

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 30, 40, 50, 70, and 72**

**[NRC-2017-0021]**

**RIN 3150-AJ92**

**Alternatives to the Use of Credit Ratings**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and draft interim staff guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for approved financial assurance mechanisms for decommissioning, specifically for parent and self-company guarantees that require bond ratings issued by credit rating agencies. This proposed rule would implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 that directed agencies to amend their regulations to remove any reference to or requirement of reliance on credit ratings. This proposed rule affects applicants and licensees who are required to provide decommissioning financial assurance. The NRC invites public comment on this proposed rule and associated draft guidance, and will hold a public meeting to promote full understanding of the contemplated action and facilitate public comment.

**DATES:** Submit comments by **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will

be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject); however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0021. Address questions about NRC Docket IDs to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Email comments to:** [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6244; email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **TABLE OF CONTENTS:**

- I. Obtaining Information and Submitting Comments
  - A. Obtaining Information
  - B. Submitting Comments
- II. Background
- III. Discussion of Changes
- IV. Specific Requests for Comments
- V. Discussion of Proposed Amendments by Section
- VI. Regulatory Flexibility Certification
- VII. Regulatory Analysis
- VIII. Backfitting and Issue Finality
- IX. Cumulative Effects of Regulation
- X. Plain Writing
- XI. Environmental Assessment and Final Finding of No Significant Environmental Impact
- XII. Paperwork Reduction Act Statement
- XIII. Compatibility of Agreement State Regulations
- XIV. Availability of Guidance
- XV. Public Meeting
- XVI. Availability of Documents

### **I. Obtaining Information and Submitting Comments**

#### **A. Obtaining Information**

Please refer to Docket ID NRC-2017-0021 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0021.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public

Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section..

- **NRC’s PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC’s Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

## B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0021 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying

or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## **II. Background**

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010<sup>1</sup> (The Dodd-Frank Act” or “Act”) to “promote the financial stability of the United States by improving accountability and transparency in the financial system.”<sup>2</sup> In the Act, Congress finds that “ratings on structured financial products have proven to be inaccurate” and that “[t]his inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy.”<sup>3</sup> Section 939A of the Act directs Federal agencies to review regulations that require the use of an assessment of the creditworthiness of a security or money market instrument and modify any regulations identified by the review to remove “any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of [creditworthiness] as each respective agency shall determine as appropriate for such regulations.”<sup>4</sup>

As directed by section 939A of the Dodd-Frank Act, the NRC reviewed its regulations for any references to, or requirements regarding, credit ratings.

Appendices A, C, and E to part 30 of title 10 of the *Code of Federal Regulations*

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<sup>1</sup> Public law 111-203.

<sup>2</sup> Public Law 111-203, Preamble.

<sup>3</sup> Public Law 111-203, Sec. 931(5).

<sup>4</sup> Public Law 111-203, Sec. 939A(b).

(10 CFR), “Rules of General Applicability to Domestic Licensing of Byproduct Material,” require specified bond ratings from Moody’s or Standard and Poor’s to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and non-power reactor applicants and licensees. In accordance with the Dodd-Frank Act, the NRC is proposing to amend these appendices by removing these requirements and relying instead on newly established criterion for creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed. Other regulations that cite or reference these appendices also would be affected by this proposed rule, including §§ 30.35(f)(2), 40.36(e)(2), 50.75(e)(1)(iii)(c), 70.25(f)(2), and 72.30(e)(2).

The NRC published an advance notice of proposed rulemaking (ANPR) in the *Federal Register* on December 21, 2020 (85 FR 82950). The ANPR identified alternative approaches for assessing a licensee’s creditworthiness and requested comment on alternative approaches. The NRC held a public meeting on February 8, 2021, to facilitate comments on the ANPR. The NRC received six comments. Of those six comments, four were in scope and supportive of the NRC’s approach described in the ANPR, one was partially in scope and not in support, and one was~~two were~~ out of scope. The NRC analyzed the comments and considered them in the development of this proposed rule (NRC-2017-0021).

