

DOCKET: 70-113

LICENSES: SNM-95

LICENSEE: PENNSYLVANIA STATE UNIVERSITY

SUBJECT: SAFETY EVALUATION REPORT: EXEMPTION FROM 90-DAY  
REQUIREMENT TO SUBMIT ANNUAL CERTIFICATION OF FINANCIAL  
ASSURANCE FOR DECOMMISSIONING

## 1. BACKGROUND

Pennsylvania State University (PSU) has two licenses issued by the U.S. Nuclear Regulatory Commission (NRC) under Title 10 of the *Code of Federal Regulations* (10 CFR); license SNM-95 is the special nuclear materials (SNM) license (Docket No. 70-113) and license R-2 is for the research test reactor (Docket No. 50-005). This safety evaluation report addresses the financial assurance licensing activity of license SNM-95. Financial assurance issues pertaining to license R-2 will be addressed separately.

Under 10 CFR 70.25, holders of SNM licenses are required to provide adequate financial assurance for decommissioning. PSU satisfies the NRC's financial assurance requirements in 10 CFR 70.25(f) through a self-guarantee. A self-guarantee of funds for decommissioning costs may be used by non-profit universities, provided the licensee meets the applicable requirements of the financial test and guarantee in 10 CFR Part 30, Appendix E.

The terms of the financial test in 10 CFR Part 30, Appendix E, Section II.C require that a licensee repeat passage of the financial test within 90 days after the close of each succeeding fiscal year, and requires that the data used by the licensee in the test be derived from independently audited year end financial statements. Effective December 17, 2012, the NRC's regulations were revised to clarify that the audited year end financial statements were to be for the latest fiscal year and to require that the licensee provide documentation of its continued eligibility to use the self-guarantee to the NRC within 90 days after the close of each succeeding fiscal year.

PSU is unable to meet the timing requirement because the final versions of the documents showing its continued eligibility to use the self-guarantee are unavailable within 90 days of the close of the fiscal year. In order for the necessary documents to be finalized, they must be approved by the PSU Board of Trustees. PSU's end of fiscal year timeline is as follows:

- The fiscal year of PSU closes on June 30<sup>th</sup>.
- Under the 90-day requirement of Part 30, Appendix A, the annual certification documents are required to be submitted to the NRC by September 28<sup>th</sup>.
- At PSU, the Committee on Audit and Risk meets to review and accept financial statements on behalf of the Board of Trustees during October or November.
- The date on which the PSU Board of Trustees meets to give final approval of the financial statements varies from year to year, but such approval is generally given by November 30<sup>th</sup>.

Since 2006, PSU has committed to providing the requisite documents to the NRC within 180 days of the close of its fiscal year (Ref. 1 and Ref. 2) or within 90 days of the completion of its fiscal year-end audit (Ref. 3). In 2008, the NRC staff requested (Ref. 4) that PSU justify its 180-day submittal period or change the period to be within 90 days of the close of the guarantor's fiscal year as recommended in NRC staff guidance (Ref. 5). In its response dated October 31, 2008 (Ref. 6), PSU stated that it could not comply with the guidance recommendation to provide documentation within 90 days because its final audited financial statements were unavailable within 90 days of the close of its fiscal year.

In a letter dated November 15, 2011 (Ref. 7), the NRC staff concluded that the licensee's commitment to provide the NRC with the results of the financial test annually within 180 days of the close of the fiscal year gave the NRC staff assurance that the self-guarantee provided adequate financial assurance. At that time, the NRC staff did not consider the timeliness issue because the NRC's regulations then in effect did require the submission of the documentation of PSU's continued eligibility to use the self-guarantee. However, on June 17, 2011, the NRC issued a final Decommissioning Planning rule amending 10 CFR Part 30, Appendix E (Ref. 8) to require licensees to *provide documentation* of their continued eligibility to use the self-guarantee within 90 days of the close of the fiscal year. The regulation became effective on December 17, 2012. Hence, the annual timing to demonstrate passage of the financial test, sometimes referred to as "recertification" or "annual certification," has now become a compliance issue.

Since the Decommissioning Planning rule was issued in 2011, the NRC staff and PSU have discussed the timing of PSU's self-guarantee financial test documentation. By letter dated December 23, 2013, PSU submitted a request for an exemption from 10 CFR Part 30, Appendix E, paragraph II.C.(2) (Ref. 9).

