

**4731.3165 ASSURING DECOMMISSIONING FUNDS; SELF-GUARANTEES; BOND RATING.**

Subpart 1. **General requirement.** This part applies to an applicant or licensee that has a rated bond issuance and wishes to self-guarantee. 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 under subpart 2. This part establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

Subp. 2. **Financial test requirements.** To pass the financial test, a company must have:

A. tangible net worth at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof, or the current amount required if certification is used, or, for a power reactor licensee, at least ten times the amount of decommissioning funds being assured by a self-guarantee, for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee and as a parent-guarantor for the total of all reactor units or parts thereof. Tangible net worth must be calculated to exclude the net book value of the nuclear units;

B. assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof, or the current amount required if certification is used, or, for a power reactor licensee, at least ten times the amount of decommissioning funds being assured by a self-guarantee, for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee and as a parent-guarantor for the total of all reactor units or parts thereof;

C. a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's or Aaa, Aa, or A as issued by Moody's; and

D. at least one class of equity securities registered under the Securities Exchange Act of 1934, United States Code, title 15, sections 78a to 78mm.

Subp. 3. **Audit.** A company's independent certified public accountant must compare the data used by the company in the financial test, which must be derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statements. In connection with that procedure, the licensee must inform the commissioner within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data in the financial test should be adjusted and that the company no longer passes the test.

**Subp. 4. Continued compliance.**

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

B. If a licensee no longer meets the requirements of subpart 2, the licensee must send immediate notice to the commissioner of its intent to establish alternate financial assurance according to this chapter within 120 days of the notice.

**Subp. 5. Terms of guarantee.** The terms of a self-guarantee that an applicant or licensee furnishes must provide that:

A. the guarantee remains in force unless the licensee sends notice of cancellation by certified mail to the commissioner. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the commissioner, as evidenced by the return receipt;

B. the licensee must provide alternative financial assurance according to this chapter within 90 days following receipt by the commissioner of a notice of cancellation of the guarantee;

C. the guarantee and financial test provisions remain in effect until the commissioner terminates the license or until another financial assurance method acceptable to the commissioner is put in effect by the licensee;

D. the licensee must promptly forward to the commissioner and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission according to section 13 of the Securities Exchange Act of 1934, United States Code, title 15, section 78m;

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 Poor's or Moody's, the licensee must provide notice in writing of such fact to the commissioner within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of subpart 2; and

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

**Statutory Authority:** *MS s 144.1202; 144.1203*

**History:** *29 SR 755*

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