

February 13, 1997

FOR: The Commissioners

FROM: Hugh L. Thompson, Jr. /s/
Acting Executive Director for Operations

SUBJECT: PROPOSED AMENDMENTS TO 10 CFR PARTS 30, 40, 50, 70, AND 72--SELF-GUARANTEE OF DECOMMISSIONING FUNDING BY NON-PROFIT AND NON-BOND ISSUING LICENSEES

PURPOSE:

To request Commission approval to publish a notice of proposed rulemaking.

CATEGORY:

This paper covers a minor policy question.

BACKGROUND:

The Commission directed the staff to develop the subject proposed rulemaking in the Staff Requirements Memorandum on SECY-96-091, dated May 24, 1996.

The financial criteria for self-guarantee were discussed in SECY-95-278, November 28, 1995. The rulemaking plan was provided to the Commission in SECY-96-091, April 30, 1996. The Staff Requirements Memorandum on SECY-96-091, instructed the staff to seek Agreement State comment, and if no substantive comments were received, the Executive Director for Operations (EDO) should approve the rulemaking plan. State comments supported the rulemaking, and the EDO approved the plan on September 4, 1996.

DISCUSSION:

The proposed rule would extend the option of self-guarantee already in the Commission's regulations for qualified bond issuing commercial licensees to qualified non-profit licensees and qualified non-bond issuing commercial licensees.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer finds no resource related issues. The Office of the Chief Information Officer has reviewed the proposed rule for information technology and information management implications and concurs in the rulemaking.

RECOMMENDATION:

That the Commission:

1. Approve the Notice of Proposed Rulemaking for publication (Enclosure 1).
2. Certify that this rule, if promulgated, will not have a negative economic impact on a substantial number of small entities in order to satisfy requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b).
3. Note:
 - a. The rulemaking would be published in the *Federal Register* for a 90-day public comment period;
 - b. A draft regulatory analysis will be available in the Public Document Room (Enclosure 2);
 - c. A draft environmental assessment and a finding of no significant impact have been prepared and are included in the Notice of Proposed Rulemaking;
 - d. The Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification regarding economic impact on small entities and the reasons for it as required by the Regulatory Flexibility Act;
 - e. This proposed rule contains a new information collection requirement subject to the Paperwork Reduction act of 1995 (44 U.S.C. 3501, et seq.)
 - f. A public announcement will be issued (Enclosure 3);
 - g. The appropriate congressional committees will be informed (Enclosure 4).

Hugh L. Thompson, Jr.
Acting Executive Director for Operations

CONTACT: Clark Prichard, RES
415-6203

Enclosures: 1. *Federal Register* Notice
2. Draft Regulatory Analysis
3. Draft Public Announcement
4. Draft Congressional Letters

cc w/encls.: R. Scroggins, OC
H. T. Bell, IG

ATTACHMENT 1

[7590-01P]

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

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.

DATES: Submit comments by (comment period 90 days) _____, 199_. 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.

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.

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- I. Background
 - II. Analysis of Financial Criteria
 - A. Criteria for Colleges and Universities:
 - B. Criteria for Hospitals:
 - C. Criteria For Non-Bond Issuing Industrial Corporations:
 - D. Cost Savings:
 - III. Section-by-Section Description of Changes
 - 10 CFR Part 30
 - 10 CFR Part 40
 - 10 CFR Part 50
 - 10 CFR Part 70
 - 10 CFR Part 72
 - IV. Issues for Public Comment
 - Electronic Access
 - Finding of No Significant Environmental Impact: Availability
 - Paperwork Reduction Act Statement
 - Public Protection Notification
 - Regulatory Analysis
 - Regulatory Flexibility Certification
 - Backfit Analysis
 - List of Subjects
 - 10 CFR Part 30
 - 10 CFR Part 40
 - 10 CFR Part 50
 - 10 CFR Part 70
 - 10 CFR Part 72
 - PART 30 - RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL
 - 30.8 Information collection requirements: OMB approval.
 - 30.35 Financial assurance and recordkeeping for decommissioning.
 - 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
 - II. Financial Test
 - III. Company Self-Guarantee
 - APPENDIX E TO PART 30 -- CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEE FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY NON-PROFIT COLLEGES, UNIVERSITIES, AND HOSPITALS
 - I. Introduction
 - II. Financial Test
 - III. The terms of a self-guarantee which an applicant or licensee furnishes must provide that--
 - PART 40 - DOMESTIC LICENSING OF SOURCE MATERIAL
 - 40.36 Financial assurance and recordkeeping for decommissioning.
 - PART 50 - DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES
 - 50.75 Reporting and recordkeeping for decommissioning planning.
 - PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL
 - 70.25 Financial assurance and recordkeeping for decommissioning.
 - PART 72 - LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE
 - 72.30 Decommissioning Planning including financing and recordkeeping.

