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TITLE: PR-030, 040, 050, 070 & 072 - 62FR23394 - SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-PROFIT AND NON-BOND ISSUING LICENSEES

CASE REFERENCE: PR-030, 040, 050, 070 & 072
62FR23394

KEY WORD: RULEMAKING COMMENTS

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STATUS OF RULEMAKING

PROPOSED RULE: PR-030, 040, 050, 070 & 072 OPEN ITEM (Y/N) N

RULE NAME: SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-P
ROFIT AND NON-BOND ISSUING LICENSEES

PROPOSED RULE FED REG CITE: 62FR23394

PROPOSED RULE PUBLICATION DATE: 04/30/97 NUMBER OF COMMENTS: 16

ORIGINAL DATE FOR COMMENTS: 07/29/97 EXTENSION DATE: / /

FINAL RULE FED. REG. CITE: 63FR29535 FINAL RULE PUBLICATION DATE: 06/01/98

NOTES ON: AMENDMENT WILL ALLOW ADDITIONAL MATERIAL LICENSEES & NON-ELECTRIC
STATUS : UTILITY REACTOR LICENSEES WHO MEET CERTAIN FINANCIAL CRITERIA TO S
OF RULE : ELF-GUARANTEE FUNDING FOR DECOMM.

HISTORY OF THE RULE

PART AFFECTED: PR-030, 040, 050, 070 & 072

RULE TITLE: SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-P
ROFIT AND NON-BOND ISSUING LICENSEES

PROPOSED RULE	PROPOSED RULE	DATE PROPOSED RULE
SECY PAPER: 97-041	SRM DATE: 04/01/97	SIGNED BY SECRETARY: 04/24/97
FINAL RULE	FINAL RULE	DATE FINAL RULE
SECY PAPER: 98-046	SRM DATE: 05/13/98	SIGNED BY SECRETARY: 05/22/98

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DOCKET NO. PR-030, 040, 050, 070 & 072
(62FR23394)

In the Matter of
SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-P
ROFIT AND NON-BOND ISSUING LICENSEES

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
04/25/97	04/24/97	FEDERAL REGISTER NOTICE - PROPOSED RULE
05/19/97	05/14/97	COMMENT OF STAN A. HUBER CONSULTANTS, INC. (STAN A. HUBER, PRESIDENT) (1)
06/16/97	06/12/97	COMMENT OF PRINCETON UNIVERSITY (LAUREL HARVEY, ASST. VICE PRESIDENT) (2)
07/09/97	07/02/97	COMMENT OF COUNCIL ON RADIONUCLIDES AND RADIOPHARMACEUTICALS (LEONARD R. SMITH) (3)
07/22/97	07/18/97	COMMENT OF ILLINOIS DEPARTMENT OF NUCLEAR SAFETY (STEVEN C. COLLINS) (4)
07/24/97	07/23/97	COMMENT OF FANSTEEL (MICHAEL J. MOCNIAK, VICE PRESIDENT) (5)
07/25/97	07/22/97	COMMENT OF AMERSHAM HOLDINGS, INC. (MARK A. DORUFF, CHP) (6)
07/29/97	07/24/97	COMMENT OF MASSACHUSETTS INSTITUTE OF TECHNOLOGY (JOHN A. BERNARD, PH.D.) (7)
07/29/97	07/25/97	COMMENT OF UNIVERSITY OF DELAWARE (MELVYN D. SCHIAVELLI, PROVOST) (8)
07/29/97	07/28/97	COMMENT OF AMERICAN COUNCIL ON EDUCATION, ET AL. (SHELDON ELLIOT STEINBACH) (9)
07/30/97	07/29/97	COMMENT OF MASSACHUSETTS INSTITUTE OF TECHNOLOGY (PAUL C. POWELL) (10)
07/30/97	07/29/97	COMMENT OF NUCLEAR ENERGY INSTITUTE (FELIX M. KILLAR) (11)
08/04/97	08/01/97	COMMENT OF UNITED STATES ENRICHMENT CORPORATION (STEVEN A. TOELLE) (12)

DOCKET NO. PR-030, 040, 050, 070 & 072 (62FR23394)

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
08/05/97	07/29/97	COMMENT OF FRED HUTCHINSON CANCER RESEARCH CENTER (RAO M. GORIPARTHI) (13)
08/07/97	07/29/97	COMMENT OF STATE OF NEW YORK DEPARTMENT OF HEALTH (STEPHEN M. GAVITT) (15)
08/08/97	08/01/97	COMMENT OF HARVARD UNIVERSITY (BERTHA K. MADRAS, PH.D.) (14)
09/22/97	09/17/97	COMMENT OF REED COLLEGE (EDWIN O. MCFARLANE, V.P./TREASURER) (16)
05/28/98	05/22/98	FEDERAL REGISTER NOTICE - FINAL RULE

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

DOCKETED
[7590-01-P]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150-AF64

OFFICE OF SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

Self-Guarantee of Decommissioning Funding
by Nonprofit and Non-Bond-Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to self-guarantee funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to self-guarantee funding if they meet stringent financial criteria. This rule allows nonprofit licensees, such as colleges, universities, and hospitals, as well as some commercial licensees who do not issue bonds, to self-guarantee funding provided they meet similarly stringent financial criteria. Allowing additional qualified licensees to use self-guarantee reduces licensee costs while providing adequate assurance that funds for decommissioning will be available when needed.

July 1, 1998
EFFECTIVE DATE: ~~(30 days after publication)~~

*Pub. on 6/1/98
at 63FR 29535*

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301)415-6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensees subject to 10 CFR Parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for, or holders of, operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance,¹ parent company guarantee for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, self-guarantee. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

To date, self-guarantee has not been available to nonprofit licensees such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for

¹ Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities and does not affect the NRC's Notice of Proposed Rulemaking that addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors -- 62 FR 47588, September 10, 1997). As part of this proposed rule, the NRC is considering amending its definition of "electric utility" and clarifying the distinction between financial assurance mechanisms applicable to power reactor licensees and non-power reactor licensees.

self-guarantee uses the rating of the bonds issued by the licensee as one measure of the licensee's financial resources and ability to fund decommissioning.

The NRC is extending the use of self-guarantee, previously limited to bond-issuing industrial corporations, to additional categories of qualified licensees. By selecting appropriate financial criteria for self-guarantee, this extension can be made without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified nonprofit and non-bond-issuing licensees to self-guarantee will reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows financially strong corporations with A or better bond ratings the option of using self-guarantee as a mechanism for complying with the regulations on financial assurance for decommissioning. Self-guarantee was added to the list of financial assurance mechanisms as a cost-saving option for licensees that are able to meet the stringent financial test.

The NRC's decision to add self-guarantee to the list of approved financial assurance mechanisms for qualified licensees came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM-30-59, Notice of receipt published September 25, 1991 (56 FR 48445)). The petition presented a case for allowing self-guarantee as a cost-saving option for corporate licensees that are able to pass a stringent financial test.

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for nonprofit licensees and

non-bond-issuing commercial licensees to use self-guarantee while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. The study, "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," NUREG\CR-6514² (June 1997), identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of self-guarantee. The financial criteria in this rule were selected by the NRC based on information in this report.

Public Comments on the Proposed Rule

The NRC published a notice of proposed rulemaking on April 30, 1997, (62 FR 23394). In response to this notice, 16 comments were received; 2 from States, 6 from colleges and universities, 3 from associations, 3 from private corporations, 1 from a hospital, and 1 from the United States Enrichment Corporation. The commenters all supported the extension of self-guarantee to qualified nonprofit and non-bond-issuing commercial licensees. Although some commenters urged NRC to adopt the proposed rule as written, most favored some type of change to the financial criteria.

² Single copies are available from the NRC contact. Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328 (telephone (202) 512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW.; Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343.

1. Financial Criteria for Colleges and Universities

The financial test criteria proposed for colleges and universities were an A or better bond rating or, for those not having a bond rating, unrestricted endowment of at least \$50 million or 30 times projected decommissioning costs, whichever was greater. There were no comments regarding the A or better bond rating, but several commenters objected to the non-bond criteria as too conservative.

Comment: A commenter stated that the selected multiple of 30 times decommissioning costs is excessively conservative. NRC's basis for the 30 multiple is that an amount of money 30 times decommissioning costs invested at 3 percent would yield an annual amount sufficient to fund those costs. The commenter said that it should not be difficult to obtain secure investments yielding 6 percent; thus an appropriate multiple would be 15 based on investment yield.

Response: NRC's objective in selecting financial criteria was to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. However, for colleges and universities that do not issue bonds, lack of appropriate data on default risk made a financial assurance risk analysis impossible. For these licensees, NRC deliberately chose financial criteria which are conservative.

NRC did state in the preamble to the proposed rule, at 62 FR 32296, that "[t]he multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent." However, it is important to note that NRC was not assuming (1) that institutions will in fact finance decommissioning out of endowments; (2) that endowments can be expected in all circumstances to grow at a rate of at least 3 percent annually; or (3) that institutions can be

expected to reallocate up to 3 percent of their spending from endowments in a one-year period. Rather, the criterion was selected to serve as a measure of the overall financial strength of the institution, indicating that NRC can reasonably assume that such a college or university can be allowed to self-guarantee for the costs of decommissioning because it possesses sufficient financial strength to obtain the necessary funds when they are needed.

Even assuming the premise of the commenter, NRC does not believe that reducing the multiple to 15, as the commenter suggests, is desirable. Although a real rate of return of 3 percent may appear low under the market conditions prevailing during certain periods, there is a substantial body of empirical evidence indicating that it is a reasonable assumption. If a licensee who has been relying on a self-guarantee is required to fully fund a trust fund for decommissioning in the year before the beginning of decommissioning, and the licensee relies on earnings from endowment to create the trust, it is the annual earnings of the endowment for the year immediately prior to the decommissioning that must equal the required amount. NRC has reviewed the information provided in Ibbotson Associates, *Stocks, Bonds, Bills, and Inflation 1995 Yearbook*, 1995, which published a summary of market results for the 69-year period from 1926 to 1995 for five categories of investments: small company stocks, large company stocks, long-term government bonds, long-term corporate bonds, and intermediate-term government bonds.

On a year-by-year basis, less risky investments, such as treasury bills, showed the most frequent positive returns, but their annual returns also were relatively low. Riskier investments showed a broad distribution of returns, from very good to very poor. Overall, however, with the exception of small and large company stocks, the average inflation-adjusted earnings (geometric mean) for these categories of investments were less than 3 percent. In a number of

years, earnings for stocks also were less than 3 percent. Thus, real investment returns over a one-year period may not even match conservative earnings assumptions.

