paragraph (d)(2) and by revising paragraph (a) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale," will be posted in a prominent place in the County Office. If a program applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. The second advertisement will contain a paragraph that indicates that if no party purchases the property, FmHA will consider leasing the property with or without an option to purchase to any party that would be able to meet the eligibility and priority criteria established to purchase inventory farm property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale or lease by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations as defined in § 1955.103 of this subpart shall be responsible for notifying those parties listed in § 1955.66 (d)(2) of subpart B of this part.

* * * * *

Dated: October 26, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–31077 Filed 12–28–93; 8:45 am]

BILLING CODE 3410–07–U

NUCLEAR REGULATORY COMMISSION

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

RIN 3150–AE16

Self-Guarantee as an Additional Financial Assurance Mechanism

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations for decommissioning licensed facilities to allow certain non-electric utility licensees to use self-guarantee as a means of financial assurance. The rule reduces the cost burden of financial assurance while providing NRC with sufficient assurance that decommissioning costs will be funded. This rule grants a petition for rulemaking (PRM–30–59) from General Electric Company and Westinghouse Electric Corporation and completes action on the petition.

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492–3734.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1993 (58 FR 3515), the NRC published a notice of proposed rulemaking that would allow self-guarantee as an additional mechanism for complying with the regulations on financial assurance for decommissioning. This action was in response to a petition for rulemaking (PRM–30–59) from the General Electric Company (GE) and the Westinghouse Electric Corporation (Westinghouse). The notice of receipt of the petition was published on September 25, 1991 (56 FR 48445). The petitioners requested that the NRC amend its decommissioning regulations contained in 10 CFR parts 30, 40, 50, 70, and 72 to provide a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial standards and related reporting and oversight requirements. The petitioners proposed that electric utility reactor licensees under 10 CFR part 50 not be affected by the proposals in the petition.

Under the original decommissioning regulations (53 FR 24018; June 27, 1988), licensees were permitted to provide financial assurance for decommissioning funding through prepayment, insurance, surety bond, letter of credit, or parent company guarantee. Electric utilities were also allowed to establish an external sinking fund. The proposed rule sought public comments on amendments to parts 30, 40, 50, 70, and 72 to allow self-guarantee as an additional method of complying with the decommissioning requirements in those parts.

The objective of this rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The regulatory analysis developed for this rule estimates that the annual industry cost savings would be approximately $730,000 if all licensees meeting the criteria use the self-guarantee. This estimate is based on rather conservative assumptions (i.e., $750,000 total decommissioning cost per license); the actual cost savings may be considerably greater.

The cost savings would result from the elimination of the cost of third party financial assurance for licensees qualifying to use the self-guarantee. Annual fees for letters of credit, surety bonds, and other forms of third party financial assurance typically are approximately 1.5 percent of the amount of financial assurance provided.

A. Proposed Criteria

The proposed criteria for corporate self-guarantee included these financial criteria:

(1) Tangible net worth of at least $1 billion;

(2) Tangible net worth at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(3) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used); for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(4) A current bond rating of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

Procedural requirements proposed were:

(1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(2) The company shall provide the Commission with copies of all reports filed with the Securities and Exchange

Commission under section 13 of the Securities Exchange Act of 1934;

(3) The company's independent certified public accountant must compare the data used by the company in the financial test with the company's independently audited yearend financial statements;

(4) The company must repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(5) The company must notify NRC within 90 days of any matters that may come to the attention of the auditor that may 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.

The self-guarantee would be available only for an applicant or licensee having no parent company holding majority control of its voting stock.

B. Alternative Criteria

Because a majority of commenters on the notice of receipt of the petition questioned the need for the financial criteria to be so stringent, the Commission offered an alternative set of criteria to that of the petition as contained in the proposed rule. The alternative was the same financial criteria presented in the proposed rule, without the $1 billion net worth requirement.

A company's tangible net worth is an important factor in determining its bond rating. The rating itself, combined with the other criteria, may be a sufficient indicator of financial stability. Because all firms qualifying would need an A or better bond rating, this alternative may not be riskier in terms of financial assurance than the proposed rule. The regulatory analysis examined the effects on availability of the self-guarantee to licensees of deleting the $1 billion tangible net worth requirement from the financial criteria in the proposed rule, all other criteria remaining constant. The conclusion was that this alternative, if adopted, would allow an additional 7 firms to use the proposed self-guarantee. (Approximately 20 firms would qualify with the $1 billion criterion included.) The additional availability would save industry an estimated $130,000 annually and, since all firms would need an A or better bond rating, would maintain a high level of assurance. An A or better bond rating indicates that a company has substantial net worth. A company which merits an A or better bond rating has passed a stringent review by the independent ratings agencies of its ability to meet its financial obligations. A report by Moody's gives the default rate associated with companies whose bonds are rated A or above in 1 of the 3 years prior to default as only 0.13 percent annually.[1] In addition, all companies, irrespective of their overall size, must demonstrate that they possess tangible net worth of at least 10 times the current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing license and as parent grantor.