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-6514⁽²⁾, 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, 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.

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 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:

Type of Licensee	Number Qualifying	Total Annual Cost Savings
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 of whether to allow self-guarantee. 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. 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 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.

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 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 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.

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 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 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 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:

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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:

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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 ____ day of _____, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

**COLLEGES AND UNIVERSITIES, HOSPITALS,
AND FIRMS THAT DO NOT ISSUE BONDS**

* * Draft * *

- 1. INTRODUCTION
 - 1.1 Background
 - 1.2 Statement of the Problem
 - 1.3 Objective of the Rulemaking
- 2. PRELIMINARY IDENTIFICATION AND DESCRIPTION OF OPTIONS
 - 2.1 Option 1: No Action
 - 2.2 Option 2: Adopt a Single Test for Self-Guarantee for All Non-Profit Entities and for Firms That Do Not Issue Bonds
 - 2.3 Option 3: Adopt Tests for Self-Guarantee That are Designed to Apply to the Specific Financial Accounting and Reporting Procedures Used by Non-Profit Entities and Firms that Do Not Issue Bonds
- 3. ANALYSIS OF OPTIONS
 - 3.1 Methodology
 - 3.2 Availability of Self-Guarantee Options
 - 3.3 Assurance Risk
 - 3.4 Public and Private Costs of Self-Guarantee Options
 - 3.5 Decision Rationale for Selection of Proposed Option
- 4. FINANCIAL AND ECONOMIC IMPACTS OF SELF-GUARANTEE RULEMAKING
 - 4.1 Impacts on Licensees
 - 4.2 Impacts on NRC and the States
- 5. IMPLICATIONS FOR OTHER NRC REGULATORY PROGRAMS

1. INTRODUCTION

1.1 Background

The U.S. Nuclear Regulatory Commission (NRC) amended its regulations establishing general requirements for decommissioning licensee facilities on December 29, 1993, to allow certain NRC non-electric utility licensees to self-guarantee decommissioning funding costs (58 FR 68726; December 29, 1993). In the Supplementary Information for that rulemaking, NRC noted that several commenters on the proposed rule had suggested that NRC should allow universities and other non-profit entities to use a self guarantee. NRC responded that it planned to begin a study of extending the availability of cost-saving financial assurance alternatives to non-profit entities. (58 FR 68728) NRC has now completed its evaluation of several alternatives for self guarantee for non-profit entities, such as colleges and universities, and for firms that are operated for profit but are unable to qualify for NRC's existing self guarantee because they do not issue bonds. NRC is publishing a proposed rule on self guarantee for these licensees. This Regulatory Analysis was prepared pursuant to NUREG/BR-0058⁽⁶⁾ to support NRC's regulatory action and examine the costs and benefits of the alternatives considered by the Commission.

NRC currently administers over 6,500 licenses for the possession and use of nuclear materials. Approximately 600 of the licensees who hold these licenses are required to provide financial assurances for decommissioning under rules promulgated in 1988 (53 FR 24018; June 27, 1988) and subsequently amended by 56 FR 23471; May 21, 1991, 58 FR 39633; July 26, 1993, 58 FR 67659; December 22, 1993, 58 FR 68730; December 29, 1993, and 59 FR 1618; January 12, 1994.

NRC also currently has 33 non-electric utility reactor licensees that are colleges or universities, and must provide financial assurance for decommissioning. These licensees are affected by this proposed rulemaking.

The rules on financial assurance for decommissioning provide that licensees under 10 CFR Parts 30, 40, 50, 70, and 72 must provide financial assurance to ensure that decommissioning of licensed facilities will be accomplished in a safe and timely manner and that adequate funds will be available for this purpose. According to the decommissioning regulations,⁽⁷⁾ financial assurance must be provided by one or more of the following methods:

- (1) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.
- (2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. 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 specified in Appendix A of 10 CFR Part 30. A parent company guarantee may not be used in combination with any other financial methods to satisfy the decommissioning financial assurance requirements.
- (3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at any time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

- (4) In the case of Federal, State, or local government licensees, a statement of intent containing a pledge from a responsible official indicating that funds for decommissioning "will be obtained when necessary."⁽⁸⁾
- (5) A company self-guarantee, for firms that have at least one class of equity security registered under the Security Act of 1934, that firms can qualify to use if they demonstrate that they possess tangible net worth at least 10 times the current decommissioning cost estimate (or the current certification amount); at least 90 percent of total assets, or assets at least 10 times the current decommissioning cost estimate (or the current certification amount) in the United States; and a current rating of A or above for the firm's most recent bond issuance.

