

March 9, 1998

FOR: The Commissioners

FROM: L. Joseph Callan S
Executive Director for Operations

SUBJECT: FINAL RULE:AMENDMENTS TO 10 CFR PARTS 30, 40, 50, 70, AND 72--SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-PROFIT AND NON-BOND ISSUING LICENSEES

PURPOSE:

To request Commission approval to publish a notice of final rulemaking.

CATEGORY:

This paper covers a minor policy question.

BACKGROUND:

The Commission directed the staff to develop the subject rulemaking in the Staff Requirements Memorandum on SECY-96-091, dated May 24, 1996.

The financial criteria for self-guarantee were discussed in SECY-95-278, November 28, 1995. The rulemaking plan was provided to the Commission in SECY-96-091, April 30, 1996. The proposed rule was submitted for Commission approval in SECY-97-041, February 13, 1997, and published in the *Federal Register* on April 30, 1997, for a 90-day comment period. In response to the notice of proposed rulemaking, sixteen comment letters were received. All comments supported the rulemaking, although some commenters recommended some type of change to the financial criteria for self-guarantee. After analyzing the comments, the staff does not see sufficient reason for changes to the proposed rule. The rule would extend the option of self-guarantee already in the Commission's regulations for qualified bond issuing commercial licensees to qualified non-profit licensees and qualified non-bond issuing commercial licensees.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this Commission Paper and finds no resource related issues. The Office of the Chief Information Officer has reviewed the rule for information technology and information management implications and concurs in the rulemaking.

RECOMMENDATION:

That the Commission:

1. Approve the Notice of Final Rulemaking for publication ([Enclosure 1](#)).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Note:
 1. The rulemaking would be published in the *Federal Register*;
 2. A draft regulatory analysis will be available in the Public Document Room ([Enclosure 2](#));
 3. A draft environmental assessment and a finding of no significant impact have been prepared and are included in the Notice of Final Rulemaking;
 4. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act;
 5. This rule contains a new information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.);
 6. A public announcement will be issued ([Enclosure 3](#));
 7. The appropriate Congressional committees will be informed ([Enclosure 6](#));
 8. The staff has determined that this is not a "major" rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination with the Office of Management and Budget. The appropriate Congressional and GAO contacts will be informed ([Enclosure 7](#)).

L. Joseph Callan
Executive Director for Operations

Enclosures: 1. *Federal Register* Notice + disk
 2. Draft Regulatory Analysis
 3. Draft Public Announcement
 4. Draft Comment Analysis
 5. Notice of Proposed Rulemaking
 6. Draft Congressional Letters
 7. Draft SBREFA Letters

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NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

ENCLOSURE 1

[7590-01-P]

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 30, 40, 50, 70, and 72
RIN 3150-AF64

Self-Guarantee of Decommissioning Funding
by Nonprofit and Non-Bond-Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to self-guarantee funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to self-guarantee funding if they meet stringent financial criteria. This rule allows nonprofit licensees, such as colleges, universities, and hospitals, as well as some commercial licensees who do not issue bonds, to self-guarantee funding provided they meet similarly stringent financial criteria. Allowing additional qualified licensees to use self-guarantee reduces licensee costs while providing adequate assurance that funds for decommissioning will be available when needed.

EFFECTIVE DATE: (30 days after publication)

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301)415-6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensees subject to 10 CFR Parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for, or holders of, operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance, ⁽¹⁾ parent company guarantee for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, self-guarantee. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

To date, self-guarantee has not been available to nonprofit licensees such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for self-guarantee uses the rating of the bonds issued by the licensee as one measure of the licensee's financial resources and ability to fund decommissioning.

The NRC is extending the use of self-guarantee, previously limited to bond-issuing industrial corporations, to additional categories of qualified licensees. By selecting appropriate financial criteria for self-guarantee, this extension can be made without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified nonprofit and non-bond-issuing licensees to self-guarantee will reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows

financially strong corporations with A or better bond ratings the option of using self-guarantee as a mechanism for complying with the regulations on financial assurance for decommissioning. Self-guarantee was added to the list of financial assurance mechanisms as a cost-saving option for licensees that are able to meet the stringent financial test.

The NRC's decision to add self-guarantee to the list of approved financial assurance mechanisms for qualified licensees came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM-30-59, Notice of receipt published September 25, 1991 (56 FR 48445)). The petition presented a case for allowing self-guarantee as a cost-saving option for corporate licensees that are able to pass a stringent financial test.

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for nonprofit licensees and non-bond-issuing commercial licensees to use self-guarantee while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. 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," NUREG\CR-6514⁽²⁾

(June 1997), identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of self-guarantee. The financial criteria in this rule were selected by the NRC based on information in this report.

Public Comments on the Proposed Rule

The NRC published a notice of proposed rulemaking on April 30, 1997, (62 FR 23394). In response to this notice, 16 comments were received; 2 from States, 6 from colleges and universities, 3 from associations, 3 from private corporations, 1 from a hospital, and 1 from the United States Enrichment Corporation. The commenters all supported the extension of self-guarantee to qualified nonprofit and non-bond-issuing commercial licensees. Although some commenters urged NRC to adopt the proposed rule as written, most favored some type of change to the financial criteria.

1. Financial Criteria for Colleges and Universities

The financial test criteria proposed for colleges and universities were an A or better bond rating or, for those not having a bond rating, unrestricted endowment of at least \$50 million or 30 times projected decommissioning costs, whichever was greater. There were no comments regarding the A or better bond rating, but several commenters objected to the non-bond criteria as too conservative.

Comment: A commenter stated that the selected multiple of 30 times decommissioning costs is excessively conservative. NRC's basis for the 30 multiple is that an amount of money 30 times decommissioning costs invested at 3 percent would yield an annual amount sufficient to fund those costs. The commenter said that it should not be difficult to obtain secure investments yielding 6 percent; thus an appropriate multiple would be 15 based on investment yield.

Response: NRC's objective in selecting financial criteria was to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. However, for colleges and universities that do not issue bonds, lack of appropriate data on default risk made a financial assurance risk analysis impossible. For these licensees, NRC deliberately chose financial criteria which are conservative.

NRC did state in the preamble to the proposed rule, at 62 FR 32296, that "[the multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent." However, it is important to note that NRC was not assuming (1) that institutions will in fact finance decommissioning out of endowments; (2) that endowments can be expected in all circumstances to grow at a rate of at least 3 percent annually; or (3) that institutions can be expected to reallocate up to 3 percent of their spending from endowments in a one-year period. Rather, the criterion was selected to serve as a measure of the overall financial strength of the institution, indicating that NRC can reasonably assume that such a college or university can be allowed to self-guarantee for the costs of decommissioning because it possesses sufficient financial strength to obtain the necessary funds when they are needed.

Even assuming the premise of the commenter, NRC does not believe that reducing the multiple to 15, as the commenter suggests, is desirable. Although a real rate of return of 3 percent may appear low under the market conditions prevailing during certain periods, there is a substantial body of empirical evidence indicating that it is a reasonable assumption. If a licensee who has been relying on a self-guarantee is required to fully fund a trust fund for decommissioning in the year before the beginning of decommissioning, and the licensee relies on earnings from endowment to create the trust, it is the annual earnings of the endowment for the year immediately prior to the decommissioning that must equal the required amount. NRC has reviewed the information provided in Ibbotson Associates, *Stocks, Bonds, Bills, and Inflation 1995 Yearbook*, 1995, which published a summary of market results for the 69-year period from 1926 to 1995 for five categories of investments: small company stocks, large company stocks, long-term government bonds, long-term corporate bonds, and intermediate-term government bonds.

On a year-by-year basis, less risky investments, such as treasury bills, showed the most frequent positive returns, but their annual returns also were relatively low. Riskier investments showed a broad distribution of returns, from very good to very poor. Overall, however, with the exception of small and large company stocks, the average inflation-adjusted earnings (geometric mean) for these categories of investments were less than 3 percent. In a number of years, earnings for stocks also were less than 3 percent. Thus, real investment returns over a one-year period may not even match conservative earnings assumptions.

The study of endowment sponsored by the National Council of College and University Business Officers (NACUBO) published in 1995 also emphasized a concern for this earnings variability in its analysis of college and university endowment investment. First, NACUBO's study noted that current high rates of return cannot be expected to continue indefinitely. "At a time when many public and private institutions are searching for ways to bridge the gap between revenues and expenditures, it is tempting to extrapolate these extraordinary returns into the future and to budget endowment spending accordingly. However, in this context it is instructive to note that for a representative group of institutions, the average annual real return after spending

for the 10-year period ended June 30, 1994, is 4.1 percent, but for the 20 years ended June 30, 1994, it is 0.9 percent." (*1994 NACUBO Endowment Study*, National Council of College and University Business Officers, 1995, p. 4)

Therefore, the NACUBO study recommends strongly that institutions keep their spending from endowment below the rate proposed by the commenter. The report states that:

Historical precedent indicates that a fund invested approximately 60 percent in domestic and foreign stocks, 30 percent in fixed income, and 10 percent in various other asset classes inevitably experiences recurring periods of absolute decline in market values over 3 years. Such a decline would trigger a reduction in spending for an institution sticking to a policy of spending a fixed percentage of a 3-year moving average of endowment market values. . . . For fiscal year 1994, the average endowment spending rate reported by responding institutions is 6.0 percent. On average, the smallest endowments (\$25 million and less) spent more (7.2 percent) than the largest (4.5 percent), and public institutions spent more (6.6 percent) than private institutions (5.7 percent). . . . With the sole exception of the 4.5 percent spent by the largest universities, these spending rates are not compatible with most institutions' stated intention to preserve the purchasing power of their endowment. Over time, it is possible (difficult, but possible) for the exceptionally well-managed institution to spend 6.0 percent of a 3-year moving average of endowment market values, and still preserve purchasing power. However, it is courting disaster to spend at an annual rate of 6.0 percent toward the tail end of a long bull market. (*1994 NACUBO Endowment Study*, 1995, p. 5)

Based on these considerations, the NRC continues to believe that a relatively conservative criterion, such as the 30 times requirement, is a reasonable criterion for the decommissioning self-guarantee test for colleges and universities. The NRC does not accept the commenter's recommendation to adopt a substantially less stringent criterion.

Comment: A commenter objected to the requirement that unrestricted endowment be at least \$50 million or at least 30 times the decommissioning cost estimate, whichever is greater. The requirement should be compliance with either the \$50 million figure or the 30 times decommissioning cost estimate, but not whichever is greater.

Response: As previously stated, NRC chose conservative financial criteria for non-bond-issuing colleges and universities, aimed at assuring the financial viability of a licensee qualified to self-guarantee. This is the only requirement that would apply to non-bond-issuing colleges and universities, whereas non-bond-issuing hospitals or commercial licensees would be subject to multiple financial ratios as financial tests. It is designed to capture two measures of financial viability: (1) overall financial strength and (2) financial strength relative to size of decommissioning obligation. The overall financial strength of an institution is heavily dependent on the size of its unrestricted endowment. Specific ability to fund decommissioning expenses is measured by the ratio of unrestricted endowment to decommissioning costs. A financial test based only on ratio to decommissioning cost might allow an institution without adequate financial strength to pass if its decommissioning costs were low. A test based only on the size of the unrestricted endowment might be inadequate for those institutions with the highest decommissioning costs. Both threshold requirements are needed to provide assurance that an institution can meet decommissioning obligations when necessary.

Comment: A commenter stated that NRC's rationale for a multiple of 30 implies that decommissioning costs are paid from investment yields over a 1-year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving 2 or 3 years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30.

Response: NRC recognizes that decommissioning may occur over a period longer than one year. The multiple of 30 was chosen without regard to how many years it would take to decommission a facility. The commenter is attempting to make this linkage the key factor in arriving at an appropriate multiple. However, following this line of reasoning, stretching out the time length of decommissioning would imply ever decreasing multiples.

NRC's objective is to ensure that decommissioning will take place on a timely basis. The financial assurance regulations are intended to assure that inadequate funding does not prevent timely decommissioning. Timely decommissioning may require that all decommissioning funding be available up front even though decommissioning activities are not completed within a single year. For this reason NRC's criteria for determining whether a licensee should be allowed to self-guarantee the costs of decommissioning must consider the possibility that the licensee will be required to fully fund decommissioning in the year immediately prior to the beginning of decommissioning activities. The licensee would fund a standby trust if either (1) the licensee no longer qualifies to use the self-guarantee to provide financial assurance for decommissioning, even if it was not yet required to conduct decommissioning, or (2) a licensee using a self-guarantee is required to carry out decommissioning. NRC currently does not allow licensees to consider the impact of earnings during the "payout" period (the period during which funds are being expended from the financial assurance standby trust to pay for decommissioning) in calculating the amount of funds that must be set aside for decommissioning. Therefore, the NRC disagrees with the commenter's suggestion that the expected duration of decommissioning activities should apply to the determination of the appropriate multiple.

Comment: A commenter recommends that [based on the combination of investment yield of 6 percent and investment yields over 2 to 3 years rather than 1 year] the multiplication factor [be] reduced from 30 to 10 with ample conservatism."

Response: For the reasons stated in responses to the preceding comments, NRC does not accept this recommendation.

2. Financial Criteria for Hospitals

The financial test criteria proposed for hospitals was an A or better bond rating or, for hospitals not having a bond rating, a financial ratios test consisting of the following:

(a) Liquidity -- (current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55.

(b) Net Revenue -- (Total revenues less total expenditures divided by total revenues) greater than or equal to 0.04.

(c) Leverage -- (Long term debt divided by net fixed assets) less than or equal to 0.67.

(d) Operating Revenues at least 100 times decommissioning costs.

There were no comments regarding the bond rating criterion but there were several comments on the non-bond criteria.

Comment: A commenter believed that the selected multiple of 100 [hospital operating revenues at least 100 times decommissioning costs] was excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be 2 years or more. NRC should consider a multiple of 30 or less to be appropriate.

Response: The requirement that hospital operating revenues be at least 100 times decommissioning costs is a criterion that NRC is proposing to use to determine whether a licensee has sufficient financial strength to self-guarantee. However, a potential consequence of self-guaranteeing could be the need to fully fund a trust fund in a short period of time if the licensee ceases to be capable of passing the self-guarantee test or if decommissioning must be carried out. As discussed above, the operating revenues multiple criterion does not reflect any expectation concerning the length of time during which decommissioning will occur. Therefore, NRC does not accept this recommendation.

Comment: A commenter found the rationale that requires hospitals to meet all four financial ratios tests unclear. This commenter believed that using only the operating revenues/decommissioning costs ratio would appear to provide reasonable assurance of ability to provide decommissioning funding.

Response: The financial ratios test for hospitals in the rule was carefully selected to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. The four ratios in combination represent the financial test that best achieves this goal. A financial test using just one of these ratios would not represent the same level of risk and would not provide an adequate level of financial assurance. Using only the ratio of operating revenues to decommissioning costs would completely ignore such determinants of financial strength as liquidity, indebtedness, and profitability. The financial test used for non-bond-issuing commercial licensees includes several ratios, not just one. The non-bond financial test for colleges and universities does use a single ratio, but it is the ratio of unrestricted endowment to decommissioning costs. Unrestricted endowment is a fund readily available to meet decommissioning expenses. Hospital operating revenues are different because these funds may not be readily available to meet decommissioning expenses due to other hospital costs.

3. Prohibition on Using a Guarantee in Combination with Another Financial Assurance Mechanism

Comment: Some commenters noted that provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2), and 72.30(c)(2) provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. These commenters wanted to know the reasons for these restrictions.

