

AMERICAN COUNCIL ON EDUCATION

Office of Vice President and General Counsel

DOCKETED
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July 28, 1997

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

The Honorable John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852
MS O16G15

DOCKET NUMBER
PROPOSED RULE **PR 30, 40, 50, 70 + 72**
(62 FR 23394) **(9)**

Attn: Docketing and Service Branch

Re: Proposed Rule Concerning Self-Guarantee
of Decommissioning Funding By
Non-Profit and Non-Bond Issuing Licensees
62 Fed. Reg. 23394 (April 30, 1997)

Dear Sir:

On April 30, 1997, the Nuclear Regulatory Commission (NRC) published a proposed rule which would expand the categories of NRC licensees who may self-guarantee their decommissioning funding obligations. On behalf of the higher education associations listed below, we wish to submit the following comments on the proposed rule.

On January 11, 1993, the NRC published a proposed rule amending its decommissioning funding regulations to allow licensees that meet specified financial tests, issue bonds that are rated "A" or better, and have equity securities registered under the Securities Exchange Act of 1934 to self-guarantee their decommissioning funding obligations. Absent meeting these tests, these licensees would be obligated to provide decommissioning funding assurance by means of letters of credit, surety bonds on other types of third party financial assurance at a cost estimated by the NRC of 1.5 percent of the amount of financial assurance required.

Several commentators filed comments on the proposed rule, urging that the self-guarantee mechanism be made available to educational institutions and other non-profit entities. While the NRC did not adopt these comments when it issued the final rule, in the Supplementary Information accompanying the final rule, the NRC announced that it would undertake a study of potential self-guarantees for non-profit licensees other than universities and would review the applicability of self-guarantees to universities after a fee recovery rulemaking. 58 Fed. Reg. 68726, 68728 (1993).

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The promised study, issued this year, identified alternative financial tests that might serve as the basis for self-guarantee by non-profit universities and hospitals and for-profit firms that do not issue bonds. 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" (June 1997).

Based on this study, the NRC has now proposed that non-profit colleges and universities may demonstrate decommissioning financial assurance by self-guarantee if they meet the following tests:

1. for those issuing bonds, a current rating of "A" or better; and
2. for those not issuing bonds, an unrestricted endowment with assets in the United States of at least \$50 million, or at least 30 times total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater.

The signatory organizations strongly support the NRC's amendment of its regulations to allow non-profit colleges and universities to self-guarantee their decommissioning funding obligations. The financial stability and longevity of such institutions is at least equal to commercial and industrial entities for which self-guarantees are allowed under NRC regulations.

We do, however, believe that in two respects the 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.

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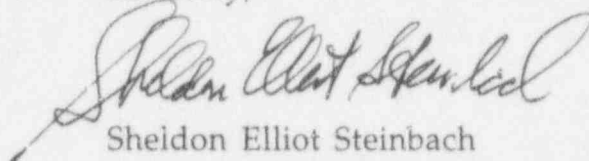
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The second comment focuses on the test adopted for non-bond-issuing colleges and universities. As proposed, a college or university must have unrestricted endowment of at least \$50 million or at least 30 times the decommissioning cost estimate, whichever 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 adequate to provide financial assurance. This would be especially true for materials licensees, whose projected decommissioning costs are likely to be significantly less than those for facility licensees.

Since the proposed rule requires that the college or university assess its compliance with the financial criteria on an annual basis (see proposed App. E to 10 CFR Part 30, § II. C), the NRC will have continued assurance that the financial well-being of the institution remains sound (or else alternate financial assurance mechanisms are required). The suggested revisions to the financial criteria discussed above will therefore maintain the same high degree of assurance as the proposed rule, while avoiding unnecessarily restrictive and wasteful requirements. At a time when all organizations are seeking to use their resources in the most efficient possible manner, reducing unnecessary costs without significantly affecting decommissioning assurance ought to be the Commission's goal. The two suggested modifications to the proposed rule would be consistent with this goal.

We appreciate the opportunity to submit these comments,

Sincerely,



Sheldon Elliot Steinbach

On behalf of the following associations:

American Council on Education

Association of American Medical Colleges

Council on Governmental Relations

National Association of State Universities and Land-Grant Colleges