### **III. Discussion of Changes**

Applicants and licensees must demonstrate reasonable assurance that funds will be available when needed for decommissioning in order to obtain and maintain a reactor

license and certain materials licenses.<sup>5</sup> Under the current regulations, this demonstration may be made by prepayment of funds or by payment of funds into an external sinking fund, a surety method, insurance, or other guarantee method, including a letter of credit, a parent company guarantee, or a self-guarantee.<sup>6</sup> For each licensee or applicant from whom the NRC accepts a parent company guarantee or self-guarantee to provide financial assurance, there exist two alternative financial tests: one test for an entity that issues bonds and has a bond rating issued by a credit rating agency, and a second test for an entity without bond ratings.

For each entity (a company, a parent company, or a non-profit college, university, or hospital) from whom the NRC accepts a parent company guarantee or self-guarantee to provide decommissioning funding financial assurance, financial tests exist in appendices A, C, D, and E to 10 CFR part 30.

A parent company guarantee must be provided by the parent company of the licensee. Under the current regulations, the parent company must meet one of the two financial tests specified in appendix A to 10 CFR part 30. These two financial tests, as discussed in the following paragraphs, differ in that one includes a bond rating criterion while the other does not.

For financial test one, the parent company must have the following: 1) two of the following three ratios: a ratio of total liabilities to total net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; 2) net

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<sup>5</sup> Section 182.a. of the Atomic Energy Act of 1954, as amended, provides that "Each application for a license . . . shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant . . . as the Commission may deem appropriate for the license."

<sup>6</sup> §§ 30.35(f), 40.36(e), 50.75(e), 70.25(f), and 72.30(e).

working capital and tangible net worth, each at least six times the amount of decommissioning funds being assured by the parent company guarantee for the total of all nuclear facilities or parts thereof (or prescribed amount, if certification is used); 3) tangible net worth of at least \$21 million; and 4) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount, if applicable).

For financial test two, the parent company must have the following: 1) a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, A, or BBB, as issued by Standard & Poor's, or Aaa, Aa, A, or Baa, as issued by Moody's; 2) total net worth at least six times the amount of decommissioning funds being assured by a parent company guarantee for the total of all nuclear facilities or parts thereof (or prescribed amount, if certification is used); 3) tangible net worth of at least \$21 million; and 4) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost.

A self-guarantee is a guarantee provided by the licensee. Under current regulations, the licensee must meet the financial tests specified in appendices C, D, and E to 10 CFR part 30. The financial test alternatives consider accounting ratios, net worth, assets, operating revenues, and bond rating data relative to fixed criteria. The licensee's financial statements must have been prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant must have verified the accuracy of the financial test data relative to the audited financial statements. A self-guarantee may not be used in combination with other financial assurance mechanisms, except a sinking fund, and may



not be used in cases in which a licensee has a parent company holding majority control of its voting stock.

The NRC's regulations for self-guarantees apply to three general categories of licensees: 1) commercial companies that issue bonds. Self-guarantees by these licensees are regulated under appendix C, "Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning," to 10 CFR part 30; 2) commercial companies that do not issue bonds. Self-guarantees by these licensees are regulated under appendix D, "Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds," to 10 CFR part 30; and 3) nonprofit colleges, universities, and hospitals. Self-guarantees by these licensees are regulated under appendix E, "Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals," to 10 CFR part 30.

Under the current regulations specified in appendix C to 10 CFR part 30, the financial test for commercial companies that issue bonds is that the licensee must have the following: 1) tangible net worth calculated to exclude the net book value of the nuclear facility and site and any intangible assets of at least \$21 million and total net worth at least 10 times the amount of decommissioning funds being assured (or prescribed amount if a certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee; 2) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the current decommissioning cost estimates (or prescribed amount if a certification is used)

for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee; and 3) a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A, as issued by Standard & Poor's, or Aaa, Aa, or A, as issued by Moody's.