Response: This rule makes no change in the already existing prohibition against combining a parent or self-guarantee with another type of financial assurance mechanism. The issue of whether or not to allow such a combination is broader than the focus of this rule. The NRC has limited experience with parent and self-guarantee to date. It is expected that the NRC will periodically reevaluate its financial assurance program in the future and could reassess the need for the prohibition.

4. Insured Bond Ratings

Comment: Some commenters objected to the proposed financial criteria which deal with bond ratings. As proposed, for institutions that issue bonds, only a bond issuance that is "uninsured" may be used; an "insured" bond rating would not be eligible. The justification for this limitation is not warranted because bond insurers evaluate the financial condition of the prospective issuers and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance indicates that the issuer is in sound financial condition.

Response: Bond insurers evaluate the financial condition of the issuers of the bonds at the time the debt is insured. Bond rating agencies, such as Moodys and Standard and Poors, typically assign such bonds a triple-A rating because of the insured status of the bond

NRC's concerns with accepting insured bonds as a criterion of financial assurance arise from the possibility that, over time, the insured bond rating could mask adverse changes in the financial condition of the bond issuer after the debt has been insured. The rule includes a requirement that the licensee must ascertain whether it continues to pass the financial test for self-guarantee every year. Furthermore, if the licensee no longer meets the test criteria, it must notify NRC and establish alternative financial assurance. However, insured bonds would continue to hold their rating, despite declines in the financial condition of the issuer.

The problem with an insured bond from the standpoint of financial assurance is that there is no criterion by which NRC can identify when a licensee/issuer no longer qualifies to self-guarantee. The bond can retain its high rating despite a decline in the financial strength of the issuer. Furthermore, the insurance coverage provided by the bond insurer, which is a guarantee of payment of principal and interest in accordance with the insured bond issue's payment schedule, will not provide any additional source of funding for decommissioning. NRC does not agree with the commenter's suggestion that it accept ratings on insured bonds as an acceptable criterion for self-guarantee.

5. Requirements for Financial Statements

Comment: Some commenters objected to the proposed requirement in Appendices D and E to 10 CFR Part 30 that licensees must conduct accounting by U.S. generally accepted accounting principles (GAAP). This does not recognize the increasingly multi-national nature of materials licensees. Foreign

ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatome) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow licensees to certify adequate assurance that funds will be available by using other recognized and accepted accounting principles.

Response: Financial statements prepared in accordance with foreign accounting principles rather than U.S. GAAP pose two problems from the standpoint of a financial test for self-guarantee. First, the financial test was developed based on an analysis of financial data for U.S. firms. Consequently, the financial test criteria may not be applicable or effective when used in conjunction with financial data that were prepared in accordance with foreign accounting practices. Second, allowing firms to rely on financial statements prepared according to accounting principles in use in their own country could place a heavy administrative burden on NRC. The examples cited by the commenter, for instance, might require NRC to know and apply German, Swiss, and French accounting principles to assess compliance with a financial test designed using U.S. GAAP. Finally, the present financial assurance regulations allow the use of a broad range of financial assurance mechanisms in part to ensure that licensees that are unable to use a particular mechanism have other alternatives available. NRC does not expect firms to change their accounting practices in order to make use of the financial test because a number of other options are available.

6. Financial Criteria for Non-Bond-Issuing Commercial Licensees

The financial test proposed for non-bond issuing commercial licensees was:

- (a) Cash flow divided by total liabilities greater than 0.15.
- (b) Total liabilities divided by net worth less than 1.5.
- (c) Net worth greater than \$10 million or at least 10 times decommissioning costs, whichever is greater.

Comment: A commenter objected to the net worth criterion of net worth greater than \$10 million or at least 10 times estimated decommissioning costs. This discriminates against well-funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the \$10 million net worth requirement.

Response: The NRC's objective in setting financial criteria for non-bond-issuing commercial licensees was to make the financial assurance risk of these criteria equal to the financial assurance risk of the financial criteria for licensees that issue bonds (estimated to be approximately 0.13 percent per year). According to the analysis of potential financial criteria carried out as part of the proposed rule, the financial criteria in the proposed rule meet this objective.⁽³⁾ Firms with smaller net worth have a larger default risk than larger firms. Thus, the \$10 million net worth requirement is an essential part of the overall financial test. The NRC has retained this requirement in the final rule.

7. Decommissioning Cost Estimates

Comment: Several commenters raised the issue of how decommissioning costs were estimated. The NRC should encourage best available information estimates of decommissioning costs, based on historic plant experience in decommissioning and renovation, rather than commercial estimates by contractors that tend to be too high. Conservative assumptions, such as use of rates charged by contractors and high estimates of waste disposal costs, should not be used. A commenter also noted that assuming a period for short-lived isotopes to decay before decommissioning begins would be a realistic assumption. Also, a typical licensee will not have the maximum amount of material allowed by the license at the time of decommissioning.

Response: This rulemaking makes no changes in the requirements for how licensees estimate decommissioning costs. Decommissioning cost estimates, or use of the certification amounts in 10 CFR Part 30, are already required by existing regulations on financial assurance. This rule simply adds an additional financial assurance mechanism to those already permitted in NRC regulations.

8. Agreement State Compatibility Status of Financial Assurance Regulations

Comment: Some commenters believed that the proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will ensure consistent requirements for financial surety arrangements and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

Response: When the proposed rule was published in the *Federal Register* (see 62 FR 23394, April 30, 1997), it was designated as a Division 2 compatibility item in accordance with the compatibility policy in effect at that time. A Division 2 level of compatibility allowed an Agreement State to promulgate equivalent, or more stringent, financial assurance regulations than those of NRC.

Under the new "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (see 62 FR 46517, September 3, 1997) Agreement States must adopt NRC regulations having particular health and safety significance and those necessary to maintain compatibility with the Commission's regulatory program.

The NRC financial assurance regulations, in effect when the new policy was implemented, were designated as having health and safety significance. Specifically, sections (a), (b), and (d) of Parts 30.35, 40.36 and 70.25, which require that licensees must consider the cost of decommissioning their facilities and that those costs must be provided for through a financial assurance mechanism, have particular health and safety significance and were designated as category H&S. Under the H&S category, Agreement States should adopt the essential objectives of these sections in order to maintain an adequate program. The remaining sections of the rule, including those which allow self-guarantee of certain commercial corporate licensees who issue

bonds if they meet stringent financial criteria, were designated as compatibility Category D. Category D means the Agreement States do not need to adopt a compatible rule.

The final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as compatibility Category D. Under compatibility category D, Agreement States may choose to maintain a more stringent rule by not adopting the self-guarantee option.

9. Requirement for Annual Passage of Financial Test

Comment: A commenter stated that Section II.C.(2) of Appendix E to Part 30 should be modified so a qualifying licensee would not have to repeat passage of the financial test for self-guarantee every year. University endowments are very stable. In addition, Section II.C.(3) provides sufficient assurance that NRC will be notified when a licensee no longer meets the criteria for self-guarantee.

Response: Although it is true that university endowments are relatively stable and Section II.C.(3) provides for notification, the provision for qualifying licensees to annually pass the test is retained in the final rule. For a self-guarantee program to provide adequate assurance of decommissioning funding, the annual "requalification" provision is necessary. NRC must have assurance of financial strength on a timely basis. A self-guarantee relies solely on the licensee's ability to fund decommissioning. There is no backup such as that provided by a third-party financial assurance mechanism. The requirement for repeating the financial test yearly is not unduly burdensome on a licensee and gives NRC information on the financial condition of the licensee on a timely basis. This requirement is not unique to colleges and universities or to this rule. It is found in the self-guarantee financial tests applicable to other types of licensees, both profit and nonprofit.

10. Use of Self-Guarantee by the United States Enrichment Corporation

Comment: The United States Enrichment Corporation (USEC) proposed that the NRC modify the language of the rule to include certificates (regulated by NRC under 10 CFR Part 76). USEC stated that it would benefit from the opportunity to reduce the costs of complying with NRC financial assurance requirements, which USEC estimated would presently cost in excess of \$100,000 per year for letters of credit and surety bonds.

Response: Under 10 CFR 76.35(n), USEC (or the Corporation) is required to establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities that are the financial responsibility of the Corporation. The funding mechanisms currently listed in the regulation as potentially acceptable for use by the Corporation include prepayment, surety, insurance, and an external sinking fund, but do not include self-guarantee or statement of intent. The rule provides that the funding mechanism must "ensure availability of funds for any activities that are required to be completed " by the Corporation.

USEC was created pursuant to the Energy Policy Act of 1992. It is a wholly owned government corporation, whose powers are vested in a five-member Board of Directors appointed by the President of the United States and confirmed by the Senate. However, on July 25, 1997 a plan was approved by the President under which USEC will be sold either to another corporation or to the public through a stock offering. Under the USEC Privatization Act, Congress set certain restrictions on foreign involvement in USEC's privatization and required that a "reliable and economical domestic source of enrichment services" exist following privatization.

Although the NRC is not currently aware of any reason why it would be inappropriate to consider expanding the category of funding mechanisms available to the Corporation to demonstrate the availability of funds for the actions required under 10 CFR 76.35(n), NRC does not believe that it would be feasible to do so in the current rule. First, USEC was not included in any of the analyses performed to evaluate potential self-guarantee tests for demonstrating financial assurance. NRC believes that detailed analyses should be undertaken to ensure that all critical factors have been considered. Second, USEC's current and future situation with respect to the costs that it might incur is substantially different from those of the licensees included in the current rulemaking. In particular, the scope and type of activities that USEC must carry out under 10 CFR 76.35(n) are very different from those conducted by hospitals and universities, and the non-bond issuing firms covered by the proposed rule.

Third, the exact size of the obligations that USEC might be required to cover is uncertain and will not be determined until a later date, although it is known that many of the costs will remain the responsibility of the U.S. Department of Energy (DOE). Under 10 CFR 76.35(n), DOE is responsible for those aspects of decontamination and decommissioning of the gaseous diffusion plants (GDPs) assigned to DOE under the Atomic Energy Act. DOE also is responsible for all environmental liabilities associated with the operation of the GDPs before July 1, 1993. According to USEC's Annual Report for 1996, "[e]xcept for certain accrued liabilities that will be specified in a memorandum of agreement entered into prior to privatization, all environmental liabilities of the Company through the date of privatization will remain obligations of the U.S. Government." (Notes to Financial Statements: 7. Environmental Matters). Furthermore, as of June 30, 1996, USEC had accrued liability of \$303 million for transportation, conversion, and disposition of depleted uranium currently stored at the GDPs. The 1996 Annual Report states that "USEC is evaluating various proposals for the disposition of depleted uranium, and depending on the outcome of such evaluations, the Company may be able to reduce future cost accruals * * *. Pursuant to the USEC Privatization Act, all costs and liabilities related to the disposition of depleted uranium generated prior to the privatization date are the responsibility of DOE." Fourth, until privatization has occurred, important information about USEC's future corporate structure and ownership will remain uncertain. As noted above, Congress has allowed USEC to be sold either to another corporation or to the public through a stock offering. Thus, the form in which privatization occurs could affect the NRC's analysis of financial assurance alternatives. Because of the need to evaluate all of these factors, NRC has determined not to include 10 CFR Part 76 in the current rulemaking.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for self-guarantee by non-bond-issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for self-guarantee for nonprofit college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit self-guarantee for financial assurance which can be used by qualified non-bond issuing licensees.

Compatibility of Agreement State Regulations

The current NRC regulation which allows self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria is designated as compatibility Category D. This final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as a compatibility Category D. Category D means the agreement States do not need to adopt a compatible rule. The Category D designation was determined in accordance with the new "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 30, 1997. The final rule change

does not involve a basic radiation protection standard, activities that have direct and significant effects in multiple jurisdictions, or essential objectives which an Agreement State should adopt to avoid conflicts, gaps, or duplications in the regulation of agreement material on a nationwide basis. Therefore, Category D has been assigned to these rule provisions.

Finding of No Significant Environmental Impact: Availability

The amendments will allow qualified nonprofit and non-bond-issuing licensees the option of using self-guarantee as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use self-guarantee if they meet the regulatory criteria. Other licensees currently may elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and escrow accounts to comply with decommissioning regulations. This action is intended to offer nonprofit and non-bond-issuing nuclear materials licensees and non-electric utility reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of self-guarantee.

This revision to the NRC's regulations simply adds one more financial assurance mechanism to the mechanisms currently available. It does not affect the cost of decommissioning materials and non-power reactor facilities. Allowing self-guarantee for additional types of licensees does not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988, (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988).⁽⁴⁾

Promulgation of this rule does not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted in making this determination. The NRC staff is not aware of any other documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0017, -0020, -0011, -0009, and -0132.

The public reporting burden for this information collection is estimated to average 9 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on

any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0017), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6203.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this rule would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that backfitting provisions (10 CFR 50.109 and 72.62) in the parts of the Commission's regulations that are being amended by this rulemaking do not apply to this rule because the rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) or 72.62(a). The rule extends the self-guarantee alternative for demonstrating decommissioning financial assurance to qualified non-profit and non-bond-issuing licensees. Extending the availability of this option does not impose a new burden on licensees of commercial power reactors or independent spent fuel storage installations (ISFSI's). Accordingly, the rulemaking does not constitute a backfit and a backfit analysis was not prepared for this final rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 70, and 72.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In 30.8, paragraph (b) is revised to read as follows:

30.8 Information collection requirements: OMB approval.

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(b) The approved information collection requirements contained in this part appear in 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E.

3. In 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

30.35 Financial assurance and recordkeeping for decommissioning.

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(f)(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, 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 Appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 this part. 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 this part. 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 this part. A 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 or 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:

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4. New Appendices D and E to Part 30 are added to read as follows:

APPENDIX D TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEE FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY COMMERCIAL COMPANIES THAT HAVE NO OUTSTANDING RATED BONDS.

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than \$10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 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.

(3) A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may 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.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II.A of this appendix, the licensee must send notice to the NRC of intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission 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 Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

APPENDIX E TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY NONPROFIT COLLEGES, UNIVERSITIES, AND HOSPITALS

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities, to pass the financial test a college or university must meet either the criteria in Paragraph II.A.(1) or the criteria in Paragraph II.A.(2) of this appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet either the criteria in Paragraph II.B.(1) or the criteria in Paragraph II.B.(2) of this appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is

used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

C. In addition, to pass the financial test, a licensee must meet all the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC 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 licensee no longer passes the test.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to the NRC of its intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that--

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

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

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In 40.36, the introductory text of paragraph (e)(2) is revised to read as follows:

40.36 Financial assurance and recordkeeping for decommissioning.

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(e)(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, 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 Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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. 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. 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. A 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 or 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:

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PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. In 50.75, the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

50.75 Reporting and recordkeeping for decommissioning planning.

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(e)(2)(iii) 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, 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 Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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. 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. 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. A 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 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

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PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

70.25 Financial assurance and recordkeeping for decommissioning.

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(f)(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, 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 Appendix A to Part 30. A parent company guarantee may not be used in combination with

other financial methods to satisfy the requirements of this section. 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. 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. 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. A 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 or 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:

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PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

12. In 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

72.30 Financial assurance and recordkeeping for decommissioning.

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(c)(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, 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 Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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. For commercial corporations 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. A 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 or 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:

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Dated at Rockville, Maryland, this _____ day of _____, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle
Secretary of the Commission.