With the exception of the financial test component of the parent company guarantee and the self-guarantee, the terms and conditions of the various financial mechanisms that may be used as proof of financial assurance for decommissioning are provided in guidance.⁽⁹⁾ The financial test requirements for the parent company guarantee are provided in the regulations at 10 CFR Part 30 Appendix A, while the financial test requirements for the self-guarantee are provided in the regulations at 10 CFR Part 30 Appendix C. Both sets of requirements are referenced in other pertinent Parts.⁽¹⁰⁾

The self-guarantee currently provided for under the decommissioning financial assurance regulations contains two elements: a guarantee and an underlying financial test submission. Under this mechanism, a firm may submit a guarantee to NRC affirming that it will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, will set up and fund a trust in the amount of the current cost estimates for decommissioning. A firm seeking to self-guarantee also is required to notify NRC immediately if it no longer continues to satisfy the criteria for self-guarantee. For such a self-guarantee to be acceptable, the firm must demonstrate that it has adequate financial resources to cover the costs of decommissioning activities. It makes such a demonstration when it provides specified documentation to NRC that it passes a financial test that measures the financial strength of the firm.

The financial test currently requires the firm to demonstrate that it meets all of the following criteria. It must demonstrate that it possesses tangible net worth 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 a self-guaranteeing licensee and as a parent-guarantor. Tangible net worth is defined as net worth minus goodwill, patents, trademarks, and copyrights. The firm also must show that it possesses assets in the United States amounting to at least 90 percent of its total assets or at least 10 times the sum of the current decommissioning cost estimates being covered by the test. Third, the firm also must demonstrate that it has a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

1.2 Statement of the Problem

The NRC has decided to initiate rulemaking to make the self-guarantee option available to a broader range of qualified licensees. Presently, non-profit entities are generally precluded from use of the current self-guarantee because as a class they cannot satisfy some of its requirements. In particular, (a) they do not issue securities registered under the Securities Exchange Act of 1934 and/or (b) their financial accounting and reporting practices have traditionally made use of fund accounting procedures that do not generate the same measures that are used as financial criteria in the financial tests for eligibility to use the corporate parent guarantee or the self-guarantee currently used by the NRC.⁽¹¹⁾

Many colleges and universities, however, are in a very strong financial condition, with large endowment funds that could be used if necessary for decommissioning funding, and they have demonstrated considerable institutional longevity and continuity. Some hospitals also are financially and institutionally strong. Although firms that do not issue bonds are frequently smaller and may be less financially secure, the absence of any bond issuance also can reflect the control of financial resources large enough to render unnecessary any resort to outside funding. Thus, some non-bond-issuing firms are also in a strong financial position.

The primary issues addressed in this analysis are (1) whether non-profit licensees are of sufficient financial strength and stability so that self-guarantees provided by them would provide adequate financial assurance; (2) whether adequate measures of the financial strength and stability of non-profit licensees can be identified; and (3) whether use of self-guarantees would substantially reduce the costs of financial assurance to those non-profit licensees that qualify for use of a self-guarantee mechanism.

1.3 Objective of the Rulemaking

NRC's objective in promulgating a self-guarantee mechanism for non-profit colleges and universities and hospitals and for-profit firms that do not issue bonds is to reduce the cost burden of financial assurance on licensees while providing NRC with sufficient assurance that decommissioning costs will be funded when necessary.

2. PRELIMINARY IDENTIFICATION AND DESCRIPTION OF OPTIONS

NRC considered three regulatory options: (1) no action; (2) adopt the same test for self-guarantee for all types of non-profit and non-bond-issuing institutions; and (3) adopt different tests to determine the qualification of colleges and universities, hospitals, and non-bond-issuing firms to self-guarantee the costs of decommissioning. It soon became apparent that differences in accounting methods precluded option (2).

2.1 Option 1: No Action

Under Option 1, NRC would not develop a test or tests to determine the qualification of colleges and universities, hospitals, or non-bond-issuing firms to self-guarantee for decommissioning costs. Such licensees that are unable to qualify to self-guarantee using the tests currently adopted in 10 CFR Part 30 Appendix C would be required to obtain an alternative form of financial assurance. As at present, they will be required to demonstrate financial assurance using one of the other financial assurance methods currently allowed (i.e., prepayment, surety method or insurance, external sinking fund coupled with a surety method or insurance, or statement of intent).

2.2 Option 2: Adopt a Single Test for Self-Guarantee for All Non-Profit Entities and for Firms That Do Not Issue Bonds

Under Option 2, NRC would allow licensees to self-guarantee if they qualified under a test that would apply to all categories of licensees that are currently unable to use the current test for self-guarantee. After examination of the financial accounting and reporting systems of colleges and universities, hospitals, and firms that do not issue bonds, however, NRC concluded that the disparate nature of these systems precluded the development of financial criteria that would serve for all three. NRC therefore ceased evaluation of this option.

