

3701:1-40-17**Appendix E**

Criteria relating to use of financial tests and self-guarantees for providing reasonable assurance of funds for decommissioning by nonprofit colleges, universities, hospitals or nonprofit research and development entities.

I. Introduction

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 applicant or licensee passes the financial test of section II of this appendix. The terms of the self-guarantee are in section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial test

- (A) For colleges and universities, to pass the financial test a college or university must meet either the criteria in section II, paragraph (A)(1) or the criteria in section II, paragraph (A)(2) of the appendix.
- (1) For applicants or licensees that issue bonds, a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.
- (2) For applicants or licensees that do not issue bonds, endowments consisting of assets located in the United States of at least fifty million dollars, or at least thirty 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 college or university is responsible as a self-guaranteeing licensee.
- (B) For hospitals or nonprofit research and development entities, to pass the financial test a hospital or nonprofit research and development entity must meet either the criteria in section II, paragraph (B)(1) or the criteria in section II, paragraph (B)(2) of the appendix:
- (1) For applicants or licensees that issue bonds, a current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.
- (2) For applicants or licensees that do not issue bonds, all of the following tests must be met:

- (a) (Total revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.
 - (b) Long term debt divided by net fixed assets must be less than or equal to 0.67.
 - (c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.
 - (d) Operating revenues must be at least one hundred times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital or nonprofit research and development entity is responsible as a self-guaranteeing license.
- (C) In addition, to pass the financial test, a licensee must meet all of the following requirements:
- (1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to 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 statement. In connection with that procedure, the licensee shall inform the director within ninety days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.
 - (2) After the initial financial test, the licensee must repeat the passage of the test within ninety days after the close of each succeeding fiscal year.
 - (3) If the licensee no longer meets the requirements of section I of this appendix, the licensee must send notice to the director of intent to establish alternate financial assurance. The notice must be sent by certified mail, return receipt requested, within ninety 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 one hundred twenty days after the end of such fiscal year.

III. Self-guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

- (A) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the director.

Cancellation may not occur unless an alternative financial assurance mechanism is in place.

- (B) The licensee shall provide alternate financial assurance as specified in the rules within ninety days following receipt by the director of a notice of cancellation of the guarantee.
- (C) The guarantee and financial test provisions must remain in effect until the director has terminated the license or until another financial assurance method acceptable to the director has been put in effect by the licensee.
- (D) The applicant or licensee must provide to the director a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the director, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning..
- (E) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "Aa" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the director within twenty days after publication of the change by the rating service.