§ 1606.8 Late payroll submissions.

All contributions on payment records contained in a payroll submission received from an employing agency and processed by the TSP record keeper more than 30 days after the pay date associated with the payroll submission (as reported on Form TSP–2, Certification of Transfer of Funds and Journal Voucher) will be subject to lost earnings, as follows:

(a) The TSP record keeper will generate a lost earnings record for each payment record contained in the late payroll submission. The lost earnings records generated by the TSP record keeper will reflect that the contributions on the payment records should have been made on the pay date associated with the payroll submission, that the contributions should have been deposited to the investment fund(s) indicated on the payment records if the pay date was before May 1, 2001, or based on the participant's contribution allocation on file as of the pay date if the pay date was on or after May 1, 2001, and that the contributions were actually made on the date the late payroll submission was processed.

(b) The procedures applicable to lost earnings records submitted by employing agencies which are set forth in paragraphs (a)(2) through (a)(4) of § 1606.5 will be applied to lost earnings records generated by the TSP record keeper pursuant to paragraph (a)(1) of this section.

7. Section 1606.9 is amended by revising paragraph (a)(3) as follows:

§ 1606.9 Loan allotments.

(a) * * *

(3) The lost earnings will be posted to the participant's account pro rata to all investment funds within the same source of contributions based on the most recent month-end valued account balance.

* * * * *

8. Section 1606.11 is amended by revising paragraphs (c), (d), and (e) and by adding a new paragraph (f) as follows:

§ 1606.11 Agency submission of lost earnings records.

* * * * *

(c) Where this part requires the employing agency to indicate on a lost earnings record the investment fund to which a contribution would have been deposited had an employing agency error not occurred, that determination must be made solely on the basis of a properly completed allocation election that was accepted by the employing agency *before* the date the contribution should have been made, and that was still in effect as of that date. Where no such allocation election was in effect as of the date the contribution would have been made had the error not occurred, the lost earnings record submitted by the employing agency must indicate that the contributions should have been made to the G Fund.

(d) With respect to employing agency errors that cause money not to be invested in the Thrift Savings Fund, lost earnings records may not be submitted until the money to which the lost earnings relate has been invested in the Thrift Savings Fund. Where the employing agency error involved delayed TSP contributions, no lost earnings will be payable unless the associated payment records are submitted in accordance with the provisions of 5 CFR part 1605. Lost earnings records and the delayed payment records to which they relate should be submitted simultaneously.

(e) Where an employing agency erroneously submits a lost earnings record that is processed by the TSP record keeper, the employing agency must consult with the Board or TSP record keeper to determine the method to be used in removing the erroneous lost earnings.

(f) Lost earnings records that contain contributions for which lost earnings must be determined at the G Fund rate of return pursuant to 5 CFR 1605.22(a)(4) or 1605.41(a)(3) must be accompanied by the special Journal Voucher, Form TSP–2–EG.

9. Section 1606.13 is amended by removing paragraph (g) and by revising paragraphs (a), (b), and (c) as follows:

§ 1606.13 Calculation and crediting of lost earnings.

(a) Lost earnings records submitted or generated pursuant to this part will be processed by the TSP record keeper monthly.

(b) Lost earnings records received, edited, and accepted by the TSP record keeper by the next-to-last business day of a month will be processed in the processing cycle for the month following acceptance. Lost earnings records received, edited, and accepted by the TSP record keeper on the last business day of a month will be processed in the processing cycle for the second month following acceptance.

(c) In calculating lost earnings attributable to a lost earnings record, earnings and losses for different sources of contributions or investment funds within a source will not be offset against each other.

* * * * *

10. Section 1606.15 is amended by revising paragraph (a) as follows:

§ 1606.15 Time limits on participant claims.

(a) Participant claims for lost earnings pursuant to § 1606.14 of this part must be filed within six months of the participant's receipt of the earliest of a TSP participant statement, TSP loan statement, employing agency earnings and leave statement, or any other document that indicates that an employing agency error has affected the participant's TSP account.