The study of endowment sponsored by the National Council of College and University Business Officers (NACUBO) published in 1995 also emphasized a concern for this earnings variability in its analysis of college and university endowment investment. First, NACUBO's study noted that current high rates of return cannot be expected to continue indefinitely. "At a time when many public and private institutions are searching for ways to bridge the gap between revenues and expenditures, it is tempting to extrapolate these extraordinary returns into the future and to budget endowment spending accordingly. However, in this context it is instructive to note that for a representative group of institutions, the average annual real return after spending for the 10-year period ended June 30, 1994, is 4.1 percent, but for the 20 years ended June 30, 1994, it is 0.9 percent." (*1994 NACUBO Endowment Study*, National Council of College and University Business Officers, 1995, p. 4)

Therefore, the NACUBO study recommends strongly that institutions keep their spending from endowment below the rate proposed by the commenter. The report states that:

Historical precedent indicates that a fund invested approximately 60 percent in domestic and foreign stocks, 30 percent in fixed income, and 10 percent in various other asset classes inevitably experiences recurring periods of absolute decline in market values over 3 years. Such a decline would trigger a reduction in spending for an institution sticking to a policy of spending a fixed percentage of a 3-year moving average of endowment market values. . . . For fiscal year 1994, the average endowment spending rate reported by responding institutions is 6.0 percent. On average, the smallest endowments (\$25 million and less) spent more (7.2 percent) than the largest (4.5

percent), and public institutions spent more (6.6 percent) than private institutions (5.7 percent). . . . With the sole exception of the 4.5 percent spent by the largest universities, these spending rates are not compatible with most institutions' stated intention to preserve the purchasing power of their endowment. Over time, it is possible (difficult, but possible) for the exceptionally well-managed institution to spend 6.0 percent of a 3-year moving average of endowment market values, and still preserve purchasing power. However, it is courting disaster to spend at an annual rate of 6.0 percent toward the tail end of a long bull market. (*1994 NACUBO Endowment Study*, 1995, p. 5)

Based on these considerations, the NRC continues to believe that a relatively conservative criterion, such as the 30 times requirement, is a reasonable criterion for the decommissioning self-guarantee test for colleges and universities. The NRC does not accept the commenter's recommendation to adopt a substantially less stringent criterion.

Comment: A commenter objected to the requirement that unrestricted endowment be at least \$50 million or at least 30 times the decommissioning cost estimate, whichever is greater. The requirement should be compliance with either the \$50 million figure or the 30 times decommissioning cost estimate, but not whichever is greater.

Response: As previously stated, NRC chose conservative financial criteria for non-bond-issuing colleges and universities, aimed at assuring the financial viability of a licensee qualified to self-guarantee. This is the only requirement that would apply to non-bond-issuing colleges and universities, whereas non-bond-issuing hospitals or commercial licensees would be subject to multiple financial ratios as financial tests. It is designed to capture two measures of financial viability: (1) overall financial strength and (2) financial strength relative to size of decommissioning obligation. The overall financial strength of an institution is heavily dependent

on the size of its unrestricted endowment. Specific ability to fund decommissioning expenses is measured by the ratio of unrestricted endowment to decommissioning costs. A financial test based only on ratio to decommissioning cost might allow an institution without adequate financial strength to pass if its decommissioning costs were low. A test based only on the size of the unrestricted endowment might be inadequate for those institutions with the highest decommissioning costs. Both threshold requirements are needed to provide assurance that an institution can meet decommissioning obligations when necessary.

Comment: A commenter stated that NRC's rationale for a multiple of 30 implies that decommissioning costs are paid from investment yields over a 1-year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving 2 or 3 years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30.

Response: NRC recognizes that decommissioning may occur over a period longer than one year. The multiple of 30 was chosen without regard to how many years it would take to decommission a facility. The commenter is attempting to make this linkage the key factor in arriving at an appropriate multiple. However, following this line of reasoning, stretching out the time length of decommissioning would imply ever decreasing multiples.

NRC's objective is to ensure that decommissioning will take place on a timely basis. The financial assurance regulations are intended to assure that inadequate funding does not prevent timely decommissioning. Timely decommissioning may require that all decommissioning funding be available up front even though decommissioning activities are not completed within a single year. For this reason NRC's criteria for determining whether a

licensee should be allowed to self-guarantee the costs of decommissioning must consider the possibility that the licensee will be required to fully fund decommissioning in the year immediately prior to the beginning of decommissioning activities. The licensee would fund a standby trust if either (1) the licensee no longer qualifies to use the self-guarantee to provide financial assurance for decommissioning, even if it was not yet required to conduct decommissioning, or (2) a licensee using a self-guarantee is required to carry out decommissioning. NRC currently does not allow licensees to consider the impact of earnings during the "payout" period (the period during which funds are being expended from the financial assurance standby trust to pay for decommissioning) in calculating the amount of funds that must be set aside for decommissioning. Therefore, the NRC disagrees with the commenter's suggestion that the expected duration of decommissioning activities should apply to the determination of the appropriate multiple.

Comment: A commenter recommends that [based on the combination of investment yield of 6 percent and investment yields over 2 to 3 years rather than 1 year] the multiplication factor [be] reduced from 30 to 10 with ample conservatism."

Response: For the reasons stated in responses to the preceding comments, NRC does not accept this recommendation.

2. Financial Criteria for Hospitals

The financial test criteria proposed for hospitals was an A or better bond rating or, for hospitals not having a bond rating, a financial ratios test consisting of the following:

(a) Liquidity – (current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55.

(b) Net Revenue – (Total revenues less total expenditures divided by total revenues) greater than or equal to 0.04.

(c) Leverage -- (Long term debt divided by net fixed assets) less than or equal to 0.67.

(d) Operating Revenues at least 100 times decommissioning costs.

There were no comments regarding the bond rating criterion but there were several comments on the non-bond criteria.

Comment: A commenter believed that the selected multiple of 100 [hospital operating revenues at least 100 times decommissioning costs] was excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be 2 years or more. NRC should consider a multiple of 30 or less to be appropriate.

Response: The requirement that hospital operating revenues be at least 100 times decommissioning costs is a criterion that NRC is proposing to use to determine whether a licensee has sufficient financial strength to self-guarantee. However, a potential consequence of self-guaranteeing could be the need to fully fund a trust fund in a short period of time if the licensee ceases to be capable of passing the self-guarantee test or if decommissioning must be carried out. As discussed above, the operating revenues multiple criterion does not reflect any expectation concerning the length of time during which decommissioning will occur. Therefore, NRC does not accept this recommendation.

Comment: A commenter found the rationale that requires hospitals to meet all four financial ratios tests unclear. This commenter believed that using only the operating

revenues/decommissioning costs ratio would appear to provide reasonable assurance of ability to provide decommissioning funding.

Response: The financial ratios test for hospitals in the rule was carefully selected to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. The four ratios in combination represent the financial test that best achieves this goal. A financial test using just one of these ratios would not represent the same level of risk and would not provide an adequate level of financial assurance. Using only the ratio of operating revenues to decommissioning costs would completely ignore such determinants of financial strength as liquidity, indebtedness, and profitability. The financial test used for non-bond-issuing commercial licensees includes several ratios, not just one. The non-bond financial test for colleges and universities does use a single ratio, but it is the ratio of unrestricted endowment to decommissioning costs. Unrestricted endowment is a fund readily available to meet decommissioning expenses. Hospital operating revenues are different because these funds may not be readily available to meet decommissioning expenses due to other hospital costs.

3. Prohibition on Using a Guarantee in Combination with Another Financial Assurance Mechanism

Comment: Some commenters noted that provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2), and 72.30(c)(2) provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. These commenters wanted to know the reasons for these restrictions.

Response: This rule makes no change in the already existing prohibition against combining a parent or self-guarantee with another type of financial assurance mechanism. The issue of whether or not to allow such a combination is broader than the focus of this rule. The NRC has limited experience with parent and self-guarantee to date. It is expected that the NRC will periodically reevaluate its financial assurance program in the future and could reassess the need for the prohibition.

4. Insured Bond Ratings

Comment: Some commenters objected to the proposed financial criteria which deal with bond ratings. As proposed, for institutions that issue bonds, only a bond issuance that is "uninsured" may be used; an "insured" bond rating would not be eligible. The justification for this limitation is not warranted because bond insurers evaluate the financial condition of the prospective issuers and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance indicates that the issuer is in sound financial condition.

Response: Bond insurers evaluate the financial condition of the issuers of the bonds at the time the debt is insured. Bond rating agencies, such as Moodys and Standard and Poors, typically assign such bonds a triple-A rating because of the insured status of the bond

NRC's concerns with accepting insured bonds as a criterion of financial assurance arise from the possibility that, over time, the insured bond rating could mask adverse changes in the financial condition of the bond issuer after the debt has been insured. The rule includes a requirement that the licensee must ascertain whether it continues to pass the financial test for self-guarantee every year. Furthermore, if the licensee no longer meets the test criteria, it must

notify NRC and establish alternative financial assurance. However, insured bonds would continue to hold their rating, despite declines in the financial condition of the issuer.

The problem with an insured bond from the standpoint of financial assurance is that there is no criterion by which NRC can identify when a licensee/issuer no longer qualifies to self-guarantee. The bond can retain its high rating despite a decline in the financial strength of the issuer. Furthermore, the insurance coverage provided by the bond insurer, which is a guarantee of payment of principal and interest in accordance with the insured bond issue's payment schedule, will not provide any additional source of funding for decommissioning. NRC does not agree with the commenter's suggestion that it accept ratings on insured bonds as an acceptable criterion for self-guarantee.

5. Requirements for Financial Statements

Comment: Some commenters objected to the proposed requirement in Appendices D and E to 10 CFR Part 30 that licensees must conduct accounting by U.S. generally accepted accounting principles (GAAP). This does not recognize the increasingly multi-national nature of materials licensees. Foreign ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatom) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow licensees to certify adequate assurance that funds will be available by using other recognized and accepted accounting principles.

Response: Financial statements prepared in accordance with foreign accounting principles rather than U.S. GAAP pose two problems from the standpoint of a financial test for self-guarantee. First, the financial test was developed based on an analysis of financial data for U.S. firms. Consequently, the financial test criteria may not be applicable or effective when used in conjunction with financial data that were prepared in accordance with foreign accounting practices. Second, allowing firms to rely on financial statements prepared according to accounting principles in use in their own country could place a heavy administrative burden on NRC. The examples cited by the commenter, for instance, might require NRC to know and apply German, Swiss, and French accounting principles to assess compliance with a financial test designed using U.S. GAAP. Finally, the present financial assurance regulations allow the use of a broad range of financial assurance mechanisms in part to ensure that licensees that are unable to use a particular mechanism have other alternatives available. NRC does not expect firms to change their accounting practices in order to make use of the financial test because a number of other options are available.

6. Financial Criteria for Non-Bond-Issuing Commercial Licensees

The financial test proposed for non-bond issuing commercial licensees was:

- (a) Cash flow divided by total liabilities greater than 0.15.
- (b) Total liabilities divided by net worth less than 1.5.
- (c) Net worth greater than \$10 million or at least 10 times decommissioning costs, whichever is greater.

Comment: A commenter objected to the net worth criterion of net worth greater than \$10 million or at least 10 times estimated decommissioning costs. This discriminates against

well-funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the \$10 million net worth requirement.

Response: The NRC's objective in setting financial criteria for non-bond-issuing commercial licensees was to make the financial assurance risk of these criteria equal to the financial assurance risk of the financial criteria for licensees that issue bonds (estimated to be approximately 0.13 percent per year). According to the analysis of potential financial criteria carried out as part of the proposed rule, the financial criteria in the proposed rule meet this objective.³ Firms with smaller net worth have a larger default risk than larger firms. Thus, the \$10 million net worth requirement is an essential part of the overall financial test. The NRC has retained this requirement in the final rule.