Under the current regulations specified in appendix D to 10 CFR part 30, the financial test for commercial companies that do not issue bonds is that the licensee must have the following: 1) tangible net worth of at least \$21 million and total net worth of at least 10 times the amount of decommissioning funds being assured (or prescribed amount if a certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee (or the current amount required if certification is used); 2) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the amount of funds being assured (or prescribed amount if a certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee for the total of all nuclear facilities or parts thereof (or the current amount required if certification is used); and 3) ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by total net worth less than 1.5.

Under the current regulations specified in appendix E to 10 CFR part 30, the financial test for nonprofit colleges and universities that issue bonds is that the licensee must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A, as issued by Standard & Poor's, or Aaa, Aa, or A, as issued by Moody's.

The financial test for nonprofit colleges and universities that do not issue bonds is that the licensee must have unrestricted endowment consisting of assets located in the

United States of at least \$50 million or at least 30 times the current decommissioning cost estimates (or prescribed amount if a certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee for the total of all nuclear facilities or parts thereof (or the current amount required if certification is used).

Under the current regulations, the financial test for nonprofit hospitals that issue bonds is that the licensee must have a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A, as issued by Standard & Poor's, or Aaa, Aa, or A, as issued by Moody's.

The financial test for nonprofit hospitals that do not issue bonds is that the licensee must have the following: 1) total revenues less total expenditures divided by total revenues must be equal to or greater than 0.04; 2) long-term debt divided by net fixed assets must be less than or equal to 0.67; 3) (current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55; and 4) operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

This proposed rule would remove from NRC regulations those financial tests that rely, in part, on credit ratings and substitute newly established standards of creditworthiness. The NRC would perform an independent review to evaluate a licensee's creditworthiness. The NRC would seek to determine the licensee's risk of default based on the NRC's review of financial data. This review could include evaluation of financial data available from the licensee, open sources, and third parties, and may include credit ratings.

Specifically, this proposed rule would—

1) For use of parent company guarantees, revise paragraphs II.A.2(i) and B of appendix A to 10 CFR part 30 to remove bond rating requirements and rely instead on a new criterion: creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

2) For use of self-guarantees for commercial companies, revise paragraphs II.A.3 and B.2 of appendix C to 10 CFR part 30 to remove bond rating requirements and rely instead on new creditworthiness criteria that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

3) For use of self-guarantees for nonprofit colleges, universities, and hospitals, revise paragraphs II.A.(1) and B of appendix E to 10 CFR part 30 to remove bond rating requirements and rely instead on new creditworthiness criteria that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

4) Change the title of appendix D to 10 CFR part 30 to read “Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies.” The title change removes the term, “That Have no Outstanding Rated Bonds” and provides for alternative criteria to appendix C for commercial companies.

5) Revise the reporting requirement in paragraph III.E.(1) of appendix C to 10 CFR part 30 from 20 to 90 days, that at any time the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the licensee will notify the Commission in writing. The 20-day reporting requirement was based on bond ratings, which would be removed as a result

of the proposed rule, and the 90-day requirement conforms to existing reporting requirements in Appendices A and D to 10 CFR part 30.

6) Revise the reporting requirement in paragraph III.E.(1) of appendix E to 10 CFR part 30 from 20 to 90 days, that at any time the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the licensee will notify the Commission in writing. The 20-day reporting requirement was based on bond ratings, which would be removed as a result of the proposed rule, and the 90-day requirement conforms to existing reporting requirements in Appendices A and D to 10 CFR part 30.

#### **IV. Specific Requests for Comments**

The NRC is seeking advice and recommendations from the public on this proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

1) Would this proposed rule present additional risk to the public regarding reasonable assurance that NRC licensees have adequate funding to decommission their facilities? If yes, please explain.

2) Does the draft guidance effectively communicate the necessary information to be submitted to the NRC that will enable the NRC to effectively determine a licensee's creditworthiness?

3) Does the draft regulatory analysis capture all of the NRC and licensee costs required by this proposed rule?