COLLEGES AND UNIVERSITIES, HOSPITALS, AND FIRMS THAT DO NOT ISSUE BONDS

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1. INTRODUCTION

1.1 BACKGROUND

The U.S. Nuclear Regulatory Commission amended its regulations establishing general requirements for decommissioning licensee facilities on December 29, 1993, to allow certain NRC non-electric utility licensees to self-guarantee decommissioning funding costs (58 FR 68726; December 29, 1993). In the Supplementary Information for that rulemaking, NRC noted that several commenters had suggested that NRC should allow universities and other non-profit entities to use a self guarantee. NRC responded that it planned to begin a study of extending the availability of cost-saving financial assurance alternatives to non-profit entities (58 FR 68728). NRC completed its evaluation of several alternatives for self guarantee for non-profit entities, such as colleges and universities, and for firms that are operated for profit but are unable to qualify for NRC's existing self guarantee because they do not issue bonds.⁽⁵⁾ NRC published a proposed rule on self guarantee for these licensees on April 30, 1997 (62 FR 23394). This Regulatory Analysis was prepared pursuant to NUREG/BR-0058⁽⁶⁾ to support NRC's regulatory action and examine the costs and benefits of the alternatives considered by the Commission.

NRC currently administers approximately 5,900 licenses for the possession and use of nuclear materials. Approximately 500 of the licensees who hold these licenses are required to provide financial assurances for decommissioning under rules promulgated in 1988 (53 FR 24018; June 27, 1988), and subsequently amended by 56 FR 23471; May 21, 1991, 58 FR 39633; July 26, 1993, 58 FR 67659; December 22, 1993, 58 FR 68730; December 29, 1993, and 59 FR 1618; January 12, 1994.

NRC also currently has 33 non-electric utility reactor licensees that are colleges or universities, and must provide financial assurance for decommissioning. These licensees are affected by this rulemaking.

The rules on financial assurance for decommissioning provide that licensees under 10 CFR Parts 30, 40, 50, 70, and 72 must provide financial assurance to ensure that decommissioning of licensed facilities will be accomplished in a safe and timely manner and that adequate funds will be available for this purpose. According to the decommissioning regulations⁽⁷⁾, financial assurance must be provided by one or more of the following methods:

- (1) 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 such 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.
- (2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. 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 specified in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with any other financial methods to satisfy the decommissioning financial assurance requirements.
- (3) 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 any 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.
- (4) In the case of Federal, State, or local government licensees, a statement of intent containing a pledge from a responsible official indicating

that funds for decommissioning "will be obtained when necessary."⁽⁸⁾

- (5) A company self-guarantee, for firms that have at least one class of equity security registered under the Security Act of 1934, that firms can qualify to use if they demonstrate that they possess tangible net worth at least 10 times the current decommissioning cost estimate (or the current certification amount); at least 90 percent of total assets, or assets at least 10 times the current decommissioning cost estimate (or the current certification amount) in the United States; and a current rating of A or above for the firm's most recent bond issuance.

With the exception of the financial test component of the parent company guarantee and the self-guarantee, the terms and conditions of the various financial mechanisms that may be used as proof of financial assurance for decommissioning are provided in guidance.⁽⁹⁾

The financial test requirements for the parent company guarantee are provided in the regulations at 10 CFR Part 30 Appendix A, while the financial test requirements for the self-guarantee are provided in the regulations at 10 CFR Part 30 Appendix C. Both sets of requirements are referenced in other pertinent Parts.⁽¹⁰⁾

The self-guarantee established in 1993 for bond issuing commercial firms under the decommissioning financial assurance regulations contains two elements: a guarantee and an underlying financial test submission. Under this mechanism, a firm may submit a guarantee to NRC affirming that it will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, will set up and fund a trust in the amount of the current cost estimates for decommissioning. A firm seeking to self-guarantee also is required to notify NRC immediately if it no longer continues to satisfy the criteria for self-guarantee. For such a self-guarantee to be acceptable, the firm must demonstrate that it has adequate financial resources to cover the costs of decommissioning activities. It makes such a demonstration when it provides specified documentation to NRC that it passes a financial test that measures the financial strength of the firm.

The financial test requires the firm to demonstrate that it meets all of the following criteria. It must demonstrate that it possesses tangible net worth at least 10 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 a self-guaranteeing licensee and as a parent-guarantor. Tangible net worth is defined as net worth minus goodwill, patents, trademarks, and copyrights. The firm also must show that it possesses assets in the United States amounting to at least 90 percent of its total assets or at least 10 times the sum of the current decommissioning cost estimates being covered by the test. Third, the firm also must demonstrate that it has a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

1.2 STATEMENT OF THE PROBLEM

The NRC has decided to complete rulemaking to make the self-guarantee option available to a broader range of qualified licensees. Until now, non-profit entities are generally precluded from use of the current self-guarantee because as a class they cannot satisfy some of its requirements. In particular, (a) they do not issue securities registered under the Securities Exchange Act of 1934 and/or (b) their financial accounting and reporting practices have traditionally made use of fund accounting procedures that do not generate the same measures that are used as financial criteria in the financial tests for eligibility to use the corporate parent guarantee or the original self-guarantee used by the NRC.⁽¹¹⁾

Many colleges and universities, however, are in a very strong financial condition, with large endowment funds that could be used if necessary for decommissioning funding, and they have demonstrated considerable institutional longevity and continuity. Some hospitals also are financially and institutionally strong. Although firms that do not issue bonds are frequently smaller and may be less financially secure, the absence of any bond issuance also can reflect the control of financial resources large enough to render unnecessary any resort to outside funding. Thus, some non-bond-issuing firms are also in a strong financial position.

The primary issues addressed in this analysis are (1) whether non-profit licensees are of sufficient financial strength and stability so that self-guarantees provided by them would provide adequate financial assurance; (2) whether adequate measures of the financial strength and stability of non-profit licensees can be identified; and (3) whether use of self-guarantees would substantially reduce the costs of financial assurance to those non-profit licensees that qualify for use of a self-guarantee mechanism.

1.3 OBJECTIVE OF THE RULEMAKING

NRC's objective in promulgating a self-guarantee mechanism for non-profit colleges and universities and hospitals and for-profit firms that do not issue bonds is to reduce the cost burden of financial assurance on licensees while providing NRC with sufficient assurance that decommissioning costs will be funded when necessary.

2. PRELIMINARY IDENTIFICATION AND DESCRIPTION OF OPTIONS

NRC considered three regulatory options: (1) no action; (2) adopt the same test for self-guarantee for all types of non-profit and non-bond-issuing institutions; and (3) adopt different tests to determine the qualification of colleges and universities, hospitals, and non-bond-issuing firms to self-guarantee the costs of decommissioning. It soon became apparent that differences in accounting methods precluded option (2).

2.1 OPTION 1: NO ACTION

Under Option 1, NRC would not develop a test or tests to determine the qualification of colleges and universities, hospitals, or non-bond-issuing firms to self-guarantee for decommissioning costs. Such licensees that are unable to qualify to self-guarantee using the tests currently adopted in 10 CFR Part 30 Appendix C would be required to obtain an alternative form of financial assurance. As at present, they will be required to demonstrate financial assurance using one of the other financial assurance methods currently allowed (i.e., prepayment, surety method or insurance, external sinking fund coupled with a surety method or insurance, or statement of intent).

2.2 OPTION 2: ADOPT A SINGLE TEST FOR SELF-GUARANTEE FOR ALL NON-PROFIT ENTITIES AND FOR FIRMS THAT DO NOT ISSUE BONDS

Under Option 2, NRC would allow licensees to self-guarantee if they qualified under a test that would apply to all categories of licensees that are currently unable to use the current test for self-guarantee. After examination of the financial accounting and reporting systems of colleges and universities, hospitals, and firms that do not issue bonds, however, NRC concluded that the disparate nature of these systems precluded the development of financial criteria that would serve for all three. NRC therefore ceased evaluation of this option.

2.3 OPTION 3: ADOPT TESTS FOR SELF-GUARANTEE THAT ARE DESIGNED TO APPLY TO THE SPECIFIC FINANCIAL ACCOUNTING AND REPORTING PROCEDURES USED BY NON-PROFIT ENTITIES AND FIRMS THAT DO NOT ISSUE BONDS

Under Option 3, NRC would allow licensees to self-guarantee based on their ability to qualify under financial test criteria designed to apply to their specific financial accounting and reporting procedures. Such criteria would address, for example, the special characteristic of colleges and universities, that they sometimes possess large endowments that are set aside, with and without restrictions, to pay particular obligations of the institution. As much as possible, the criteria below reflect NRC's attempt to make the financial assurance risk of the financial tests included in this rulemaking comparable to the financial assurance risk of the existing financial tests.

The tests include the following:

For colleges and universities:

An A or better bond rating by S&P or Moodys (for uninsured, unguaranteed, and uncollateralized bonds).

For those colleges and universities that do not have a bond rating, a level of unrestricted endowment of at least \$50 million, or at least 30 times the decommissioning costs, whichever is larger.

For hospitals:

An A or better bond rating by S&P or Moodys (for uninsured, unguaranteed, and uncollateralized bonds).

For those hospitals that do not have a bond rating, satisfying three financial ratios and a size criterion would be required. The three measures are: (1) liquidity (current assets and depreciation fund divided by current liabilities) equal to or greater than 2.55; (2) leverage (long term debt divided by net fixed assets) equal to or less than 0.67; and (3) revenues (total revenues minus total expenditures divided by total revenues) equal to or greater than 0.04. Also required, is a minimum size criterion -- operating revenue 100 times decommissioning costs.

For firms that do not issue bonds:

Those firms that do not issue bonds would satisfy three financial criteria. The three measures are: (1) cash flow divided by total liabilities greater than 0.15; (2) total liabilities divided by net worth less than 1.5; and (3) net worth greater than \$10 million, or at least 10 times decommissioning costs, whichever is greater.

3. ANALYSIS OF OPTIONS

3.1 METHODOLOGY

The method used by NRC to analyze the three regulatory options described above, to determine the number of licensees able to use each of the self-guarantee options, and to evaluate the costs and benefits of each option consists of several key steps. First, NRC developed a financial data base of material licensees subject to financial assurance requirements under 10 CFR Parts 30, 40, 50, 70, or 72. This data base was developed from records in the NRC License Tracking System (LTS). The LTS contains information about licensees, including their name and address, license number(s) (which in turn indicate whether the licensee is a Part 30, 40, 50, 70, or 72 licensee), specific activity codes, and whether or not the licensee is required to provide financial assurance for decommissioning. From the LTS, a database was developed that identified those colleges and universities and hospitals that are NRC licensees and are required to provide financial assurance for decommissioning. Additional information was added to the data base from a variety of sources. Data on NRC's non-electric utility reactor licensees which are colleges and universities was assembled. NRC next developed alternative financial criteria to be used as tests to evaluate the qualification of licensees to self-guarantee. These criteria and their combination into financial tests were based on suggestions contained in comments submitted to NRC and on extrapolations from the criteria ultimately developed for the original 1993 self-guarantee rulemaking. Next, NRC used the data base of information about colleges and universities, hospitals, and non-bond-issuing firms to evaluate the availability and assurance risk of the self-guarantee options. Finally, NRC calculated and compared the costs and benefits of each regulatory option.

Availability

The "availability" of the self-guarantee option refers to the number of NRC licensees that could use a particular option given their ability to satisfy the financial requirements of the option. Using the data base described above, NRC first identified each licensee of a particular type (i.e., college or university, hospital, or for-profit firm that does not issue bonds) that was required to provide financial assurance for decommissioning. NRC then calculated availability by counting those licensees whose financial condition indicated that they would pass the criteria. Many public colleges and universities can use the statement of intent mechanism for financial assurance. While some of these licensees could pass the test for self-guarantee, it was assumed that most would not apply for self-guarantee because they already can use a virtually cost-free financial assurance mechanism.

Assurance Risk

Although the licensee always retains primary responsibility for performance of the decommissioning regardless of the method of assurance used, most financial assurance mechanisms (e.g., prepayment mechanisms and surety mechanisms) provide a secondary level of protection to guard against the possibility that the licensee may be unable to meet its decommissioning obligation. Thus, the assurance risk associated with most mechanisms equals the possibility that both the licensee and the financial assurance provider (e.g., banks, sureties) will be unable to meet the required obligations.

In the case of self-guarantees, the guarantor is not required to set funds aside or obtain a third-party guarantee if it can demonstrate by means of a financial test that its financial resources are sufficient to pay the assured costs whenever those costs come due. Thus, for self-guarantees, the assurance

risk equals the possibility that the licensee will be unable to meet the required obligations. In other words, the assurance provided by a self-guarantee is exposed to the risk that a decline in the financial condition of the self-guarantor will not be identified in time so that a prepayment or third-party financial assurance mechanism can be obtained to replace the self-guarantee.

NRC sought to minimize this risk associated with self-guarantees by, first, including a bond rating criterion in the tests designed for colleges and universities and hospitals. Long-term experience suggests that institutions with A or better bond ratings generally are financially stable and do not enter precipitously into financial decline. In addition, the bond rating agencies track the financial performance of the institutions for which they have issued ratings, and downgrade those ratings if they receive information that the financial situation of the institution is declining. In order to ensure that the bond rating is an assessment of the financial strength of the institution, and not of some other entity, NRC specified that the bond ratings that may be used for qualification for self-guarantee may not be insured ratings.

Second, NRC sought to minimize the assurance risk associated with the other financial criteria in the rule (i.e., the requirement for "unrestricted" endowment for colleges and universities, the financial ratio requirements for hospitals, and the financial ratio requirements for non-bond-issuing firms) by adopting conservative values for those criteria, and whenever possible by attempting to correlate those criteria to an equivalent degree of risk posed by the bond rating requirement.

Costs and Benefits

The total costs of the self-guarantee include, in addition to implementation costs, the public and private costs associated with the self-guarantee mechanism. Private costs consist primarily of the fees that licensees must pay to a third party in order to obtain a financial assurance mechanism. Thus, licensees can avoid much of the private cost of financial assurance if they can provide a self-guarantee. Estimates of private costs were derived from the number of licensees able to pass the self-guarantee test.

Public costs of a self-guarantee include the decommissioning costs that are assured by the self-guarantee but which the licensee does not pay due to bankruptcy. Although public costs can largely be avoided by not allowing the self-guarantee, the total cost (i.e., public plus private) may be reduced by allowing the self-guarantee if private costs decline more than public costs rise. The public costs of the self-guarantee mechanism are calculated by multiplying the assurance risk by the amount of the decommissioning costs expected to be assured using the mechanism. NRC found it difficult to estimate the public costs of failures by colleges and universities and hospitals because of the extreme rarity of failures of such institutions with the level of financial strength and the size that would be capable of using the financial test. NRC's estimates of public costs for firms that do not issue bonds reflect the assurance risk of each self-guarantee by net worth category.

The net benefit of a self-guarantee would equal the savings to licensees resulting from use of the self-guarantee mechanism (rather than from a more expensive third-party mechanism) minus any increase in public costs.

3.2 AVAILABILITY OF SELF-GUARANTEE OPTIONS

NRC's analysis indicates that the financial test for colleges and universities included in Option 3 could be used by approximately 30 college and university licensees. Most of those qualifying would do so because they have an uninsured bond rating of A or better. The remaining would qualify because their estimated unrestricted endowments exceed \$50 million.

Of the 23 materials licensees that would qualify for the self-guarantee, 18 are private institutions and 5 are public institutions.

For the Part 50 reactor licensees that are colleges and universities, 4 private institutions would qualify. All of the public institutions presently use statement of intent, and this analysis assumes that they would continue to do so.

The financial test for hospitals included in Option 3 could be used by approximately 12 hospitals, out of the 26 hospitals that are NRC materials licensees that must provide financial assurance. Eleven of the 12 would qualify because they have an A or better bond rating. The remaining hospital would qualify because it passes the ratio tests. It currently has no rated bonds. Ten of the 12 hospitals that would qualify for self guarantee are not-for-profit institutions; two have state government affiliations.