The alternate criteria, as well as the criteria in the proposed rule, do not apply to electric utilities. Electric utilities would be excluded from using self-guarantee under either set of criteria. Public comments were requested on this alternative financial criteria—the criteria in the proposed rule without the $1 billion tangible net worth requirement.

Minor Wording Changes

The proposed rule deleted the phrase "should the licensee default" from §§ 30.35(f)(2), 40.36(e)(2), 50.75(e)(1)(iii), 70.25(f)(2), and 72.30(c)(2) to accommodate self-guarantee.

Summary of Public Comments

The Commission received fourteen comment letters in response to the publication of the notice of proposed rulemaking. All but one of the letters supported a revision of the Commission's regulations to allow self-guarantee. The following is a summary of significant public comments and the Commission's response. A more detailed analysis of public comments has been prepared. This analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC.

Opposition to Self-Guarantee

One commenter opposed the proposed self-guarantee mechanism on the grounds that current capabilities of electronically transferring funds make self-guarantee meaningless even if a firm has initially demonstrated that it has the required assets. The commenter argued that recent failures of pensions and health benefits assured by self-guarantee indicate that self-guarantees cannot be trusted.

Response: NRC does not agree that a well-designed self-guarantee mechanism cannot be trusted to provide financial assurance. Self-guarantees have been used in a number of applications without incurring the problems pointed out by the commenter. The Environmental Protection Agency currently allows self-guarantee as a means of financial assurance for cleanup of hazardous waste treatment, storage, and disposal facilities. Because the qualification to use self-guarantee is based in large part on a specified bond rating, the NRC believes that it is tying the self-guarantee to an accurate measure of the financial strength of the self-guarantor. By requiring annual recertification, and submission of SEC reports, the NRC believes that potential problem situations will be identified and addressed in a timely manner.

Use of Self-Guarantee by Electric Power Utility Licensees

One commenter indicated that electric utilities licensed under Part 50, which are prohibited from using the proposed self-guarantee, should be allowed to use that option. The commenter, pointing to the Regulatory Analysis, argued that NRC's stated reasons do not create a strong technical basis for not allowing nuclear power licensees to use self-guarantee.

Response: The objective of the rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The Commission already allows electric utilities to accumulate decommissioning funds in an external sinking fund. Unlike other licensees who are subject to financial assurance for decommissioning, electric utilities do not have to provide the full amount of required financial assurance "up front" but can instead build up their sinking funds over time. Thus, electric utilities already are permitted a cost-reducing financial assurance mechanism.

Requirement That 90 Percent of Total Assets Be in the U.S.

One commenter suggested dropping what is described as the requirement that self-guarantors demonstrate that 90 percent of their total assets are located in the United States, because otherwise some large, multinational companies will be excluded from using the self-guarantee simply because a majority of their assets may be outside the U.S.

Response: The proposed self-guarantee financial test included a provision requiring the self-guarantor to show that it had assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee and as parent-guarantor. A licensee using self-

[1] Corporate Bond Defaults and Default Rates, Moody's Special Report, January, 1991, p. 32.

guarantee does not have to show that 90 percent of its assets are in the United States. The licensee could show that it has assets in the U.S. amounting to at least 10 times decommissioning costs. A large, multinational corporation should readily be able to demonstrate that it has assets in the United States amounting to at least 10 times the decommissioning responsibilities.

Net Worth Criterion

Several commenters favored the self guarantee concept but argued for less stringent financial criteria.

Response: The Commission has considered various alternative financial criteria. It has decided to drop the $1 billion tangible net worth criterion. However, tangible net worth will be an important factor in the requirements for self-guarantee for several reasons:

(1) The financial criteria in the final rule contain the requirement that to qualify to use self-guarantee, a licensee must have tangible net worth at least 10 times decommissioning costs, and

(2) A company must have at least an A bond rating. The A or better bond rating indicates that a company has substantial net worth. Net worth is an important factor in comprising a bond rating.

