

**4731.3170 ASSURING DECOMMISSIONING FUNDS; SELF-GUARANTEE; NO OUTSTANDING RATED BONDS.**

Subpart 1. **General requirement.** This part applies to an applicant or licensee that has no outstanding rated bonds 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 requirement.** To pass the financial test, a company must have:

A. tangible net worth greater than \$10,000,000, or at least ten 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 a self-guaranteeing licensee and as a parent-guarantor;

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, 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; and

C. 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.

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, based on United States generally accepted accounting practices, 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 that may 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 notice to the commissioner of intent to establish alternative financial assurance according to this chapter. 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 alternative financial assurance within 120 days after the end of the fiscal year.

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, return receipt requested, to the commissioner. Cancellation may not occur until an alternative financial assurance mechanism is in place;

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; and

D. 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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