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SUPPLEMENTARY INFORMATION:

Introduction

When NRC published the "General Requirements for Decommissioning Nuclear Facilities" final rule the Commission noted that inadequate or untimely consideration of decommissioning, specifically in the areas of planning and financial assurance, could result in significant adverse health, safety and environmental impacts (53 FR 24018, June 27, 1988). Additionally, they stated an intention that the regulations make clear that the licensee is responsible for the funding and completion of decommissioning in a manner which protects public health and safety.

Availability of adequate decommissioning funding is necessary for assuring that timely decontamination of facilities takes place following cessation of licensed operations. If a nuclear materials facility remains in a nonoperating status without being decommissioned, public health and safety could be compromised by leakage and contamination and/or loss of control of nuclear materials. Also, when decommissioning is delayed for long periods following cessation of operations, there is a risk that safety practices may become lax as key personnel relocate and management interest wanes. The Commission stated in the "Timeliness in Decommissioning of Materials Facilities" final rule that the rule was intended to reduce the potential risk to public health and the environment from radioactive material remaining for long periods of time at such facilities after licensed activities have ceased (59 FR 36026, July 15, 1994).

Background

On October 7, 2002, the NRC published a proposed rule (67 FR 62403) that would amend the requirements for financial assurance for certain materials licensees. The proposed rule was developed in response to a need to update financial assurance requirements to ensure that licensees maintain adequate financial assurance coverage. The NRC regulations requiring financial assurance for decommissioning are designed to ensure that adequate funding will be available for timely decommissioning by licensees following shutdown of normal operations. The financial assurance regulations are part of the overall NRC strategy to maintain safety and protection of the public and the environment during and after

decommissioning and decontamination of nuclear facilities.

Financial assurance is composed of several parts: (1) Appropriate identification of licensees for which financial assurance should be required; (2) the amount of financial assurance required for each licensee must be adequate to fund current decommissioning costs; and (3) appropriate financial assurance mechanisms (surety bonds, escrow accounts, parent or self-guarantee, etc.) must be required.

The NRC is amending its financial assurance requirements for certain materials licensees to bring required financial assurance amounts more in line with actual current decommissioning costs. The objective of this rulemaking is to maintain adequate financial assurance by addressing gaps in the current regulatory framework regarding (1) and (2) above.

Under current decommissioning regulations, materials licensees that use substantial quantities of nuclear materials must provide financial assurance for decommissioning (most materials licensees do not need to provide financial assurance because their possession limits are below the threshold for requiring financial assurance). NRC has approximately 4900 materials licensees, of which approximately 10 percent require financial assurance. The financial assurance requirements were established in 1988 as part of the decommissioning rulemaking (53 FR 24018; June 27, 1988). The amount of financial assurance that must be provided can be based on either: (1) A facility-specific decommissioning cost estimate provided by the licensee in a decommissioning funding plan;¹ or (2) one of several dollar amounts prescribed by regulation (certification amounts), that are based on possession limits. Revision to some of the financial assurance requirements for materials licensees are needed because there have been changes in decommissioning costs since that rulemaking was issued. Also, experience has revealed that for certain types of licensees, such as waste brokers,² special circumstances exist that require different financial assurance considerations.

The financial assurance regulations no longer provide adequate coverage of decommissioning costs for certain types of materials licensees, mainly due to

large increases in decommissioning costs since the financial assurance regulations were put in place. Allowing these financial assurance coverage shortfalls to remain could increase the likelihood of inadequate funding for timely decommissioning.

To address these financial assurance coverage issues NRC considered two alternatives which were: (1) No action; and (2) carrying out this rulemaking. NRC performed a regulatory analysis studying the costs and benefits of the two alternatives and reached the following conclusions.

(1) No Action

Under this alternative, no rulemaking would be done. The amount of financial assurance required would not be adequate to fully fund decommissioning activities for a large number of licensees. This shortfall in financial assurance would increase the likelihood that decommissioning of some facilities would not be carried out in a timely manner. This could result in adverse impacts on public health and safety, and also could have adverse environmental effects. It would also increase the likelihood that State or local governments and/or the general public would have to bear the costs of decommissioning.

No costs to licensees or NRC would be involved for this alternative. Licensees would not be subject to any cost increases, and NRC would not incur costs associated with developing and implementing the rulemaking.

(2) Rulemaking to Revise the Financial Assurance Requirements for Materials Licensees

Under this alternative, certification amounts would be raised by 50 percent, providing approximately \$80 million in additional financial assurance.³ Large irradiator and waste broker licensees would have to base financial assurance on a site-specific decommissioning cost estimate. All waste brokers would have to provide financial assurance to cover the amount of the cost estimate. The decommissioning cost estimates would have to be updated at least every 3 years. A rulemaking to revise the financial assurance requirements for materials licensees would increase the assurance of adequate funding for decommissioning activities. This increased assurance would make timely decommissioning more likely, contributing to maintaining public health and safety and protection of the environment. This action would also

¹ For some types of licensees using very large amounts of radioactive material, a facility-specific cost estimate must be used.

² Waste brokers are waste processors and waste collectors as defined in 10 CFR part 20, appendix G.

³ Estimate based on current numbers of licensees using each certification amount.