7. Decommissioning Cost Estimates

Comment: Several commenters raised the issue of how decommissioning costs were estimated. The NRC should encourage best available information estimates of decommissioning costs, based on historic plant experience in decommissioning and renovation, rather than commercial estimates by contractors that tend to be too high. Conservative assumptions, such as use of rates charged by contractors and high estimates of waste disposal costs, should not be used. A commenter also noted that assuming a period for short-lived isotopes to decay before decommissioning begins would be a realistic assumption. Also, a

³ "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges, Universities, and Hospitals, and by Business Firms That Do Not Issue Bonds," NUREG/CR-6514, p. 4.7, June 1997.

typical licensee will not have the maximum amount of material allowed by the license at the time of decommissioning.

Response: This rulemaking makes no changes in the requirements for how licensees estimate decommissioning costs. Decommissioning cost estimates, or use of the certification amounts in 10 CFR Part 30, are already required by existing regulations on financial assurance. This rule simply adds an additional financial assurance mechanism to those already permitted in NRC regulations.

8. Agreement State Compatibility Status of Financial Assurance Regulations

Comment: Some commenters believed that the proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will ensure consistent requirements for financial surety arrangements and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

Response: When the proposed rule was published in the Federal Register (see 62 FR 23394, April 30, 1997), it was designated as a Division 2 compatibility item in accordance with the compatibility policy in effect at that time. A Division 2 level of compatibility allowed an Agreement State to promulgate equivalent, or more stringent, financial assurance regulations than those of NRC.

Under the new "Policy Statement on Adequacy and Compatibility of Agreement State Programs," (see 62 FR 46517, September 3, 1997) Agreement States must adopt NRC regulations having particular health and safety significance and those necessary to maintain compatibility with the Commission's regulatory program.

The NRC financial assurance regulations, in effect when the new policy was implemented, were designated as having health and safety significance. Specifically, sections (a), (b), and (d) of Parts 30.35, 40.36 and 70.25, which require that licensees must consider the cost of decommissioning their facilities and that those costs must be provided for through a financial assurance mechanism, have particular health and safety significance and were designated as category H&S. Under the H&S category, Agreement States should adopt the essential objectives of these sections in order to maintain an adequate program. The remaining sections of the rule, including those which allow self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria, were designated as compatibility Category D. Category D means the Agreement States do not need to adopt a compatible rule.

The final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as compatibility Category D. Under compatibility category D, Agreement States may choose to maintain a more stringent rule by not adopting the self-guarantee option.

9. Requirement for Annual Passage of Financial Test

Comment: A commenter stated that Section II.C.(2) of Appendix E to Part 30 should be modified so a qualifying licensee would not have to repeat passage of the financial test for self-guarantee every year. University endowments are very stable. In addition, Section II.C.(3) provides sufficient assurance that NRC will be notified when a licensee no longer meets the criteria for self-guarantee.

Response: Although it is true that university endowments are relatively stable and Section II.C.(3) provides for notification, the provision for qualifying licensees to annually pass the test is retained in the final rule. For a self-guarantee program to provide adequate assurance of decommissioning funding, the annual "requalification" provision is necessary. NRC must have assurance of financial strength on a timely basis. A self-guarantee relies solely on the licensee's ability to fund decommissioning. There is no backup such as that provided by a third-party financial assurance mechanism. The requirement for repeating the financial test yearly is not unduly burdensome on a licensee and gives NRC information on the financial condition of the licensee on a timely basis. This requirement is not unique to colleges and universities or to this rule. It is found in the self-guarantee financial tests applicable to other types of licensees, both profit and nonprofit.

10. Use of Self-Guarantee by the United States Enrichment Corporation

Comment: The United States Enrichment Corporation (USEC) proposed that the NRC modify the language of the rule to include certificates (regulated by NRC under 10 CFR Part 76). USEC stated that it would benefit from the opportunity to reduce the costs of complying with NRC financial assurance requirements, which USEC estimated would presently cost in excess of \$100,000 per year for letters of credit and surety bonds.

Response: Under 10 CFR 76.35(n), USEC (or the Corporation) is required to establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities that are the financial responsibility of the Corporation. The funding mechanisms currently listed in the regulation as potentially acceptable for use by the Corporation include prepayment,

surety, insurance, and an external sinking fund, but do not include self-guarantee or statement of intent. The rule provides that the funding mechanism must "ensure availability of funds for any activities that are required to be completed " by the Corporation.

USEC was created pursuant to the Energy Policy Act of 1992. It is a wholly owned government corporation, whose powers are vested in a five-member Board of Directors appointed by the President of the United States and confirmed by the Senate. However, on July 25, 1997 a plan was approved by the President under which USEC will be sold either to another corporation or to the public through a stock offering. Under the USEC Privatization Act, Congress set certain restrictions on foreign involvement in USEC's privatization and required that a "reliable and economical domestic source of enrichment services" exist following privatization.

Although the NRC is not currently aware of any reason why it would be inappropriate to consider expanding the category of funding mechanisms available to the Corporation to demonstrate the availability of funds for the actions required under 10 CFR 76.35(n), NRC does not believe that it would be feasible to do so in the current rule. First, USEC was not included in any of the analyses performed to evaluate potential self-guarantee tests for demonstrating financial assurance. NRC believes that detailed analyses should be undertaken to ensure that all critical factors have been considered. Second, USEC's current and future situation with respect to the costs that it might incur is substantially different from those of the licensees included in the current rulemaking. In particular, the scope and type of activities that USEC must carry out under 10 CFR 76.35(n) are very different from those conducted by hospitals and universities, and the non-bond issuing firms covered by the proposed rule.

Third, the exact size of the obligations that USEC might be required to cover is uncertain and will not be determined until a later date, although it is known that many of the costs will

remain the responsibility of the U.S. Department of Energy (DOE). Under 10 CFR 76.35(n), DOE is responsible for those aspects of decontamination and decommissioning of the gaseous diffusion plants (GDPs) assigned to DOE under the Atomic Energy Act. DOE also is responsible for all environmental liabilities associated with the operation of the GDPs before July 1, 1993. According to USEC's Annual Report for 1996, "[e]xcept for certain accrued liabilities that will be specified in a memorandum of agreement entered into prior to privatization, all environmental liabilities of the Company through the date of privatization will remain obligations of the U.S. Government." (Notes to Financial Statements: 7. Environmental Matters). Furthermore, as of June 30, 1996, USEC had accrued liability of \$303 million for transportation, conversion, and disposition of depleted uranium currently stored at the GDPs. The 1996 Annual Report states that "USEC is evaluating various proposals for the disposition of depleted uranium, and depending on the outcome of such evaluations, the Company may be able to reduce future cost accruals * * *. Pursuant to the USEC Privatization Act, all costs and liabilities related to the disposition of depleted uranium generated prior to the privatization date are the responsibility of DOE." Fourth, until privatization has occurred, important information about USEC's future corporate structure and ownership will remain uncertain. As noted above, Congress has allowed USEC to be sold either to another corporation or to the public through a stock offering. Thus, the form in which privatization occurs could affect the NRC's analysis of financial assurance alternatives. Because of the need to evaluate all of these factors, NRC has determined not to include 10 CFR Part 76 in the current rulemaking.

Changes from the Proposed Rule

There are no changes from the proposed rule.

Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for self-guarantee by non-bond-issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for self-guarantee for nonprofit college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit self-guarantee for financial assurance which can be used by qualified non-bond issuing licensees.

Compatibility of Agreement State Regulations

The current NRC regulation which allows self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria is designated as compatibility Category D. This final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as a compatibility Category D. Category D means the agreement States do not need to adopt a compatible rule. The Category D designation was determined in accordance with the new "Policy Statement on Adequacy and Compatibility of Agreement State Programs," approved by the Commission on June 30, 1997. The final rule change does not involve a basic radiation protection standard, activities that have direct and significant effects in multiple jurisdictions, or essential objectives which an Agreement State should adopt to avoid conflicts, gaps, or duplications in the regulation of agreement material on a nationwide basis. Therefore, Category D has been assigned to these rule provisions.

Finding of No Significant Environmental Impact: Availability

The amendments will allow qualified nonprofit and non-bond-issuing licensees the option of using self-guarantee as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use self-guarantee if they meet the regulatory criteria. Other licensees currently may elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and escrow accounts to comply with decommissioning regulations. This action is intended to offer nonprofit and non-bond-issuing nuclear materials licensees and non-electric utility reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of self-guarantee.

This revision to the NRC's regulations simply adds one more financial assurance mechanism to the mechanisms currently available. It does not affect the cost of decommissioning materials and non-power reactor facilities. Allowing self-guarantee for additional types of licensees does not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988, (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988).⁴ Promulgation of this rule does not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this rule

⁴ Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402-9328 (telephone (202) 512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555; telephone (202) 634-3273; fax (202) 634-3343.

would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted in making this determination. The NRC staff is not aware of any other documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0017, -0020, -0011, -0009, and -0132.

The public reporting burden for this information collection is estimated to average 9 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0017), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6203.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this rule would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that backfitting provisions (10 CFR 50.109 and 72.62) in the parts of the Commission's regulations that are being amended by this rulemaking do not apply to this rule because the rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) or 72.62(a). The rule extends the self-guarantee alternative for demonstrating decommissioning financial assurance to qualified non-profit and non-bond-issuing licensees. Extending the availability of this option does not impose a new burden on licensees of commercial power reactors or independent spent fuel storage installations (ISFSI's). Accordingly, the rulemaking does not constitute a backfit and a backfit analysis was not prepared for this final rule.

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 30, 40, 50, 70, and 72.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF
BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E.

3. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f)(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to this part. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to this part. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee

may be used if the guarantee and test are as contained in Appendix E to this part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. New Appendices D and E to Part 30 are added to read as follows:

APPENDIX D TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS
AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS
FOR DECOMMISSIONING BY COMMERCIAL COMPANIES THAT HAVE NO
OUTSTANDING RATED BONDS.

I. Introduction

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 company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than \$10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II.A of this appendix, the licensee must send notice to the NRC of intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the

Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

APPENDIX E TO PART 30, – CRITERIA RELATING TO USE OF FINANCIAL TESTS
AND SELF-GUARANTEE FOR PROVIDING REASONABLE ASSURANCE OF FUNDS
FOR DECOMMISSIONING BY NONPROFIT COLLEGES, UNIVERSITIES, AND HOSPITALS

I. Introduction

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 of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities, to pass the financial test a college or university must meet either the criteria in Paragraph II.A.(1) or the criteria in Paragraph II.A.(2) of this appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet either the criteria in Paragraph II.B.(1) or the criteria in Paragraph II.B.(2) of this appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

C. In addition, to pass the financial test, a licensee must meet all the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the attention of the auditor 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.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to the NRC of its intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that—

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246

(42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.36, the introductory text of paragraph (e)(2) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e)(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the

guarantee and test are as contained in Appendix D to Part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under

sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. In § 50.75, the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e)(2)(iii) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the

guarantee and test are as contained in Appendix D to Part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f)(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a),

10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

12. In § 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

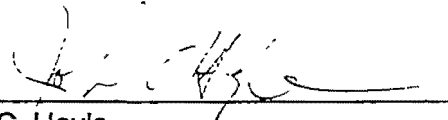
(c)(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial corporations that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the

requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

Dated at Rockville, Maryland, this 32nd day of May, 1998.

For the Nuclear Regulatory Commission.



