

## RULEMAKING ISSUE

### Notation Vote

June 27, 2002

SECY-02-0116

FOR: The Commissioners

FROM: William D. Travers  
Executive Director for Operations /RA/

SUBJECT: PROPOSED RULE: 10 CFR PARTS 30, 40, AND 70: FINANCIAL  
ASSURANCE AMENDMENTS FOR MATERIALS LICENSEES

PURPOSE:

To request Commission approval to publish a proposed rule, in the Federal Register, that would amend financial assurance requirements for certain materials licensees in 10 CFR Parts 30, 40, and 70. The proposed amendments would bring financial assurance requirements more in line with actual decommissioning costs for these materials licensees.

### BACKGROUND:

The staff notified the Commission of its intent to develop a rulemaking to amend financial assurance requirements for materials licensees in SECY-01-0084, "Rulemaking Plan: Financial Assurance Amendments for Materials Licensees," May, 9, 2001. The Commission advised the staff that it did not object to the rulemaking plan, in a Staff Requirements Memorandum dated June 6, 2001 (Attachment 1).

### DISCUSSION:

#### A. Current Financial Assurance Requirements for Materials Licensees

Under current decommissioning regulations, materials licensees using quantities of nuclear materials above a threshold level must provide financial assurance for

CONTACTS Clark Prichard, NMSS/IMNS  
(301) 415-6203

Thomas Fredrichs, NMSS/DWM  
(301) 415-5971

decommissioning. Most materials licensees are not required to provide financial assurance; of approximately 4900 materials licensees, only approximately 10 percent require financial assurance. All but the largest licensees, such as fuel cycle licensees, may base the amount of financial assurance required on either a site-specific decommissioning cost estimate approved by NRC, or one of the certification amounts in NRC regulations. The certification amounts are based on possession limits, and range from \$75,000 for sealed source licensees, to \$750,000 for licensees possessing large quantities of unsealed material.

The financial assurance requirements were promulgated in 1988 as part of the decommissioning rulemaking (53 FR 24018, June 27, 1988). Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that time, and U.S. Nuclear Regulatory Commission experience has revealed that, for certain types of licensees, such as waste brokers, special considerations exist that require different treatment.

#### B. Proposed Changes

The changes being proposed are in four areas: (1) large sealed source licensees--large irradiators--would no longer be able to use the \$75,000 certification amount as a basis for financial assurance, and would have to base their financial assurance on a site-specific decommissioning cost estimate; (2) all waste broker licensees would have to provide financial assurance and would not be permitted to use the certification amounts. They would have to base their financial assurance on a site-specific decommissioning cost estimate; (3) the certification amounts for all licensees would be increased by 50 percent; and (4) licensees using a decommissioning cost estimate would have to update it at least every 3 years.

##### Large Sealed Source Licensees

Studies conducted for NRC conclude that, for large irradiators, decommissioning costs are substantially above the \$75,000 certification amount they currently may use as a basis for financial assurance (as discussed later, the staff proposes to modify the current certification amounts). The proposed amendments place an upper limit on the amount of licensed radioactive material that a sealed source licensee may possess and continue to use the \$75,000 certification amount. For Cobalt-60 sources, the types of sources generally used by large irradiators, the ceiling amount would be 1 million curies. Approximately 10 NRC licensees would be affected; these licensees would have to submit a site-specific decommissioning cost estimate.

##### Waste Broker Licensees

NRC has approximately 15 waste broker licensees, approximately half now require financial assurance. The term "waste broker" is not defined in NRC regulations. The proposed rule would define "waste broker" as any licensee that collects or accepts radioactive material from other entities for the purpose of processing, compacting, packaging, or otherwise preparing such material for disposal, or for storage. Under current regulations, waste brokers are treated like any other materials licensees for the purpose of financial assurance. However, their decommissioning costs are likely to be much higher than typical licensees because of the large amounts of waste

that must be disposed of. The proposed amendments would require all waste brokers to provide financial assurance, based on a site-specific decommissioning cost estimate.

#### Certification Amounts

The current certification amounts are \$75,000 for sealed source licensees, and \$150,000 or \$750,000 for other licensees, depending on the possession limits. These amounts have not been changed since the 1988 decommissioning rulemaking. Studies of changes in decommissioning costs since the certification amounts were established show substantial increases in decommissioning costs. The proposed amendments would raise all certification amounts by 50 percent. Proposed certification amounts for sealed source licensees would be \$113,000, and for other licensees, \$225,000 and \$1,125,000. Approximately 300 NRC licensees would be affected.

#### Requirement for Updating Decommissioning Cost Estimates

The existing financial assurance regulations do not contain a specific requirement for updating cost estimates in decommissioning funding plans after a certain number of years. Existing regulatory language only refers to "...adjusting cost estimates and associated funding levels periodically over the life of the facility." The staff believes that a more specific requirement is warranted, and is proposing to require updated decommissioning cost estimates at least every 3 years.

#### STRATEGIC PLAN GOALS:

The proposed rule would maintain safety by providing additional assurance of adequate/timely decommissioning. The effect of inadequate/untimely funding of decommissioning may have adverse impacts on public health and safety. If a site is not decommissioned because of insufficient funds, there is an increased likelihood of contamination and/or exposure of members of the public. The proposed rule would increase public confidence in NRC by reducing the likelihood that a State or local government would be forced to pay for decommissioning of a facility. It would make NRC financial assurance regulations more realistic and effective. Although the cost burden on licensees required to provide financial assurance would increase, the increase would be no more than necessary to maintain parity with increased decommissioning costs.