The financial test for firms that do not issue bonds in Option 3 could be used by approximately 3 firms, out of the 31 firms that were identified as NRC materials licensees that must provide financial assurance but have not issued rated bonds.⁽¹²⁾

3.3 ASSURANCE RISK

Because of the very low failure rates for colleges and universities, particularly institutions of the endowment size and longevity exhibited by the colleges and universities passing the test for self-guarantee, and for hospitals, NRC had almost no historical data from which to measure assurance risk.

Therefore, the assurance risk was measured by the estimated failure rate for A or better rated bonds, since almost all of the colleges and universities and hospitals that would qualify for use of self-guarantee would qualify on the basis that they possess such bond ratings. For A-rated or better bonds, the estimated annual assurance risk is 0.13 percent, based on historical data from Moodys. In other words, there is a 0.13 percent chance that a licensee using the self-guarantee will go bankrupt and be unable to cover the costs of decommissioning in a given year. In addition, the premise of the bond ratings is that all A-rated bonds should be of the same approximate risk (i.e., different bond ratings are assigned to different risk categories). Therefore, differences in the size or other characteristics of colleges and universities and hospitals are not expected to affect this assurance risk.

3.4 PUBLIC AND PRIVATE COSTS OF SELF-GUARANTEE OPTIONS

In this analysis, public costs are defined as the amount of decommissioning costs that would be required to be paid by the public sector due to the financial failure of self-guaranteeing licensees without the substitution of another source of financial assurance or the failure of a third party financial assurance mechanism. Private costs are defined as the cost of financial assurance mechanisms that must be obtained by licensees in order to comply

with regulatory requirements.

Mechanisms based on financial tests, such as a self-guarantee, reduce private costs by allowing licensees to demonstrate financial assurance without incurring the fees associated with the use of third-party mechanisms such as letters of credit, surety bonds, etc. The private costs associated with financial test mechanisms are assumed to be the costs of preparing the necessary submissions to NRC, which are estimated as only a few hundred dollars.

Table 3.1 presents and compares the estimated private costs, public costs, and total costs (private plus public costs) of NRC's decommissioning financial assurance requirements for colleges and universities, hospitals, and firms that do not issue bonds with and without the self-guarantee.

Table 3.1

Private and Public Costs of Financial Assurance With and Without Self-Guarantee, Including Research Reactor Licensees and Impacts of Statement of Intent for Public Colleges and Universities^a

Financial Assurance Option		Private Costs \$ (000)	Public Costs \$ (000)	Total Costs \$ (000)
1: All eligible licensees use bank letter of credit \$ (000)				
--Colleges and Universities	(66 @ \$750)	1,733	19.6	1,752.6
--Hospitals	(33 @ \$2,000)	293	3.3	296.3
--Non-bond Issuing Firms	(26 licensees) (31 licensees)	349	3.9	352.9
Total		2,375	26.9	2,401.9
2: All licensees use letter of credit, except all Part 50 public schools and 75% of other public schools use Statements of Intent				
--Colleges and Universities	*	585	103.4	688.4
--Hospitals	(26 licensees)	293	3.3	296.3
--Non-bond Issuing Firms	(31 licensees)	349	3.9	352.9
Total		1,227	110.7	1,337.7
3: All qualified licensees use self-guarantee; others use letter of credit, except all Part 50 public schools and 75% of other public schools use Statement of Intent				
--Colleges and Universities	**	206.2	114.4	320.7
--Hospitals	(12 qualify of 26)	157	13.4	170.9
--Non-bond Issuing Firms	(3 qualify of 31)	315	6.4	321.4
Total		678.7	134.4	813.1
4: Difference between 2 and 3		548.2	(23.6)	524.5

^a Source: ICF calculations. The costs in the table do not reflect any decrease in private decommissioning costs that would occur if the public assumes the decommissioning costs that are unfunded by the private sector. Although some licensees hold several licenses, it is assumed here that each licensee holds one license, except when a school holds both a reactor and materials licenses.

* Represents 30 Part 30, 40, 70, or 72 licenses held by public institutions using Statements of Intent and 10 using letters of credit, and 26 Part 30, 40, 70, or 72 licenses held by private institutions using letters of credit; also represents 26 Part 50 licenses held by public institutions using Statements of Intent, as well as 6 Part 50 licenses held by private institutions using letters of credit.

** Represents 30 Part 30, 40, 70, or 72 licenses held by public institutions using Statements of Intent 5 using self-guarantee, and 5 using letters of credit, and 26 Part 30, 40, 70, or 72 licenses held by private institutions with 18 using self-guarantee and 8 using letters of credit; also represents 26 Part 50 licenses held by public institutions using Statements of Intent; as well as 4 Part 50 licenses held by private institutions using self-guarantee and 2 using a letter of credit.

Table 3.1 presents and compares the estimated private costs, public costs, and total costs (private plus public costs) of NRC's decommissioning financial assurance requirements for colleges and universities, hospitals, and firms that do not issue bonds.

The first scenario in the table presents a baseline that includes colleges and universities that are regulated under Part 50 as well as under Parts 30, 40, and 70. It thus includes college and university licensees with research reactors. Although some colleges and universities hold licenses under both Part 50 and Parts 30, 40, or 70, they are treated separately for this analysis. For estimating the baseline for this scenario, licensees are assumed to use letters of credit at annual cost of 1.5 percent of their face value. The assurance risk assumed for letters of credit was based on the estimated assurance risk of standby letters of credit issued by FDIC insured banks from 1984 through 1990, 0.017 percent per annum. Licensees under Parts 30, 40, 70, and 72 are assumed to have decommissioning costs of 750K per licensee. Licensees under Part 50 are assumed to have decommissioning costs of \$2 million (a licensee under both Part 50 and Parts 30, 40, 70, or 72 would have decommissioning costs of \$2.75 million).

The second scenario presents an alternate baseline that assumes that, for materials licensees, 75 percent of public colleges and universities use statements of intent to provide financial assurance and the remaining 25 percent use letters of credit. For reactor licensees, 26 public institutions use statement of intent and 6 private institutions use a letter of credit. The statement of intent is assumed to have no cost, and the assurance risk of the statement of intent is assumed to be the equivalent of self-guarantee, or 0.13 percent per annum.

The third scenario in the table estimates the costs if all licensees in the three categories under investigation that meet the financial conditions of the self-guarantee (except for public colleges and universities) are assumed to use the self-guarantee and licensees that are unable to use a self-guarantee are assumed to use a letter of credit. In addition, however, this scenario assumes the same breakdown of licensees use a statement of intent as above and the remaining are divided between those licensees that qualify to use self-guarantee and those that are unable to use self-guarantee and therefore use a letter of credit.

Finally, the difference in costs between scenario two and three is given.

As Table 3.1 demonstrates, while private costs decline substantially under a self-guarantee, public costs rise. Total costs, however, are lower when the self-guarantee mechanism is available. Allowing use of the self-guarantee (Option 3) reduces total annual costs by approximately \$500,000.

3.5 DECISION RATIONALE FOR SELECTION OF OPTION

On the basis of the analyses summarized above, the Commission has chosen Option 3.

4. FINANCIAL AND ECONOMIC IMPACTS OF SELF-GUARANTEE RULEMAKING

4.1 IMPACTS ON LICENSEES

Adoption of a self-guarantee option is not expected to produce any negative financial or economic impacts. Because a self-guarantee option will generate cost savings for those licensees able to use the self-guarantee, the rulemaking is expected to produce positive financial impacts. Other licensees that cannot use the self-guarantee, including licensees that qualify as small businesses, will be unaffected by the rulemaking and therefore should not experience significant impacts. Costs for licensees qualifying for self-guarantee would be reduced relative to licensees unable to qualify. However, the purpose of this rule is to reduce cost burdens where justified.

4.2 IMPACTS ON NRC AND THE STATES

No significant impacts are expected for NRC or the States because the effort to review and administer the self-guarantee is expected to be comparable to or less than the burden associated with other mechanisms currently allowed. In each case, NRC or the States will be required to review financial assurance submissions, and the size and scope of self-guarantee submissions are not expected to differ significantly from the mechanisms already allowed.

5. IMPLICATIONS FOR OTHER NRC REGULATORY PROGRAMS

Currently, self-guarantees are not allowed in NRC's financial assurance programs for low-level radioactive waste disposal facilities, uranium recovery facilities, or for power reactors. While much of the analysis behind the self-guarantee rulemaking may be generally applicable to these other programs, licensees in these programs may also be significantly different from materials licensees in at least two ways:

(1)

The decommissioning cost estimates typical of these licensees may be much higher than is typical of materials licensees. Higher costs estimates could alter the optimal balance between public and private costs.

(2)

The financial characteristics of these licensees may be very different from those of materials licensees. Different financial characteristics could suggest different financial test criteria and perhaps different baseline failure rates.

Because the present analysis, for the reasons stated above, may not fully apply to NRC's other financial assurance programs, NRC is not allowing a self-guarantee option for these programs at the present time.

REFERENCES

Draft NUREG/CR-6514, 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, Draft Report, June 1997.

**NRC TO ALLOW MORE LICENSEES
TO USE SELF-GUARANTEE FOR DECOMMISSIONING FUNDING**

The Nuclear Regulatory Commission is amending its regulations to allow additional licensees who meet stringent financial criteria to self-guarantee adequate funds for decommissioning.

The amendments extend the option of using a self-guarantee to non-profit licensees, such as universities and hospitals, and to for-profit licensees who do not issue bonds.

Since 1993, NRC regulations have permitted financially strong for-profit corporate licensees (other than electric utilities), with bond ratings of A or better, to use a procedure called "self-guarantee" to ensure that adequate funds will be available for decommissioning. Other methods--available to all licensees--include a surety bond or letter of credit, prepayment, insurance, or external sinking fund.

Under a self-guarantee, the licensee gives the Commission a written commitment that the licensee will fund and carry out the required decommissioning activities. Licensees who use this option must pass an annual financial test and report promptly to the NRC any deterioration in financial condition.

Licensees affected by the amended regulations would have to meet the following financial criteria:

- For colleges and universities, either (1) a bond rating of A or better; or (2) for institutions that do not issue bonds, an unrestricted endowment of at least \$50 million or at least 30 times the estimated decommissioning costs, whichever is greater.
- For hospitals, either (1) a bond rating of A or better; or (2) for hospitals that do not issue bonds, satisfaction of four tests specified in the regulations for liquidity, net revenue, leverage, and size.
- For industrial corporations that do not issue bonds, satisfaction of the following tests: net worth would have to be greater than \$10 million or at least 10 times the estimated decommissioning costs, whichever is greater; cash flow would have to be more than 15% of liabilities; and liabilities would have to be less than 150% of net worth.

The NRC estimates that 25 to 30 college and university licensees, 10 to 14 hospitals, and two to four non-bond-issuing industrial companies might qualify for self-guarantee.

Further details on the rule are contained in a *Federal Register* notice to be published shortly. The revisions will be effective 30 days after the *Federal Register* notice.

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DETAILED COMMENT SUMMARY AND RESPONSE

- 1. Standby Trust Agreements
- 2. Financial Criteria for Colleges and Universities
- 3. Financial Criteria for Hospitals
- 4. Formula for Establishing Net Worth
- 5. Study to Evaluate Benefits of Financial Assurance
- 6. National Insurance Program for Non-Utility Licensees
- 7. Definition of Liquidity for Hospitals
- 8. Prohibition on Using a Guarantee in Combination with Another Financial Assurance Mechanism
- 9. Need for Definitions of Accounting Terms
- 10. Insured Bond Ratings
- 11. Requirements for Financial Statements
- 12. Which Financial Criteria Apply When a University Also Includes a Hospital
- 13. What is the Bond Issuing Entity
- 13. Definition of "Uninsured, Uncollateralized, and Unencumbered Bonds"
- 14. Application of Criteria for Issuers of Uninsured, Uncollateralized, and Unencumbered Bonds.
- 15. Meaning of Unrestricted Endowment
- 15. Financial Criteria for Non-Bond Issuing Commercial Licensees
- 16. Decommissioning Cost Estimates
- 17. Agreement State Compatibility Status of Financial assurance Regulations
- 18. Applicability of Rule in Finding of No Significant Impact Section
- 19. Requirement for Annual Passage of Financial Test
- 20. Use of Self-Guarantee by the United States Enrichment Corporation

- 21. Obtaining a Bond Rating Even if a Licensee Does Not Issue Bonds

1. STANDBY TRUST AGREEMENTS

Comment: "Many licensees use a letter of credit and standby trust agreement to assure decommissioning. . . . [T]he NRC model standby trust agreement in Reg. Guide 3.66 provides for funds to be released to the licensee for decommissioning purposes. This action can defeat the intent of the regulations because, if the licensee has filed for bankruptcy, they legally become a separate entity from the licensee that initially filed financial assurance arrangements and under the constraints of bankruptcy proceedings those funds could be used for purposes other than decommissioning. CORAR recommends that NRC replaces this model with one that provides for the regulator to manage the decommissioning funds in the event of bankruptcy. The benefit of this recommendation is that it will assure the intent of the regulation, it will provide a model that regulatory staff can use to process licensee submissions and the arrangements carry less risk to the bank providing the service and consequently less cost to the licensee."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: NRC does not agree that the current model in *Regulatory Guide 3.66* for the standby trust requires funds to be released to the licensee in all circumstances nor does it believe that funds placed in the standby trust can or should become available in bankruptcy to be used for other purposes. In fact, the standby trust language provided in Reg. Guide 3.66 was developed, in part, to address issues arising in the bankruptcy of the licensee.

Under the terms of Section 5 of the trust, "In the event of the Grantor's default or inability to direct decommissioning activities, the Trustee shall make payments from the fund as the NRC shall direct, in writing, to provide for the payment of the costs of required activities covered by this Agreement." (emphasis added) The NRC interprets this language to provide that if the licensee is solvent and capable of conducting the decommissioning, NRC can direct the trustee to make payments from the trust to compensate the licensee for funds that it has expended for decommissioning activities, upon presentation of suitable documentation of such expenditures. However, if the licensee is insolvent and its business affairs are under the supervision of a bankruptcy court and/or a trustee in bankruptcy, NRC probably would take the position that the licensee is "unable to direct decommissioning activities." In that case, NRC can provide instructions to the trustee of the standby trust to make payments from the trust to a third party, such as a contractor, who is performing the decommissioning activities. Under the appropriate circumstances, such as a reorganization under the Bankruptcy Code, in which the licensee serves as a "debtor in possession" and continues to direct its business activities, and if suitable agreements can be made between the trustee in bankruptcy or the bankruptcy court and the NRC, the NRC might conclude that the licensee continues to be able to direct decommissioning activities. In that case, NRC might instruct the trustee of the standby trust to make payments to the licensee, but those payments would be made only after the licensee has provided proof that decommissioning activities have been carried out. In no case, however, should funds in the standby trust become part of the bankruptcy estate, or be used for a purpose other than decommissioning. Therefore, NRC disagrees with this comment, since in the NRC's opinion the standby trust currently provides for suitable protection against the bankruptcy of the licensee. NRC also notes that if funds in a financial assurance mechanism, such as a letter of credit, were to go directly to NRC instead of into the standby trust, the NRC would be obligated by law to place such funds immediately into the control of the Treasury, with the potential effect of delaying decommissioning.

