

**RULEMAKING ISSUE**  
(Negative Consent)

May 9, 2001

SECY-01-0084

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations

SUBJECT: RULEMAKING PLAN: FINANCIAL ASSURANCE AMENDMENTS FOR  
MATERIALS LICENSEES

PURPOSE:

To request by negative consent Commission approval of the attached Rulemaking Plan for amending financial assurance requirements for materials licensees.

BACKGROUND:

The financial assurance requirements for materials licensees in 10 CFR Parts 30, 40, 70, and 72 were established in the 1988 decommissioning rulemaking. Changes in decommissioning costs since 1988 and staff experience with managing the financial assurance program have led to a recognition of the need for revisions to the financial assurance requirements. The attached draft rulemaking plan identifies certain areas of the financial assurance regulations that need to be changed. The need for a staff review of the financial assurance requirements was indicated in the staff's response to COMIS-93-02, "Reexamination of NRC Decommissioning Funding Requirements for Reactor and Major Fuel Cycle Facilities" (March 30, 1993). This review, which involved several contractor studies of decommissioning costs for various types of licensees, has now been completed. Some changes to the financial assurance regulations for materials licensees have already been made. Final rulemakings allowing self-guarantee as an additional financial assurance mechanism for qualified licensees were published in 1993 (58 FR 68726) and 1998 (63 FR 29535).

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The attached rulemaking plan would amend financial assurance requirements in Parts 30, 40, and 70 to make revisions in financial assurance coverage required of some materials licensees. The certification amounts will be adjusted to reflect current decommissioning costs. In addition, the basis for waste broker and certain sealed source licensee financial assurance requirements will be changed to provide greater assurance of financial responsibility for decommissioning costs. Because of the health and safety significance of decommissioning, Agreement States would be expected to adopt program elements that embody the objectives of this rule.

#### DISCUSSION:

The draft rulemaking plan on financial assurance for materials licensees was sent to the Agreement States for comment in November 1999. Three States, Colorado, Illinois, and Washington, submitted comment letters. The following is a summary of the major State comments, and staff responses.

#### (1) Base Financial Assurance on a Variety of Factors, not Just Possession Limits

(1) The State of Colorado commented that the financial assurance rule should base financial assurance not only on amount and type of radioactive material authorized, but also other factors, such as volume of material, size and complexity of facility, and unique characteristics of specific radionuclides that affect cleanup costs.

#### Response:

NRC's financial assurance regulations allow a licensee to provide financial assurance using one of two approaches for determining the amount of financial assurance required: (1) a facility-specific decommissioning plan, including a decommissioning cost estimate; or (2) a certification amount based solely on possession limits for that license.

A licensee desiring to base its financial assurance on other factors, such as area and complexity of facility, can develop a facility-specific decommissioning cost estimate that takes into account any factors that the licensee chooses.

NRC offered the certification amount method as an option for licensees that did not want to devote the significant resources needed to develop a decommissioning plan. It was designed to be a simple, straightforward way of ensuring that adequate funding would be available. NRC has used the certification amount approach successfully for approximately 10 years. For NRC to base the certification amounts on a complex formula involving a number of variables, all of which must be calculated by the licensee and reviewed by NRC, would be contrary to the purpose for which the certification amounts were developed.

#### (2) More Risk-Based Approach to Financial Assurance

Colorado commented that NRC should require financial assurance for all licensees except for certain defined inventories of materials. A more risk- or dose-based approach could be used; any facility where risk was determined to be sufficient to require an emergency plan would be required to have financial assurance.

Response:

NRC's policy is to make financial assurance regulations risk-informed. The current regulations recognize different levels of risk in that they require financial assurance only from licensees authorized to use relatively large amounts of radioactive materials. Smaller licensees are exempt from financial assurance regulations. NRC's emergency preparedness regulations for materials licensees require an emergency plan from only about 10 of the largest licensees. Financial assurance is required from approximately 500 NRC materials licensees out of approximately 5,000 licensees. Financial assurance requirements are needed for a greater number of licensees than emergency plans, because financial assurance primarily addresses decontamination and decommissioning costs, rather than the accident situations that are the focus of emergency plans.

(3) Consult with the CRCPD in Developing the Rulemaking

Colorado stated that the Conference of Radiation Control Program Directors (CRCPD) is now developing new financial assurance regulations, and NRC should consult with CRCPD early in the development process.