4) One commenter on the ANPR argues that section 939A of the Dodd-Frank Act is focused on “issuer” credit ratings of specific financial obligations, such as long- and short-term bonds, rather than “issuer” credit ratings or corporate family ratings, and that the statute does not preclude the use of “issuer” or corporate family credit ratings in federal regulations. Should the NRC interpret the statute and implementing regulations as making this distinction? Does the statute permit NRC to use “issuer” or corporate family credit ratings in Part 30? If so, should the NRC do so?

Commenters are encouraged to provide specific suggestions and the basis for those suggestions.

## **V. Discussion of Proposed Amendments by Section**

The following paragraphs describe the specific changes proposed by this rulemaking.

### **Section 30.35 Financial assurance and recordkeeping for decommissioning.**

The NRC is proposing to revise the fourth sentence of paragraph (f)(2) introductory text to reference appendix C or D to 10 CFR part 30, and remove the sentence concerning commercial companies that do not issue bonds.

### **Appendix A to 10 CFR Part 30 - Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning.**

The NRC is proposing to amend appendix A to 10 CFR part 30 by revising paragraphs II.A.2(i) and B by removing the bond rating criteria and replacing it with a new creditworthiness requirement.

**Appendix C to 10 CFR Part 30 - Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning.**

The NRC is proposing to amend appendix C to 10 CFR part 30 by revising paragraphs II.A.3 and B.2 and III.E to replace the bond rating criteria with a new creditworthiness requirement. In addition, the NRC is proposing to further revise paragraph III.E to change the written notification requirement from 20 days to 90 days and to make conforming changes.

**Appendix D to 10 CFR Part 30 - Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have No Outstanding Rated Bonds.**

The NRC is proposing to revise the title of appendix D to 10 CFR part 30 to read “Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies.” The title change removes the term, “That Have no Outstanding Rated Bonds” and provides for alternative criteria to appendix C for commercial companies.

**Appendix E to 10 CFR Part 30 - Criteria Relating to Use of Financial Tests and Self-Guarantee For Providing Reasonable Assurance of Funds For Decommissioning by Nonprofit Colleges, Universities, and Hospitals.**

The NRC is proposing to reorder and revise paragraphs II.A.(1) and (2) and II.B.(1) and (2), and revise paragraphs II.C.(1) and III.E to replace the bond rating criteria with a new creditworthiness requirement. In addition, the NRC is proposing to further revise paragraph III.E to change the written notification requirement from 20 days to 90 days and to make conforming changes.

**Section 40.36 Financial assurance and recordkeeping for decommissioning.**

The NRC is proposing to revise the fourth sentence of paragraph (e)(2) introductory text to reference appendix C or D to 10 CFR part 30, and remove the sentence concerning commercial companies that do not issue bonds.

**Section 50.75 Reporting and recordkeeping for decommissioning.**

The NRC is proposing to revise the first sentence of paragraph (e)(1)(iii)(C) to reference appendix C or D to 10 CFR part 30, and remove from the paragraph the sentence concerning commercial companies that do not issue bonds.

**Section 70.25 Financial assurance and recordkeeping for decommissioning.**

The NRC is proposing to revise the fourth sentence of paragraph (f)(2) introductory text to reference appendix C or D to 10 CFR part 30.

**Section 72.30 Financial assurance and recordkeeping for decommissioning.**



The NRC is proposing to revise the fourth sentence of paragraph (e)(2) introductory text to reference appendix C or D to 10 CFR part 30, and remove the sentence concerning commercial companies that do not issue bonds.

## **VI. Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would not affect any “small entities” as defined by the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

## **VII. Regulatory Analysis**

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The conclusion from the analysis is that this proposed rule and associated guidance would result in a cost to the industry (NRC-licensees) and the NRC of \$1,150,000 using a 7-percent discount rate and \$1,340,000 using a 3-percent discount rate. Though the regulatory analysis indicates the proposed rule is not cost-beneficial, the NRC plans to proceed with the proposed rule because it is required by statute. The changes in the proposed rule were chosen as the most cost-effective method for complying with the statute. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available in ADAMS.