2. FINANCIAL CRITERIA FOR COLLEGES AND UNIVERSITIES

(a) **Comment:** "The selected multiple of 30 is excessively conservative. It should not be difficult to obtain secure investments yielding 6%. CORAR recommends that an appropriate multiple would be 15 based on investment yield."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: NRC's objective in selecting financial criteria was to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. However, for colleges and universities that do not issue bonds, lack of appropriate data on default risk made a financial assurance risk analysis impossible. For these licensees, NRC deliberately chose financial criteria which are conservative. NRC did state in the preamble to the proposed rule, at 62 FR 32296, that "[t]he multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent." However, it is important to note that NRC was not assuming (1) that institutions will in fact finance decommissioning out of endowments; (2) that endowments can be expected in all circumstances to grow at a rate of at least 3 percent annually; or (3) that institutions can be expected to reallocate up to 3 percent of their spending from endowments in a one-year period. Rather, the criterion was selected to serve as a measure of the overall financial strength of the institution, indicating that NRC can reasonably assume that such a college or university can be allowed to self-guarantee for the costs of decommissioning because it possesses sufficient financial strength to obtain the necessary funds when they are needed.

Even assuming the premise of the commenter, NRC does not believe that reducing the multiple to 15, as the commenter suggests, is desirable.

- First, colleges and universities can be expected to have budgeted expenditures from endowments in advance. Reallocating that spending to address decommissioning costs may be difficult. Other sources of funds, including borrowing, may be a more efficient resource to use than endowment to pay the costs of decommissioning. Endowments of the size required by the 30 times criterion should ensure that the necessary funds can be obtained.
- Second, although a real rate of return of 3 percent may appear low under the market conditions prevailing during certain periods, there is a substantial body of empirical evidence indicating that it is a reasonable assumption. If a licensee who has been relying on a self-guarantee is required to fully fund a trust fund for decommissioning in the year prior to the beginning of decommissioning, and the licensee relies on earnings from endowment to create the trust, it is the annual earnings of the endowment for the year immediately prior to the decommissioning that must equal the required amount. NRC has reviewed the information provided in Ibbotson Associates, *Stocks, Bonds, Bills, and Inflation 1995 Yearbook*, 1995, which published a summary of market results for the 69 year period from 1926 to 1995 for five categories of investments: small company stocks, large company stocks, long-term government bonds, long-term corporate bonds, and intermediate-term government bonds. On a year-

by-year basis, less risky investments, such as treasury bills, showed the most frequent positive returns, but their annual returns also were relatively low. Riskier investments showed a broad distribution of returns, from very good to very poor. Overall, however, with the exception of small and large company stocks, the average inflation adjusted earnings (geometric mean) for these categories of investments were less than 3 percent. In a number of years, earnings for stocks also were less than 3 percent. Thus, real investment returns over a one-year period may not even match conservative earnings assumptions.

The study of endowment sponsored by the National Council of College and University Business Officers (NACUBO) published in 1995 also emphasized a concern for this earnings variability in its analysis of college and university endowment investment. First, NACUBO's study noted that current high rates of return cannot be expected to continue indefinitely. "At a time when many public and private institutions are searching for ways to bridge the gap between revenues and expenditures, it is tempting to extrapolate these extraordinary returns into the future and to budget endowment spending accordingly. In this context, however, it is instructive to note that for a representative group of institutions, the average annual real return after spending for the 10-year period ended June 30, 1994, is 4.1%, but for the 20 years ended June 30, 1994, it is 0.9%." (1994 NACUBO Endowment Study, 1995, p. 4)

The NACUBO study therefore recommends strongly that institutions keep their spending from endowment below the rate proposed by the commenter. The report says:

Historical precedent indicates that a fund invested approximately 60% in domestic and foreign stocks, 30% in fixed income, and 10% in various other asset classes inevitably experiences recurring periods of absolute decline in market values over three years. Such a decline would trigger a reduction in spending for an institution sticking to a policy of spending a fixed percentage of a three-year moving average of endowment market values. . . . For fiscal year 1994, the average endowment spending rate reported by responding institutions is 6.0%. On average, the smallest endowments (\$25 million and less) spent more (7.2%) than the largest (4.5%), and public institutions spent more (6.6%) than private institutions (5.7%). . . . With the sole exception of the 4.5% spent by the largest universities, these spending rates are not compatible with most institutions' stated intention to preserve the purchasing power of their endowment. Over time, it is possible (difficult, but possible) for the exceptionally well-managed institution to spend 6.0% of a three-year moving average of endowment market values, and still preserve purchasing power. However, it is courting disaster to spend at an annual rate of 6.0% toward the tail end of a long bull market. (1994 NACUBO Endowment Study, 1995, p. 5)

Although to date the bull market existing in 1994-1995 is continuing, there is also current evidence that market fluctuations can adversely impact spending plans of colleges and universities. (See, for example, "Market Swings Take Colleges and Endowments Along For the Ride," *The New York Times*, August 20, 1997, A30).

Based on these considerations, the NRC continues to believe that a relatively conservative criterion, such as the 30 times requirement, is a reasonable criterion for the decommissioning self-guarantee test for colleges and universities, and does not accept the commenter's recommendation to adopt a substantially less stringent criterion.

The 30 times criterion is not a requirement that prevents a significant number of additional licensees from qualifying for self-guarantee. It applies only to colleges and universities that do not qualify on the basis of an A or better bond rating. Of the 27 colleges and universities estimated to qualify, over 75% do so on the basis of their bond rating. For the remaining licensees, the absolute unrestricted endowment level (\$50 million) is the restricting factor. At most, only a few (1-3) additional licensees might qualify if the 30 times criterion were relaxed.

(b) **Comment:** A commenter objected to the requirement in the non-bond rating financial test for colleges and universities that unrestricted endowment be at least \$50 million or at least 30 times the decommissioning cost estimate, whichever is greater. "No explanation is provided as to why an endowment that is at least 30 times projected decommissioning costs is not an adequate standard. Nor, given the size of projected decommissioning costs for college and university licensees, is there any reason why an unrestricted endowment of at least \$50 million is not by itself an adequate standard. Rather than requiring compliance with the greater of the two tests, compliance with either of the tests would appear more than adequate to provide financial assurance."

American Council on Education

Response: This requirement is aimed at assuring the financial viability of a licensee qualified to self-guarantee. This is the only requirement for non-bond issuing colleges and universities, unlike that for non-bond issuing hospitals or commercial licensees--which use multiple financial ratios as financial tests. It is designed to capture two measures of financial viability: overall financial strength, and financial strength relative to size of decommissioning obligation. The overall financial strength of an institution is heavily dependent on size of unrestricted endowment. Specific ability to fund decommissioning expenses is measured by the ratio of unrestricted endowment to decommissioning costs. A financial test based only on ratio to decommissioning cost might allow an institution without adequate financial strength to pass if its decommissioning costs were low. A test based only on size of unrestricted endowment might be inadequate for those institutions with the highest decommissioning costs. Both threshold requirements are needed to provide assurance that an institution can meet decommissioning obligations when necessary.

(c) **Comment:** NRC's rationale for a multiple of 30 "implies that decommissioning costs are paid from investment yields over a one year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving two or three years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: NRC recognizes that decommissioning may occur over a period longer than one year. The multiple of 30 was chosen without regard to how many years it would take to decommission a facility. The commenter is attempting to make this linkage the key factor in arriving at an appropriate

multiple. However, following this line of reasoning, stretching out the time length of decommissioning would imply ever decreasing multiples.

NRC's objective is to ensure that decommissioning will take place on a timely basis. The financial assurance regulations are intended to assure that inadequate funding does not prevent timely decommissioning. Timely decommissioning may require that all decommissioning funding be available up front even though decommissioning activities are not completed within a single year period. For this reason NRC's criteria for determining whether a licensee should be allowed to self-guarantee the costs of decommissioning must consider the possibility that the licensee will be required to fully fund decommissioning in the year immediately prior to the beginning of decommissioning activities. The licensee would fund a standby trust either (1) if the licensee no longer qualified to use the self-guarantee to provide financial assurance for decommissioning, even if it was not yet required to conduct decommissioning, or (2) if a licensee using a self-guarantee is required to carry out decommissioning. NRC currently does not allow licensees to consider the impact of earnings during the "payout" period (the period during which funds are being expended from the financial assurance standby trust to pay for decommissioning) in calculating the amount of funds that must be set aside for decommissioning. Therefore, the commenter's suggestion concerning the expected duration of decommissioning activities is not relevant to the determination of the appropriate multiple.

Comment: "CORAR recommends that [based on the combination of investment yield of 6% and investment yields over two to three years rather than one year] the multiplication factor [be] reduced from 30 to 10 with ample conservatism."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: For the reasons stated in responses to the preceding comments, NRC does not accept this recommendation.

3. FINANCIAL CRITERIA FOR HOSPITALS

(a) **Comment:** "The selected multiple of 100 [hospital operating revenues at least 100 times decommissioning costs] is excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be two years or more. CORAR recommends that the NRC considers a multiple of 30 or less to be appropriate."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: As noted above, the requirement that hospital operating revenues be at least 100 times decommissioning costs is a criterion that NRC is proposing to use to determine if a licensee has sufficient financial strength to self-guarantee. A potential consequence of self-guaranteeing, however, could be the requirement to fully fund a trust fund in a short period of time, if the licensee ceases to be capable of passing the self-guarantee test or if decommissioning must be carried out. As discussed above, the operating revenues multiple criterion does not reflect any expectation concerning the length of time during which decommissioning will occur. Therefore, NRC does not accept this recommendation.

The multiple of 100 times decommissioning costs is not a significant restricting factor in limiting the number of hospitals that could qualify for self-guarantee. The requirement applies only to hospitals that cannot qualify on the basis of an A or better bond rating. Of the estimated 12 qualifying hospitals, all but 1 would do so by having an A or better bond rating. Of the 26 non-profit hospitals in the NRC database analyzed in the Regulatory Analysis, all have operating revenues in excess of 100 times the average decommissioning cost estimates submitted by hospitals to NRC (\$372,000). All but 2 have operating revenues in excess of 100 times the highest decommissioning certification amount (\$750,000). This indicates that only a few (1-2) additional licensees might qualify if this requirement were dropped.

(b) **Comment:** A commenter found the rationale for requiring hospitals to meet all four financial ratios tests unclear. This commenter believed that using only one ratio-- operating revenues/decommissioning costs-- would appear to provide reasonable assurance of ability to provide decommissioning funding.

State of New York Department of Health

Response: The financial ratios test for hospitals in the rule was carefully selected to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. The four ratios in combination represent the best financial test identified which achieves this goal. A financial test using just one of these ratios would not represent the same level of risk, and would not provide an adequate level of financial assurance. Using only the ratio of operating revenues to decommissioning costs would completely ignore such determinants of financial strength as liquidity, indebtedness, and profitability. The financial test used for non-bond issuing commercial licensees includes several ratios, not just one. The non-bond financial test for colleges and universities does use a single ratio, but it is the ratio of unrestricted endowment to decommissioning costs. Unrestricted endowment is a fund readily available to meet decommissioning expenses. Hospital operating revenues is different; these funds may not be readily available to meet decommissioning expenses due to other hospital costs. A detailed explanation of the four ratios can be found in NUREG/CR-6514, "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Non-Profit Colleges, Universities, and Hospitals and by Business Firms That Do Not Issue Bonds".

4. FORMULA FOR ESTABLISHING NET WORTH

Comment: "CORAR observes that Net Worth is defined as Assets minus Liabilities and that Liabilities include decommissioning cost estimates. It therefore appears that the liabilities are double counted in [the requirements that total liabilities divided by net worth be less than 1.5, and net worth be greater than \$10 million or at least 10 times decommissioning costs]. We recommend that decommissioning costs be explicitly excluded from liabilities in these criteria. The modified formula will continue to provide adequate financial assurance."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: NRC has no evidence that all licensees currently are including estimates of their future decommissioning costs in their financial statements as part of their recognized liabilities. In some cases, companies choose to describe future decommissioning costs as only a potential future liability,

recognizing them in footnotes to their financial reports, but not including them in their balance sheets. Second, even when a licensee includes decommissioning costs in its liabilities in its financial statements, such inclusion does not lead to "double counting," as suggested by the commenter, although it does make the total liabilities to net worth ratio more difficult to satisfy. However, the NRC has concluded that such stringency is reasonable, because a self-guarantee does not provide the same "defense in depth" as financial assurance provided by third-party mechanisms such as letters of credit. Finally, NRC notes that future national accounting standards are likely to require decommissioning costs to be included in financial statement liabilities. The Financial Accounting Standards Board (FASB) has circulated for comment, but not yet finalized, a financial accounting standard (No. 158-B) relating to obligations that are incurred for the closure or removal of long-lived assets. Under this standard, the liability for decommissioning (stated as the present value of the estimated future cash outflows required to satisfy the obligation) would be recognized in the entity's financial statements, either on the face of the statement of financial position or in the notes to the financial statements. NRC is reluctant to adopt a regulatory definition that would be inconsistent with the FASB standard.

5. STUDY TO EVALUATE BENEFITS OF FINANCIAL ASSURANCE

Comment: "While CORAR appreciates the need for financial assurance for licensees with significant historic radionuclide inventories it is not clear whether the regulatory measures are effective. CORAR therefore recommends that the NRC should publish an evaluation that clearly shows that the benefit to society in ensuring decommissioning and reduction in public dose is justified by the cost of maintaining financial assurance arrangements, regulatory costs in reviewing financial assurance arrangements and costs of adverse effects of financial assurance arrangements on licensee radiation protection resources and financial and operational viability."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: NRC agrees with the commenter that there is a need for financial assurance requirements for licensees. However, the Commission does not agree that detailed study is needed to further demonstrate the effectiveness of the current financial assurance requirements.

In 1988 NRC stated the rationale for financial assurance in the preamble to the regulations promulgating financial assurance requirements for decommissioning: "[I]adequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety, and environmental impacts." (53 FR 24019, June 27, 1988) In the course of its development of the decommissioning requirements, including an Advanced Notice of Proposed Rulemaking in 1978 and a Notice of Proposed Rulemaking in 1985, the Commission received and considered public comments on the need for financial assurance for decommissioning. The Commission's conclusion, which was particularly directed at the need for financial assurance for reactor decommissioning, also applies to decommissioning of other licensed facilities:

In carrying out its licensing and related regulatory responsibilities . . . the NRC has determined that this regulation is needed because there is a significant radiation hazard associated with nondecommissioned nuclear facilities. The NRC has also determined that the public health and safety can best be protected by promulgating a rule requiring reasonable assurance that at the time of termination of operations adequate funds are available so that decommissioning can be carried out in a safe and timely manner and that lack of funds does not result in delays that may cause potential health and safety problems. (53 FR 24037, June 27, 1988)

NRC's experience since 1988 supports this conclusion. In several cases, termination of operations by licensees that had not set aside sufficient funds (e.g., because such termination occurred prior to the promulgation of the decommissioning financial assurance requirements) has raised the issue whether safe and timely decommissioning will occur and has required extensive efforts by the NRC to ensure protection of public health and safety. In contrast, the NRC has not experienced any failures of the financial assurance requirements to date. Therefore, it does not agree with the comment that a detailed review of the benefits of the requirements is required.

6. NATIONAL INSURANCE PROGRAM FOR NON-UTILITY LICENSEES

Comment: "The NRC should consider promoting a national insurance program for all non-utility licensees with the objective of reducing the cost of demonstrating financial assurance."

CORAR (Council on Radionuclides and Radiopharmaceuticals, Inc.)

Response: The NRC does not believe that it should promote a national insurance program for this purpose. Whatever the issues involved in such a program are, there is no reason that this should be an NRC responsibility. Similar programs have been established through industry associations. This rulemaking, which simply adds to the list of acceptable financial assurance mechanisms, has no direct link to the pros and cons of such an insurance program.