* * * * *

[FR Doc. 01–9562 Filed 4–18–01; 8:45 am]

BILLING CODE 6760–01–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

[Docket No. PRM–30–64]

Charles T. Gallagher, Gammatron, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Charles T. Gallagher of Gammatron, Inc. (PRM–30–64). The petitioner requested that NRC amend its regulations regarding financial assurance for decommissioning funding. The NRC is denying the petition because the information presented in the petition does not support a basis for changing the existing regulations.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD.

These documents are available on NRC's rulemaking website at *http://ruleforum.llnl.gov.* For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301–415–5905 *(e-mail:CAG@nrc.gov).*

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: (301) 415–6203, *cwp@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On August 11, 2000 (65 FR 49207), the NRC published a notice of receipt of a petition for rulemaking filed by Charles T. Gallagher, of Gammatron, Inc., Houston , Texas. The petitioner requested that NRC amend its financial assurance requirements for materials licensees.

The petitioner requested that NRC amend its requirements in the following principal respects, or address the following issues:

(1) NRC should provide a greater opportunity for comment to Agreement State licensees when new regulations are put in place. The petitioner states that Agreement state licensees were not provided adequate opportunity for comment when the financial assurance requirements were established.

(2) The petitioner believes that NRC's financial assurance requirements are arbitrary. The petitioner advocates basing the amount of financial assurance required on other factors in addition to possession limits because safety programs in smaller licensees may be not as good as those carried out by larger licensees.

(3) The petitioner wanted financial assurance to be required of all licensees, not just the larger licensees.

(4) The petitioner believes that additional mechanisms for financial assurance should be established that impose less of a financial burden on small businesses. According to the petitioner, the NRC should add financial assurance mechanisms that allow the cost of financial assurance to be spread out over time.

(5) Finally, the petitioner wanted the NRC regulations to exempt orphan sources from financial assurance requirements. The petitioner believes that there are no disposal facilities that accept this waste, so that requiring financial assurance for licensees possessing this type of waste is unnecessary.

Public Comments on the Petition

Four comments were received, including one from the petitioner. The following is a summary of the comments received.

1. American College of Nuclear Physicians/ Society of Nuclear Medicine

This comment opposes the portion of the petition requesting that NRC modify it's financial assurance regulations to require financial assurance of all licensees. The letter expresses no comment on the rest of the petition, but states that ample opportunity for comment on the financial assurance regulations was provided the petitioner.

2. State of Texas, Department of Health, Bureau of Radiation Control

This comment states that the petitioner, along with other licensees in Texas, and the general public, had opportunity to comment on regulations established for financial assurance. The commenter does not agree that financial assurance should be required for all licensees. The letter also disagrees with the petitioner's belief that financial assurance should be provided by a small business licensee over a longer period of time, rather than all at one time upon licensing. The letter agrees with the petitioner's belief that it is impractical for regulatory agencies to determine the costs of disposal of orphan waste.

3. Nuclear Energy Institute

The Nuclear Energy Institute (NEI) believes that Agreement States and their licensees had adequate opportunity for comment on the financial assurance regulations, and that licensed facilities had ample time to prepare for the funding requirement imposed by the regulations. NEI does not support the petitioner's request that all licensees have financial assurance. Some licensees handle materials that do not require a decommissioning fund, and other types of licensees should not be required to tie up capital as financial assurance that could be used for better purposes. NEI believes that current regulations allow a licensee to accumulate funds during the life of a facility, citing the example of a licensee initially posting a bond and retiring it with a sinking fund. NEI disagrees with the petitioner's point that licensees possessing greater than Class C waste be exempted from financial assurance requirements. NEI states that disposal is only one part of decommissioning. The licensee must have funding available to clean up a site and package the waste for disposal. NEI states that the Department of Energy (DOE) will currently accept greater than Class C waste if there is no alternative for storage or other facility that can accept the waste.

4. Charles T. Gallagher, Gammatron, Inc.

The petitioner sent in a comment responding to other comments that were posted on NRC's website. The petitioner notes that few comments were received and faults the regulatory agencies for not adopting a method to notify more of the public of regulatory actions, such as by e-mail. The petitioner responds to the American College of Nuclear Physicians/Society of Nuclear Medicine (ACNP/SNM) comment by stating that ample opportunity for comment on the financial assurance regulations was not provided. He also opposes the statement in the ACNP/SNM letter that nuclear medicine licensees provide a public benefit, stating that industrial licensees also provide a public benefit.