John C. Hoyle,
Secretary of the Commission.

REED COLLEGE



Portland, Oregon 97202

DOCKETED
USNRC

EDWIN O. McFARLANE
VICE PRESIDENT/TREASURER

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72

(62 FR 23394)

16

'97 SEP 22 P3:38

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

September 17, 1997

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike, MS O16G15
Rockville, Maryland 20852

Attn.: Docketing and Service Branch
Subj.: Comments on Proposed Rules for Self-Guarantee of Decommissioning
Funding by Non-Profit Issuing Licensees (62 FR 23394)

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.

Reed College strongly supports the Proposed Rule. It would allow Reed College to meet the proposed stringent financial test and achieve significant cost savings without any loss of confidence for the NRC that funds for decommissioning will be available when needed.

We appreciate the opportunity to submit these comments.

Sincerely,

Edwin O. McFarlane
Vice President/Treasurer

OCT 3 1 1997

Acknowledged by card

67 27 15 72 18

TO

DOA

U.S. NUCLEAR REGULATORY COMMISSION
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STATE OF NEW YORK DEPARTMENT OF HEALTH

11 University Place

Albany, New York 12203-3399

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

DOCKETED
1997 AUG -7 P4:18

Dennis P. Whalen
Executive Deputy Commissioner

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,70+72
(62FR23394)

OFFICE OF SECRETARY
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15

July 29, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attn: Docketing and Service Branch

RE: Comments on Proposed Rule - Self-Guarantee of Decommissioning Funding

The New York State Department of Health submits the following comments on the above proposed rulemaking.

1. The proposed rule does not make clear which financial criteria apply when a university also includes a hospital.
2. The proposed rule does not make clear what it means for the non-profit to "issue bonds." In New York State, tax-exempt bonds issued for colleges and universities are placed through the Dormitory Authority of the State of New York. The Dormitory Authority, a public agency, takes no financial risk in the transaction, and the bonds are rated based on the financial strength of the college or university for whom they are issued. The bonds are not, strictly speaking, issued to the market directly by the institutions themselves; they are the bonds of the Authority.
3. What is meant by "uninsured, uncollateralized and unencumbered bonds"? Would a bond for which no property is mortgaged but a priority claim is given to bondholders on certain receivables (e.g., room and board payments) be considered "collateralized" or "encumbered"?
4. Do any criteria apply when a non-profit has issued bonds, but none are "uninsured, uncollateralized and unencumbered"? Such institutions could not meet the first test, and the second test appears to be restricted to "applicants and licensees that do not issues bonds," regardless of what sorts of bonds those might be.
5. What is meant by unrestricted "endowment"? Most institutions have what are referred

2 University Place, Rm. 375, Albany, N.Y. 12203 Tele:518/458-6485 FAX: 518/458-6434

Acknowledged by card AUG 14 1997

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to generally as "endowments" that consists substantially of funds functioning in that capacity, even though the donors contributed them in such a way that the funds would not necessarily be regarded, strictly speaking, as "endowment" in the narrower legal sense of that term. Many institutions of great financial strength may not meet the criteria if a strict legal definition is applied.

6. The rationale for requiring hospitals to meet all four financial tests is unclear. It would appear that implementation of test d, "operating revenues/decommissioning costs" would provide reasonable assurance of ability to provide decommissioning funding.

The Department supports the concept of self-guarantee for medical and academic institutions as there is little evidence these institutions pose a risk of leaving a contamination problem. However the proposed rule prescribes strict financial tests that are unclear and appear to be over restrictive and possibly not true indicators of financial strength. Consideration should be given to including the detailed financial tests in a guidance document much like the current financial assuredness rule. Further Agreement States should have additional flexibility determine the requirements for financial assurance especially in the case of hospitals. For example, the Department has considerable regulatory control over the operation of hospitals including the issuance of operating certificates, approving certificates of need and overseeing closures.

We appreciate the opportunity to comment. Please contact me if you have any questions or need additional information.

Sincerely



Stephen M. Gavitt, Chief
Radioactive Materials Section
Bureau of Environmental Radiation Protection



HARVARD UNIVERSITY
RADIATION SAFETY COMMITTEE

DOCKETED
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'97 AUG -8 A11:28

BERTHA K. MADRAS, PH.D.
Chair
JOSEPH P. RING, PH.D., CHP
Radiation Protection Officer

August 1, 1997

46 Oxford Street
Cambridge, MA 02138
Tel: (617) 495-2060
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Secretary
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555-001

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

Attn: Docketing and Service Branch

14

Subject: Proposed rule on Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond issuing Licensees

Federal Register/ Vol 62, No. 83/Wednesday, April 30, 1997/Proposed Rules, page 23394

Harvard University supports the proposed rule Decommissioning Funding for 10 CFR 30, 40, 50, 70, and 72 as referenced above to permit financially strong non-profit licensees the option of self-guarantee of the financial resources to fund and complete decommissioning of licensed activities.

We agree with your finding that private universities, which can meet the stringent financial criteria, would reduce the costs of complying with financial assurance requirements while providing adequate confidence that the decommissioning funds were available. This rule would allow these institutions the self-guarantee option that is now only available to bond-issuing industrial corporations.

We urge that the NRC adopt the proposed rule as written so that not for profit licensees who meet the proposed criteria have available to them the same financial assurance options currently available to corporate licensees.

Sincerely,

Bertha K. Madras, Ph.D.
Chair

cc: E. Barkley
J. Griffin
R. McGaw
J. Ring

AUG 1 1 1997
Acknowledged by card

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July 29, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-001

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72
(62FR 23394) (13)

Attn: Rulemakings and Adjudications Staff

Re: Federal Register/Vol.62, No. 83 / Wednesday, April 30, 1997 / Proposed Rules, Page 23394, Nuclear Regulatory Commission 10 CFR Parts 30, 40, 50, 70 and 72 Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees

On behalf of Fred Hutchinson Cancer Research Center, as a Health Physicist, I strongly feel that the NRC's proposed rule is highly beneficial to Institutes like us. It not only allows us to act accordingly and also organize ahead of time with our financial situation in much more efficient way. Non-profit organizations like Fred Hutchinson Cancer Research Center, can achieve a significant cost savings without any loss of confidence for the NRC and Agreement State that funds for decommissioning will be available when needed.

We therefore urge that the NRC adopts the proposed rule as written so that non-profit licensees who meet the NRC's stringent financial criteria have available to them the same financial assurance options presently available to corporate licensees.

Respectfully,

Rao M. Goriparthi
Radiation Safety Officer/ Health Physicist
Environmental Health & Safety Department
Fred Hutchinson Cancer Research Center

AUG 11 1997
Acknowledged by card

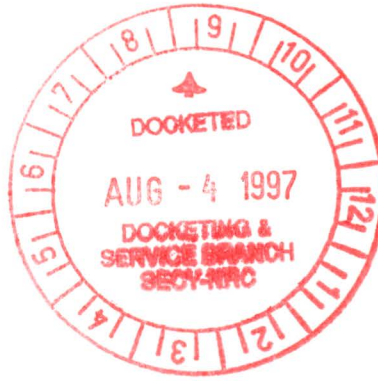
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United States
Enrichment Corporation



August 1, 1997

United States
Enrichment Corporation

2 Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

Tel: (301) 564-3200
Fax: (301) 564-3201

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72
(62FR23394)

12

Secretary
US Nuclear Regulatory Commission
Washington, D.C. 20555-0001
Attention: Docketing and Service Branch

SERIAL: GDP 97-0137

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
AVLIS Uranium Enrichment Plant
Docket Nos. 70-7001 70-7002, 70-3089
USEC Comments on NRC's Proposed Rule "Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees," (62 Fed. Reg. 23395)

Dear Sir:

On behalf of the United States Enrichment Corporation (USEC), I am pleased to provide the following comments on the NRC's Proposed Rule, "Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees."

The proposed amendment would extend current authority for licensees to self-guarantee decommissioning funding. It is not clear that certificatees, such as USEC, would also be extended this authority. USEC would also benefit from this opportunity to reduce the costs of complying with NRC financial assurance requirements. It was recently estimated that the costs of obtaining Letters of Credit and Surety Bonds for our gaseous diffusion plants is in excess of \$100,000 per year. Allowing certificatees to demonstrate compliance with the proposed financial criteria required to self-guarantee would reduce compliance costs while providing adequate confidence to the NRC that funds for decommissioning will be available when needed. It is proposed that the NRC modify the language of the proposed rule to clarify that it also applies to certificatees.

The term "cash flow" is undefined in Appendix D. USEC understands the term to mean the "sum of net income plus depreciation, depletion, and amortization." It is proposed that the NRC modify the language of the proposed rule to define the term "cash flow."

AUG 11 1997
Acknowledged by card

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U.S. Nuclear Regulatory Commission
Docketing and Service Branch
August 1, 1997
GDP 97-0137, Page 2

Thank you for the opportunity to provide our input to the Commission's evaluation process. We would be pleased to discuss these comments with you. Please contact Ms. Lisamarie Jarriel at (301) 564-3247.

Sincerely,

A handwritten signature in black ink, appearing to read "S. A. Toelle". The signature is written in a cursive style with a horizontal line above the first part of the name.

Steven A. Toelle
Nuclear Regulatory Assurance and Policy Manager

NEI
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'97 JUL 30 A11:21

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Felix M. Killar, Jr.
DIRECTOR,
Material Licensees & Nuclear Insurance
Direct Line 202.739.8126
Internet fmk@nei.org

July 29, 1997

Mr. John C. Hoyle
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR** 30, 40, 50, 70 + 72
(62 FR 23394) **11**

ATTENTION: Docketing and Service Branch

SUBJECT: Comments on Proposed Rules for Self-Guarantee of
Decommissioning Funding by Non-Bond Issuing Licensees
(62 FR 23394)

By a Federal Register Notice published April 30, 1997, the Nuclear Regulatory Commission (NRC) requested comment on a proposed rule change that would extend current authority for licensees to "self-guarantee" decommissioning funding. Under this approach, certain financially strong licensees are not required to provide financial assurance for the decommissioning of their facilities through one of the mechanisms allowed by rule (e.g., surety bond, letter of credit, pre-payment). Licensees using self-guarantees are permitted to rely upon corporate funds to cover decommissioning costs. The current criteria allowing licensees to use self-guarantees are based on corporate bond ratings. This option is therefore not available to non-profit organizations and corporate entities that do not issue bonds. The proposed rule would add qualifying criteria to permit certain of these licensees also to use self-guarantees.

The Nuclear Energy Institute¹ (NEI) supports the extension of the self-guarantee principle to additional licensees. NEI recognizes NRC's responsibility to provide for reasonable assurance that funds will be available to decommission licensed facilities. This assurance should be provided with the minimum burden necessary on licensees. Allowing additional licensees to utilize self-guarantees is a laudable step in that direction. However, we believe that NRC should reconsider the conservative nature of some assumptions required to be made in estimating decommissioning costs. More

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

Acknowledged by card **JUL 31 1997**

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Mr. John C. Hoyle

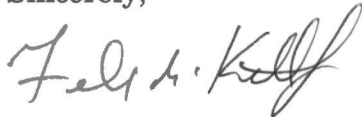
July 29, 1997

Page 2

realistic assumptions would have the effect of estimating costs more realistically and reducing the projected funds for which assurance must be sought. Specific comments on such assumptions and other issues are presented in the enclosure to this letter.