## **2. DISCUSSION**

### **2.1. Regulatory Requirements**

10 CFR 30.11(a) states that the NRC may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

10 CFR Part 30, Appendix E, Section I states that 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.

10 CFR Part 30, Appendix E, Section II.C.(1) states that the licensee's independent certified public accountant must compare the data used by the licensee in the financial test, which is derived from the independently audited, year-end, financial statements for the latest fiscal year, with the amounts in such financial statements. The accountant must evaluate the licensee's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the licensee's ability to pay for decommissioning costs. The accountant must verify that a bond rating, if used to demonstrate passage of the financial test, meets the requirements of Section II of this appendix. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the

auditor's attention 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.

10 CFR Part 30, Appendix E, Section II.C.(2) states that after the initial financial test, the licensee must repeat passage of the test and provide documentation of its continued eligibility to use the self-guarantee to the NRC within 90 days after the close of each succeeding fiscal year.

## 2.2. NRC Staff Evaluation

The requirement in 10 CFR Part 30, Appendix E, Section II.C.(2) that licensees submit their financial data within 90 days of the end of their fiscal year allows the staff to verify whether the licensee has demonstrated financial assurance for decommissioning. From a health and safety perspective, the important component of the regulation is not a specific submittal date, but that the NRC staff can regularly and consistently verify that financial resources for decommissioning continue to be available and that the licensee continues to be eligible to use the self-guarantee. 10 CFR Part 30, Appendix E, Section II.C.(3) assures the NRC staff of the continuity of the financial resources between the annual recertifications in that the NRC must be notified when the licensee or its auditor becomes aware that the licensee no longer passes the financial test.

The NRC's current regulations permit a university licensee to satisfy its decommissioning financial assurance obligations through the use of a self-guarantee if the university licensee passes the financial test in 10 CFR Part 30, Appendix E and submits a guarantee in the required format. As part of the Appendix E financial test, the data used by the licensee must be based on independently audited, year-end financial statements for the latest fiscal year. In addition, the licensee is required to provide documentation of its continued eligibility to use the self-guarantee to the NRC within 90 days after the close of each succeeding fiscal year.

PSU indicates that its fiscal year is from July 1 through June 30<sup>th</sup>. To meet the NRC's financial test timeframes, PSU would need to provide the documentation of its financial re-test based upon its audited financial statements to the NRC by September 28<sup>th</sup>. PSU states that the financial documents necessary to demonstrate their continued eligibility to use the self-guarantee are not finalized until approximately December following the close of the fiscal year (Ref. 9). PSU is requesting an exemption from the NRC's requirements in the form of an extension of time such that PSU has 180 days from the end of its fiscal year to submit the documentation required in Section II.C.(2) of Appendix E to Part 30. Assuming that the PSU Board of Trustees do not meet and approve the necessary documents until November 30<sup>th</sup>, which is the outside date indicated by PSU, the latest the financial documents would be approved would be 153 days following the close of PSU's fiscal year. The NRC staff considers that the additional 27 days would afford PSU a reasonable amount of time to compile documents, prepare a submittal, and leave additional time for unforeseen circumstances. Thus, the NRC staff concludes that 180 days after the close of the fiscal year is a reasonable milestone for PSU's submittal to the NRC of the documentation required by 10 CFR Part 30, Appendix E, Section II.C.(2).

Under 10 CFR 30.11(a) prior to granting an exemption, the NRC must first determine: 1) that the exemption is authorized by law; 2) that the exemption will not endanger life or property or the common defense and security; and 3) that the exemption is otherwise in the public interest. Each criterion will be discussed below.

If PSU is allowed to submit documentation to demonstrate its continued eligibility to use the self-guarantee 180 days after the close of PSU's fiscal year, instead of 90 days as required by 10 CFR Part 30, Appendix E, Section II.C.(2), the licensee would be able to compile and submit the necessary documents without being in technical violation of the NRC's regulations. The licensee would continue to recertify its eligibility to use the self-guarantee *annually*, and would submit the associated documents relative to the same financial milestone, namely, the close of the fiscal year. Other provisions, such as notifying the NRC when either the independent auditor or the licensee becomes aware that the licensee ceases to pass the financial test, remain unchanged by the exemption.

#### The Exemption is Authorized by Law

The NRC staff concluded that the proposed exemption is authorized by law as 10 CFR 70.17(a) expressly allows for an exemption to the requirements of the regulation in 10 CFR Part 70.17(a), and the proposed exemption would not be contrary to any provision of the Atomic Energy Act of 1954, as amended. Therefore, the exemption is authorized by law.

