



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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ALL AGREEMENT STATES, NEW JERSEY, PENNSYLVANIA, VIRGINIA

**OPPORTUNITY TO COMMENT: PROPOSED CLARIFICATION FOR AMENDMENT ON
FINANCIAL ASSURANCE FOR DECOMMISSIONING (FSME-06-105)**

Purpose: To inform you of an opportunity to comment on a proposed clarification to be incorporated into the next revision of the Office of Federal and State Materials and Environmental Management Program's (FSME) Procedure, SA-200 "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements" (enclosed), which deals with the compatibility designation assigned to financial assurance for decommissioning in 10 CFR 30.35, 40.36 and 70.25. Any comments should be submitted to the contact listed below, within 30* days of the date of this letter.

Background: The proposed clarification to be incorporated into the next revision of SA-200 addresses an issue relating to the financial assurance and recordkeeping requirements for decommissioning, an amendment included in Regulatory Amendment Tracking System (RATS) 2003-1. The provisions included in 10 CFR 30.35, 40.36 and 70.25 are identical yet do not have the same compatibility designations. The Statements of Consideration for this amendment indicate that the requirements for these sections were intended to be the same. The NRC staff analyzed this issue and has concluded that paragraphs 30.35(e), 40.36(d) as well as 70.25(e) were intended to be designated as health and safety (H&S) and thus are a matter of Agreement State adequacy. In addition, for the reasons explained in the enclosed document, the NRC staff has concluded that 30.35(d) and 70.25(d) should be designated as compatibility category "D." The proposed change to FSME Procedure SA-200 will occur the next time that the procedure is updated.

Contents: The enclosed document concerning the proposed change was prepared as a result of the review of the State of Washington's regulations concerning financial assurance for decommissioning provisions; NRC staff identified the compatibility designations in 10 CFR 30.35, 40.36 and 70.25 to be inconsistent and thus identified it as a generic concern.

* This information request has been approved by OMB 3150-0029, expiration 06/30/2007. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct a or sponsor, and a person is not required to response to, the information collection.

NRC Point of Contact: If you have any questions regarding this correspondence, please contact me or either of the individuals named below.

POINT OF CONTACT: Jenny Tobin
TELEPHONE: (301) 415-2328

INTERNET: JCT1@NRC.GOV
FAX: (301) 415-3502

POINT OF CONTACT: Kathleen Schneider
TELEPHONE: (301) 415-2320

INTERNET: KXS@NRC.GOV
FAX: (301) 415-3502

/RA/

Janet R. Schlueter, Director
Division of Material Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosure:
Draft Clarification to SA-200

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PROPOSED
CLARIFICATION FOR AMENDMENT ON FINANCIAL ASSURANCE FOR
DECOMMISSIONING

ISSUE:

The 2003 regulatory amendment concerning financial assurance for decommissioning (68 FR 57327) contains a typographical error in assigning compatibility designations and thus is unclear as to if an Agreement State program needs to adopt requirements, including an adjustment of decommissioning costs, to be found adequate.

DISCUSSION:

In submitting their proposed regulatory amendment for Regulatory Amendment Tracking System (RATS) 2003-1, the State of Washington noted an error in 68 FR 57327 regarding the compatibility designation for paragraphs 30.35(e), 40.36(d), and 70.25(e). If left uncorrected, this error would result in inconsistent treatment of these nearly identical paragraphs when State regulations are evaluated for adequacy and compatibility.

RATS 2003-1 covers an amendment to 10 CFR Parts 30.35, 40.36 and 70.25, which impose financial assurance and recordkeeping requirements for the decommissioning of byproduct, source, and special nuclear materials, respectively. The amended paragraphs in each of these sections contain nearly identical language. The requirement that byproduct, source, and special nuclear materials licensees periodically adjust decommissioning cost estimates over the life of a facility are contained in paragraphs 30.35(e), 40.36(d) and 70.25(e), respectively. The text in paragraph 40.36(d) has been assigned a "Health and Safety" (H&S) designation but the text in paragraphs 30.35(e) and 70.25(e) have been assigned a compatibility designation of "D." A "H&S" designation means that the requirements should meet the essential objectives for purposes of adequacy. A "D" designation means that the requirement need not be included for purposes of adequacy or compatibility of a State program element.

The basis for the compatibility determinations contained in the 2003 regulatory amendment (68 FR 57334) indicates that paragraphs 30.35(e) and 70.25(e), as well as paragraph 40.36(d), were intended to be designated as "H&S". Specifically, the basis for the "H&S" designations for certain paragraphs in sections 30.35, 40.36, and 70.25 reads, in part, as follows:

The health and safety "H&S" designation...is warranted because these paragraphs address decommissioning funding plans necessary to ensure that funding is available for timely decommissioning.

On the other hand, the basis for designating certain paragraphs contained in these same sections as compatibility category "D" reads as follows:

Compatibility category D...is warranted because States are allowed the flexibility to specify different dollar amounts based on jurisdiction and local conditions.

As explained above, paragraphs 30.35(e), 40.36(d) and 70.25(e) describe the requirements for decommissioning funding plans, including the requirement that these plans be periodically

updated over the life of a facility at intervals not to exceed 3 years. However, these paragraphs do not specify dollar amounts that are required to provide adequate financial assurance for decommissioning. Specific dollar amounts are, however, specified in paragraphs 30.35(d) and 70.25(d). Therefore, according to the rationales quoted above, paragraphs 30.35(e) and 70.25(e), as well as 40.36(d), should be designated "H&S," not compatibility category "D." In addition, paragraphs 30.35(d) and 70.25(d) should be designated as compatibility category "D," not "H&S."

CONCLUSION:

The NRC staff concludes that a typographical error was made in 68 FR 57327 and the intent of the amendment was to designate the compatibility of the adjustment of cost estimates in 30.35(e), 40.36(d) and 70.25(e) as "H&S" and thus are a matter of Agreement State adequacy provisions. In addition, for the reasons explained above, the NRC staff concludes that 30.35(d) and 70.25(d) should be designated as compatibility category "D." The changes to compatibility designations will be included in the next revision of procedure, SA-200 "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."