NEI commends the NRC for this initiative, and appreciates the opportunity to provide comments. If there are any questions regarding our comments, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Felix M. Killar".

Felix M. Killar

Director,

Material Licensees & Nuclear Insurance

Enclosure

c: Marvin Fertel

Specific Comments on NRC Proposal to Extend Self-Guarantee

1. Estimated decommissioning costs should be based on best available information. Use of conservative assumptions such as the prime rates charged by contractors or unreasonably high estimates of waste disposal costs should not be required. Other considerations that would result in more realistic cost estimates (such as delays to allow short-lived radioactivity to decay as discussed below) should be allowed. In general, decommissioning cost estimates should be based on actual experience, rather than conservative worst-case assumptions.
2. Estimates of decommissioning costs should not be required to assume disposal of the maximum amount of material permitted by the license. Typically, the licensee seldom comes close to having the maximum amount of material permitted by the license. It is more reasonable to assume that the licensee would have minimal licensed material on site when going into decommissioning. Additionally, licensees are engaged in commercial activities to produce products. It is reasonable to assume that some portion of the licensed maximum quantity will be in the form of finished product that will have value and will not be disposed of. In fact, assuming otherwise would be an unreasonable assumption.
3. Decommissioning costs can be reduced significantly by allowing a period for short-lived isotopes to decay before decommissioning and dismantlement begins. Such delay, to reduce ultimate cost, is the likely scenario in cases where licensed activities occupy only a small portion of the licensee's facility. Licensees should be permitted to consider choosing to implement those procedures rather than be required to base their cost estimates on assuming immediate decommissioning.
4. The requirements for licensees pursuing self-guarantees should reflect the realities of the licensee community. In particular, the proposed requirement (Appendices D and E) that licensees conduct accounting per U.S. generally accepted accounting principles (GAAP) does not recognize the increasingly multi-national nature of materials licensees. Foreign ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatome) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow that adequate assurance that funds will be available can be provided using other recognized and accepted accounting practices.
5. The proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will assure consistent requirements for financial surety arrangements, and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Office of Sponsored Programs
Massachusetts Institute of Technology
77 Massachusetts Avenue, E19-750
Cambridge, MA 02139-4307



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ppowell@mit.edu

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July 29, 1997

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

10

Secretary
U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Docketing and Service Branch

Subject: Self-Guarantee of Decommissioning Funding

To Whom It May Concern:

First, accept my apology for the late response to NRC's proposed amendment that appeared in the 4/30/97 Federal Register. We at MIT heartily agree with the proposed amendment. We have found the cost associated with adhering to NRC's current financial assurance requirements to be quite significant. Allowing qualified non-profits, such as MIT, to use self-guarantee would significantly reduce these costs.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Paul C. Powell".

Paul C. Powell
Assistant Director

PCP/mm
xc: Dr. Prichard

Acknowledged by card JUL 31 1997

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AMERICAN COUNCIL ON EDUCATION

Office of Vice President and General Counsel

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'97 JUL 29 P3:29

July 28, 1997

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

Attn: Docketing and Service Branch

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

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).

Acknowledged by card JUL 31 1997

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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.

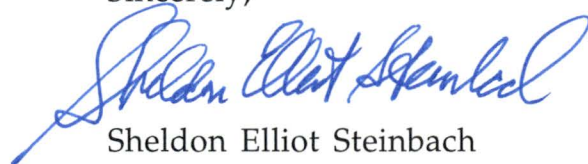
July 28, 1997
Page 3

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 than 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



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USNRC
OFFICE OF THE PROVOST

'97 JUL 29 P3:28

July 25, 1997

OFFICE OF SECRETARY
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Internet: Mel.Schiavelli@MVS.UDEL.EDU

Secretary John C. Hoyle
U. S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72
(62 FR 23394) **(8)**

RE: Proposed rule regarding self-guarantee of decommissioning funding by Non-Profit Licensees

Dear Secretary Hoyle:

The University of Delaware strongly endorses the proposed rule allowing universities and other non-profit organizations to self-guarantee the funds for decommissioning costs. Not only are most universities very stable institutions, but they are perhaps the least likely licensee type to terminate licensed activities and require decommissioning. One change in the proposed rule is recommended.

As proposed, Appendix E to Part 30 section II.C.(2) requires that licensees annually "repeat passage of the test" to ensure that they continue to pass all self-guarantee criteria. However, the only financial test under criteria II.A.(20) is the maintenance of at least a \$50 million dollar endowment. University endowments are, by nature, stable and secure. Universities meeting the endowment criteria should not need to perform annual financial test. Section II.C.(3) provides sufficient assurance that the NRC will be notified if a university no longer meets the endowment criteria.

The University recommends that section II.C.(2) of Appendix E to Part 30 be modified to read:

(2) After the initial financial test, licensees qualifying for self guarantee under criteria B.(2) must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

The University of Delaware appreciates the opportunity to comment on this important issue.

Sincerely,

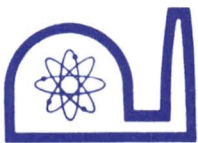
Melvyn D. Schiavelli
Provost

Acknowledged by card JUL 31 1997

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NUCLEAR REACTOR LABORATORY
AN INTERDEPARTMENTAL CENTER OF
MASSACHUSETTS INSTITUTE OF TECHNOLOGY



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Director of Reactor Operations
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'97 JUL 29 11:00

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Activation Analysis
Coolant Chemistry
Nuclear Medicine
Reactor Engineering

July 24, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
Attention: Rulemakings and Adjudications Staff

DOCKET NUMBER
PROPOSED RULE **PR** 30, 40, 50, 70+72
(62 FR 23394) (7)

Subject: Proposed Rule on Self-Guarantee for Decommissioning Funding

Gentlemen:

The Massachusetts Institute of Technology supports the proposed rule that would allow colleges and universities with either a certain bond rating or a certain unrestricted endowment to utilize self-guarantee as a means of financial assurance for decommissioning.

Sincerely,

John A. Bernard, Ph.D.
Director
MIT Nuclear Reactor Laboratory

JAB/CRM

cc: USNRC - Senior Project Manager,
NRR/ONDD

USNRC - Region I - Project Scientist,
Effluents Radiation Protection Section (ERPS)
FRSSB/DRSS

J. D. Litster, MIT

Acknowledged by card JUL 31 1997

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'97 JUL 25 A10:31

July 22, 1997

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Amersham Holdings, Inc.
2636 S. Clearbrook Drive
Arlington Heights, IL 60005
tel (847) 593-6300

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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

(6)

Amersham
The Health Science Group

Attention: Docketing and Service Branch

Re: Federal register, Vol. 62, No. 83, April 30, 1997. Proposed Rule: Self Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees

These comments are submitted by Amersham Holdings, Inc., a manufacturer and distributor of radiopharmaceuticals, life science research radiochemicals and sealed sources used in medicine and in quality and safety assurance. Amersham currently maintains financial surety arrangements with the Illinois Department of Nuclear Safety in accordance with its Agreement State licensing regulations.

General Comments

Amersham supports this NRC Proposed Rule as it provides licensees the opportunity to self-guarantee the costs of decommissioning. We recognize and appreciate the need for NRC to ensure that reasonable and responsible arrangements are established for licensee accountability of decommissioning costs. At the same time, the current methods available for demonstration of financial surety by licensees often result in estimates of decommissioning costs that include conservative assumptions and, therefore, unrealistically high. The financial burden of letters of credit, surety bonds, and other approved mechanisms of financial surety may actually lead licensees to bankruptcy which may make some of the financial provisions available for decommissioning.

While the option of self-guarantee is viewed as a more reasonable and cost effective means of holding licensees accountable for long term decommissioning liability, Amersham provides the following specific comments regarding the mechanisms of financial surety which include the suggestion of some modifications to the financial tests used to qualify certain non-bond issuing industrial corporations for self-guarantee. These modifications could make the self-guarantee option available to a wider range of licensees while still assuring the funding of decommissioning.

Specific Comments

1. Estimated costs of decommissioning should not rely upon worst case conservative assumptions such as the prime rates charged by contractors or theoretical waste disposal

JUL 31 1997

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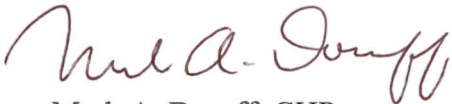
costs. The estimated costs of decommissioning and waste disposal should be based upon licensee and industry experience.

2. The estimate of decommissioning liability should include the costs of activities associated with site assessment, post decommissioning surveys, decontamination, dismantling and packaging and disposal of waste, and should not include the estimated cost of disposal of finished goods in inventory and other materials in process and facilities that have value. Licensees should not be required to assume disposal costs for the total amount of material they are authorized to possess in their decommissioning estimates.
3. Licensees, particularly those with relatively short-lived radionuclides, should be given the option of estimating the cost of site access control over the period of time necessary to significantly decay the radioactivity to reduce actual cleanup and disposal costs. The fact that decommissioning occurs over a time span should be allowed to be considered rather than the requirement to estimate the cost of decommissioning at the time the facility ceases operation.
4. The proposed regulations should be assigned a compatibility status of Level 1 to ensure consistent requirements for financial surety arrangements and to avoid competitive disadvantages.
5. The proposed criteria for non-bond issuing industrial corporations should be modified to enable more licensees to qualify while still providing adequate financial surety to cover the cost of decommissioning:
 - 5.1 The second proposed criterion is total liabilities divided by net worth must be less than 1.5. Since net worth is defined as assets minus liabilities, liabilities are factored into this formula in both total liabilities and net worth. This formula should be changed to total assets divided by the quantity of balance sheet liabilities plus decommissioning liability must be greater than 1.5. This formula makes more sense and more realistically reflects a licensee's ability to shut down and have the necessary assets to pay off remaining liabilities and decommissioning costs with a considerable margin remaining.
 - 5.2 The third criterion is net worth greater than \$10 million or at least 10 times decommissioning costs, whichever is greater. Again, since the definition of net worth is assets minus liabilities, it appears that the application of decommissioning costs in this relationship is redundant. In addition, finished goods and other valuable assets should not be included in decommissioning costs. If these are considered as

both decommissioning liabilities and assets in the determination of net worth, then the licensee is unfairly penalized using this criterion. This penalty is further exacerbated if licensees are required to determine the cost of decommissioning based on total license possession rather than a realistic projection of actual decommissioning and disposal liabilities on site.

Amersham appreciates the opportunity to comment on this very important proposed rule and is willing to answer any questions or provide additional information as required.

Sincerely,



Mark A. Doruff, CHP
Director, Environmental and Safety
Regulatory Affairs



number one tantalum place north chicago, illinois 60064 phone: (847) 689-4900 fax: (847) 689-0307

'97 JUL 24 P1:43

July 23, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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BRANCH

Attention: Docketing and Service Branch

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

5

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

Dear Secretary:

I am writing on behalf of Fansteel Inc. in support of the NRC's proposed rule and to offer comments for NRC's consideration in the Final Rule. Fansteel supports the concept that non-profit and non-bond issuing licensees should be allowed to self-guarantee the availability of decommissioning funds. We believe, however, that the proposed financial test for non-bond issuing industrial corporations is unduly restrictive and that the final rule should adopt a less restrictive test similar to that currently used for parent company guarantees.