Bond ratings are reviewed often, and changed in response to changes in the issuer's financial condition. A bond rating of A or better assures that the financial strength of a licensee offering a self-guarantee has been independently reviewed and affirmed. It provides an excellent guide to the ability of a company to meet its obligations. According to Moodys, default rates associated with companies whose bonds are rated A or above in 1 of the 3 years prior to default are 0.13 percent annually.[2]

The criteria for parent guarantee were given consideration as financial criteria for self-guarantee in the final rule. Under current NRC decommissioning regulations, the parent company of a licensee that meets the financial criteria in 10 CFR part 30, appendix A may guarantee that funds will be available to decommission the facility of its subsidiary licensee. The financial criteria for the NRC parent guarantee include a lower bond rating (BBB or Baa) requirement and a lower net worth times decommissioning cost requirement (6, rather than 10 times decommissioning costs) than the criteria in this rule.

The Commission has decided against using the criteria for parent guarantee in the rule. This is the first instance in which self-guarantee is being allowed under the Commission's decommissioning regulations. The Commission prefers that the more conservative criteria be used. At some future time, when the Commission has gained some experience with self-guarantee, it may consider an appropriate revision of the financial criteria.

Use of Self-Guarantee by Non-Profit Entities

Several commenters suggested that NRC should amend the proposed rule to allow universities and other non-profit entities to use self-guarantee. They argued that many non-profit entities have been in existence and been financially stable for long periods of time. These commenters proposed several alternative criteria, including size of endowments, that they said could be used to assess the financial strength of non-profit entities.

Response: NRC plans to begin shortly a study of extending the availability of cost-saving financial assurance alternatives to non-profit entities other than universities. A similar study for universities will be deferred until after planned rulemaking on fee recovery. However, including these non-profit entities in the self-guarantee program established by this rulemaking presents certain problems. The analysis which was prepared to evaluate the financial criteria in the proposed rule did not include non-profit entities. In order to extend the use of self-guarantees to non-profit entities, new criteria would have to be developed to assess the financial strength of the non-profit licensees. Development of financial criteria to assess the qualifications of a non-profit entity to provide a self-guarantee is likely to require detailed consideration of the different financial accounting methods used by medical institutions. The financial accounting and reporting of non-profit entities are unique and substantially different from the accounting and reporting of for-profit entities.

The financial reporting practices of public and private hospitals generally follow standards for these institutions established by the American Institute of Certified Public Accountants. Development of financial criteria for a self-guarantee for hospitals also would involve analysis of the various accounting funds utilized and establishment of adequate criteria.

NRC's review of decommissioning financial assurance submissions identified third-party financial mechanisms, such as surety bonds and letters of credit, as well as escrows and trusts, as the financial mechanisms used most often by private non-profit entities. In a few instances, private non-profit entities have sought to use parent company guarantees. Publicly owned non-profit entities, particularly public universities, have sought to use statements of intent (a financial assurance mechanism available only to government licensees). To the extent that non-profit entities have been able to make use of guarantees or statements of intent, cost saving financial assurance alternatives already exist for those licensees.

The Commission anticipates that in the future it will carry out a study of potential self-guarantee criteria for non-profit licensees other than universities. Because of the time required for such a study however, it cannot include non-profit entities in the self-guarantee program established by this rulemaking. The NRC will review the situation relative to universities after its planned rulemaking on fee recovery.

Requiring Additional Written Commitment by Self-Guarantors

One commenter recommended adding a requirement that self-guarantors execute a binding commitment to make the necessary funds available for decommissioning. Under this recommendation, in addition to submitting proof of the required financial strength, the self-guarantor would also have to submit a written agreement that, upon issuance of an order by the Commission to undertake decommissioning, the licensee will set up a trust fund in favor of the Commission, or obtain other surety accessible to the Commission.

Response: The addition of a written commitment is a useful suggestion. A provision is being included in the self-guarantee requirements calling for the licensee to provide the Commission with a written guarantee (a written commitment by a corporate officer) stating that the licensee will fund and carry out the required decommissioning activities, or, upon issuance of an order by the Commission, it will set up and fund a standby trust with sufficient funds to carry out the required decommissioning activities based on the current cost estimates.

Changes From the Proposed Rule

There are only three changes from the proposed rule. First, the specific $1 billion tangible net worth criterion has been deleted from the financial criteria required for a non-electric utility licensee to use self-guarantee. The

[2] Corporate Bond Defaults and Default Rates, Moody's Special Report, January 1991, p. 32.

financial criteria included in the final rule are:

(1) Tangible net worth at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) 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.

As used by the ratings agencies, an A rating marks a discrete point on the ratings scale, different from A−. An A− or lower rating would not be acceptable.

The second change is the addition of the requirement for the licensee to provide the Commission with a written guarantee.

The third change is that additional language has been added to Appendix B to clarify procedural requirements for notification of the Commission and provision of alternate financial assurance if a licensee no longer meets the requirements for self-guarantee.