7. DEFINITION OF LIQUIDITY FOR HOSPITALS

Comment: "[Under the criteria for hospitals,] 'liquidity' is incorrectly defined twice as 'current assets and depreciation fund, divided by current liabilities.' (emphasis added) The same mistake is made in II.B.(2)(c) of the proposed Appendix E to Part 30. The underscored language should be deleted. Inclusion of 'depreciation fund' in the liquidity test makes no sense from an accounting perspective. The study upon which the proposed rule is based, NUREG/CR-6514, correctly defines the liquidity test on page 32 as 'Liquidity,' measured by the current ratio (current assets divided by current liabilities)."

State of Illinois, Department of Nuclear Safety

Response: As the commenter notes, the ratio that NRC has selected as one criterion for self-guarantee is the so-called "current ratio." Generally, it is defined as current assets divided by current liabilities. In some cases, however, particularly involving hospitals, the ratio in the proposed rule that is quoted by the commenter is used. For example, HCIA Inc., which prepares the annual *Profiles of U.S. Hospitals*, which collects and evaluates information on the financial, operational, and clinical performance of about 6,500 hospitals in the U.S., defines liquidity for purposes of its report as follows:

Liquidity is measured by a hospital's current ratio, which is computed as the sum of the hospital's current assets and depreciation fund divided by its current liabilities. (HCIA, *1996 Profiles of U.S. Hospitals*, 1995, p. 2)

The primary source relied upon by HCIA is the Medicare cost report, which is filed annually with the U.S. Department of Health and Human Services by every U.S. hospital that participates in the Medicare program. Hospitals must describe the method of depreciation that they use, note whether depreciation is funded, and provide the balance in the depreciation fund, if any, at the end of the reporting period. (See Form HCFA-2552, the Hospital and Health Care Cost Report Certification and Settlement Summary) Thus, hospitals should have the information necessary to respond to this criterion.

NRC recognizes that the detailed information presented in Medicare cost reports is not always presented in the same way in other financial reports prepared by hospitals. In particular, hospitals do not always provide information about their depreciation fund, if any, in their financial statements and balance sheets, and therefore hospitals' independently audited year-end financial statements may not contain information on the depreciation fund. The NRC believes, however, that even if a hospital uses a figure for "current assets" from its financial statement, and that figure does not include the hospital's depreciation fund, this should not pose a problem from the standpoint of qualifying to self-guarantee. The effect will be to make the test criterion somewhat more stringent. That stringency can be addressed by the licensee if it desires, by noting in its submission that it is adjusting the current assets from its financial statement by the addition of information on its depreciation fund from another source. Therefore, NRC does not agree that it is necessary to revise the definition of liquidity.

8. PROHIBITION ON USING A GUARANTEE IN COMBINATION WITH ANOTHER FINANCIAL ASSURANCE MECHANISM

Comment: "Provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2) and 72.30(c)(2), provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. What are the reasons for these restrictions? It would seem that the licensing agency would, for instance, have stronger financial assurance for decommissioning if there were a 50% prepayment and a 50% guarantee than if there [is] just a 100% guarantee."

State of Illinois, Department of Nuclear Safety

Response: This rulemaking makes no change in the already existing prohibition against combining a parent or self-guarantee with another type of financial assurance mechanism. The issue of whether or not to allow such a combination is broader than the focus of this rulemaking. The NRC has limited experience with parent and self-guarantee to date. It is expected that NRC will periodically reevaluate its financial assurance program in the future, and could assess the need for the prohibition.

9. NEED FOR DEFINITIONS OF ACCOUNTING TERMS

Comment: "Fansteel . . . suggests that the final rule include definitions for the various accounting terms used in the rule. For example, the proposed rule uses the term 'cash flow' but does not define it, whereas the current parent guarantee rule (10 CFR 30, Appendix B) uses the term 'the sum of net income plus depreciation, depletion and amortization,' but does not mention cash flow. NUREG/CR-6514 defines cash flow as 'net income plus depreciation, depletion and amortization.' Without the NUREG, one might conclude that the use of different terms in similar rules suggests that different meanings are intended. This confusion can be avoided by defining the terms in the rule, rather than relying on documents merely referenced in the rulemaking notice to provide clarity."

The US Enrichment Corporation wanted a definition of "cash flow" in Appendix D to be defined.

Fansteel, Incorporated, US Enrichment Corporation

Response: NRC intends the definitions of accounting terms used in similar financial assurance rules to be consistent from rule to rule. The detailed criteria for the financial tests for use of the parent guarantee, self-guarantee, and the self-guarantee by non-profit and non-bond issuing licensees under the proposed rule all will be found in appendices to 10 CFR Part 30 (Appendix A, Appendix C, and Appendix D, respectively). Therefore, NRC will review the regulations and determine if definitions should be added. In many cases, however, the NRC places material illustrating or explaining basic regulatory requirements in regulatory guidance. NRC will also review the guidance on financial assurance for decommissioning, *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, to ensure that all necessary definitions are included and that the definitions are consistent.

10. INSURED BOND RATINGS

Comment: "[T]he criteria in the proposed rule are unnecessarily restrictive and could be modified without any significant reduction in financial assurance. The first issue concerns the ability to rely upon bond ratings. As proposed, for those institutions that issue bonds, only a bond issuance that is 'uninsured' may be relied upon. The justification for this limitation is that 'insured bond ratings are in fact the rating of the insurance company' rather than the college or university itself. 62 Fed. Reg. at 23396. However, as the NRC's own study acknowledges, bond insurers 'evaluate the financial condition of the issuers to insure and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance (and the triple-A rating that accompanies it) indicates that the issuer is in sound financial condition.' NUREG/CR-6514, 2.5.2 at p. 18. Thus, the existence of bond insurance provides further assurance that the institution is financially secure, and should support the acceptability of the self-guarantee, rather than disqualifying the bond issuance from consideration."

American Council on Education

Response: NRC agrees that bond insurers evaluate the financial condition of the issuers of the bonds at the time the debt is insured, and that bond rating agencies, such as Moodys and Standard and Poors typically assign such bonds a triple-A rating. However, the rating agencies do not directly consider the creditworthiness of the bond issuer when assigning ratings on insured bonds; rather, the rating corresponds to the rating of the bond insurer.

NRC's concerns with accepting insured bonds as a criterion of financial assurance arise from the possibility that over time the insured bond rating could mask potential adverse changes in the financial condition of the bond issuer after the debt has been insured. The proposed rule includes a requirement that the licensee must review whether it continues to pass the financial test for self-guarantee every year. Furthermore, if the licensee no longer meets the test criteria, it must notify NRC and establish alternate financial assurance. However, insured bonds would continue to hold their rating, despite declines in the financial condition of the issuer.

The study quoted by the commenter addresses this issue immediately after the text quoted above:

Bond insurance companies evaluate the financial condition of the issuers they insure and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance (and the triple-A rating that accompanies it) indicates that the issuer is in sound financial condition. In fact almost all insured university debt would receive an investment grade rating (i.e., Baa/BBB or higher) without insurance. [However, i]f an issuer's financial condition deteriorates, the rating on its insured bonds remains constant. . . . If . . . surveillance causes the insurer to believe that an issuer may be in jeopardy of defaulting on insured debt payments, the insurer may advise the issuer of ways to improve its financial condition and avoid default.

The problem from the standpoint of financial assurance is that an insured bond does not provide a criterion by which NRC can identify when a licensee/issuer no longer qualifies to self-guarantee. The bond can retain its high rating despite a decline in the financial strength of the issuer. Furthermore, the insurance coverage provided by the bond insurer -- a guarantee of payment of principal and interest in accordance with the insured bond issue's payment schedule -- will not provide any additional source of funding for decommissioning. NRC therefore does not agree with the commenter's suggestion that it accept ratings on insured bonds as an acceptable criterion for self-guarantee.

11. REQUIREMENTS FOR FINANCIAL STATEMENTS

Comment: "The requirements for licensees pursuing self-guarantees should reflect the realities of the licensee community. In particular, the proposed requirement (Appendices D and E) that licensees conduct accounting per U.S. generally accepted accounting principles (GAAP) does not recognize the increasingly multi-national nature of materials licensees. Foreign ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatome) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow that adequate assurance that funds will be available can be provided using other recognized and accepted accounting principles."

Nuclear Energy Institute

Response: Financial statements prepared in accordance with foreign accounting principles rather than U.S. generally accepted accounting principles pose two problems, from the standpoint of a financial test for self-guarantee. First, the financial test was developed based on an analysis of financial data for U.S. firms. Consequently, the financial test criteria may not be applicable or effective when used in conjunction with financial data that were prepared in accordance with foreign accounting practices. Second, allowing firms to rely on financial statements prepared according to accounting principles in use in their own country could place a heavy administrative burden on NRC. The examples cited by the commenter, for instance, might require NRC to know and apply German, Swiss, and French accounting principles to assess compliance with a financial test designed using U.S. GAAP. Finally, NRC has authorized the use of a broad range of financial assurance mechanisms in part to ensure that licensees that are unable to use a particular mechanism have other alternatives available. NRC does not expect firms to change their accounting practices in order to make use of the financial test, because a number of other options are available.

12. WHICH FINANCIAL CRITERIA APPLY WHEN A UNIVERSITY ALSO INCLUDES A HOSPITAL

Comment: "The proposed rule does not make clear which financial criteria apply when a university also includes a hospital."

State of New York Department of Health

Response: The activity of the licensee determines the appropriate financial criteria. If a hospital is the licensee, even if the hospital is within a university, the financial criteria for hospitals would be applicable.

13. WHAT IS THE BOND ISSUING ENTITY

Comment: "The proposed rule does not make clear what it means for the non-profit to 'issue bonds.' In New York State, tax-exempt bonds issued for colleges and universities are placed through the Dormitory Authority of the State of New York. The Dormitory Authority, a public agency, takes no financial risk in the transaction, and the bonds are rated based on the financial strength of the college or university for whom they are issued. The bonds are not, strictly speaking, issued to the market directly by the institutions themselves; they are the bonds of the Authority."

State of New York Department of Health

Response: The NRC would look closely at three attributes of a particular bond, to determine whether it could be used to satisfy the self-guarantee bond-rating criterion. First, the bond should be attributable to the college or university licensee that is attempting to use its rating. That is, even if the bond is issued to the market by a special state authority, such as the Dormitory Authority, the bond issuance should be clearly linked, on its face or in supporting documentation supplied to the NRC, with the college or university. Second, the bond issuance should be linked only with that college or university seeking to rely upon it for financial assurance. That is, it should not be linked to two or more institutions. Third, the bond's rating should be based only on the financial strength of the college or university for whom the bond is issued. That is, the bond's rating should not reflect any assessment of the financial strength of the issuing authority. It is important to note, however, that other factors also may be important, and that NRC will address each situation according to the facts of the licensee's particular submission.

13. DEFINITION OF "UNINSURED, UNCOLLATERALIZED, AND UNENCUMBERED BONDS"

Comment: "What is meant by 'uninsured, uncollateralized and unencumbered bonds?'" Would a bond for which no property is mortgaged but a priority claim is given to bondholders on certain receivables (e.g., room and board payments) be considered 'collateralized' or 'encumbered?'"

State of New York Department of Health

Response: "Collateral" is defined as an asset pledged as security to ensure payment or performance of an obligation. A collateralized bond can be a bond backed by the cash flow from such obligations as a pool of loans, lease payments, or receivables. Such asset-backed securities generally are rated with reference to the quality of the pledged assets, in contrast to unsecured bonds, which are rated with reference to the overall financial condition and future prospects of the issuer. Although NRC will address each situation according to the facts of the licensee's particular submission, bonds backed by the cash flow from certain specified receivables are unlikely to qualify as "uninsured, uncollateralized and unencumbered."

14. APPLICATION OF CRITERIA FOR ISSUERS OF UNINSURED, UNCOLLATERALIZED, AND UNENCUMBERED BONDS.

Comment: "Do any criteria apply when a non-profit has issued bonds, but none are 'uninsured, uncollateralized and unencumbered?'" Such institutions could not meet the first test, and the second test appears to be restricted to 'applicants and licensees that do not issue bonds,' regardless of what sorts of bonds these might be."

State of New York Department of Health

Response: A licensee that has not issued any uninsured, uncollateralized, or unencumbered bonds clearly cannot use the bond-rating criterion to qualify to self-guarantee. However, a licensee that has issued insured, collateralized, or otherwise encumbered bonds may in fact be able to demonstrate that it satisfies the alternative criteria. The NRC did not intend for the rule language quoted by the commenter to restrict the use of the alternative test for self-guarantee, if the licensee can satisfy the alternative criteria.

15. MEANING OF UNRESTRICTED ENDOWMENT

Comment: "What is meant by unrestricted 'endowment?'" Most institutions have what are referred to generally as 'endowments' that consist substantially of funds functioning in that capacity, even though the donors contributed them in such a way that the funds would not necessarily be regarded, strictly speaking, as 'endowment' in the narrower legal sense of that term. Many institutions of great financial strength may not meet the criteria if a strict legal definition is applied."

State of New York Department of Health

Response: As defined by NACUBO, endowment is "assets donated by individuals or organizations to provide permanent capital and an ongoing stream of current income for an institution." NRC considers unrestricted endowment to be endowment that is not limited by the terms of its donation to use for a specified purpose; that is not subject to any reversionary interest if not used for a specified purpose; and whose principal or interest are not required to be spent by a particular specified date. An analysis prepared for NRC of the impact of this criterion indicated that institutions of financial strength would not be precluded by the unrestricted endowment requirement from qualifying for self-guarantee.

15. FINANCIAL CRITERIA FOR NON-BOND ISSUING COMMERCIAL LICENSEES

Comment: A commenter objected to the net worth criteria--net worth greater than \$10 million or at least 10 times estimated decommissioning costs.

This discriminates against well-funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the \$10 million net worth requirement.

Stan A. Huber Consultants

Response: The NRC's objective in setting financial criteria for non-bond issuing commercial licensees was to make the financial assurance risk of these criteria equal to the financial assurance risk of the financial criteria for those licensees that issue bonds (estimated to be approximately 0.13 percent per year). According to the analysis of potential financial criteria carried out as part of the proposed rule, the financial criteria in the proposed rule meet this objective.⁽¹³⁾ Firms with smaller net worth have a larger default risk than larger firms. Thus, the \$10 million net worth requirement is an essential part of the overall financial test. Moreover, eliminating the \$10 million requirement would not allow more than a few (1-2) additional licensees to qualify. The analysis in NUREG/CR-6514, (p. 4.6) estimates that all non-bond issuing firms in the NRC licensee database have a \$10 million net worth.

16. DECOMMISSIONING COST ESTIMATES

Comment: Several commenters raised the issue of how decommissioning costs estimates were arrived at. The NRC should encourage best available information estimates of decommissioning costs, based on historic plant experience in decommissioning and renovation, rather than commercial estimates by contractors which tend to be too high. Conservative assumptions, such as use of rates charged by contractors and high estimates of waste disposal costs, should not be used. A commenter also noted that assuming a period for short-lived isotopes to decay before decommissioning begins would be a realistic assumption. Also, a typical licensee will not have the maximum amount of material allowed by the license at the time of decommissioning.

CORAR, Amersham, Nuclear Energy Institute

Response: This rulemaking makes no changes in requirements for how licensees estimate decommissioning costs. Decommissioning cost estimates, or use of the certification amounts in 10 CFR Part 30, are already required by existing regulations on financial assurance. This rule simply adds an additional financial assurance mechanism to those already permitted in NRC regulations.