In the proposed rule, industrial corporations would have to meet the following criteria:

Cash Flow ÷ Total Liabilities > 0.15;

Total Liabilities ÷ Net Worth < 1.5; and

Net Worth > \$10 MM or 10 times the decommissioning costs, whichever is greater.

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These are the same criteria evaluated as Option 4 for non-bond issuing business firms in NUREG/CR-6514 "Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Non-Profit Colleges, Universities and Hospitals and by Business Firms That Do Not Issue Bonds." That analysis concluded that only six percent (2 of 36) licensees considered in the study would be able to pass such a rigorous financial test.

NUREG/CR-6514 also analyzed a less restrictive financial test, identified as Option 2, which presented only a moderate assurance risk. The criteria for this test are:

$$\text{Cash Flow} \div \text{Total Liability} > 0.1 \text{ or}$$

$$\text{Total Liability} \div \text{Net Worth} < 1.5.$$

This is the same test being considered by EPA for both parent company guarantees and self-guarantees for hazardous and nonhazardous waste management facilities under RCRA. The analyses for this option concluded that 69% (25 of 36) licensees would be able to qualify for the self-guarantee under this option.

For comparison, NRC currently accepts a parent company guarantee where the parent company satisfies two of the following three ratios:

$$\text{Total Liability} \div \text{Net Worth} < 2.0;$$

$$\text{Cash Flow} \div \text{Total Liability} > 0.1; \text{ and}$$

$$\text{Current Assets} \div \text{Current Liabilities} > 1.5.$$

The parent company must also have net working capital and tangible net worth each at least six times the decommissioning cost estimate; a tangible net worth of at least \$10 MM; and at least 90% of its assets, or assets worth six times the decommissioning cost estimate, located in the United States. This is the same test currently used by EPA for parent guarantees for closure and post-closure costs at RCRA facilities.



The proposed self-guarantee standard appears to be inconsistent with the existing parent guarantee standard used by the NRC, and it appears to favor corporate form over financial substance. For example, a licensee which is not a subsidiary of another company could pass the parent-guarantee test but not the self-guarantee test. This licensee would have to use other means to financially assure its decommissioning cost estimate--all of which entail significant costs. Another licensee with the same decommissioning cost estimate, but which has a parent company, could use a parent company guarantee as long as the parent satisfies the less restrictive financial test for parent companies. Thus, it is possible that a financially weaker parent company can guarantee a given amount, whereas a stronger company which has no parent cannot guarantee the same amount, and will incur significant additional costs to satisfy its financial assurance obligations. The potential for such an outcome should not be countenanced by the NRC.

Fansteel believes that NRC should adopt for the self-guarantee test to be employed by non-bond issuing business firms either the current parent guarantee criteria or the NUREG/CR-6514 Option 2 criteria. Either test would not unfairly discriminate against companies which do not have parent companies (or which did not establish subsidiaries for their licensed activities) and which are otherwise financially sound. Additionally, more licensees would be able to employ these methods, thereby saving the costs that would be incurred when other financial assurance mechanisms are employed.

Fansteel also suggests that the final rule include definitions for the various accounting terms used in the rule. For example, the proposed rule uses the term "cash flow" but does not define it, whereas the current parent guarantee rule (10 CFR 30, Appendix B) uses the term "the sum of net income plus depreciation, depletion and amortization," but does not mention cash flow. NUREG/CR-6514 defines cash flow as "net income plus depreciation, depletion and



amortization.” Without the NUREG, one might conclude that the use of different terms in similar rules suggests that different meanings are intended. This confusion can be avoided by defining the terms in the rule, rather than relying on documents merely referenced in the rulemaking notice to provide clarity.

We hope these comments are helpful as the NRC moves to finalize this rule.

Very truly yours,

FANSTEEL INC.

A handwritten signature in black ink that reads "Michael J. Mocniak". The signature is written in a cursive, flowing style.

Michael J. Mocniak
Vice President and General Counsel

(4)

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE
SPRINGFIELD, ILLINOIS 62704

Jim Edgar
Governor

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217-782-6133 (TDD)

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97 JUL 22 A10:05

Thomas W. Ortiger
Director
OFFICE OF SECRETARY
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BRANCH

July 18, 1997

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NUMBER
PROPOSED RULE PR 30, 40, 50, 70 + 72
(62FR23394)

Attention: Docketing and Service Branch

Re: Proposed Rule, "Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees."

Gentlemen:

The Illinois Department of Nuclear Safety (Department) hereby submits its comments on the referenced proposed rule. The proposed rule represents changes to surety rules that would allow non-profit licensees and commercial licensees who do not issue bonds, the option to use self-guarantee as a surety funding mechanism. Specific comments on the proposed rule are detailed below.

1. Under II. Analyses of Financial Criteria, A. Criteria for Colleges and Universities, there is a statement that non-profit entities or for-profit firms that do not issue bonds may opt to obtain a bond rating from one of the major ratings agencies. However, the proposed language in Section 30.35 does not clearly indicate this option.

2. Under II. Analyses of Financial Criteria, B. Criteria for Hospitals, "liquidity" is incorrectly defined twice as "current assets and depreciation fund, divided by current liabilities." (emphasis added) The same mistake is made in II.B.(2)(c) of the proposed Appendix E to Part 30. The underscored language should be deleted. Inclusion of "depreciation fund" in the liquidity test makes no sense from an accounting perspective. The study upon which the proposed rule is based, NUREG/CR-6514, correctly defines the liquidity test on page 32 as "Liquidity," measured by the current ratio (current assets divided by current liabilities)."

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Secretary of the Commission

Page 2

July 17, 1997

3. Provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2) and 72.30(c)(2), provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. What are the reasons for these restrictions? It would seem that the licensing agency would, for instance, have stronger financial assurance for decommissioning if there were a 50% prepayment and a 50% guarantee than if there if just a 100% guarantee.

4. Under Finding of No Significant Environmental Impact, the notice states that, "The proposed action is intended to offer non-profit and non bond-issuing nuclear materials licensees and non-power reactor licensees greater flexibility by allowing an additional mechanism that meet the financial criteria for use of self guarantee." (emphasis added) The underscored language inaccurately reflects the scope of the proposed rule to reactor licensees. The factor which determines whether a Part 50 reactor licensee can use the new mechanism is whether the licensee is an electric utility, not whether the reactor is a power reactor. See section 50.75(e)(2). In other words, a non-electric utility licensed to operate a power reactor under Part 50 could use the new guarantee mechanism. This issue is correctly addressed in the first sentence of the Summary at the beginning of the notice, which refers to "non-electric utility reactor licensees."

Overall, we believe that the NRC has increased the flexibility of this rule by developing additional surety options for licensees. If you have any questions regarding these comments, please contact either me or Kathy Allen at (217) 785-9947.

Sincerely,



Steven C. Collins, Chief
Division of Radioactive Materials

SCC:kaa

cc: Jim Lynch, State Agreements Officer, RIII



3

DOCKETED
USNRC
Council on Radionuclides and Radiopharmaceuticals, Inc.

3911 Campolindo Drive
Moraga, CA 94556-1551
510/283-1850
Fax: 510/283-1850

'97 JUL -9 A11:47

July 2, 1997

Henry H. Kramer, Ph.D., FACNP
Executive Director

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE PR 30,40,50,70+72
(62FR23394)

Attention: Docketing and Service Branch

Reference: Federal Register, Vol. 62, No. 83, April 30, 1997.
Proposed Rule: Self Guarantee of Decommissioning Funding by
Non-Profit and Non-Bond Issuing Licensees

These comments are submitted on behalf of the Council on Radionuclides and Radiopharmaceuticals (CORAR). CORAR members include the major manufacturers and distributors of radiopharmaceuticals, radioactive sources and research radionuclides used in the U.S. for therapeutic and diagnostic medical applications and for industrial, environmental and biomedical research and quality control. CORAR members and their customers are U.S. Nuclear Regulatory Commission (NRC) or Agreement State licensees and therefore interested in this proposed rule.

CORAR supports the NRC's proposal to allow additional licensees to self-guarantee funding for decommissioning. CORAR welcomes the approach taken by the NRC and recommends extending this effort by reconsidering the values used in current and proposed financial tests to ensure that the program is cost effective. CORAR has enclosed detailed comments on this proposal and made additional recommendations to satisfy the intent of the regulations.

We appreciate the opportunity to comment on this proposed rule and would be glad to provide clarification or additional information.

Sincerely yours,

Leonard R. Smith, CHP
Chairperson, CORAR Committee on
Regulatory and Legislative Issues

Acknowledged by card JUL 11 1997

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CORAR COMMENTS ON PROPOSED RULE: SELF GUARANTEE OF
DECOMMISSIONING FUNDING BY NON-PROFIT AND NON-BOND ISSUING
LICENSEES.

1. **Page 23395, column 1, paragraph 1:**

“Allowing qualified non-profit and non-bond-issuing licensees to use self-guarantee would reduce the costs of complying with NRC financial assurance requirements while providing adequate confidence to the NRC that funds for decommissioning will be available when needed”.

- a. CORAR agrees that extending the use of self-guarantees would reduce the costs of complying with NRC financial assurance requirements.
- b. Many licensees have insufficient financial strength to meet the current stringent regulatory conditions and tests to qualify for self guarantee. They are therefore forced to seek alternative financial assurance arrangements, letters of credit being a common solution. However, because of their financial status, these licensees are required to pay very high fees for the necessary banking services. Furthermore the establishment of, a letter of credit often reduces a licensee's available credit which can weaken the licensee's financial and operational flexibility. Current NRC requirements for demonstrating financial assurance can therefore indirectly weaken the financial viability of smaller licensees and can be expected to statistically cause some licensees to fail and precipitate the very condition that the NRC seeks to protect against.
- c. The NRC should be aware that fees to maintain financial assurance arrangements are often paid out of the Radiation Protection budget. Consequently the payment of high fees can adversely affect the radiation protection program. It is not unusual for financial assurance fees to consume from 10 to 20% of the radiation protection budget.
- d. Clearly any viable financial assurance mechanism that is less costly than current practice should be preferable to the licensee, regulator and the public.
- e. CORAR agrees that licensees should be required to provide adequate confidence to the NRC that funds for decommissioning will be available when needed. It is clear too that the costs for maintaining this assurance should be minimized to preserve the financial, operational and radiation protection capability of the licensee.

- f. There are three areas where the costs for demonstrating financial assurance could be reduced if NRC were to change its current licensing practice. These are:
- i. Many licensees use commercial contractors to estimate the cost of decommissioning the licensed facility. Contractors commonly over estimate the cost to provide for generous profit margins and ultra conservative contingencies in the event that they are contracted to decommission the facility. NRC should encourage best estimates of decommissioning costs and prefer estimates based on historic plant experience in decommissioning and renovation rather than commercial estimates.
 - ii. Many licensees use a letter of credit and standby trust agreement to assure decommissioning. NRC Regions and Agreement state staff have limited financial and legal expertise and rely heavily on comparing licensee financial assurance arrangements with models presented in Regulatory Guide 3.66. However the NRC model standby trust agreement in Reg. Guide 3.66 provides for funds to be released to the licensee for decommissioning purposes. This action can defeat the intent of the regulations because, if the licensee has filed for bankruptcy, they legally become a separate entity from the licensee that initially filed financial assurance arrangements and under the constraints of bankruptcy proceedings those funds could be used for purposes other than decommissioning.