Reasons for Denial

1. *Issue—Agreement State Licensees Were not Provided Opportunity to Comment on the Original Financial Assurance Regulations.* The petitioner states that Agreement State licensees were not provided an opportunity to comment on the original financial assurance regulations and that the NRC accepted comments only from NRC licensees and Agreement State regulatory personnel. The petitioner further states that Agreement State regulatory agencies did not request comments from their licensees, and that they did not recognize the impact that the rulemaking represented.

Response. The financial assurance requirements for materials licensees were established as part of the decommissioning rule, ''General Requirements for Decommissioning Nuclear Facilities'' promulgated in 1988. The proposed decommissioning rule was issued for public comment on February 11, 1985 (50 FR 5600). NRC received comments from 143 groups or individuals, including 10 comment letters from Agreement States on a variety of issues, including financial assurance. Comments were accepted from all groups and individuals; NRC did not impose any restrictions, such as accepting comments ''only from NRC licensees and from Agreement State regulatory personnel,'' as stated by the petitioner. Since that time, the financial assurance for decommissioning regulations have been amended several times. In each case, the proposed amendments were published for public comment, and comments were received from a wide range of State governments, trade associations, individuals, and businesses.

There is no basis to the petitioner's argument that Agreement State licensees were not provided an opportunity to comment on the original financial assurance regulations by the NRC. The comment letter from the State of Texas indicates that Texas offered its licensees and the general public an opportunity to comment on Texas' equivalent financial assurance regulations, when they were published in 1993.

2. *Issue—Financial Assurance Should Not be Based on Amounts of Material Possessed.* The petitioner states that current financial assurance requirements, which are based on the

quantity of licensed material possessed, are arbitrary. The petitioner disputes the premise that risk is greater for licensees that possess larger quantities of materials on the basis that these larger licensees often have more extensive safety programs and more careful handling procedures. According to the petitioner, the amount of financial assurance required should not be based on possession limits.

Response. The basis for NRC's financial assurance requirements is not arbitrary. Quantities and types of materials are considered. Larger amounts of materials used by a licensee generally require larger amounts of financial assurance. Possession of an equivalent amount of radioactive material in the form of sealed sources has lower financial assurance amount requirements than if the material is in unsealed form. The NRC stated its belief in the general principle of basing financial assurance on type and quantity of material in an amendment to the decommissioning requirements published in 1995. Addressing the 1988 decommissioning rule, the NRC said ''The rule established a graded structure for financial assurance that is based on the assumption that the kinds and quantities of radioactive materials authorized in the license provide a reasonably good correlation to the amount of contamination that has to be remediated.'' (60 FR 38235; July 26, 1995—final rule ''Clarification of Decommissioning Funding Requirements''). The NRC continues to support this view. NRC's experience to date with the financial assurance program for materials licensees does not indicate that a change in emphasis away from possession limits is needed.

The petition does not recognize that a licensee has the option under current NRC regulations of not using the certification amounts, which are based on possession limits, as a basis for financial assurance. The regulations on financial assurance in Parts 30, 40, and 70 allow licensees (except for licensees using very large quantities of materials) to use one of two methods for determining the amount of financial assurance required. The methods are either: to submit a decommissioning plan with a cost estimate, or use one of the certification amounts. A licensee may submit a decommissioning plan that includes a decommissioning cost estimate. This estimate may take into account other factors in addition to type and amount of material possessed. The estimate, when approved by NRC, becomes the basis for the amount of financial assurance required. Most materials licensees that are required to have financial assurance choose to use one of the certification amounts, instead of submitting a facility-specific decommissioning cost estimate.

The State of Texas comment letter notes that the petition appears to ignore potential costs of disposal of materials, focusing only on decontamination costs. Decommissioning costs associated with disposal depend directly on the quantity of material possessed by a licensee. From this perspective, basing financial assurance on possession limits is a sound method of ensuring that decommissioning costs are fully covered.