17. AGREEMENT STATE COMPATIBILITY STATUS OF FINANCIAL ASSURANCE REGULATIONS

Comment: The proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will assure consistent requirements for financial surety arrangements, and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

CORAR, Amersham, Nuclear Energy Institute

Response: When the proposed rule was published in the *Federal Register* (see 62 FR 23394, April 30, 1997), it was designated as a Division 2 compatibility item in accordance with the compatibility policy in effect at that time. A Division 2 level of compatibility allowed an Agreement State to promulgate equivalent, or more stringent, financial assurance regulations than those of NRC.

Under the new "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (see 62 FR 46517, September 3, 1997) Agreement States must adopt NRC regulations having particular health and safety significance and those necessary to maintain compatibility with the Commission's regulatory program.

The NRC financial assurance regulations, in effect when the new policy was implemented, were designated as having health and safety significance. Specifically, sections (a), (b), and (d) of Parts 30.35, 40.36 and 70.25, which require that licensees must consider the cost of decommissioning their facilities and that those costs must be provided for through a financial assurance mechanism, have particular health and safety significance and were designated as category H&S. Under the H&S category, Agreement States should adopt the essential objectives of these sections in order to maintain an adequate program. The remaining sections of the rule, including those which allow self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria, were designated as compatibility Category D. Category D means the Agreement States do not need to adopt a compatible rule.

The final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as compatibility Category D. Under compatibility category D, Agreement States may choose to maintain a more stringent rule by not adopting the self-guarantee option.

18. APPLICABILITY OF RULE IN FINDING OF NO SIGNIFICANT IMPACT SECTION

Comment: A commenter noted that in the "Finding of No Significant Impact" section, the phrase "non-power reactor licensees" is used to describe the applicability of the proposed rule. This is incorrect; the correct phrase should be "non-electric utility" licensees.

State of Illinois, Department of Nuclear Safety

Response: The commenter is correct; this has been changed in the final rule.

19. REQUIREMENT FOR ANNUAL PASSAGE OF FINANCIAL TEST

Comment: A commenter stated that Section II. C. (2) of Appendix E should be modified so that a qualifying licensee would not have to repeat passage of the financial test for self-guarantee every year. University endowments are very stable. In addition, section II. C. (3) provides sufficient assurance that NRC will be notified when a licensee no longer meets the criteria for self-guarantee.

University of Delaware

Response: While it is true that university endowments are relatively stable and Section II. C. (3) provides for notification, the provision for qualifying licensees to repeat passage of the test is retained in the final rule. For a self-guarantee program to provide adequate assurance of decommissioning funding, the annual "requalification" provision is necessary. NRC must have assurance of financial strength on a timely basis. A self-guarantee relies solely on the licensees ability to fund decommissioning; there is no backup such as provided by a third party financial assurance mechanism. The requirement for repeating the financial test yearly is not unduly burdensome on a licensee, and it gives NRC information on the financial condition of the licensee on a timely basis. This requirement is not unique to colleges and universities or to this rule; it is found in the self-guarantee financial tests applicable to other types of licensees, both profit and non-profit.

20. USE OF SELF-GUARANTEE BY THE UNITED STATES ENRICHMENT CORPORATION

Comment: The US Enrichment Corporation proposed that the NRC modify the language of the rule to include certificates (regulated under 10 CFR Part 76 by NRC). USEC stated that it would benefit from the opportunity to reduce the costs of complying with NRC financial assurance requirements, which USEC estimated would presently cost in excess of \$100,000 per year for letters of credit and surety bonds.

Response: Under 10 CFR 76.35(n), the United States Enrichment Corporation (USEC or the Corporation) is required to establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanisms currently listed in the regulation as potentially acceptable for use by the Corporation include prepayment, surety, insurance, and an external sinking fund, but do not include self-guarantee or statement of intent. The rule provides that the funding mechanism must "ensure availability of funds for any activities that are required to be completed. . . ." by the Corporation.

USEC was created pursuant to the Energy Policy Act of 1992. It is a wholly-owned government corporation, whose powers are vested in a five-member Board of Directors appointed by the President of the United States and confirmed by the Senate. On July 25, 1997, however, a plan was approved by the President under which USEC will be sold either to another corporation or to the public through a stock offering. Under the USEC Privatization Act, Congress set certain restrictions on foreign involvement in USEC's privatization, and required that a "reliable and economical domestic source of enrichment services" exist following privatization.

Although the NRC is not currently aware of any reason why it would be inappropriate to consider expanding the category of funding mechanisms available to the Corporation to demonstrate the availability of funds for the actions required under 10 CFR 76.35(n), it does not believe that it would be feasible to do so in the current rulemaking. First, USEC was not included in any of the analysis performed to evaluate potential self-guarantee tests for demonstrating financial assurance. NRC believes that detailed analysis should be undertaken to ensure that all critical factors have been considered. Second, USEC's current and future situation with respect to the costs that it might incur is substantially different from the licensees included in the current rulemaking. In particular, the scope and type of activities that USEC must carry out under 10 CFR 76.35(n) are very different from those conducted by hospitals and universities and the non-bond issuing firms covered by the proposed rule. Third, the exact size of the obligations that USEC might be required to cover is uncertain, and will not be determined until a later date, although it is known that many of the costs will remain the responsibility of the U.S. Department of Energy (DOE). Under 10 CFR 76.35(n), DOE is responsible for those aspects of decontamination and decommissioning of the gaseous diffusion plants (GDPs) assigned to DOE under the Atomic Energy Act. DOE also is responsible for all environmental liabilities associated with the operation of the GDPs prior to July 1, 1993. According to USEC's Annual Report for 1996, "[e]xcept for certain accrued liabilities that will be specified in a memorandum of agreement entered into prior to privatization, all environmental liabilities of the Company through the date of privatization will remain obligations of the U.S. government." (Notes to Financial Statements: 7. Environmental Matters). Furthermore, as of June 30, 1996, USEC had accrued liability of \$303 million for transportation, conversion, and disposition of depleted uranium currently stored at the GDPs. The 1996 Annual Report states that "USEC is evaluating various proposals for the disposition of depleted uranium, and depending on the outcome of such evaluations, the Company may be able to reduce future cost accruals. . . . Pursuant to the USEC Privatization Act, all costs and liabilities related to the disposition of depleted uranium generated prior to the privatization date are the responsibility of DOE." Fourth, until privatization has occurred, important information about USEC's future corporate structure and ownership will remain uncertain. As noted above, Congress has allowed for USEC to be sold either to another corporation or to the public through a stock offering. Thus, the form in which privatization occurs could affect the NRC's analysis of financial assurance alternatives. Because of the need to evaluate all of these factors, NRC has determined not to include Part 76 in the current rulemaking.

21. OBTAINING A BOND RATING EVEN IF A LICENSEE DOES NOT ISSUE BONDS

Comment: A commenter noted that while the "Supplementary Information" section of the notice of proposed rulemaking said that a licensee that did not issue bonds could obtain an indicative bond rating, the proposed rule text did not state this.

State of Illinois, Department of Nuclear Safety

Response: As the NRC stated in the Supplementary Information accompanying the proposed rule, the fact that a licensee has not issued bonds is not necessarily a sign of financial weakness. "[L]ack of any bond issuance could reflect financial resources great enough to preclude the need to issue debt." (62 FR 23396, April 30, 1997) Therefore, as the commenter correctly notes, the preamble went on to say the following:

Even if an applicant or licensee were a non-profit entity or a for-profit firm that does not issue bonds, it may obtain a bond rating from one of the major ratings agencies. This option would be allowed. Having obtained a bond rating, the licensee would be subject to the same requirements as the bond-issuing institutions. (*Ibid.*)

By "obtaining a bond rating" the NRC meant securing a so-called "indicative" bond rating from Moodys or Standard & Poors. In banking and finance, an "indication" is a notation next to a price quote that it is for information only. Similarly, "indicative" bond ratings, which are available for a relatively large fixed fee, are informative in nature, and are provided as an indication of what a rating would be if the firm were to issue debt. Moodys explains such ratings as follows:

Issuers contemplating the issuance of debt at some future date are offered an indicative rating on a prospective issue. The rating is indicated on a confidential basis, subject to certain limitations in the event of debt issuance by the applicant in any of the capital markets. The indicative rating is subject to revision or withdrawal at any time, without notice, if any information (or lack of information) warrants such action, in the sole opinion of Moodys.

A licensee seeking to use such a rating would be required to submit the rating and name of the rating service, but it would not be able to provide NRC information on the dates of issuance and maturity of the bond, nor certify that the rating pertained to its "most recent" issuance. Instead, it would need to explain that the rating was an indicative rating.

NRC's approach to defining the criteria for the financial tests for use of the parent guarantee and self-guarantee is to place the basic requirements in appendices to 10 CFR Part 30 and to place material illustrating or explaining the basic regulatory requirements in regulatory guidance. Information concerning the use of indicative bond ratings to satisfy the bond rating criterion and details concerning the information that a licensee should submit to qualify for such use are more appropriately included in guidance material than in the regulation. NRC will review the guidance on financial assurance for decommissioning, *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, to ensure that the necessary explanation of the use of indicative bond ratings is included.

ENCLOSURE 5

[Federal Register: April 30, 1997 (Volume 62, Number 83)]

[Proposed Rules]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150-AF64

Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

[[Page 23395]]

ACTION: **Proposed** rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to **self-guarantee** funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to **self-guarantee** funding if they meet stringent financial criteria. The **proposed** rule would allow non-profit licensees, such as colleges, universities, and hospitals, and also some commercial licensees who do not issue bonds, to **self-guarantee** funding, provided they meet similarly stringent financial criteria. Allowing qualified non-profit and non-bond-issuing licensees to use **self-guarantee** would reduce the costs of complying with NRC financial assurance requirements while providing adequate confidence to the NRC that funds for decommissioning will be available when needed.

DATES: Submit comments by July 29, 1997. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Docketing and Service Branch. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Single copies of this **proposed** rulemaking may be obtained by written request to Distribution and Services Section, Printing, Graphics and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, or by telefax to (301) 415-2260. For information on submitting comments electronically see the discussion under Electronic Access in the Supplementary Information section. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated in the discussion under Electronic Access.

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415-6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION: Licensees subject to 10 CFR Parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for or holders of operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance, ¹ parent company **guarantee** for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, **self-guarantee**. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

\1\ Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities, and does not affect the NRC's Advance Notice of **Proposed** Rulemaking which addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors--61 FR 15427 April 8, 1996).

Licensees currently using **self-guarantee** must pass a stringent financial test that is given in Appendix C to 10 CFR Part 30. **Self-guarantee** is currently not available to non-profit licensees, such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for **self-guarantee** uses the rating of the bonds issued by the licensee as one measure of its financial resources and ability to fund decommissioning.

The NRC has determined that the use of **self-guarantee**, currently limited to bond-issuing industrial corporations, could be made available to additional categories of licensees without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified non-profit and non-bond issuing licensees to use **self-guarantee** would reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

I. Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows financially strong corporations with A or better bond ratings the option of using **self-guarantee** as a mechanism for complying with the regulations on financial assurance for decommissioning. **Self-guarantee** was added to the list of financial assurance mechanisms as a cost-saving option for those licensees able to meet the stringent financial test required. The NRC's **self-guarantee** procedure requires licensees to pass the financial test annually. In addition, NRC's requirements for **self-guarantee** provide for early reporting by licensees of any deterioration in financial condition.

The NRC's decision to add **self-guarantee** by qualified licensees to the list of approved financial assurance mechanisms came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM-30-59, notice of receipt published September 25, 1991 (56 FR 48445). The petition presented a case for allowing **self-guarantee** as a cost-saving option for corporate licensees able to pass a stringent financial test. The NRC published a notice of **proposed** rulemaking on January 11, 1993 (58 FR 3515), in response to the petition. Several

comment letters were received from universities requesting that **self-guarantee** also be applied to non-profit entities able to pass a financial test. At that time, the NRC had not conducted an analysis of the feasibility of applying **self-guarantee** to non-profit entities. In the final rule, the NRC stated that ``In order to extend the use of **self-guarantee** to non-profit entities, new criteria would have to be developed to assess the financial strength of the non-profit licensees. Development of financial criteria to assess the qualifications of a non-profit entity to provide a **self-guarantee** is likely to require detailed consideration of the different financial accounting methods used by medical institutions. The financial accounting and reporting of non-profit entities are unique and substantially different from the accounting and reporting of for-profit entities'' (58 FR 68728).

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for non-profit licensees and non-bond issuing commercial licensees to use **self-guarantee** while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. The study, ``Analysis of Potential **Self-Guarantee** Tests for Demonstrating Financial Assurance by Nonprofit Colleges and Universities and Hospitals and by

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Business Firms that Do Not Issue Bonds,'' NUREG/CR-6514,² identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of **self-guarantee**. The financial criteria **proposed** here were selected by the NRC based on information in this report. The NRC believes that the financial criteria **proposed** in this notice would maintain the high level of assurance of availability of decommissioning funding provided by the present **self-guarantee** mechanism for bond-issuing licensees.

\\2\ Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L St. NW, Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343. Single copies are available from the NRC contact.

II. Analysis of Financial Criteria

The NRC must have evidence of adequate financial strength on the part of the licensee to ensure that decommissioning funding obligations will be met when the need arises. If **self-guarantee** is permitted, the applicant or licensee must submit a basis for concluding that decommissioning financial assurance is still provided. Financial strength does not necessarily depend on the type of licensee. Many colleges and universities have very strong financial positions, with large endowment funds that could be used, if needed, for decommissioning funding. Some hospitals are also quite financially strong. With respect to non-bond issuing commercial firms, their lack of any bond issuance could reflect financial resources great enough to preclude the need to issue debt.

If a college, university, or hospital 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**. This risk 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 at less than 1 percent annually.³ 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 NUREG/CR-6514, insured bond ratings are in fact the rating of the insuring company and may not apply to the institution that holds the NRC license.

\3\ Corporate Bond Defaults and Default Rates, Moodys Special Report, January 1991, p. 32.

Regarding financial criteria that are based on factors other than bond ratings, quantitative estimates of financial assurance risk are not available because of the lack of a large financial database such as that maintained by the bond-rating agencies on bond-issuing entities. The NRC has deliberately chosen non-bond rating financial criteria that are conservative. The NRC regulations have included a **self-guarantee** mechanism for only a few years. It seems prudent to set the threshold financial criteria at a high level. At some future time, as more experience is gained with **self-guarantee**, the financial criteria can be reviewed, and appropriate revisions can be **proposed**.

A. Criteria for Colleges and Universities

Approximately 75 percent of NRC's college and university licensees issue bonds and have bond ratings. Bond rating can thus be used as a basis for financial criteria for most college and university licensees. Note that many college or university licensees are public institutions and a large portion of these can use a governmental statement of intent that funds for decommissioning will be obtained when necessary, a mechanism which does not involve any significant cost to the licensee. The NRC 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. Even if an applicant or licensee were a non-profit entity or a for-profit firm that does not issue bonds, it may obtain a bond rating from one of the major ratings agencies. This option would be allowed. Having obtained a bond rating, the licensee would be subject to the same requirements as the bond-issuing institutions.

For licensees without a bond rating, a level of unrestricted endowment of at least \$50 million, or at least 30 times projected decommissioning costs, whichever is larger, should be sufficient to allow use of **self-guarantee**. This level of endowment is adequate to generate annual income sufficient to cover the upper range of estimated decommissioning costs. The multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent.

B. Criteria for Hospitals

Approximately 50 percent of hospital licensees issue bonds and have bond ratings. For the same reasons outlined above, a criterion of an A or better bond rating could be used for hospital licensees. The A or better rating should be for unguaranteed, uninsured, or uncollateralized bonds.