CORAR recommends that NRC replaces this model with one that provides for the regulator to manage the decommissioning funds in the event of bankruptcy. The benefit of this recommendation is that it will assure the intent of the regulation, it will provide a model that regulatory staff can use to process licensee submissions and the arrangements carry less risk to the bank providing the services and consequently less cost to the licensee.
 - iii. NRC has had considerable experience in reviewing financial assurance submissions. CORAR recommends that the NRC should consider reevaluating the quantities used in both the proposed and current financial tests in 10CFR30. CORAR maintains that such a review should indicate that financial tests for self guarantee and parent guarantee could be relaxed by a factor of two and still provide adequate assurance. This would have the benefit of making a self guarantee accessible to more licensees and reduce any unproductive financial burden on them.

2. **Page 23396, column 2, paragraph 4:**

“The multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endorsement invested at 3 percent”.

- a. The selected multiple of 30 is excessively conservative. It should not be difficult to obtain secure investments yielding 6%. CORAR recommends that an appropriate multiple would be 15 based on investment yield.
- b. The above statement implies that decommissioning costs are paid from investment yields over a one year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving two or three years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30.
- c. CORAR recommends that the above two considerations can be combined and the multiplication factor reduced from 30 to 10 with ample conservatism

3. **Page 23396, column 3, paragraph 6:**

“....hospital operating revenues to be at least 100 times decommissioning costs”.

The selected multiple of 100 is excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be two years or more. CORAR recommends that the NRC considers a multiple of 30 or less to be more appropriate.

4. **Page 23396, column 3, paragraph 7:**

“The proposed criterion is..., total liabilities divided by Net Worth less than 1.5, and Net Worth greater than \$10 million or at least 10 times decommissioning costs,....”

CORAR observes that Net Worth is defined as Assets minus Liabilities and that Liabilities include decommissioning cost estimates. It therefore appears that the liabilities are double counted in the above criteria. We recommend that decommissioning costs be explicitly excluded from Liabilities in these criteria. The modified formula will continue to provide adequate financial assurance.

5. **Page 23397, column 2, paragraph 2:**

“The NRC invites comments on the general issue of the compatibility status of its financial assurance regulations”.

CORAR asserts that financial assurance regulations should be assigned level 1 strict compatibility status. We recommend this because financial assurance arrangements can have a significant effect on the financial and operational viability of a licensee.

Consequently Agreement States with more stringent regulatory requirements can cause competitive disadvantages to licensees.

6. **Other Considerations**

- a. While CORAR appreciates the need for financial assurance for licensees with significant historic radionuclide inventories it is not clear whether the regulatory measures are effective. CORAR therefore recommends that the NRC should publish an evaluation that clearly shows that the benefit to society in ensuring decommissioning and reduction in public dose is justified by the cost of maintaining financial assurance arrangements, regulatory costs in reviewing financial assurance arrangements and costs of adverse effects of financial assurance arrangements on licensee radiation protection resources and financial and operational viability.
- b. The NRC should consider promoting a national insurance program for all non-utility licensees with the objective of reducing the cost of demonstrating financial assurance.

Princeton University

Office of the Vice President for Finance and Administration
318 Nassau Hall, Princeton, New Jersey 08544-5264

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'97 JUN 16 P3:31

June 12, 1997

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Attn: Docketing and Service Branch

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

Re: **Federal Register** / Vol. 62, No. 83 / Wednesday, April 30, 1997 / Proposed Rules, page 23394, **Nuclear Regulatory Commission 10 CFR Parts 30, 40, 50, 70, and 72 Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees**

Princeton University commends the NRC's proposed rule 10 CFR parts 30,40,50,70, and 72 as referenced above permitting financially strong non-profit licensees the option to self-guarantee as a mechanism to ensure that adequate financial resources are available to fund and carry-out required decommissioning activities. On behalf of the University, I am writing this letter in my capacity as Assistant Vice President for Finance and Administration at Princeton University with responsibility for the Office of Environmental Health and Safety.

We heartily agree with your finding that private universities which can meet the proposed stringent financial test can achieve significant cost savings without any loss of confidence for the NRC that funds for decommissioning will be available when needed. To illustrate the cost-savings at an institutional level, Princeton University (rated AAA by S&P and Aaa by Moody's) spends roughly \$12,000 each year to maintain its letter-of-credit, which is, at the current time, the least expensive financial assurance option for Princeton University.

We therefore urge that the NRC adopt the proposed rule as written so that non-profit licensees who meet the NRC's stringent financial criteria have available to them the same financial assurance options presently available to corporate licensees.

Sincerely,

Laurel Harvey

Laurel Harvey
Assistant Vice President for Finance and Administration

Acknowledged by card JUN 20 1997

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'97 MAY 19 P4:06

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Secretary
Attn: Docketing and Service Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

DOCKET NUMBER
PROPOSED RULE **PR** 30,40,50,70+72
(62FR23394)

①

RE: Proposed NRC Financial Assurance Rule for Non-Utility Decommissioning
REF: Federal Register, Vol. 62 No. 83

Dear Secretary:

The proposed rule for non-utility decommissioning indicates that industrial corporations would need to meet not only a series of financial ratio tests but also have a "net worth of greater than ten million dollars or at least ten (10) times the estimated decommissioning costs, whichever is greater".

The words "whichever is greater" is discriminatory against well funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the requirement of a net worth of at least 10 million dollars. A smaller firm that meets the financial criteria tests and has a net worth at least ten times greater than the estimated decommissioning costs should enjoy the same privileges as the larger firms with likely larger decommissioning costs for their facilities.

Unless the words "whichever is greater" are eliminated from the proposed rule, only larger firms with net worth's of greater than 10 million dollars will benefit. Many hundreds of millions more dollars could be saved each year by allowing all licensees to meet equal financial assurance criteria.

Thank you for your consideration.

Sincerely,

Stan A. Huber Consultants, Inc.

Stan A. Huber
President

MAY 29 1997
Acknowledged by card

U.S. NUCLEAR REGULATORY COMMISSION
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NUCLEAR REGULATORY COMMISSION
10 CFR Parts 30, 40, 50, 70, and 72
RIN 3150-AF64

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Self-Guarantee of Decommissioning Funding
by Non-Profit and Non-Bond Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to self-guarantee funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to self-guarantee funding if they meet stringent financial criteria. The proposed rule would allow non-profit licensees, such as colleges, universities, and hospitals, and also some commercial licensees who do not issue bonds, to self-guarantee funding, provided they meet similarly stringent financial criteria. Allowing qualified non-profit and non-bond-issuing licensees to use self-guarantee would reduce the costs of complying with NRC financial assurance requirements while providing adequate confidence to the NRC that funds for decommissioning will be available when needed.

Pub. on 4/30/97
at 62FR23394

DATES: Submit comments by (comment period 90 days) July 29, 1997.

Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attn: Docketing and Service Branch. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Single copies of this proposed rulemaking may be obtained by written request to Distribution and Services Section, Printing, Graphics and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, or by telefax to (301) 415-2260. For information on submitting comments electronically see the discussion under Electronic Access in the Supplementary Information section. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated in the discussion under Electronic Access.

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415-6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensees subject to 10 CFR Parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for or holders of operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance,¹ parent company guarantee for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, self-guarantee. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

Licensees currently using self-guarantee must pass a stringent financial test that is given in Appendix C to 10 CFR Part 30. Self-guarantee is currently not available to non-profit licensees, such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for self-guarantee uses the rating of the bonds issued by the licensee as one measure of its financial resources and ability to fund decommissioning.

¹ Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities, and does not affect the NRC's Advance Notice of Proposed Rulemaking which addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors--61 FR 15427 April 8, 1996).

The NRC has determined that the use of self-guarantee, currently limited to bond-issuing industrial corporations, could be made available to additional categories of licensees without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified non-profit and non-bond issuing licensees to use self-guarantee would reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

I. Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows financially strong corporations with A or better bond ratings the option of using self-guarantee as a mechanism for complying with the regulations on financial assurance for decommissioning. Self-guarantee was added to the list of financial assurance mechanisms as a cost-saving option for those licensees able to meet the stringent financial test required. The NRC's self-guarantee procedure requires licensees to pass the financial test annually. In addition, NRC's requirements for self-guarantee provide for early reporting by licensees of any deterioration in financial condition.

The NRC's decision to add self-guarantee by qualified licensees to the list of approved financial assurance mechanisms came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM-30-59, notice of receipt published September 25, 1991 (56 FR 48445)). The petition presented a case for allowing self-guarantee as a cost-saving option for corporate

licensees able to pass a stringent financial test. The NRC published a notice of proposed rulemaking on January 11, 1993 (58 FR 3515), in response to the petition. Several comment letters were received from universities requesting that self-guarantee also be applied to non-profit entities able to pass a financial test. At that time, the NRC had not conducted an analysis of the feasibility of applying self-guarantee to non-profit entities. In the final rule, the NRC stated that "In order to extend the use of self-guarantee to non-profit entities, new criteria would have to be developed to assess the financial strength of the non-profit licensees. Development of financial criteria to assess the qualifications of a non-profit entity to provide a self-guarantee is likely to require detailed consideration of the different financial accounting methods used by medical institutions. The financial accounting and reporting of non-profit entities are unique and substantially different from the accounting and reporting of for-profit entities" (58 FR 68728).

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for non-profit licensees and non-bond issuing commercial licensees to use self-guarantee while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. The study, "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," NUREG\CR-6514², identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of self-guarantee. The financial criteria proposed here were selected by the NRC based on information in this report. The NRC believes that the financial criteria proposed in this notice would maintain the high level of assurance of availability of decommissioning funding provided by the present self-guarantee mechanism for bond-issuing licensees.

II. Analysis of Financial Criteria

The NRC must have evidence of adequate financial strength on the part of the licensee to ensure that decommissioning funding obligations will be met when the need arises. If self-guarantee is permitted, the applicant or licensee must submit a basis for concluding that decommissioning financial assurance is still provided. Financial strength does not necessarily depend on the type of licensee. Many colleges and universities have very strong financial positions, with large endowment funds that could be used, if needed, for decommissioning funding. Some hospitals are also quite financially strong. With respect to non-bond issuing commercial firms, their lack of any bond issuance could reflect financial resources great enough to preclude the need to issue debt.

If a college, university, or hospital has an A or better bond rating,

² Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L St. NW, Washington, DC; the PDR's mailing address is Mail Stop LL-6, Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343. Single copies are available from the NRC contact.

the financial assurance risk of allowing it to self-guarantee decommissioning funding is comparable to the financial assurance risk of institutions currently allowed to self-guarantee. This risk is also based on an A or better bond rating. The risk of default of industrial bond issuers with an A or better bond rating has been estimated at less than 1 percent annually.³ An A or better bond rating indicates that the issuer has passed a stringent review by the independent ratings agencies of its ability to meet financial obligations. Bond ratings are reviewed often and changed in response to changes in the issuer's financial condition. The A or better bond rating should be for uninsured bonds. As discussed in NUREG\CR-6514, insured bond ratings are in fact the rating of the insuring company and may not apply to the institution that holds the NRC license.