Regarding the petitioner's argument that larger licensees have more extensive safety programs and more careful handling procedures, the petitioner has not set forth any supporting material for this assertion and, therefore, has not provided a basis in this respect for a rulemaking to amend the regulations.

The petition does not provide sufficient information on decommissioning costs or how to establish a new financial assurance system to provide a basis for the NRC to consider changing to an alternative method for establishing financial assurance requirements.

3. *Issue—Require Financial Assurance for All Materials Licensees.* The petitioner states that financial assurance should be required of all licensees.

Response. The decommissioning rule required financial assurance only of large licensees because the NRC considered that the risks involved when adequate funds are not available for timely decommissioning vary according to the amount and type of radioactive materials that a licensee may possess. Financial assurance, except for instances where a letter of intent or parent or self guarantee is used,[1] is a cost burden on a licensee. In deciding what licensees should be required to have financial assurance, NRC must weigh the potential decommissioning costs that might be required for categories of licensees against the cost burden on licensees to provide that financial assurance. The majority of licensees do not possess a quantity of radioactive materials likely to pose significant risks to public health and safety. Therefore, financial assurance would be an unnecessary burden for these licensees. Type of licensed material possessed is also a factor, as the risks from sealed sources were considered lower than material in unsealed form.

The petitioner has not provided a sufficient basis for changing this approach. The comment from the Society of Nuclear Medicine and American College of Radiology states that imposing financial assurance on smaller licensees would be an unnecessary burden on these licensees. There is inadequate information in the petition to justify imposing the burden of financial assurance on all NRC licensees.

4. *Issue—Spreading Over Time the Funding of Financial Assurance.* The petitioner states that financial assurance requirements are too burdensome for small business. Licensees should not be required to provide financial assurance at one time, upon licensing, but should be allowed to fund it over the life of the licensed facility. The Environmental Protection Agency (EPA) and its designated State agencies allow this type of funding. Large businesses and public institutions are the only types of licensee that can obtain surety bonds, parent company guarantees, etc. If the purpose of financial assurance regulations is to require licensee cleanup of their facilities, rather than taxpayer funded cleanup, the regulations must allow a method of providing financial assurance that does not force the small business licensee out of business.

Response. This issue was considered in the decommissioning rulemaking (50 FR 5600; February 11, 1985). The types of financial assurance mechanisms required of licensees take into account the stability of the source of revenues to the licensee. In the NRC's financial assurance regulations, only electric utilities, as defined in 10 CFR 50.2, were provided an opportunity to use sinking funds.[2] Under a regulated electric utility system where a utility is granted a monopoly in providing electric service, revenues would be stable and thus sources of funding were reasonably predictable. The regulator could adjust the price of electric service so that a utility would have revenues sufficient for decommissioning. Even premature shutdown of a plant, before the sinking fund fully covered decommissioning costs, could be accommodated by a regulatory authority that allowed the

[1] A government operated licensee may use a statement from an official of that government that decommissioning costs will be covered. A qualifying parent company may guarantee that decommissioning costs of a subsidiary will be covered. A company or nonprofit institution may ''self-guarantee'' decommission obligations if it passes a rigorous financial test.

[2] NRC does allow materials licensees to use a sinking fund, but only in combination with another type of financial assurance mechanism so that the decommissioning obligation is always fully funded at any time during licensed operations.

utility to recover decommissioning costs from utility service area ratepayers. For other licensees, it is the NRC's position that the required amount of financial assurance for decommissioning must be available when operations commence. Revenues are not stable and predictable, and there is a possibility that the licensee could cease operations prior to the sinking fund being fully funded. To guard against this possibility, the full amount of financial assurance required to decommission a facility was required ''up front''.

The Commission further recognized this principle in the recent rulemaking on financial assurance for power reactor licensees (Financial Assurance Requirements for Decommissioning Nuclear Power Reactors—63 FR 50465; September 22, 1998). Under the new requirements, designed to address potential electric utility deregulation, when a reactor licensee loses its regulated monopoly status, it is no longer allowed to use a sinking fund, and must provide the full amount of financial assurance up front.