2.3 Option 3: Adopt Tests for Self-Guarantee That are Designed to Apply to the Specific Financial Accounting and Reporting Procedures Used by Non-Profit Entities and Firms that Do Not Issue Bonds

Under Option 3, NRC would allow licensees to self-guarantee based on their ability to qualify under financial test criteria designed to apply to their specific financial accounting and reporting procedures. Such criteria would address, for example, the special characteristic of colleges and universities, noted by commenters on the proposed self-guarantee rule for for-profit firms, that they sometimes possess large endowments that are set aside, with and without restrictions, to pay particular obligations of the institution. As much as possible, the criteria below reflect NRC's attempt to make the financial assurance risk of the financial tests included in this proposed rulemaking comparable to the financial assurance risk of the existing financial tests.

The tests being proposed include the following:

For colleges and universities:

The A or better bond rating by S&P or Moody's (for uninsured, unguaranteed, and uncollateralized bonds) criterion used in the existing self-guarantee financial test can also be used as the criterion in a financial test for colleges and universities.

For those colleges and universities that do not have a bond rating, a level of unrestricted endowment of at least \$50 million, or at least 30 times the decommissioning costs, whichever is larger.

For hospitals:

The A or better bond rating by S&P or Moody's (for uninsured, unguaranteed, and uncollateralized bonds) criterion used in the existing self-guarantee financial test can also be used as the criterion in a financial test for hospitals.

For those hospitals that do not have a bond rating, satisfying three financial ratios and a size criterion would be required. The three measures are: (1) liquidity (current assets and depreciation fund divided by current liabilities) equal to or greater than 2.55; (2) leverage (long term debt divided by net fixed assets) equal to or less than 0.67; and (3) revenues (total revenues minus total expenditures divided by total revenues) equal to or greater than 0.04. Also required, is a minimum size criterion -- operating revenue 100 times decommissioning costs.

For firms that do not issue bonds:

Those firms that do not issue bonds would satisfy three financial criteria. The three measures are: (1) cash flow divided by total liabilities greater than 0.15; (2) total liabilities divided by net worth less than 1.5; and (3) net worth greater than \$10 million, or at least 10 times decommissioning costs, whichever is greater.

3. ANALYSIS OF OPTIONS

3.1 Methodology

The method used by NRC to analyze the three regulatory options described above, to determine the number of licensees able to use each of the self-guarantee options, and to evaluate the costs and benefits of each option consists of several key steps. First, NRC developed a financial data base of material licensees subject to financial assurance requirements under 10 CFR Parts 30, 40, 50, 70, or 72. This data base was developed from records in the NRC License Tracking System (LTS). The LTS contains information about licensees, including their name and address, license number(s) (which in turn indicate whether the licensee is a Part 30, 40, 50, 70, or 72 licensee), specific activity codes, and whether or not the licensee is required to provide financial assurance for decommissioning. From the LTS, a database was developed that identified those colleges and universities and hospitals that are NRC licensees and are required to provide financial assurance for decommissioning. Additional information was added to the data base from a variety of sources. Data on NRC's non-electric utility reactor licensees which are colleges and universities was assembled. NRC next developed alternative financial criteria to be used as tests to evaluate the qualification of licensees to self-guarantee. These criteria and their combination into financial tests were based on suggestions contained in comments submitted to NRC on the proposed self-guarantee test for for-profit firms, and on extrapolations from the criteria ultimately developed for that self-guarantee rulemaking. Next, NRC used the data base of information about colleges and universities, hospitals, and non-bond-issuing firms to evaluate the availability and assurance risk of the self-guarantee options. Finally, NRC calculated and compared the costs and benefits of each regulatory option.

Availability

The "availability" of the self-guarantee option refers to the number of NRC licensees that could use a particular option given their ability to satisfy the financial requirements of the option. Using the data base described above, NRC first identified each licensee of a particular type (i.e., college or university, hospital, or for-profit firm that does not issue bonds) that was required to provide financial assurance for decommissioning. NRC then calculated availability by counting those licensees whose financial condition indicated that they would pass the proposed criteria. Many public colleges and universities can use the statement of intent mechanism for financial assurance. While some of these licensees could pass the proposed test for self-guarantee, it was assumed that most would not apply for self-guarantee because they already can use a virtually cost-free financial assurance mechanism.

Assurance Risk

Although the licensee always retains primary responsibility for performance of the decommissioning regardless of the method of assurance used, most financial assurance mechanisms (e.g., prepayment mechanisms and surety mechanisms) provide a secondary level of protection to guard against the possibility that the licensee may be unable to meet its decommissioning obligation. Thus, the assurance risk associated with most mechanisms equals the possibility that both the licensee and the financial assurance provider (e.g., banks, sureties) will be unable to meet the required obligations.

