

Proposed Amendments to Provide Tighter Controls on Decommissioning Financial Assurance

<u>Current Regulations</u>	<u>Amendments Providing Tighter Control of Adequate Funds</u>
<p>Current regulations allow materials licensees authorized to possess relatively small quantities of radioactive materials meeting limits specified in 10 CFR 30.35(d) to submit a certification that they have financial assurance in amounts specified by regulation, rather than having to prepare a detailed DCE and submit proof of financial assurance in the amount of the estimate. Remediating subsurface contamination can be expensive. Licensees with certified amounts have no requirement to increase the amount of decommissioning financial assurance to cover subsurface remediation costs.</p>	<p>Proposed amendments to §§ 30.35(c)(6), 40.36(c)(5) and 70.25(c)(5) would require licensees using a certification to shift to a DCE if survey results detect significant residual radioactivity in soils or ground water. These proposed amendments also provide the regulatory basis to require such licensees to cover the full cost of decommissioning, not just the prescribed amount covered by a certification.</p>
<p>Current regulations allow the use of an escrow account as a financial assurance mechanism. Staff considers an escrow account as less preferable than a trust for assurance that funds will be available when needed for decommissioning. The United States Environmental Protection Agency (EPA) concluded that a trust was more protective of funds because, under trust law, the title to property in a trust is transferred to the trustee, while in an escrow account, title to the property remains with the grantor. (46 FR 2802, 2827) Escrow property is more likely to be subject to a creditor's claim than property held in trust.</p>	<p>Proposed amendments to §§ 30.35(f), 40.36(e), 70.25(f), and 72.30(e) would eliminate the escrow account as a method to provide financial assurance. About 25 licensees with escrow accounts will be affected by this proposed change.</p>
<p>Current regulations allow lines of credit as financial assurance mechanisms, but no licensee to date has used this method to provide decommissioning financial assurance. Maintaining the option to use a line of credit incurs costs to maintain regulatory guidance and conduct training. The cost is small, but it appears no benefit is realized from retaining this option in the regulations.</p>	<p>Proposed amendments to §§ 30.35(f), 40.36(e), 70.25(f), and 72.30(e) would eliminate the line of credit as a method to provide financial assurance.</p>
<p>Current regulations allow funds set aside for decommissioning to be placed in accounts that are subject to market fluctuations. But there is no requirement for the licensee to monitor the fund balance and replace shortfalls that can occur when market prices decline.</p>	<p>Proposed amendments to §§ 30.35(i), 40.36(h), 70.25(i), and 72.30(g) would require licensees to monitor the fund balance and specifies a time period for licensees to make up a shortfall in decommissioning funding. A decline of 25 percent was selected as the make-up trigger point because the cost estimate includes a 25 percent contingency.</p>

<p>Current regulations allow licensees to use several financial assurance mechanisms to provide decommissioning financial assurance for restricted site release, but specify no financial assurance options for licensees planning to decommission under 10 CFR 20.1404 alternate release criteria. A trust fund as a financial assurance mechanism is best suited for a long-term financial assurance instrument because it can exist for long periods of time without need for renewal.</p>	<p>Proposed amendments to §§ 20.1403(c) and § 20.1404(a)(5) would require licensees to place adequate funds into a trust for the purpose of long-term control and maintenance, and would eliminate sureties, insurance, other guarantee methods, and other forms of prepayment for restricted site release cases. Government entities would continue to be permitted to use a statement of intent or to assume custody and ownership of a site.</p>
<p>Current regulations do not specify required information about the transferee as part of the request for license transfer.</p>	<p>The proposed changes to §§ 30.34(b), 40.46, 70.36, and 72.50(b)(3) would codify NRC regulatory guidance to require the existing licensee to provide information on the proposed transferee's technical and financial qualifications, and to provide financial assurance for decommissioning as a condition for approval of the transfer. The information and financial assurance are necessary to evaluate the adequacy of the proposed transferee</p>
<p>Current regulations specify a limited amount of information that must be in the financial assurance instrument. Financial instruments submitted to the NRC do not always contain adequate identifying information regarding the licensee, the issuer, and, if applicable, the trustee.</p>	<p>The proposed amendments to §§ 30.35(f), 40.36(e), 70.25(f), and 72.30(e) would require that the name and contact information for each party is included in the instrument, and that the instrument include the license and docket numbers of the facility for which it provides financial assurance. The licensee would be required to submit a revised instrument within 30 days of a change in the information on the current instrument.</p>
<p>Current regulations in the parent guarantee and self guarantee specify a minimum tangible net worth requirement of \$10 million, which was adopted in the 1988 final rule (53 FR 24018)</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would change this figure to \$19 million to account for inflationary increase in the value of the dollar.</p>
<p>Appendices A and C of 10 CFR part 30 do not specify that the rated bond must be uninsured, uncollateralized, and unencumbered to reflect a bond rating agency's evaluation of the financial stability of the bond issuer.</p>	<p>Proposed amendments in Appendices A and C of 10 CFR part 30 will add the requirement that the bond rating used to pass the financial test must be uninsured, uncollateralized, and unencumbered.</p>
<p>Current regulations in the parent guarantee and self guarantee specify the bond ratings required to pass the financial test.</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 will clarify that qualifiers at the low end of the bond ratings, for example “-“ and “3”, meet the regulatory standard. The amendments also will require an annual verification of the bond rating.</p>

<p>Current regulations in the parent guarantee and self guarantee do not require the independent certified public accountant's special report to examine off-balance sheet transactions. These transactions have the potential to materially affect the guarantor's ability to fund decommissioning obligations.</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would require the auditor to include an opinion of off-balance sheet transactions.</p>
<p>Current regulations in the parent guarantee and self guarantee require the licensee to repeat passage of the financial test each year, but do not explicitly state that the licensee must annually submit documentation to the NRC to verify its passage of the test</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would require annual submittal of documentation that the guarantor passed the financial test.</p>
<p>Current regulations in the parent guarantee and self guarantee do not require the guarantor to set up a standby trust to hold funds for decommissioning in the event the NRC requires the guarantor to provide funding for decommissioning until after the NRC has required payment.</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would require the guarantor to set up a standby trust before the guarantee becomes effective, would provide the Commission with the right to change the trustee, and would specify that an acceptable trust is one that meets the regulatory requirements of the Commission.</p>
<p>Current regulations in the parent guarantee and self guarantee do not specify the guarantor's obligation to fund decommissioning work to terminate the license.</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would clarify that the guarantor's obligation is not capped at the guaranteed amount, but includes costs in excess of the guaranteed amount if additional funds are required to complete decommissioning and termination of the license.</p>
<p>Current regulations do not require the parent company to comply with Commission orders.</p>	<p>Proposed amendments in Appendix A of 10 CFR part 30 would clarify the parent company guarantee to include an agreement by the parent company making itself subject to NRC payment orders. The requirement is necessary because the parent company may not itself be an NRC licensee.</p>
<p>Current regulations in the parent guarantee and self guarantee do not provide for the possibility that the guarantor may be in financial distress at the time it is required to provide alternate financial assurance</p>	<p>Proposed amendments in Appendices A, C, D, and E of 10 CFR part 30 would authorize the Commission to make the amount guaranteed immediately due and payable to the standby trust, in order to provide a money claim on the assets of the guarantor that would cover the cost of decommissioning at the time of a division of assets.</p>