Regarding financial criteria that are based on factors other than bond ratings, quantitative estimates of financial assurance risk are not available because of the lack of a large financial database such as that maintained by the bond-rating agencies on bond-issuing entities. The NRC has deliberately chosen non-bond rating financial criteria that are conservative. The NRC regulations have included a self-guarantee mechanism for only a few years. It seems prudent to set the threshold financial criteria at a high level. At some future time, as more experience is gained with self-guarantee, the financial criteria can be reviewed, and appropriate revisions can be proposed.

³ Corporate Bond Defaults and Default Rates, Moodys Special Report, January 1991, p. 32.

A. Criteria for Colleges and Universities:

Approximately 75 percent of NRC's college and university licensees issue bonds and have bond ratings. Bond rating can thus be used as a basis for financial criteria for most college and university licensees. Note that many college or university licensees are public institutions and a large portion of these can use a governmental statement of intent that funds for decommissioning will be obtained when necessary, a mechanism which does not involve any significant cost to the licensee. The NRC believes that the A or better bond rating (for uninsured bonds) criterion used in the existing self-guarantee financial test can also be used as the criterion in a financial test for use by colleges and universities. Even if an applicant or licensee were a non-profit entity or a for-profit firm that does not issue bonds, it may obtain a bond rating from one of the major ratings agencies. This option would be allowed. Having obtained a bond rating, the licensee would be subject to the same requirements as the bond-issuing institutions.

For licensees without a bond rating, a level of unrestricted endowment of at least \$50 million, or at least 30 times projected decommissioning costs, whichever is larger, should be sufficient to allow use of self-guarantee. This level of endowment is adequate to generate annual income sufficient to cover the upper range of estimated decommissioning costs. The multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent.

B. Criteria for Hospitals:

Approximately 50 percent of hospital licensees issue bonds and have bond ratings. For the same reasons outlined above, a criterion of an A or better bond rating could be used for hospital licensees. The A or better rating should be for unguaranteed, uninsured, or uncollateralized bonds.

For hospital licensees without a bond rating, three financial ratios are identified as most accurate indicators of financial strength: (1) liquidity -- (current assets and depreciation fund, divided by current liabilities), (2) net revenue -- (total revenue less total expenses, divided by total revenue), and (3) leverage -- (ratio of long term debt to net fixed assets). Numerical values for these ratios have been developed by reviewing the financial characteristics of hospitals. The licensee must meet all three ratios. The proposed values are as follows, and based upon the analysis performed for the NRC, represent a level of financial risk comparable to an A bond rating:

(a) Liquidity -- (Current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55

(b) Net revenue -- (Total revenues less total expenditures divided by total revenues) greater than or equal to .04.

(c) Leverage -- (Long term debt divided by net fixed assets) less than or equal to .67.

In addition, a hospital must be of a minimum size relative to estimated decommissioning costs. The financial test calls for hospital operating

revenues to be at least 100 times decommissioning costs.

C. Criteria For Non-Bond Issuing Industrial Corporations:

A financial ratios test is an alternative to bond rating which is currently allowed by NRC regulations. The NRC parent guarantee test in Appendix A to 10 CFR Part 30 includes a ratio test as an alternative to a bond rating test. The proposed criterion is Cash Flow divided by Total Liabilities greater than 0.15, Total Liabilities divided by Net Worth less than 1.5, and Net Worth greater than \$10 million or at least 10 times decommissioning costs, whichever is greater. The financial assurance risk of using such a criterion is estimated to be comparable to the risk associated with current regulations.⁴

D. Cost Savings:

Cost savings would result because qualifying licensees would not have to purchase other types of financial assurance instruments such as letters of credit or surety bonds. These types of financial assurance instruments typically cost a licensee approximately 1.5 percent per annum of the amount of financial assurance purchased.

Estimates of the numbers of NRC licensees who could qualify for self-guarantee under the proposed financial criteria and estimated total cost

⁴"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", NUREG\CR-6514, 1995, p. 47.

savings on an annual basis are as follows, and for colleges and universities includes estimates for the reactors licensed to them as well as materials licenses:

<u>Type of Licensee</u>	<u>Number Qualifying</u>	<u>Total Annual Cost Savings</u>
College and University	25-30	\$350K - \$400K
Hospital	10-14	\$120K - \$150K
Non-Bond Issuing Industrial	2-4	\$20K - \$40K

The total cost savings for all licensees estimated to qualify for self-guarantee could range from approximately \$500K to \$600K per annum. Greater cost savings would result if Agreement States allow self-guarantee for their licensees.

There would be no significant cost impact on NRC as review time for the various financial assurance mechanisms is essentially the same.

III. Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit self-guarantee for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for self-guarantee by non-bond issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for self-guarantee for non-profit

college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit self-guarantee for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit self-guarantee for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit self-guarantee for financial assurance which can be used by qualified non-profit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit self-guarantee for financial assurance which can be used by qualified non-bond issuing licensees.

IV. Issues for Public Comment

(A) Agreement State Implementation Issues.

Financial assurance mechanisms are a Division II compatibility item.

Agreement States may adopt regulations of equal or greater stringency. States would therefore have the option to allow self-guarantee. An Agreement State does not need to change its financial assurance regulations if this proposed rule becomes final. The existing Agreement State regulations on financial assurance do not have to include self-guarantee as a financial assurance mechanism. Agreement States have the flexibility to allow self-guarantee as a financial assurance mechanism or not to allow it. The NRC invites comments on the general issue of the compatibility status of its financial assurance regulations.

(B) Financial Criteria for Non-Bond Issuing Entities.

As discussed, substantial data exist on the default risks associated with various levels of bond rating. However, a quantitative estimate is not available for the financial assurance risk associated with the non-bond rating criteria proposed here. The NRC invites comment on whether these proposed criteria are sufficiently rigorous with respect to financial assurance risk, or conversely, whether they are so stringent as to exclude licensees who should not be excluded because their financial position is such that the financial assurance risk is acceptable.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic

Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take the user to the NRC online main menu. The NRC online area also can be accessed directly by typing `"/go NRC` at a FedWorld command line. If the user accesses NRC from FedWorld's main menu, he or she may return to FedWorld by selecting the "Return to FedWorld" option from the NRC online Main Menu. However, if the user accesses NRC at FedWorld by using NRC's toll-free number, he or she will

have full access to all NRC systems but will not have access to the main FedWorld system.

If the user contacts FedWorld using Telnet, he or she will see the NRC area and menus, including the Rules Menu. Although the user will be able to download documents and leave messages, he or she will not be able to write comments or upload files (comments). If the user contacts FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all the user will see is a list of files without descriptions (normal Gopher look). An index file is available listing and describing all files within a subdirectory. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

Finding of No Significant Environmental Impact: Availability

The proposed amendments would allow qualified non-profit and non-bond-issuing licensees the option of using self-guarantee as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use self-guarantee if they meet the regulatory criteria. Other licensees may currently elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and

escrow accounts to comply with decommissioning regulations. The proposed action is intended to offer non-profit and non-bond issuing-nuclear materials licensees and non-power reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of self-guarantee.

This proposed revision to the NRC's regulations simply would add one more financial assurance mechanism to the mechanisms currently available. It would not affect the cost of decommissioning materials and non-power reactor facilities. Allowing self-guarantee for additional types of licensees would not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August, 1988).⁵ Promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this proposed rule would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. No other agencies or persons were contacted in making this determination, and the NRC staff is not aware of any other

⁵ Copies of NUREG-0586 are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW (Lower Level), Washington, DC 20555-0001; telephone (202)634-3273; fax (202)634-3343. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402-9328 (telephone (202)512-2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The public reporting burden for this collection of information is estimated to average 9-14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the collection of information contained in the proposed rule and on the following issues:

1. Is the proposed collection of information necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden correct?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed collection of information, including suggestions for reducing the burden, to the Information and Records

Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory affairs, NEOB-10202, (3150-0017, -0020, -0011, -0009, and -01320, Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the collections of information or on the above issues should be submitted by (insert date 30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, telephone (301) 415-6203.

The NRC requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this proposed rule, if promulgated as final, would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule, because 10 CFR 50.109 addresses only the process for controlling backfits of nuclear power reactors and this proposed rule does not affect the Commission's decommissioning financial assurance requirements regarding nuclear power reactors (see Statement of Considerations: Final Rule--Revision of Backfitting Process for Power Reactors, 50 FR 38097; September 20, 1985).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and

health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 30, 40, 50, 70, and 72.

PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF
BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

AUTHORITY: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8 paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35,

30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E.

* * * * *

3. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to this Part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to this Part. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to this Part. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to this Part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation

where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

4. New Appendices D and E to Part 30 are added to read as follows:

APPENDIX D TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEE FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY COMMERCIAL COMPANIES THAT HAVE NO OUTSTANDING RATED BONDS.

I. Introduction

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 company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than \$10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) A ratio of cash flow divided by total liabilities greater than 0.15, and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may cause the auditor to believe that the data specified in the financial

test should be adjusted and that the company no longer passes the test.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II. A of this appendix, the licensee must send notice to the NRC of intent to establish alternate financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

I:II. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternate financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial

assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

APPENDIX E TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY NON-PROFIT COLLEGES, UNIVERSITIES, AND HOSPITALS

I. Introduction

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 of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities, to pass the financial test a college

or university must meet either the criteria in Paragraph II. A. (1) or the criteria in Paragraph II. A. (2) of this Appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet either the criteria in Paragraph II. B. (1) or the criteria in Paragraph II. B. (2) of this Appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all of the following tests must be met:

(a) (Total Revenues less total expenditures) divided by total revenues must be equal to or greater than .04.

(b) Long term debt divided by net fixed assets must be less than or

equal to .67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

C. In addition, to pass the financial test, a licensee must meet all of the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the attention of the auditor 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.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I. of this appendix, the licensee must send notice to the NRC of its intent to establish alternate financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data

show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. The terms of a self-guarantee which an applicant or licensee furnishes must provide that--

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternate financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or

Moody's, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

AUTHORITY: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97-415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.36 the introductory text of paragraph (e)(2) is revised to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

	*	*	*	*	*
(e)	*	*	*		

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

AUTHORITY: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

8. In § 50.75 the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

AUTHORITY: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In § 70.25, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method

may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix E to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT
NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

AUTHORITY: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

12. In § 72.30 the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Decommissioning Planning including financing and recordkeeping.

* * * * *

(c) * * *

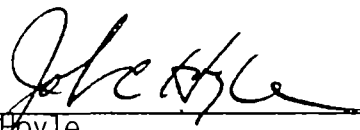
(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix A to Part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix C to Part 30. For commercial corporations that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix D to Part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding

majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

Dated at Rockville, Maryland, this 24th day of April, 1997.

For the Nuclear Regulatory Commission.



John C. Boyle,
Secretary of the Commission.

From: Carol Gallagher
To: ELJ
Date: 6/12/97 12:23pm
Subject: PUBLISHED RULEMAKINGS

Emile,

A proposed rulemaking amending 10 CFR Parts 30, 40, 70 and 72 on Self-Guarantee for Non-Profit and Non-Bond Issuing Licensees, and a Direct Final Rule Amending 10 CFR 51.60 Revoking the Requirement for an Environmental Report from Uranium Mill Licensees at License Termination, were noted in the Federal Register recently.

Please send me a copy of any comment letters you may receive on these rulemakings.

Thanks,
Carol Gallagher