#### AGREEMENT STATE ISSUES:

The proposed amendments would affect Agreement States. The draft proposed rule was sent to Agreement States for review and comment on March 7, 2002. Ohio, Texas, and California provided comments. The comments generally supported NRC's proposed changes to financial assurance requirements.

Ohio supports all the proposed changes except reducing the maximum period for updating decommissioning cost estimates to 3 years. Ohio believes that 5 years is an adequate time frame, and that it is more convenient for the licensee and State to update decommissioning cost estimates at the time of license renewal, which is every 5 years. The staff recognizes that licensee preparation of a new decommissioning cost estimate, as well as regulator review, is a resource burden. However, decommissioning costs, especially waste disposal costs, can

change significantly over a relatively short time period. For example, the decommissioning cost estimate for a large materials licensee increased from approximately \$40 million in 2001 to over \$67 million in 2002. Even requiring updates at least every 3 years would not completely address this problem. However, by requiring an update of decommissioning cost estimates at least every 3 years, the staff is attempting to prevent a large gap between actual decommissioning costs and licensee decommissioning cost estimates from developing.

Texas supports all the proposed changes. It suggested that a definition of “waste broker” be added to the proposed rule. Texas also suggested that the discussion of the proposed rule note the relationship between security of radioactive material and appropriate decommissioning of a site, with timely disposal of radioactive materials. The staff agrees with these comments, and has made these changes.

California's comments were in the form of several questions about the proposed rule. California wanted to know if a licensee's certification amount would be evaluated every 3 years. The staff recognizes that the certification amounts will need to be evaluated periodically, but is not proposing a schedule. California had questions about the implementation of the proposed rule. The staff plans to implement the rule, if finalized, in a way that minimizes the burden on licensees and regulators. Licensees would have a certain time period to conform to new requirements. The staff also plans to implement any new requirements so that all affected licensees would not be required to submit new financial assurance at one time. A section on implementation has been added to the Federal Register notice “Statement of Considerations” asking for comments on how best to implement the rule. California asked if a cost adjustment factor, such as is used for financial assurance requirements in 10 CFR Part 50, would be proposed for materials licensees. The adjustment factor in 10 CFR 50.75 was specifically developed for reactor licensees. It would be much more difficult to develop a similar adjustment factor for materials licensees because of the great diversity in types and sizes of materials licensees.

The Conference of Radiation Control Program Directors (CRCPD) is in the process of developing amendments to the Suggested State Regulations for financial assurance. The staff has coordinated with CRCPD in preparing NRC's draft proposed rule.

#### RESOURCES:

The staff estimates that 2.4 FTE's will be required to complete this rulemaking. Implementation, consisting of guidance revision and review of additional decommissioning cost estimates, will require 0.5 FTE. In addition, more frequent review of decommissioning cost estimate updates will require 0.1 FTE per year. Contractor support for the rulemaking is estimated at approximately \$160K.

#### COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The rule proposes changes in information collection

requirements that must be submitted to the Office of Management and Budget (OMB) no later than the date the proposed rule is forwarded to the Federal Register for publication.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication, in the Federal Register, the proposed amendments to Parts 30, 40, and 70 (Attachment 2).
2. Note:
  - a. That the proposed amendments will be published in the Federal Register, allowing 75 days for public comment;
  - b. That 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 U.S.C. 605(b);
  - c. That a draft Regulatory Analysis has been prepared for this rulemaking (Attachment 3);
  - d. That a draft Environmental Assessment is included in the Federal Register notice under "Environmental Assessment and Finding of No Significant Environmental Impact: Availability;"
  - e. That appropriate Congressional committees will be informed of this action;
  - f. That OMB review is required and a clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register, for publication; and
  - g. That resources to complete and implement this rulemaking are included in the current budget.

**/RA/**

William D. Travers  
Executive Director  
for Operations

The Commissioners

7

Attachments:

1. SRM
2. Federal Register Notice
3. Regulatory Analysis

1. Approve for publication, in the Federal Register, the proposed amendments to Parts 30, 40, and 70 (Attachment 2).
2. Note:
  - a. That the proposed amendments will be published in the Federal Register, allowing 75 days for public comment;
  - b. That 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 U.S.C. 605(b);
  - c. That a draft Regulatory Analysis has been prepared for this rulemaking (Attachment 3);
  - d. That a draft Environmental Assessment is included in the Federal Register notice under "Environmental Assessment and Finding of No Significant Environmental Impact: Availability;"
  - e. That appropriate Congressional committees will be informed of this action;
  - f. That OMB review is required and a clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register, for publication; and
  - g. That resources to complete and implement this rulemaking are included in the current budget.

**/RA/**

William D. Travers  
Executive Director  
for Operations

Attachments:

1. SRM
2. Federal Register Notice
3. Regulatory Analysis

o:\nmss\prichard\fasecyMay14.wpd

**ML011610003**

NMSS 200200245

OFFICE:	RGB/IMNS		RGB/IMNS		D/IMNS		Tech Editor	
NAME:	CPrichard		PHolahan		DCool		EKraus	
DATE:	5/ 24/2002		5/ 30/2002		5/ 30/2002		5/3/2002	
OFFICE:	OSTP		ADM		CIO			
NAME:	PLohaus		MLesar		BShelton			
DATE:	2/ 27 /2002		5 / 9/2002		3 /13 /2002		/	/2002
OFFICE:	D/OE		OGC		CFO		D/NMSS	
NAME:	FCongel		STreby		JFunches		MVirgilio	
DATE:	3/18 /2002		5 / 24 /2002		2 / 28 /2002		6 / 10/2002	
OFFICE:	DEDMRS		EDO					



NAME:	CPaperiello	WTravers		
DATE:	6/27/2002	6/27/2002		

OFFICIAL RECORD COPY