This does not mean that licensees not using a sinking fund cannot pay for financial assurance over a long time frame. Several financial assurance mechanisms permit this approach. A surety bond or letter of credit can be used to provide financial assurance; the cost of these mechanisms is on a yearly or multi-yearly basis. A licensee may use a sinking fund, in combination with a surety bond or another mechanism that covers the portion of required financial assurance not covered by accumulated funds in the sinking fund. Also, several financial assurance mechanisms—statement of intent, and parent and self guarantee—do not impose any direct costs on the licensee. However, it is true that these guarantee mechanisms are not likely to be available to most small business licensees.

EPA does allow a graduated trust to be used for financial assurance under several of its regulations applicable to solid waste management, hazardous waste management, and other types of facilities. For example, EPA's regulations at 40 CFR 264.143, ''Financial assurance for closure,'' allow financial assurance to be provided by annual payments into a trust fund over a period that is the shorter of (1) the term of the initial RCRA permit, or (2) the remaining life of the facility. However, these EPA financial assurance regulations generally apply to all regulated facilities, even the smallest. In contrast, NRC's financial assurance regulations apply only to the largest licensees; less than 15 percent of NRC materials licensees are required to provide financial assurance. NRC's financial assurance requirements thus pose less of a regulatory burden on smaller licensees.

The petitioner does not present sufficient information to warrant a change by NRC in its regulations.

5. *Issue—Financial Assurance for Orphan Sources.* The petitioner states that orphan waste (waste which has no disposal ''home'') should be exempted from financial assurance requirements because the DOE is responsible for disposal of this category of waste. A licensee that has this type of waste should not be required to calculate and fund its disposal when there is no disposal site that will accept it. An example cited by the petitioner where DOE has taken steps to implement the responsibility that the petitioner addresses, is americium-241. The DOE is compiling a list of unwanted or abandoned sources for the ultimate recovery of the americium-241.

Response: Orphan sources do pose a significant problem for a licensee. DOE, NRC, EPA, and State regulatory agencies are all working to address this issue, and ensure that proper disposition is provided for orphan sources. DOE has initiated a pilot program, working with NRC, to identify orphan sources. However, this program is in the pilot stage, and DOE does not now have a program in place to accept all orphan sources. Moreover, DOE is required by law to recover costs of any program that is established by charging a disposal fee to accept orphan sources.

Financial assurance is especially important for orphan sources. Many of these sources are accepted by waste brokers either for reuse or for storage. However, the cost of using these services can be very high. Using the example of americium-241, costs are significantly higher relative to other isotopes.

In addition to funding of disposal costs, there are other decommissioning cost concerns involved in this issue, as noted in the Nuclear Energy Institute comment. A damaged/leaking source could cause contamination at a licensee's facility, which would need remediation. Waste packaging would also require funding. Thus, the rationale for requiring financial assurance would remain, even if disposal were assured by DOE. It is premature to change NRC's financial assurance regulations until a national orphan source recovery program is fully implemented. At that time, a review of financial assurance amounts required for these types of sources may be warranted.

For reasons cited in this document, the NRC denies the petition.

Dated at Rockville, Maryland, this 28 day of March, 2001.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 01–9731 Filed 4–18–01; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

RIN 3064–AC49

Being Engaged in the Business of Receiving Deposits Other Than Trust Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: Under section 5 of the Federal Deposit Insurance Act, an applicant for deposit insurance must be ''engaged in the business of receiving deposits other than trust funds''. This requirement was interpreted in General Counsel Opinion No. 12, which was published by the FDIC in March of 2000.

The FDIC is proposing to replace General Counsel Opinion No. 12 with a regulation. The purpose of promulgating a regulation would be to clarify the requirement that an insured depository institution be ''engaged in the business of receiving deposits other than trust funds''. Under the proposed regulation, this requirement would be satisfied by the continuous maintenance of one or more non-trust deposit accounts in the aggregate amount of $500,000.

DATE: Written comments must be received on or before July 18, 2001.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (facsimile number (202) 898–3838; Internet address: *comments@fdic.gov* <*mailto:comments@fdic.gov*>). Comments may be posted on the FDIC internet site at *http://www.fdic.gov/regulations/laws/federal/propose.html* and may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.