In the case of self-guarantees, the guarantor is not required to set funds aside or obtain a third-party guarantee if it can demonstrate by means of a financial test that its financial resources are sufficient to pay the assured costs whenever those costs come due. Thus, for self-guarantees, the assurance risk equals the possibility that the licensee will be unable to meet the required obligations. In other words, the assurance provided by a self-guarantee is exposed to the risk that a decline in the financial condition of the self-guarantor will not be identified in time so that a prepayment or third-party financial assurance mechanism can be obtained to replace the self-guarantee.

NRC sought to minimize this risk associated with self-guarantees by, first, including a bond rating criterion in the tests designed for colleges and universities and hospitals. Long-term experience suggests that institutions with A or better bond ratings generally are financially stable and do not enter precipitously into financial decline. In addition, the bond rating agencies track the financial performance of the institutions for which they have issued ratings, and downgrade those ratings if they receive information that the financial situation of the institution is declining. In order to ensure that the bond rating is an assessment of the financial strength of the institution, and not of some other entity, NRC specified that the bond ratings that may be used for qualification for self-guarantee may not be insured ratings.

Second, NRC sought to minimize the assurance risk associated with the other financial criteria being proposed (i.e., the requirement for "unrestricted" endowment for colleges and universities, the financial ratio requirements for hospitals, and the financial ratio requirements for non-bond-issuing firms) by adopting conservative values for those criteria, and whenever possible by attempting to correlate those criteria to an equivalent degree of risk posed by the bond rating requirement.

Costs and Benefits

The total costs of the self-guarantee include, in addition to implementation costs, the public and private costs associated with the self-guarantee mechanism. Private costs consist primarily of the fees that licensees must pay to a third party in order to obtain a financial assurance mechanism. Thus, licensees can avoid much of the private cost of financial assurance if they can provide a self-guarantee. Estimates of private costs were derived from the number of licensees able to pass the proposed self-guarantee test.

Public costs of a self-guarantee include the decommissioning costs that are assured by the self-guarantee but which the licensee does not pay due to bankruptcy. Although public costs can largely be avoided by not allowing the self-guarantee, the total cost (i.e., public plus private) may be reduced by allowing the self-guarantee if private costs decline more than public costs rise. The public costs of the self-guarantee mechanism are calculated by multiplying the assurance risk by the amount of the decommissioning costs expected to be assured using the mechanism. NRC found it difficult to estimate the public costs of failures by colleges and universities and hospitals because of the extreme rarity of failures of such institutions with the level of financial strength and the size that would be capable of using the financial test. NRC's estimates of public costs for firms that do not issue bonds reflect the assurance risk of each self-guarantee by net worth category.

The net benefit of a self-guarantee would equal the savings to licensees resulting from use of the self-guarantee mechanism (rather than from a more expensive third-party mechanism) minus any increase in public costs.

3.2 Availability of Self-Guarantee Options

NRC's analysis indicates that the financial test for colleges and universities included in Option 3 could be used by approximately 30 college and university licensees. Most of those qualifying would do so because they have an uninsured bond rating of A or better. The remaining would qualify because their estimated unrestricted endowments exceed \$50 million.

Of the 23 materials licensees that would qualify for the self-guarantee, 18 are private institutions and 5 are public institutions.

For the Part 50 reactor licensees that are colleges and universities, 4 private institutions would qualify. All of the public institutions presently use statement of intent, and this analysis assumes that they would continue to do so.

The financial test for hospitals included in Option 3 could be used by approximately 12 hospitals, out of the 26 hospitals that are NRC materials licensees that must provide financial assurance. Eleven of the 12 would qualify because they have an A or better bond rating. The remaining hospital would qualify because it passes the proposed ratio tests. It currently has no rated bonds. Ten of the 12 hospitals that would qualify for self-guarantee are not-for-profit institutions; two have state government affiliations.

The financial test for firms that do not issue bonds in Option 3 could be used by approximately 3 firms, out of the 31 firms that were identified as NRC materials licensees that must provide financial assurance but have not issued rated bonds.⁽¹²⁾

3.3 Assurance Risk

Because of the very low failure rates for colleges and universities, particularly institutions of the endowment size and longevity exhibited by the colleges and universities passing the proposed test for self-guarantee, and for hospitals, NRC had almost no historical data from which to measure assurance risk. Therefore, the assurance risk was measured by the estimated failure rate for A or better rated bonds, since almost all of the colleges and universities and hospitals that would qualify for use of self-guarantee would qualify on the basis that they possess such bond ratings. For A-rated or better bonds,

the estimated annual assurance risk is 0.13 percent, based on historical data from Moody's. In other words, there is a 0.13 percent chance that a licensee using the proposed self-guarantee will go bankrupt and be unable to cover the costs of decommissioning in a given year. In addition, the premise of the bond ratings is that all A-rated bonds should be of the same approximate risk (i.e., different bond ratings are assigned to different risk categories). Therefore, differences in the size or other characteristics of colleges and universities and hospitals are not expected to affect this assurance risk.

