, 1994), the NRC published a notice of final rulemaking that allows financially strong corporations with established bond ratings the option of using self-guarantee as an additional mechanism for complying with the regulations on financial assurance for decommissioning. The financial criteria which must be met by a licensee using self-guarantee were promulgated in 10 CFR Part 30, Appendix C. The Commission, in a Staff Requirements Memorandum (SRM) directing the staff to promulgate the criteria in 10 CFR Part 30, Appendix C, which were also made applicable under 10 CFR Parts 40, 50, 70, and 72, also approved the initiation of a study to determine if there were criteria that could be developed to allow non-profit licensees and non-bond issuing industrial licensees to use self-guarantee. Non-profit entities, such as universities and hospitals, and also non-bond issuing licensees, are presently excluded from the self-guarantee program.

In SECY-95-278, dated November 28, 1995, the staff forwarded the results of the study, "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges and Universities and Hospitals and by Business Firms that do not Issue Bonds," ICF Report 1995, and recommended financial criteria for allowing these additional categories of licensees to use self-guarantee. In an SRM responding to SECY-95-278, the Commission approved the staff's proposal and directed the staff to develop a rulemaking plan for extending the option of self-guarantee to non-profit and non-bond issuing licensees. The SRM also directed that the rulemaking plan be forwarded for Commission review by negative consent prior to proceeding with the rulemaking.

The NRC must have proof of financial strength on the part of the licensee adequate to ensure that decommissioning funding obligations will be met if self-guarantee is permitted. Financial strength does not necessarily depend on type of licensee. Many colleges and universities have very strong financial positions, with very large endowment funds that could be used if needed for decommissioning funding. Some hospitals are also financially strong. With respect to non-bond issuing industrial firms, their lack of any bond issuance can reflect financial resources great enough to preclude the need to issue debt.

If a college, university, or hospital, which is not a publicly held corporation, has an A or better bond rating, the financial assurance risk of allowing it to self-guarantee decommissioning funding is comparable to the financial assurance risk of institutions currently allowed to self-guarantee, which is also based on an A or better bond rating. The risk of default of industrial bond issuers with an A or better bond rating has been estimated as being less than one percent annually.⁽¹⁾ An A or better bond rating indicates that the issuer has passed a stringent review by the independent ratings agencies of its ability to meet financial obligations. Bond ratings are reviewed often and changed in response to changes in the issuer's financial condition. The A or better bond rating should be for uninsured bonds. As discussed in the ICF report, insured bond ratings are in fact the rating of the insuring company and may not apply to the institution that holds the NRC license.

For proposed financial criteria which are based on factors other than bond rating, estimates of risk comparability are less certain. However, the non-bond rating criteria being proposed have been carefully chosen to be conservative.

Preliminary Regulatory Analysis

Consistent with the Commission's directive in the SRM to SECY-95-278, financial criteria will be proposed for non-profit licensees and non-bond issuing licensees to use self-guarantee as an additional mechanism for financial assurance for decommissioning funding. The staff will develop a rulemaking package to set up financial criteria which allow use of self-guarantee by the entities mentioned. The criteria in Part 30, Appendix C would be expanded to permit financially strong hospitals and colleges and universities, as well as financially strong non-bond issuing industrial corporations to use self-guarantee. Self-guarantee criteria, which were recommended in SECY-95-278, are specified in the Appendix to this rulemaking plan that would result in comparable risk to the existing criteria.

Cost Savings

Cost savings would result from qualifying licensees not having to purchase other types of financial assurance

instruments, such as letters of credit or surety bonds. These types of financial assurance instruments typically cost a licensee approximately 1.5% per annum of the amount of financial assurance purchased.

Estimates of the numbers of NRC licensees who could qualify for self-guarantee under the proposed financial criteria and estimated total cost savings on an annual basis are as follows:

Type of Licensee	Number Qualifying	Total Cost Savings
College and University	40-50	\$900K - \$1100K
Hospital	20-30	\$100K - \$ 170K
Non-Bond Issuing Industrial	2-4	\$20K - \$ 40K

Total cost savings for all licensees estimated to qualify for self-guarantee would range from \$1,020K to \$1,310K per annum. Even greater cost savings would result to the extent that Agreement States allow self-guarantee for their licensees.

There would be no significant cost impact on NRC as review time for the various financial assurance mechanisms is essentially the same.