For hospital licensees without a bond rating, three financial ratios are identified as most accurate indicators of financial strength: (1) liquidity--(current assets and depreciation fund, divided by current liabilities), (2) net revenue--(total revenue less total expenses, divided by total revenue), and (3) leverage--(ratio of long term debt to net fixed assets). Numerical values for these ratios have been developed by reviewing the financial characteristics of hospitals. The licensee must meet all three ratios. The **proposed** values are as

follows, and based upon the analysis performed for the NRC, represent a level of financial risk comparable to an A bond rating:

- (a) Liquidity--(Current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55.
- (b) Net revenue--(Total revenues less total expenditures divided by total revenues) greater than or equal to .04.
- (c) Leverage--(Long term debt divided by net fixed assets) less than or equal to .67.

In addition, a hospital must be of a minimum size relative to estimated decommissioning costs. The financial test calls for hospital operating revenues to be at least 100 times decommissioning costs.

C. Criteria For Non-Bond Issuing Industrial Corporations

A financial ratios test is an alternative to bond rating which is currently allowed by NRC regulations. The NRC parent **guarantee** test in Appendix A to 10 CFR Part 30 includes a ratio test as an alternative to a bond rating test. The **proposed** criterion is Cash Flow divided by Total Liabilities greater than 0.15, Total Liabilities divided by Net Worth less than 1.5, and Net Worth greater than \$10 million or at least 10 times decommissioning costs, whichever is greater. The financial assurance risk of using such a criterion is estimated to be comparable to the risk associated with current regulations.⁴

\4\ ``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'', NUREG/CR-6514, 1995, p. 47.

D. Cost Savings

Cost savings would result because qualifying licensees would not have to purchase other types of financial assurance instruments such as letters of

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credit or surety bonds. These types of financial assurance instruments typically cost a licensee approximately 1.5 percent 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, and for colleges and universities includes estimates for the reactors licensed to them as well as materials licenses:

Type of licensee	Number qualifying	Total annual cost savings (thousands)
College and University.....	25-30	\$350--\$400
Hospital.....	10-14	\$120--\$150
Non-Bond Issuing Industrial.....	2-4	\$20--\$40

The total cost savings for all licensees estimated to qualify for **self-guarantee** could range from approximately \$500K to \$600K per annum. Greater cost savings would result if 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.

III. Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit **self-guarantee** for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for **self-guarantee** by non-bond issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for **self-guarantee** for non-profit college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit **self-guarantee** for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit **self-guarantee** for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit **self-guarantee** for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit **self-guarantee** for financial assurance which can be used by qualified non-bond issuing licensees.

IV. Issues for Public Comment

(A) 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 to allow **self-guarantee**. An Agreement State does not need to change its financial assurance regulations if this **proposed** rule becomes final. The existing Agreement State regulations on financial assurance do not have to include **self-guarantee** as a financial assurance mechanism. Agreement States have the flexibility to allow **self-guarantee** as a financial assurance mechanism or not to allow it. The NRC invites comments on the general issue of the compatibility status of its financial assurance regulations.

(B) Financial Criteria for Non-Bond Issuing Entities

As discussed, substantial data exist on the default risks associated with various levels of bond rating. However, a quantitative estimate is not available for the financial assurance risk associated with the non-bond rating criteria **proposed** here. The NRC invites comment on whether these **proposed** criteria are sufficiently rigorous with respect to financial assurance risk, or conversely, whether they are so stringent as to exclude licensees who should not be excluded because their financial position is such that the financial assurance risk is acceptable.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can be accessed by selecting the ``Rules Menu'' option from the ``NRC Main Menu.'' Users will find the ``FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ``Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ``Regulatory, Government Administration and State Systems,'' then selecting ``Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ``U.S. Nuclear Regulatory Commission'' that will take the user to the NRC online main menu. The NRC online area also can be accessed directly by typing ``/go NRC'' at a FedWorld command line. If the user accesses NRC from FedWorld's main menu, he or she may return to FedWorld by selecting the ``Return to FedWorld'' option from the NRC online Main Menu. However, if the user accesses NRC at FedWorld by using NRC's toll-free number, he or she will have full access to all NRC systems but will not have access to the main FedWorld system.

If the user contacts FedWorld using Telnet, he or she will see the NRC area and menus, including the Rules Menu. Although the user will be able to download documents and leave

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messages, he or she will not be able to write comments or upload files (comments). If the user contacts FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all the user will see is a list of files without descriptions (normal Gopher look). An index file is available listing and describing all files within a subdirectory. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Finding of No Significant Environmental Impact: Availability

The **proposed** amendments would allow qualified non-profit and non-bond-issuing licensees the option of using **self-guarantee** as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use **self-guarantee** if they meet the regulatory criteria. Other licensees may currently elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and escrow accounts to comply with decommissioning regulations. The **proposed** action is intended to

offer non-profit and non-bond-issuing nuclear materials licensees and non-power reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of **self-guarantee**.

This **proposed** revision to the NRC's regulations simply would add one more financial assurance mechanism to the mechanisms currently available. It would not affect the cost of decommissioning materials and non-power reactor facilities. Allowing **self-guarantee** for additional types of licensees would not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August, 1988). ⁵ Promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this **proposed** rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted in making this determination, and the NRC staff is not aware of any other documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this **proposed** rule.

\5\ Copies of NUREG-0586 are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW (Lower Level), Washington, DC 20555-0001; telephone (202)634-3273; fax (202)634-3343. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402-9328 (telephone (202)512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

Paperwork Reduction Act Statement

This **proposed** rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 9-14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the **proposed** rule and on the following issues:

1. Is the **proposed** collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden correct?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this **proposed** collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet

electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0017, -0020, -0011, -0009, and -01320, Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by May 30, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this **proposed** regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6203.

The NRC requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This **proposed** rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this **proposed** rule, if promulgated as final, would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this **proposed** rule and, therefore, that a backfit analysis is not

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required for this **proposed** rule, because 10 CFR 50.109 addresses only the process for controlling backfits of nuclear power reactors and this **proposed** rule does not affect the Commission's decommissioning financial assurance requirements regarding nuclear power reactors (see Statement of Considerations: Final Rule--Revision of Backfitting Process for Power Reactors, 50 FR 38097; September 20, 1985).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 70, and 72.

PART 30--RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In Sec. 30.8 paragraph (b) is revised to read as follows:

Sec. 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in Secs. 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E.

* * * * *

3. In Sec. 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

Sec. 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(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, 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 Appendix A to this Part. A parent company **guarantee** may not be used in combination with other financial methods to satisfy the requirements of this section. 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 this Part. 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 this Part. For non-profit entities, such as colleges, universities, and non-profit 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 this Part. A **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 or 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:

* * * * *

4. New Appendices D and E to Part 30 are added to read as follows:

Appendix D to Part 30--Criteria Relating to Use of Financial Tests and **Self-Guarantee** for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have No Outstanding Rated Bonds

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own **guarantee** that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the **self-guarantee** are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the **self-guarantee** and establishes the terms for a **self-guarantee**.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than \$10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as **self-guaranteeing** licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 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.

(3) A ratio of cash flow divided by total liabilities greater than 0.15, and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such

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financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may 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.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II. A of this appendix, the licensee must send notice to the NRC of intent to establish alternate financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Company **Self-Guarantee**

The terms of a **self-guarantee** which an applicant or licensee furnishes must provide that:

A. The **guarantee** shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternate financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the **guarantee**.

C. The **guarantee** and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission 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 Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

Appendix E to Part 30--Criteria Relating to Use of Financial Tests and **Self-Guarantee** for Providing Reasonable Assurance of Funds for Decommissioning by Non-Profit Colleges, Universities, and Hospitals

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own **guarantee** that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Section II of this appendix. The terms of the **self-guarantee** are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the **self-guarantee** and establishes the terms for a **self-guarantee**.

II. Financial Test

A. For colleges and universities, to pass the financial test a college or university must meet either the criteria in Paragraph II. A. (1) or the criteria in Paragraph II. A. (2) of this Appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a **self**-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet either the criteria in Paragraph II. B. (1) or the criteria in Paragraph II. B. (2) of this Appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all of the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than .04.

(b) Long term debt divided by net fixed assets must be less than or equal to .67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a **self**-guaranteeing licensee.

C. In addition, to pass the financial test, a licensee must meet all of the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC 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 licensee no longer passes the test.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I. of this appendix, the licensee must send notice to the NRC of its intent to establish alternate financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. The Terms of a **Self-Guarantee** Which an Applicant or Licensee Furnishes Must Provide That--

A. The **guarantee** shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternate financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the **guarantee**.

C. The **guarantee** and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

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

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of ``A'' or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40--DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

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6. In Sec. 40.36 the introductory text of paragraph (e)(2) is revised to read as follows:

Sec. 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

(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, 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 Appendix A to Part 30. A parent company **guarantee** may not be used in combination with other financial methods to satisfy

the requirements of this section. 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. 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. For non-profit entities, such as colleges, universities, and non-profit 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. A **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 or 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:

* * * * *

PART 50--DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. In Sec. 50.75 the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

Sec. 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(2) * * *

(iii) 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, 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 Appendix A to Part 30. A parent company **guarantee** may not be used in combination with other financial methods to satisfy the requirements of this section. 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. 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. For non-profit entities, such as colleges, universities, and non-profit 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. A **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 or 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:

* * * * *

PART 70--DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 USC 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 USC 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 USC 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 USC 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 USC 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 USC 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 USC 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 USC 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 USC 2138).

10. In Sec. 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

Sec. 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(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, 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 Appendix A to Part 30. A parent company **guarantee** may not be used in combination with other financial methods to satisfy the requirements of this section. 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. 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. For non-profit

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entities, such as colleges, universities, and non-profit 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. A **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 or 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:
* * * * *

PART 72--LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 USC 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 USC 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 USC 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 USC 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 USC 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 USC 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 USC 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 USC 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 USC 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 USC 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 USC 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 USC 10153) and sec. 218(a), 96 Stat. 2252 (42 USC 10198).

12. In Sec. 72.30 the introductory text of paragraph (c)(2) is revised to read as follows:

Sec. 72.30 Decommissioning Planning including financing and recordkeeping.

* * * * *

(c) * * *

(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, 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 Appendix A to Part 30. A parent company **guarantee** may not be used in combination with other financial methods to satisfy the requirements of this section. 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. For commercial corporations 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. A **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 or 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:

* * * * *

Dated at Rockville, Maryland, this 24th day of April, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97-11203 Filed 4-29-97; 8:45 am]

BILLING CODE 7590-01-P

ENCLOSURE 6

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of
Representatives
Washington, DC 20515

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission intends to publish the enclosed final amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, and 72 in the *Federal Register* shortly. The amendments would allow certain qualifying non-profit licensees, such as universities, colleges, and hospitals, and non-bond issuing business licensees to use self-guarantee as an additional mechanism for financial assurance for decommissioning.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: *Federal Register* Notice

cc: Representative Ralph Hall

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private,
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The U.S. Nuclear Regulatory Commission intends to publish the enclosed final amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, and 72 in the *Federal Register* shortly. The amendments would allow certain qualifying non-profit licensees, such as universities, colleges, and hospitals, and non-bond issuing business licensees to use self-guarantee as an additional mechanism for financial assurance for decommissioning.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: *Federal Register* Notice

cc: Senator Bob Graham

ENCLOSURE 7

The Honorable Al Gore

President of the United
States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the U.S. Nuclear Regulatory Commission is submitting final amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, 70, and 72. The NRC is amending its regulations to allow additional categories of licensees to qualify to use self-guarantee as an additional mechanism for complying with financial assurance requirements.

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule that is being transmitted to the Office of the *Federal Register* for publication. This final rule will become effective 30 days after it is published in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

The Honorable Newt Gingrich
Speaker of the United States
House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the U.S. Nuclear Regulatory Commission is submitting final amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, 70, and 72. The NRC is amending its regulations to allow additional categories of licensees to qualify to use self-guarantee as an additional mechanism for complying with financial assurance requirements.

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule that is being transmitted to the Office of the *Federal Register* for publication. This final rule will become effective 30 days after it is published in the *Federal Register*.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: Final Rule

Mr. Robert P. Murphy
General Counsel
General Accounting Office
Room 7175
441 G. Street, NW.
Washington, DC 20548

Dear Mr. Murphy:

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, the U.S. Nuclear Regulatory Commission is submitting final amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, 70, and 72. The NRC is amending its regulations to allow additional categories of licensees to qualify to use self-guarantee as an additional mechanism for complying with financial assurance requirements.

We have determined that this rule is not a "major rule" as defined in 5 U.S.C. 804(2). We have confirmed this determination with the Office of Management and Budget.

Enclosed is a copy of the final rule that is being transmitted to the Office of the *Federal Register* for publication. This final rule will become effective 30 days after it is published in the *Federal Register*.

Sincerely,

Enclosure: Final Rule

1. Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities and does not affect the NRC's Notice of Proposed Rulemaking that addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors -- 62 FR 47588, September 10, 1997). As part of this proposed rule, the NRC is considering amending its definition of "electric utility" and clarifying the distinction between financial assurance mechanisms applicable to power reactor licensees and non-power reactor licensees.
2. Single copies are available from the NRC contact. Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328 (telephone (202) 512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343.
3. "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges, Universities, and Hospitals, and by Business Firms That Do Not Issue Bonds," NUREG/CR-6514, p. 4.7, June 1997.
4. Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328 (telephone (202) 512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555; telephone (202) 634-3273; fax (202) 634-3343.
5. "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Non-Profit Colleges, Universities, and Hospitals and by Business Firms That Do Not Issue Bonds," NUREG/CR-6514, June 1997.
6. NUREG/BR-0058, Revision 2, NRC Regulatory Analysis Guidelines, U.S. Nuclear Regulatory Commission, 1995.
7. The same four alternative methods of providing financial assurance are authorized for licensees under Parts 30, 40, 50, 70, and 72 in the following sections: 10 CFR 30.35(f), 40.36(e), 50.75(e), 70.25(f), and 72.30(c).
8. 53 FR 24018; June 27, 1988.
9. U.S. Nuclear Regulatory Commission, 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.
10. The decommissioning regulations do not define "parent company." NRC has provided in Regulatory Guide 3.66 that in order to qualify as a parent company, a firm must demonstrate that it has "majority control of the licensee's voting stock." Regulatory Guide 3.66, pp. 3-21 and 3-23.
11. The decommissioning regulations do not define "parent company." NRC has provided in Regulatory Guide 3.66 that in order to qualify as a parent company, a firm must demonstrate that it has "majority control of the licensee's voting stock." Regulatory Guide 3.66 pp. 3-21 and 3-23.
12. Even if firms do not plan to issue bonds, they can obtain so-called "indicative" bond ratings from Moodys and S&P. Such ratings are explained by Moodys as follows:

Issuers contemplating the issuance of debt at some future date are offered an indicative rating on a prospective issue. The rating is indicated on a confidential basis, subject to certain limitations in the event of debt issuance by the applicant in any of the capital markets. The indicative rating is subject to revision or withdrawal at any time, without notice, is any information (or lack of information) warrants such action, in the sole opinion of Moodys.

The likelihood of firms obtaining such indicative ratings solely to satisfy NRC's requirements for qualifying for self-guarantee must be considered to be extremely low, however, because of Moodys, the fixed fee for such ratings, for all types of firms and for long and short-term ratings, is \$45,000. In most cases, financial assurance provided from a third-party, such as a surety, would be less expensive. However, if a licensee must put up substantial collateral to obtain an alternate instrument, like a letter of credit, it may be cost-effective to get the bond rating to use self-guarantee.
13. "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance in Non-Profit Colleges, Universities, and Hospitals, and by Business Firms That Do Not Issue Bonds," NUREG/CR-6514, p. 4.7.