3.4 Public and Private Costs of Self-Guarantee Options

In this analysis, public costs are defined as the amount of decommissioning costs that would be required to be paid by the public sector due to the financial failure of self-guaranteeing licensees without the substitution of another source of financial assurance or the failure of a third party financial assurance mechanism. Private costs are defined as the cost of financial assurance mechanisms that must be obtained by licensees in order to comply with regulatory requirements.

Mechanisms based on financial tests, such as a self-guarantee, reduce private costs by allowing licensees to demonstrate financial assurance without incurring the fees associated with the use of third-party mechanisms such as letters of credit, surety bonds, etc. The private costs associated with financial test mechanisms are assumed to be the costs of preparing the necessary submissions to NRC, which are estimated as only a few hundred dollars.

Table 3.1 presents and compares the estimated private costs, public costs, and total costs (private plus public costs) of NRC's decommissioning financial assurance requirements for colleges and universities, hospitals, and firms that do not issue bonds with and without the proposed self-guarantee.

Table 3.1 presents and compares the estimated private costs, public costs, and total costs (private plus public costs) of NRC's decommissioning financial assurance requirements for colleges and universities, hospitals, and firms that do not issue bonds.

The first scenario in the table presents a baseline that includes colleges and universities that are regulated under Part 50 as well as under Parts 30, 40, and 70. It thus includes college and university licensees with research reactors. Although some colleges and universities hold licenses under both Part 50 and Parts 30, 40, or 70, they are treated separately for this analysis. For estimating the baseline for this scenario, licensees are assumed to use letters of credit at annual cost of 1.5 percent of their face value. The assurance risk assumed for letters of credit was based on the estimated assurance risk of standby letters of credit issued by FDIC insured banks from 1984 through 1990, 0.017 percent per annum. Licensees under Parts 30, 40, 70, and 72 are assumed to have decommissioning costs of 750K per licensee. Licensees under Part 50 are assumed to have decommissioning costs of \$2 million (a licensee under both Part 50 and Parts 30, 40, 70, or 72 would have decommissioning costs of \$2.75 million).

The second scenario presents an alternate baseline that assumes that, for materials licensees, 75 percent of public colleges and universities use statements of intent to provide financial assurance and the remaining 25 percent use letters of credit. For reactor licensees, 26 public institutions use statement of intent and 6 private institutions use a letter of credit. The statement of intent is assumed to have no cost, and the assurance risk of the statement of intent is assumed to be the equivalent of self-guarantee, or 0.13 percent per annum.

The third scenario in the table estimates the costs if all licensees in the three categories under investigation that meet the financial conditions of the self-guarantee (except for public colleges and universities) are assumed to use the self-guarantee and licensees that are unable to use a self-guarantee are assumed to use a letter of credit. In addition, however, this scenario assumes the same breakdown of licensees use a statement of intent as above and the remaining are divided between those licensees that qualify to use self-guarantee and those that are unable to use self-guarantee and therefore use a letter of credit.

Finally, the difference in costs between scenario two and three is given.

As Table 3.1 demonstrates, while private costs decline substantially under a self-guarantee, public costs rise. Total costs, however, are lower when the self-guarantee mechanism is available. Allowing use of the self-guarantee (Option 3) being proposed today reduces total annual costs by approximately \$500,000.

3.5 Decision Rationale for Selection of Proposed Option

On the basis of the analyses summarized above, the Commission has chosen Option 3.

4. FINANCIAL AND ECONOMIC IMPACTS OF SELF-GUARANTEE RULEMAKING

4.1 Impacts on Licensees

Adoption of a self-guarantee option is not expected to produce any negative financial or economic impacts. Because a self-guarantee option will generate cost savings for those licensees able to use the self-guarantee, the rulemaking is expected to produce positive financial impacts. Other licensees that cannot use the self-guarantee, including licensees that qualify as small businesses, will be unaffected by the rulemaking and therefore should not experience significant impacts. Costs for licensees qualifying for self-guarantee would be reduced relative to licensees unable to qualify. However, the purpose of this proposed rule is to reduce cost burdens where justified.

