

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 70

[Docket No. NRC-2017-0031]

RIN 3150-AK52

**Decommissioning Financial Assurance for Sealed and Unsealed Radioactive
Materials**

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory basis; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a regulatory basis to support a rulemaking that would amend its regulations for decommissioning financial assurance for sealed and unsealed radioactive materials. The rulemaking would revise NRC's decommissioning funding requirements for radioactive material based on the relative risk to public health and safety from different radioisotopes, including naturally occurring and accelerator-produced radioactive material. The potentially affected licensees are those authorized to possess byproduct and special nuclear material.

DATES: Submit comments by June 27, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the **Federal rulemaking website**:

- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0031. Address questions about NRC Docket IDs to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Email comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, telephone: 301-415-4127, email: Cardelia.Maupin@nrc.gov, or Gregory Trussell, telephone: 301-415-6244, email: Gregory.Trussell@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2017-0031 when contacting the NRC about the availability of information for this action. You may obtain publicly available information

related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0031.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the **Federal rulemaking website** (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0031 in your comment submission.

NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is requesting comments on a regulatory basis to support a proposed rule that would amend appendix B, “Quantities of licensed material requiring labeling,” to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR), “Rules of General Applicability to Domestic Licensing of Byproduct Material,” and 10 CFR 70.25, “Financial assurance and recordkeeping for decommissioning.” The regulatory basis document is developed as a precursor to a proposed rule and describes the NRC’s recommendation and considerations in amending 10 CFR parts 30 and 70. Appendix B to 10 CFR part 30 is used to determine decommissioning funding requirements for radioactive material licensed under 10 CFR parts 30 and 70.

The proposed rule would address the petition for rulemaking (PRM)-30-66, “Request of the Organization of Agreement States for the NRC to Amend Appendix B, ‘Quantities of Licensed Material Requiring Labeling,’” submitted by the Organization of Agreement States (OAS) on April 14, 2017. In its petition, OAS requested that the NRC conduct a rulemaking to update appendix B to 10 CFR part 30 to include naturally occurring and accelerator-produced radioactive material radionuclides and their specific possession values. The OAS indicated that the failure to include these radionuclides in appendix B to 10 CFR part 30 has placed undue hardships on regulators and licensees

with little or no radiation safety benefit, discouraged the development of new beneficial products, and negatively impacted patient care.

The specific objectives of this rulemaking effort are to (1) improve the regulatory framework for naturally occurring and accelerator-produced radioactive material by amending appendix B to 10 CFR part 30 to better align with NRC's regulatory authority over this material under the Energy Policy Act of 2005; (2) risk-inform NRC's decommissioning funding requirements by aligning the possession values in appendix B with NRC's radiation protection regulations in 10 CFR part 20, "Standards for Protection Against Radiation"; (3) clarify that only radioactive materials with half-lives greater than 120 days are subject to decommissioning financial assurance; and (4) clarify the purpose of appendix B by changing its title. To address item 3, the NRC is proposing to update appendix B using the list of radionuclides and possession values in appendix C to 10 CFR part 20, "Quantities of licensed material requiring labeling."

The NRC held a public meeting on January 7, 2021, to discuss different approaches for updating appendix B to 10 CFR part 30. Members of the public supported updating appendix B to 10 CFR part 30, noting that a faster update to the appendix would be more beneficial than developing a new decommissioning financial assurance methodology. Information about the public meeting is available in the "Availability of Documents" section of this document.

The NRC will consider any comments received on the regulatory basis in the development of the proposed rule and will provide responses to comments in the proposed rule.

III. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on the regulatory basis. We are particularly interested in comments and supporting rationale

from the public on the NRC's initial assumptions regarding the qualitative and quantitative costs and benefits of the rulemaking, as well as on alternatives to the current recommended approach.

Assumptions Used for Cost/Benefit Estimates

- The NRC is seeking comments on the assumptions used in developing the cost-benefit estimates. The NRC is interested in receiving information on the number of licensees affected by the rulemaking. The NRC is also interested in the effort needed to make any changes to current decommissioning funding plans or decommissioning financial assurance funding amounts, especially if an increase in decommissioning funding would be required.

- The NRC is seeking comments on possible impacts to small entities. Section 2.810, "NRC size standards," provides specific size standards to determine whether a licensee qualifies as a small entity in its regulatory programs. The NRC is interested in the number of small entities that would be impacted by these changes, as well as the types of impacts the changes being proposed by this rulemaking would have on them.

- The NRC also is seeking comments on other benefits of the rulemaking, such as supporting advancements in science and technology, enabling uses of radioisotopes that would reduce effective doses to patients or overall costs to patients, and reducing costs to licensees who currently must develop decommissioning funding plans. Please provide quantitative information on costs and benefits, if available.

Alternatives to Recommended Approach

The regulatory basis recommends a rulemaking approach using information that already exists in regulations rather than creating a new methodology for determining the amount of decommissioning financial assurance. The NRC is seeking comments on any benefits to any alternative approach that might not have been considered in the NRC's

assessment, as well as any suggested means to implement this approach, particularly on the categorization and funding amounts that would be appropriate.

IV. Cumulative Effects of Regulation

The cumulative effects of regulation (CER) describe challenges that licensees or other impacted entities (such as State agency partners) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from this proposed rulemaking. In developing comments on the regulatory basis, consider the following questions:

1. In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements, including changes to programs, procedures, and the facility?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests inspection findings of a generic nature) influence the implementation of the potential proposed requirements?

4. Are there unintended consequences? Does the proposed action create conditions that would be contrary to the proposed action’s purpose and objectives? If so, what are the consequences, and how should they be addressed?

5. Please comment on the NRC’s cost and benefit estimate of the potential proposed action. This information will be used to support additional regulatory analysis by the NRC.

V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

DOCUMENT	ADAMS ACCESSION NO./FEDERAL REGISTER CITATION
PRM-30-66, “Request of the Organization of Agreement States for the NRC to Amend Appendix B, ‘Quantities of Licensed Material Requiring Labeling,’” April 14, 2017	ML17173A063
<i>Federal Register</i> Notice Publishing PRM-30-66 for Public Comment, August 23, 2017	82 FR 39971
<i>Federal Register</i> Notice Extending the Public Comment Period, November 6, 2017	82 FR 51363
Comments on PRM-30-66, “Organization of Agreement States”	ML18038A879 (package)
SECY-19-0125, “Petition for Rulemaking and Rulemaking Plan on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material (PRM-30-66; NRC-2017-0159),” December 17, 2019	ML18292A434 (package)
Staff Requirements Memorandum: SRM-SECY-19-0125, “Petition for Rulemaking and Rulemaking Plan on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material (PRM-30-66; NRC-2017-0159),” October 13, 2020	ML20287A248 (package)
Letter to Matthew McKinley, Chair of the Organization of Agreement States (the Petitioner), November 4, 2020	ML20303A141
<i>Federal Register</i> Notice Publishing the Results of the NRC Evaluation of PRM-30-66, November 27, 2020	85 FR 75959

Public Meeting on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material, January 7, 2021	ML21026A339 (package)
Regulatory Basis for Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Materials, April 2022	ML21235A480

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2017-0031. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) navigate to the docket folder (NRC-2017-0031); 2) click the “Subscribe” link; and 3) enter an email address and click on the “Subscribe” link.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated: April 25, 2022.

For the Nuclear Regulatory Commission.

/RA/

John R. Tappert, Director,
Division of Rulemaking, Environmental,
and Financial Support,
Office of Nuclear Material Safety and
Safeguards.