## **VIII. Backfitting and Issue Finality**

The NRC has not prepared a backfit analysis for this proposed rule because the proposed requirements are mandated by Congress and, therefore, exempt from the NRC's provisions in §§ 50.109, 70.76, 72.62, 76.76, and issue finality regulations in 10 CFR part 52.

## **IX. Cumulative Effects of Regulation**

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Public involvement has included public meetings and opportunity to respond to NRC's Advance Notice of Proposed Rulemaking.

The NRC held a public meeting on October 30, 2019, where the NRC presented an analysis of the Dodd-Frank Act and its impact on the NRC regulations. The NRC's initial rulemaking approach would have removed the provisions in appendices A, C, and E to 10 CFR part 30 that relied on bond/credit rating and instead relied exclusively on existing financial ratio metrics. Industry participants shared a view that the NRC's initial rulemaking approach would have a substantial negative impact on the availability of parent company guarantees and self-guarantees (Summary of Public Meeting to Discuss the Alternatives to the Use of Credit Ratings Proposed Rule, October 30,

2019)<sup>7</sup>. Participants recommended that the NRC examine approaches taken by other Federal agencies for implementing the Dodd-Frank Act requirements, which could help identify alternative approaches for assessing a licensee's creditworthiness for purposes of determining a licensee's ability to rely on a guarantee mechanism for decommissioning. In evaluating potential approaches, the NRC determined that it would be beneficial to solicit additional stakeholders' views on the approaches when developing this proposed rule.

The NRC published an ANPR in the *Federal Register* on December 21, 2020 (85 FR 82950). The NRC held a second public meeting on February 8, 2021, to help facilitate comments for the ANPR. The ANPR identified alternative approaches for assessing a licensee's creditworthiness and requested comment on the alternative approaches.

Another opportunity for public comment is provided to the public at this proposed rule stage. The NRC is issuing draft implementing guidance for comment with this proposed rule to support more informed external stakeholder feedback. Further, the NRC will conduct another public meeting during the comment period for this proposed rule.

The effective date of the final rule would be 60-days from publication. Licensees or applicants seeking to initiate use of a guarantee mechanism after the effective date would submit information that demonstrates creditworthiness consistent with the final rule. Licensees currently using a guarantee mechanism would submit information that demonstrates creditworthiness consistent with the final rule when each licensee submits

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<sup>7</sup> This document is one of the documents available as part the package identified as "Alternatives to the Use of Credit Ratings October 30, 2019, Public Meeting, dated October 30, 2019" in the "Availability of Documents" section of this notice.

its annual documentation required to maintain its eligibility to use a guarantee mechanism.

The NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, does this proposed rule's effective date provide sufficient time to implement the proposed requirements, including changes to programs and procedures?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests inspection findings of a generic nature) influence the implementation of this proposed rule's requirements?

4. Are there unintended consequences? Does this proposed rule create conditions that would be contrary to its purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the draft regulatory analysis that supports this proposed rule.

## **X. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998

(63 FR 31885). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

## **XI. Environmental Assessment and Final Finding of No Significant Environmental Impact**

The proposed action is the amendment of the NRC regulations, appendices A, C, D, and E to 10 CFR part 30, which concern the NRC's criteria relating to the use of financial tests and self- and parent-company guarantees for providing reasonable assurance of funds for decommissioning. In accordance with the Dodd-Frank Act, the NRC is proposing to amend these appendices to remove the requirements that rely on bond ratings and rely instead on newly established criteria for creditworthiness.

The newly established criteria for creditworthiness would not lead to any increase in the effect on the environment of decommissioning activities.

Therefore, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, as a result, an environmental impact statement is not required. No other agencies or persons were contacted in making this determination. The NRC is not aware of any other documents related to the environmental impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

## **XII. Paperwork Reduction Act Statement**

This proposed rule contains a new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection(s).