Response:

The NRC staff is in contact with the Chairman of the CRCPD working group developing changes to Part S (which covers financial assurance) of the "Suggested State Regulations." The NRC staff has reviewed the current version of the amendments to the "Suggested State Regulations" in developing this rulemaking plan. The Chairman of the CRCPD working group has reviewed the NRC draft rulemaking plan. The staff plans to continue its coordination efforts with CRCPD on this rulemaking.

(4) Consider Financial Assurance for Smaller Licensees

Illinois stated that its State's experience is that smaller licensees present more of a problem in meeting decommissioning obligations. New Illinois financial assurance regulations require more entities to have financial assurance.

Response:

The rulemaking plan recognizes that some types of smaller licensees, especially in the waste broker area, may be required to be covered by financial assurance.

(5) Greater Use of Decommissioning Cost Estimates as Basis for Financial Assurance

Illinois requires large irradiators, waste processors, accelerator licensees, and "major possessors" to submit a decommissioning cost estimate and base the amount of financial assurance required on this estimate.

Response:

This rulemaking plan requires a facility-specific decommissioning cost estimate from large irradiators, and waste processors and brokers. NRC does not have accelerator licensees. NRC's current financial assurance regulations already require facility-specific decommissioning cost estimates from licensees possessing large amounts of radioactive materials.

(6) Special Requirements for Waste Brokers

Illinois noted that under its new financial assurance requirements, waste brokers must prepare a cost estimate based on the maximum amount of material allowed, and the volume and type of quantities handled.

Response:

This rulemaking plan calls for creation of a special type of financial assurance regulations just for waste brokers. The rules will be amended to require a detailed, facility-specific cost estimate from waste brokers.

(7) Eliminate the Certification Amounts as a Basis for Financial Assurance

The State of Washington recommended doing away with the certification amounts and requiring all licensees that meet the basic criteria for financial assurance to submit a facility-specific decommissioning cost estimate. The financial assurance amount required would be based on this estimate, and updated periodically. The State has used this approach successfully. Some other comments supported using a facility-specific cost estimate as a financial assurance basis for some classes of licensees, such as waste brokers.

Response:

The staff notes that this rulemaking plan does require more licensees to submit a facility-specific decommissioning cost estimate, but does not require this of all licensees. NRC has over 500 materials licensees that are required to have financial assurance. Most of these licensees use the certification amounts. Requiring all these licensees to develop and submit facility-specific decommissioning cost estimates would be an unnecessary regulatory burden on licensees and NRC.

(8) Agreement State Implementation

Washington pointed out that part of the rulemaking would change the criteria for which licensees are required to have financial assurance. This has important implications for States and the State Implementation section of the rulemaking plan does not recognize this.

Response:

The staff agrees with this comment. The text on Agreement State implementation issues has been changed.

(9) Exemption in Part 40

Colorado stated that Part 40 financial assurance requirements need to be changed to reduce the threshold for the amount of material requiring financial assurance. NRC should eliminate the exemption from financial assurance, currently in Part 40, for general licensees possessing less than 15 lbs at one time or 150 lbs over one year.

Response:

The NRC staff is currently engaged in a reevaluation of the exemptions in Part 40 as directed by the Commission in the Staff Requirements Memorandum (SRM) on SECY-99-259, "Exemption in 10 CFR Part 40 for Materials Less than 0.05% Source Material- Options and Other Issues Concerning the Control of Source Material," March 9, 2000. The need for financial assurance for general licensees is a topic that this reevaluation will address.

RESOURCES:

To complete and implement this rulemaking, 2.4 full-time equivalent positions will be required. Approximately \$115K in contractor funding has been used to develop information for this rulemaking plan. An estimated additional \$30K may be needed to complete the rulemaking. These resources are included in the current budget.

NRC STRATEGIC PLAN PERFORMANCE GOALS:

This planned rulemaking would maintain safety by enhancing financial assurance of funding for decommissioning. It would also contribute to public confidence that NRC regulations would prevent a licensee bankruptcy resulting in taxpayer expenditure for decommissioning.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection. The Office of State and Tribal Programs has reviewed this paper for Agreement State implementation issues and concurs in it. The Offices of the Chief Financial Officer, Chief Information Officer, Administration, and Enforcement have reviewed and concurred on the draft Rulemaking Plan that went out to Agreement States for comment. Since no significant changes to the Rulemaking Plan have been made, it was not considered necessary for these Offices to concur again.

RECOMMENDATION

This rulemaking plan will be implemented within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.

*/RA/*

William D. Travers  
Executive Director  
for Operations

Attachments:

1. Rulemaking Plan
2. Agreement State comment letters

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