Agreement State Compatibility

Section 72.30 is assigned Division 4 compatibility, since regulation of independent storage of spent nuclear fuel and high-level radioactive waste are functions reserved to the NRC pursuant to the Atomic Energy Act.

Sections 30.35, 40.36, and 70.25 are currently considered Division 2 compatibility. The addition of the self-guarantee mechanism for providing the required financial guarantee does not change the division of compatibility. Division 2 compatibility allows the Agreement States flexibility to be more stringent. The agreement States must provide mechanisms in their regulations, but due to the specific State financial regulations, certain mechanisms may not be acceptable in their States. Limiting the mechanisms to a subset of those provided for in the NRC regulations is within the flexibility provided in Division 2 compatibility.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(10)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). These requirements have been approved by the Office of Management and Budget, approval numbers: 3150–0017, –0020, and –0009.

The public reporting burden for this collection of information is estimated to average 19 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, –0020, and –0009), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark W. Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 telephone (301) 492–3734.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The licensees affected by this rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards of the NRC applicable to a small business (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear material, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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 adopting 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: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8 paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.50, 30.51, 30.55, 30.56, and appendix A and B to this part.

* * * * *

3. In § 30.35, the introductory text of paragraph (f)(2) is revised to read as follows:

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(1) * * *

(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, letter of credit, or line 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 of this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of this part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or 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:

* * * * *

4. A new appendix B is added to part 30 to read as follows:

Appendix B to Part 30—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

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 company 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. To pass the financial test, a company must meet all of the following criteria:

(1) Tangible net worth at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) 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.

B. To pass the financial test, a company must meet all of the following additional requirements:

(1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 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.

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

C. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send immediate notice to the Commission of its intent to establish alternate financial assurance as specified in the Commission's regulations within 120 days of such notice.

III. Company Self-Guarantee

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

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

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The licensee will promptly forward to the Commission and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of Section II.A. of this appendix.

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

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

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

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46

also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.8 paragraph (b) is revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and appendix A to this part.

* * * * *

7. In § 40.36 the introductory text of paragraph (e)(2) is revised 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, letter of credit, or line 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or 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

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 - 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

9. In § 50.8 paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in § § 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.71, 50.72, 50.75, 50.80, 50.82, 50.90, 50.91, and appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R to this part.

10. In § 50.75 the introductory text of paragraph (e)(1)(iii) and paragraph (e)(2)(iii) are revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(iii) 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, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the 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: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

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 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

12. In § 70.25, the introductory text of paragraph (f)(2) is revised 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, letter of credit, or line 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A

guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or 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 AND HIGH-LEVEL RADIOACTIVE WASTE

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

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

15. In § 72.30 the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Decommissioning planning including financing and recordkeeping.

* * * * *

(c) * * *

(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, letter of credit, or line 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or 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 at Rockville, MD, this 2d day of December 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–31767 Filed 12–28–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 780

Patent Compensation Board Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final Rulemaking.

SUMMARY: Today's rule amends the Department's Patent Compensation Board regulations to comply with the North American Free Trade Agreement, commonly referred to as "NAFTA," and its implementing legislation. These regulations are amended in response to the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) where the Administration expressed its intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103–159, vol. 1.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Hagarman, Office of the Assistant General Counsel for Intellectual Property (GC–42), U.S. Department of Energy, Washington, DC 20585, (202) 586–3499.

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

The effect of Article 1709(10) of NAFTA is to limit the extent to which a government that is a party to NAFTA may allow the use of a patent without the patent owner's permission, i.e., compulsorily license a patent.

Section 104(b) of the North American Free Trade Agreement Implementation Act (Act), Pub. L. 103–182, provides that appropriate officers of the United States may issue necessary regulations to ensure that a provision of NAFTA, such as Article 1709(10), is fully effective on the date that NAFTA enters into force, subject to the restriction that the effective date of such regulations is no earlier than the date of entry into force. Section 101(b) of the Act authorizes the President to exchange notes with the Government of Canada or Mexico, providing for entry into force, on or after January 1, 1994. On page 14 of the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903), there is an expression of the Administration's intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103–159, vol. 1.

Section 153 of the Atomic Energy Act authorizes the Department of Energy (DOE) to issue compulsory licenses under certain conditions, 42 U.S.C. 2183. The DOE regulations (10 CFR part 780), which implement section 153, set forth the procedures to be followed when compulsorily licensing a patent. The DOE regulations include the requirements of paragraphs (a) and (i)–(l) of Article 1709(10). 10 CFR 780.10 and 780.30. However, all of the requirements of each of paragraphs (b)–(h) of Article 1709(10) are not so included.

Article 1709(10) of NAFTA reads as follows:

Where the law of a Party allows for use of the subject matter of a patent, other than that