*Type of submission:* Revision

*The title of the information collection:* Alternatives to the Use of Credit Ratings

*How often the collection is required or requested:* Annually

*Who will be required or asked to respond:* Applicants and licensees who relied on bond ratings of their financial instrument for financial assurance will now have to submit information to demonstrate that an alternative financial test is met.

*An estimate of the number of annual responses:*

Part 30: 6

Part 40: 3

Part 50: 5

Part 70: 7

*The estimated number of annual respondents:*

Part 30: 6

Part 40: 3

Part 50: 5

Part 70: 7

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:*

Part 30: 646

Part 40: 323

Part 50: 538

Part 70: 754

*Abstract:*

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collection(s) contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden of the proposed information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the Office of Management and Budget (OMB) clearance package and proposed rule are available in ADAMS under Accession No. ML21306A357 or can be obtained free of charge by contacting the NRC's Public Document Room reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.resource@nrc.gov](mailto:PDR.resource@nrc.gov). You may obtain information and comment submissions related to the OMB clearance package by searching on <https://www.regulations.gov> under Docket ID NRC-2017-0021.

You may submit comments on any aspect of these proposed information collection(s), including suggestions for reducing the burden and on the above issues, by the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-20XX-XXXX.
- **Mail comments to:** FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-XXXX, 3150-XXXX, 3150-XXXX, 3150-XXXX), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17<sup>th</sup> Street, NW, Washington, DC 20503; email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Submit comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

#### Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

## **XII. Compatibility of Agreement State Regulations**

Under the “Agreement State Program Policy Statement” approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those designated as Categories A, B, C, D, NRC, or Health and Safety (H&S). Compatibility Category A are



those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements.

Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and thus, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR. These program elements should not be adopted by the Agreement States.

Compatibility Category H&S are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program. The NRC is not proposing to change the existing compatibility category designations. The compatibility category designations are listed in the following table:

Compatibility Table for the Proposed Rule

Section	Change	Subject	Compatibility	
			Existing	New
30.35(f)(2)	Amend	Methods for financial assurance	D	D
Part 30 Appendix A	Amend	Parent company guarantee	D	D
Part 30 Appendix C	Amend	Self-guarantee with bonds	D	D
Part 30 Appendix D	Amend & Redesignate	Company self-guarantee	D	D
Part 30 Appendix E	Amend & Redesignate	Self-guarantee nonprofits	D	D
40.36(e)(2)	Amend	Methods for financial assurance	D	D
50.75(e)(1)	Amend	Surety as bond or letter of credit	NRC	NRC
70.25(f)(2)	Amend	Methods for financial assurance	D	D
72.30(e)(2)	Amend	Methods for financial assurance	NRC	NRC

The NRC invites comment on the compatibility category designations in this proposed rule and suggests that commenters refer to Handbook 5.9 of Management Directive 5.9, “Adequacy and Compatibility of Program Elements for Agreement State Programs,” for more information. The NRC encourages anyone interested in commenting on the compatibility category designations in any manner to do so during the comment period.

#### **XIV. Availability of Guidance**

The NRC is issuing for comment “Draft Interim Staff Guidance on Removal of Bond Ratings from Parent and Self-Guarantees, Decommissioning Financial Assurance,” to support implementation of the requirements in this proposed rule. The guidance document is available in ADAMS. You may obtain information and comment

submissions related to the draft guidance by searching on <https://www.regulations.gov> under Docket ID NRC-2017-0021.

You may submit comments on the draft regulatory guidance by the methods outlined in the ADDRESSES section of this document.

## **XV. Public Meeting**

The NRC will conduct a public meeting on this proposed rule for the purpose of facilitating the submittal of comments and answering questions from the public on the proposed requirements.

The NRC will announce the location, time, and agenda of the meeting on the NRC's public meeting webpage at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>. A copy of the meeting notice will be posted to docket NRC-2017-0021 on [www.Regulations.gov](http://www.Regulations.gov).