4.2 Impacts on NRC and the States

No significant impacts are expected for NRC or the States because the effort to review and administer the self-guarantee is expected to be comparable to or less than the burden associated with other mechanisms currently allowed. In each case, NRC or the States will be required to review financial assurance submissions, and the size and scope of self-guarantee submissions are not expected to differ significantly from the mechanisms currently allowed.

5. IMPLICATIONS FOR OTHER NRC REGULATORY PROGRAMS

Currently, self-guarantees are not allowed in NRC's financial assurance programs for low-level radioactive waste disposal facilities, uranium recovery facilities, or for power reactors. While much of the analysis behind the proposed self-guarantee rulemaking may be generally applicable to these other programs, licensees in these programs may also be significantly different from materials licensees in at least two ways:

- (1) The decommissioning cost estimates typical of these licensees may be much higher than is typical of materials licensees. Higher costs estimates could alter the optimal balance between public and private costs.
- (2) The financial characteristics of these licensees may be very different from those of materials licensees. Different financial characteristics could suggest different financial test criteria and perhaps different baseline failure rates.

Because the present analysis, for the reasons stated above, may not fully apply to NRC's other financial assurance programs, NRC is not proposing a self-guarantee option for these programs at the present time.

REFERENCES

Draft 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, Draft Report, December, 1996.

ATTACHMENT 3

NRC PROPOSES TO ALLOW MORE LICENSEES TO USE SELF-GUARANTEE FOR DECOMMISSIONING FUNDING

The Nuclear Regulatory Commission is considering amending its regulations to allow additional licensees who meet stringent financial criteria to themselves guarantee adequate funds for decommissioning.

Since 1993, NRC regulations have permitted financially strong for-profit corporate licensees with bond ratings of A or better to make use of a procedure called "self-guarantee" to ensure that adequate funds will be available for decommissioning. Other methods--available to all licensees--include a surety bond or letter of credit, prepayment, insurance, or external sinking fund.

Under a self-guarantee, the licensee gives the Commission a written commitment that the licensee will fund and carry out the required decommissioning activities. Licensees who use this option must pass an annual financial test and report promptly to the NRC any deterioration in financial condition.

The proposed amendments would extend the option of using a self-guarantee to non-profit licensees, such as universities and hospitals, and to for-profit licensees who do not issue bonds. They would have to meet the following financial criteria:

--For colleges and universities, either (1) a bond rating of A or better; or (2) for institutions that do not issue bonds, an unrestricted endowment of at least \$50 million or at least 30 times the estimated decommissioning costs, whichever is greater.

--For hospitals, either (1) a bond rating of A or better; or (2) for hospitals that do not issue bonds, satisfaction of four tests specified in the regulations for liquidity, net revenue, leverage, and size.

--For industrial corporations that do not issue bonds, satisfaction of the following ratio tests: cash flow divided by total liabilities would have to be greater than 0.15; total liabilities divided by net worth would have to be less than 1.5; and net worth would have to be greater than \$10 million or at least 10 times the estimated decommissioning costs, whichever is greater.

The NRC estimates that 25 to 30 college and university licensees, 10 to 14 hospitals, and two to four non-bond-issuing industrial companies might qualify for self-guarantee.

Further details on the proposed rule are contained in a *Federal Register* notice issued on _____.

Interested persons are invited to submit comments by _____ (90 days after the *Federal Register* notice). Written comments should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be submitted electronically, as described in the *Federal Register* notice.

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ATTACHMENT 4

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives

Washington, DC 20515

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission (NRC) intends to publish in the *Federal Register* the enclosed proposed amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, 70, and 72. The amendments, if adopted, would allow certain qualifying non-profit licensees, such as universities, colleges, and hospitals, and non-bond issuing business licensees to use self-guarantee as an additional mechanism for financial assurance for decommissioning.

The Commission is issuing the proposed rule for public comment and has specifically requested comments with respect to the scope, level of specificity, and methods of implementation of the rule.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: *Federal Register* Notice

cc: Ranking Member

The Honorable James M. Inhofe, Chairman
Subcommittee on Clean Air, Wetlands, Private,
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In the near future, the Nuclear Regulatory Commission (NRC) intends to publish in the *Federal Register* the enclosed proposed amendments to the Commission's rules in 10 CFR Parts 30, 40, 50, 70, and 72. The amendments, if adopted, would allow certain qualifying non-profit licensees, such as universities, colleges, and hospitals, and non-bond issuing business licensees to use self-guarantee as an additional mechanism for financial assurance for decommissioning.

The Commission is issuing the proposed rule for public comment and has specifically requested comments with respect to the scope, level of specificity, and methods of implementation of the rule.

