

March 26, 2003

MEMORANDUM TO: Charles L. Miller, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: Daniel Gillen, Chief **/RA/**
Decommissioning Branch, NMSS/DWM

SUBJECT: REVIEW AND CONCURRENCE ON FINAL RULEMAKING - 10 CFR
PARTS 30, 40, AND 70 - FINANCIAL ASSURANCE AMENDMENTS -
MATERIALS LICENSEES

We have reviewed the final rulemaking package. We concur with comments. Please replace the paragraph beginning with "If the potential salvage value ..." found on page 3 of the memo to the Commissioners and on page 7 of the FRN with the following:

"If the potential salvage value of a source were to be used to offset the estimated cost of decommissioning, the effect would be to reduce the amount of funds guaranteed by financial instruments that possess a very high level of assurance, such as a prepaid escrow fund or an irrevocable letter of credit. However, the estimated salvage value of a source does not guarantee that funds will be available when needed. Even where a potential buyer provides a contractual promise to buy the source for a specified sum, the contract provides a lower level of assurance than the protection provided by the fiduciary obligations required of financial institutions that act as trustees or guarantors of funds. A contractual arrangement between the licensee and a buyer does not include the NRC as a beneficiary with the right to demand that funds be placed into a standby trust which restricts use of the funds for decommissioning only. In contrast, a letter of credit does establish the NRC as a beneficiary and gives the NRC the right to demand that funds be placed into a standby trust reserved for decommissioning. Therefore, permitting a licensee to reduce its decommissioning cost estimate by the potential salvage value of a source would decrease the level of financial assurance as compared to the financial instruments required by current regulations."

Contact: Thomas L. Fredrichs, NMSS/DWM/DCB
(301) 415-5971

MEMORANDUM TO: Charles L. Miller, Director
Division of Industrial and
Medical Nuclear Safety, NMSS

FROM: Daniel Gillen, Chief **/RA?**
Decommissioning Branch, NMSS/DWM

SUBJECT: REVIEW AND CONCURRENCE ON FINAL RULEMAKING - 10 CFR
PARTS 30, 40, AND 70 - FINANCIAL ASSURANCE AMENDMENTS -
MATERIALS LICENSEES

We have reviewed the final rulemaking package. We concur with comments. Please replace the paragraph beginning with "If the potential salvage value ..." found on page 3 of the memo to the Commissioners and on page 7 of the FRN with the following:

"If the potential salvage value of a source were to be used to offset the estimated cost of decommissioning, the effect would be to reduce the amount of funds guaranteed by financial instruments that possess a very high level of assurance, such as a prepaid escrow fund or an irrevocable letter of credit. However, the estimated salvage value of a source does not guarantee that funds will be available when needed. Even where a potential buyer provides a contractual promise to buy the source for a specified sum, the contract provides a lower level of assurance than the protection provided by the fiduciary obligations required of financial institutions that act as trustees or guarantors of funds. A contractual arrangement between the licensee and a buyer does not include the NRC as a beneficiary with the right to demand that funds be placed into a standby trust which restricts use of the funds for decommissioning only. In contrast, a letter of credit does establish the NRC as a beneficiary and gives the NRC the right to demand that funds be placed into a standby trust reserved for decommissioning. Therefore, permitting a licensee to reduce its decommissioning cost estimate by the potential salvage value of a source would decrease the level of financial assurance as compared to the financial instruments required by current regulations."

Contact: Thomas L. Fredrichs, NMSS/DWM/DCB
(301) 415-5971

AN: ML-030830403

Template No.: NMSS-010

DISTRIBUTION: File Center DCB r/f NMSS r/f Reamer D.Gillen

DOCUMENT NAME: C:\ORPCheckout\FileNET\ML030830403.wpd

OFC	DCB		DCB		DCB		DCB	
NAME	T.Fredrichs		C.Craig		D.Gillen			
DATE	03/25/03		03/25/03		03 /26/03		/ /03	

OFFICIAL RECORD COPY