#### The Exemption Presents No Undue Risk to Public Health and Safety

The 90-day requirement in 10 CFR Part 30, Appendix E, Section II.C.(2) ensures that the licensee maintains adequate financial assurance to provide the NRC with documentation so that the NRC can verify that the guarantor passes the financial test. From a health and safety perspective, the important component of the regulation is not a specific submittal date, but that the licensee maintain adequate financial assurance and that information be provided annually to NRC so that the NRC staff can verify that financial resources for decommissioning are available. The licensee continues to submit ratified documents to demonstrate their continued eligibility to use the self-guarantee, on an annual basis, relative to the same financial milestone, namely, the close of the fiscal year. Other provisions, such as notifying the NRC when the parent company ceases to pass the financial test, remain unchanged by the exemption.

Therefore, the exemption being issued by the NRC herein presents no undue risk to public health and safety.

#### The Exemption is Consistent with the Common Defense and Security

The proposed exemption would not involve or implicate the common defense or security. Therefore, granting the exemption will have no effect on the common defense and security.

#### The Exemption is in the Public Interest

The proposed exemption gives assurance that sufficient documentation is submitted. Without the exemption, only unratified documents could be submitted. The NRC staff would then have to either wait for the ratified documents to make a finding or revise their preliminary finding that was made with unratified documents, thereby using NRC and public resources in a less efficient manner. Either way, a final determination of the eligibility of the licensee to use the self-guarantee is precluded until the ratified documents have been reviewed and NRC resources may have been unnecessarily expended in the processing and review of "draft" documentation. Therefore, the exemption is in the interest of the public.

### **3. CONCLUSION**

The NRC staff has considered PSU's request and has determined that the requested exemption is appropriate because the final documents are unavailable within the timeframe of Part 30, Appendix E, Section II.C.(2). Based on the foregoing discussion, the NRC staff has determined that the requested exemption is authorized by law; that the exemption will not endanger life or property or the common defense and security; and 3) that the exemption is otherwise in the public interest. Therefore, the NRC is issuing PSU an exemption to 10 CFR Part 30, Appendix E, Section II.C.(2). Accordingly, after the repeat passage of the test in 10 CFR Part 30, Appendix E, PSU is required to submit documentation of its continued eligibility to use the self-guarantee to the NRC within 180 days after the close of each succeeding fiscal year. This exemption remains in effect until either: (i) PSU ceases to use a self-guarantee; (ii) PSU fails to qualify for a self-guarantee; or (iii) the NRC's regulations in 10 CFR Part 30, Appendix E, Section II.C.(2) are revised. Other regulatory requirements in 10 CFR Part 30, Appendix E, such as notifying the NRC when either the independent auditor (II.C.(1)) or the licensee (II.C.(3)) becomes aware that the licensee ceases to pass the financial test, remain unchanged by the exemption being granted.

### **4. ENVIRONMENTAL REVIEW**

The NRC staff has determined that the proposed action to grant the exemption from paragraph II.C.(2) of Appendix E to 10 CFR Part 30 to allow the university to submit the required information within 180 days after the end of the fiscal year belongs to a category of actions which the Commission has declared to be categorically excluded from the requirement for further environmental review. Specifically, under 10 CFR 51.22(c)(25)(vi)(G) and (H), granting exemptions from requirements involving scheduling or surety, insurance or indemnity requirements is categorically excluded from environmental review provided there is no significant: (1) hazards consideration; (2) change in the types of effluents that may be released offsite; (3) change in the amounts of any effluents that may be released offsite; (4) increase in individual or cumulative public or occupational radiation exposure; (5) construction impact; (6) increase in the potential for radiological accidents; or (7) increase in the consequences from radiological accidents.

Granting the exemption from 10 CFR Part 30, Appendix E, Section II.C.(2), does not involve a significant hazards consideration; will not result in any change in the types or increase in the amounts of any effluents that may be released offsite; will not result in any increase in individual or cumulative public or occupational radiation exposure; will not have any construction impact; and will not result in any increase in the potential for, or consequences from, radiological accidents.

Therefore, in accordance with 10 CFR 51.22(c)(25), neither an Environmental Assessment nor Environmental Impact Statement is necessary for the granting of the exemption from paragraph II.C.(2) of Appendix E to 10 CFR Part 30 for NRC License SNM-95.

### **5. PRINCIPAL CONTRIBUTORS**

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## 6. REFERENCES

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