Sincerely,
Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure: *Federal Register* Notice

cc: Senator Bob Graham

Table 3.1

Private and Public Costs of Financial Assurance With and Without Proposed Self-Guarantee, Including Research Reactor Licensees and Impacts of Statement of Intent for Public Colleges and Universities^a

Financial Assurance Option		Private Costs	Public Costs	Total Costs
1: All eligible licensees use bank letter of credit				
--Colleges and Universities	(66 @ \$750,000)	1,733,000	19,635	1,752,635
	(33 @ \$2,000,000)	293,000	3,315	296,315
--Hospitals	(26 licensees)	349,000	3,953	352,953
--Non-bond Issuing Firms	(31 licensees)			
Total		2,375,000	26,903	2,401,903

2: All licensees use letter of credit, except all Part 50 public schools and 75% of other public schools use Statements of Intent				
--Colleges and Universities	*	585,000	103,480	688,480
--Hospitals	(26 licensees)	293,000	3,315	296,315
--Non-bond Issuing Firms	(31 licensees)	349,000	3,953	352,953
Total		1,227,000	110,748	1,337,748
3: All qualified licensees use self-guarantee; others use letter of credit, except all Part 50 public schools and 75% of other public schools use Statement of Intent				
--Colleges and Universities	**	206,250	114,463	320,713
--Hospitals	(12 qualify of 26)	157,500	13,485	170,985
--Non-bond Issuing Firms	(3 qualify of 31)	315,000	6,495	321,495
Total		678,750	134,443	813,193
4: Difference between 2 and 3		548,250	(23,695)	524,555
<p>^a Source: ICF calculations. The costs in the table do not reflect any decrease in private decommissioning costs that would occur if the public assumes the decommissioning costs that are unfunded by the private sector. Although some licensees hold several licenses, it is assumed here that each licensee holds one license, except when a school holds both a reactor and materials licenses.</p> <p>* Represents 30 Part 30, 40, 70, or 72 licenses held by public institutions using Statements of Intent and 10 using letters of credit, and 26 Part 30, 40, 70, or 72 licenses held by private institutions using letters of credit; also represents 26 Part 50 licenses held by public institutions using Statements of Intent, as well as 6 Part 50 licenses held by private institutions using letters of credit.</p> <p>** Represents 30 Part 30, 40, 70, or 72 licenses held by public institutions using Statements of Intent 5 using self-guarantee, and 5 using letters of credit, and 26 Part 30, 40, 70, or 72 licenses held by private institutions with 18 using self-guarantee and 8 using letters of credit; also represents 26 Part 50 licenses held by public institutions using Statements of Intent; as well as 4 Part 50 licenses held by private institutions using self-guarantee and 2 using a letter of credit.</p>				

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).

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.

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

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.

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.

6. NUREG/BR-0058, Revision 2, NRC Regulatory Analysis Guidelines, U.S. Nuclear Regulatory Commission, 1995.

7. The same four alternative methods of providing financial assurance are authorized for licensees under Parts 30, 40, 50, 70, and 72 in the following sections: 10 CFR 30.35(f), 40.36(e), 50.75(e), 70.25(f), and 72.30(c).

8. 53 FR 24018; June 27, 1988.

9. U.S. Nuclear Regulatory Commission, Regulatory Guide 3.66, Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30, 40, 70, and 72, June 1990.

10. The decommissioning regulations do not define "parent company." NRC has provided in [Regulatory Guide 3.66](#) that in order to qualify as a parent company, a firm must demonstrate that it has "majority control of the licensee's voting stock. [Regulatory Guide 3.66](#), pp. 3-21 and 3-23.

11. 58 FR 68728; December 29, 1993. The *Federal Register* Notice notes that the study performed by NRC to evaluate the financial criteria for self-guarantee did not include non-profit entities. In addition, NRC found it necessary to delay a rulemaking involving universities until completion of planned rulemaking on fee recovery.

12. Even if firms do not plan to issue bonds, they can obtain so-called "indicative" bond ratings from Moodys and S&P. Such ratings are explained by Moodys as follows:

Issuers contemplating the issuance of debt at some future date are offered an indicative rating on a prospective issue. The rating is indicated on a confidential basis, subject to certain limitations in the event of debt issuance by the applicant in any of the capital markets. The indicative rating is subject to revision or withdrawal at any time, without notice, if any information (or lack of information) warrants such action, in the sole opinion of Moody's.

The likelihood of firms obtaining such indicative ratings solely to satisfy NRC's requirements for qualifying for self-guarantee must be considered to be extremely low, however, because according to Moody's, the fixed fee for such ratings, for all types of firms and for long and short-term ratings, is \$45,000. In most cases, financial assurance provided from a third-party, such as a surety, would be less expensive. However, if a licensee must put up substantial collateral to obtain an alternate instrument, like a letter of credit, it may be cost-effective to get the bond rating to use self-guarantee.