Office of the General Counsel Legal Analysis

The proposed rulemaking would extend the option of meeting the Commission's decommissioning financial assurance regulations through a self-guarantee, to financially strong non-profit or non-bond issuing for-profit entities. OGC has reviewed the rulemaking plan, including the proposed approach under NEPA and the Paperwork Reduction Act. OGC agrees that an EA will need to be prepared in support of the proposed rule. In addition, OGC understands that appropriate documentation will be prepared as part of the proposed rule to satisfy the requirements of the Paperwork Reduction Act. No significant legal impediments to promulgation of a rule drafted along the lines discussed in the plan are anticipated.

Backfit Analysis

The actions discussed here do not affect power reactors, and no backfit analysis is required.

Agreement State Implementation Issues

Financial assurance mechanisms are a Division II compatibility item. Agreement States may adopt regulations of equal or greater stringency. States would therefore have the option of allowing self-guarantee or not allowing it.

Unless the Commission directs otherwise, within 10 days from the date of this paper, the draft Rulemaking Plan will be provided to the Agreement States for a period of 45 days to obtain their input. After incorporating Agreement State input, the revised plan, including the disposition of the Agreement State suggestions, will again be provided to the Commission prior to the staff beginning development of a proposed rule. However, if the Agreement States suggestions are not substantive, the EDO will approve the Rulemaking Plan without resubmitting it to the Commission.

Supporting Documents Needed

An environmental assessment will have to be prepared. Since the rule would provide for submittal of new information by certain licensees, the information collection burden under the Paperwork Reduction Act will need to be addressed. Based upon its Regulatory Analysis, the NRC will also need to prepare a certification that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. (Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121 (March 29, 1996)). The staff will also need to prepare in support of the final rule a report to be submitted to the Congress and GAO in accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act. The precise documentation needed to meet that Act will be as determined by the Commission in response to this recently enacted statute. The Regulatory Guide on financial assurance, Reg. Guide 3.66, "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning under 10 CFR Parts 30, 40, 70, and 72," will need to be updated.

Issuance by Executive Director for Operations

These draft amendments represent a substantial policy issue and it is recommended that the Commission issue this rulemaking.

Resources Needed to Complete Rulemaking

Resources needed are \$42K in contractor support and 1.5 FTEs broken down as follows:

RES	1 FTE (write rulemaking documents)
NMSS	0.4 FTE (provide technical input, review documents)
OGC	0.1 FTE (provide legal input, review documents)

These resources are within existing budget allocations.

Management Steering Group

Not needed for this rulemaking.

Staff Working Group

C. Prichard, RES
L. Bykoski, NMSS
R. Wood, NRR
S. Lewis, OGC

Public Participation

There is no need for enhanced public participation for this rulemaking. The rulemaking documents will be placed on the NRC electronic bulletin board in addition to publication.

Schedule

Proposed rule published	10/30/96
Final rule published	6/30/97

FINANCIAL CRITERIA APPENDIX

Financial Criteria Recommended in SECY-95-278

- [For colleges and universities:](#)
- [For hospitals:](#)
- [For non-bond issuing industrial corporations:](#)

For colleges and universities:

The staff believes that the A or better bond rating (for uninsured bonds) criterion used in the existing self-guarantee financial test can also be used as the criterion in a financial test for use by colleges and universities.

For those licensees not having a bond rating, a level of unrestricted endowment of at least \$50 million, and at least 30 times decommissioning costs would allow use of self-guarantee. This level of endowment was identified in the ICF report as being adequate to generate annual income sufficient to cover the upper range of estimated decommissioning costs.

For hospitals:

For the same reasons outlined above, a criterion of an A or better bond rating is one that could be used for hospital licensees. The A or better rating should be for unguaranteed, uninsured or uncollateralized bonds.

For licensees not having a bond rating, three measures are identified as most applicable, (1) liquidity (current assets divided by current liabilities), (2) profitability ([revenue-expenses] divided by revenue), and (3) leverage (ratio of long term debt to net fixed assets). Numerical values for these ratios will be developed by reviewing the financial characteristics of hospitals with an A or better bond rating to establish a threshold level of comparative risk.

For non-bond issuing industrial corporations:⁽²⁾

The proposed criterion is Cash Flow/Total Liabilities greater than 0.15, Total Liabilities/Net Worth less than 1.5, and Net Worth greater than \$10 million and at least 10 times decommissioning costs. The ICF study estimates that the financial assurance risk using such a criterion would be comparable to that of current regulations.

1. **Corporate Bond Defaults and Default Rates**, Moodys Special Report, January 1991, p. 32.

2. Even if a firm does not issue bonds, it can obtain a rating from the bond rating agencies. This option would be allowed.