## **XVI. Availability of Documents**

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

<b>DOCUMENT</b>	<b>ADAMS ACCESSION NO. / FEDERAL REGISTER CITATION</b>
Alternatives to the Use of Credit Ratings October 30, 2019, Public Meeting, dated October 30, 2019	ML19276F011 (package)
Advance Notice of Proposed Rulemaking, "Alternatives to the Use of Credit Ratings," dated December 21, 2020	85 FR 82950

Alternatives to the Use of Credit Ratings (Frank-Dodd Act) Advance Notice of Proposed Rulemaking February 8, 2021, Public Meeting, dated February 12, 2021	ML21028A334 (package)
Draft Interim Staff Guidance on Removal of Bond Ratings from Parent and Self-Guarantees, Decommissioning Financial Assurance, dated [Month Day, Year]	ML21306A361
Regulatory Analysis for Proposed Rule: Alternatives to the Use of Credit Ratings, dated [Month Day, Year]	ML21306A356
OMB Clearance Package, dated [Month Day, Year]	ML21306A357 (package)

### **List of Subjects**

#### **10 CFR Part 30**

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

#### **10 CFR Part 40**

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

#### **10 CFR Part 50**

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants

and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

#### **10 CFR Part 70**

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

#### **10 CFR Part 72**

Administrative practice and procedure, Hazardous waste, Indians, Intergovernmental relations, Nuclear energy, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, 50, 70, and 72:

### **PART 30 – RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL**

1. The authority citation for part 30 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy

Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95-601, sec. 10, as amended by Pub. L. 102-486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

2. In § 30.35, revise paragraph (f)(2) introductory text to read as follows:

**§ 30.35 Financial assurance and recordkeeping for decommissioning.**

\* \* \* \*

(f) \* \* \*

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to this part. For commercial companies, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C or D to this part. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to this part. Except for an external sinking fund, a parent company guarantee or a guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial

assurance for decommissioning must contain the following conditions:

\* \* \* \*

3. In appendix A to part 30, revise sections II.A.2(i) and B to read as follows:

**Appendix A to Part 30 - Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning**

\* \* \* \*

II. \* \* \*

A. \* \* \*

2. \* \* \*

(i) Creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary; and

\* \* \* \*

B. The parent company's independent certified public accountant must compare the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the parent company's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the parent company's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test meets the requirements of paragraph A of this section. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which 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.

\* \* \* \* \*

4. In appendix C to part 30, revise paragraphs II.A.3 and B.2 and III.E to read as follows:

**Appendix C to Part 30 - Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning**

\* \* \* \* \*

II. \* \* \*

A. \* \* \*

(3) Creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

B. \* \* \*

(2) The company's independent certified public accountant must compare the data used by the company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the company's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the company's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test meets the requirements of paragraph A of this section. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which 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.



\* \* \* \* \*

III. \* \* \*

E. (1) If, at any time, the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the licensee will notify the Commission in writing within 90 days.

(2) If the licensee no longer has adequate capacity to provide full and timely payment of the amount guaranteed, the licensee no longer meets the requirements of section II.A of this appendix.

\* \* \* \* \*

5. Revise the title of appendix D to part 30 to read as follows:

**Appendix D to Part 30 - Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies**

\* \* \* \* \*

6. In appendix E to part 30, revise sections II.A.(1) and (2), II.B.(1) and (2), II.C.(1), and III.E to read as follows:

**Appendix E to Part 30 - Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals**

\* \* \* \* \*

II. \* \* \*

A. \* \* \*

(1) An unrestricted endowment(s) consisting of assets located in the United States of at least \$50 million, or at least 30 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.

(2) Creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

B. \* \* \*

(1) For applicants or licensees:

(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 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

(2) Creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

C. \* \* \*

(1) The licensee's independent certified public accountant must compare the data used by the licensee in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the licensee's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the licensee's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test

meets the requirements of section II of this appendix. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

\* \* \* \* \*

III. \* \* \*

E. (1) If, at any time, the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the licensee will notify the Commission in writing within 90 days.

(2) If the licensee no longer has adequate capacity to provide full and timely payment of the amount guaranteed, the licensee no longer meets the requirements of section II.A of this appendix.

\* \* \* \* \*

## **PART 40 – DOMESTIC LICENSING OF SOURCE MATERIAL**

7. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95-601, sec. 10, as amended by Pub. L. 102-486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

8. In § 40.36, revise paragraph (e)(2) introductory text to read as follows:

### **§ 40.36 Financial assurance and recordkeeping for decommissioning.**

\* \* \* \* \*

(e) \* \* \*

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30. For commercial companies, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C or D to 10 CFR part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30. Except for an external sinking fund, a parent company guarantee or guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

\* \* \* \*

## **PART 50 – DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES**

9. The authority citation for part 50 continues to read as follows:

**Authority:** Atomic Energy Act secs. 102, 103, 104, 105, 147, 149, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2135, 2167, 2169, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act secs. 201, 202,

206 (42 U.S.C. 5841, 5842, 5846); Nuclear Waste Policy Act sec. 306 (42 U.S.C. 10226); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95-601, sec. 10, as amended by Pub. L. 102-486, sec. 2902 (42 U.S.C. 5851). Section 50.10 also issued under Atomic Energy Act secs. 101, 185 (42 U.S.C. 2131, 2235); National Environmental Protection Act sec. 102 (42 U.S.C. 4332). Sections 50.13, 50.54(d), and 50.103 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under Atomic Energy Act sec. 185 (42 U.S.C. 2235). Appendix Q also issued under National Environmental Protection Act sec. 102 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415 (42 U.S.C. 2239). Section 50.78 also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

10. In § 50.75, revise paragraph (e)(1)(iii)(C) to read as follows:

**§ 50.75 Reporting and recordkeeping for decommissioning planning.**

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) For commercial companies, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C or D to 10 CFR part 30. For non-profit entities, such as colleges, universities, and non-profit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30. A guarantee by the applicant or licensee may not be used in any situation in which the applicant or licensee has a parent company holding majority control of voting stock of the company.

\* \* \* \* \*

## PART 70 – DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act of 1954 secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237). Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

12. In § 70.25, revise paragraph (f)(2) introductory text to read as follows:

### § 70.25 Financial assurance and recordkeeping for decommissioning.

\* \* \* \*

(f) \* \* \*

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30. For commercial companies, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C or D to 10 CFR part 30. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in appendix E to 10 CFR part 30. Except for an external sinking fund, a parent company guarantee or a guarantee by the applicant or

licensee may not be used in combination with any other financial methods used to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

\* \* \* \* \*

## **PART 72 – LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE**

13. The authority citation for part 72 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 223, 234, 274 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2210e, 2232, 2233, 2234, 2236, 2237, 2238, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); National Environmental Policy Act of 1969 (42 U.S.C. 4332); Nuclear Waste Policy Act of 1982, secs. 117(a), 132, 133, 134, 135, 137, 141, 145(g), 148, 218(a) (42 U.S.C. 10137(a), 10152, 10153, 10154, 10155, 10157, 10161, 10165(g), 10168, 10198(a)); 44 U.S.C. 3504 note.

14. In § 72.30, revise paragraph (e)(2) introductory text to read as follows:

### **§ 72.30 Financial assurance and recordkeeping for decommissioning.**

\* \* \* \* \*

(e) \* \* \*

(2) *A surety method, insurance, or other guarantee method.* These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond or letter of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix A to 10 CFR part 30. For commercial companies, a

guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C or D to 10 CFR part 30. Except for an external sinking fund, a parent company guarantee or a guarantee by the applicant or licensee may not be used in combination with other financial methods to satisfy the requirements of this section. A guarantee by the applicant or licensee may not be used in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

\* \* \* \* \*

Dated: Month XX, 2022.

For the Nuclear Regulatory Commission.

Brooke P. Clark,  
Secretary of the Commission.