

[7590-01-P]

**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.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations for approved financial assurance mechanisms for decommissioning, specifically for parent-company guarantees and self-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 (the Dodd-Frank Act). The Dodd-Frank Act directed agencies to amend their regulations to remove any reference to or requirements rely on credit ratings. Applicants and licensees who are required to provide decommissioning financial assurance may be impacted.

**DATES:** Submit comments by **[INSERT DATE 30 DAYS FROM 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:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0021. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

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

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

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

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

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 R. Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6244; e-mail: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

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**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 Web Site:** Go to <http://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 <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then 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 e-mail to

[pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

## B. Submitting Comments

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 <http://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. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the *Federal Register*. The direct final rule will become effective on **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN**

**THE FEDERAL REGISTER]**. However, if the NRC receives significant adverse comments on this proposed rule by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to these proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

- a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;
- b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or
- c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the *Federal Register*.

### **III. Background**

Congress passed the Dodd-Frank Act to “promote the financial stability of the United States by improving accountability and transparency in the financial system.”<sup>1</sup> In the Dodd-Frank Act, Congress found 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>2</sup> In Section 939A of the Dodd-Frank Act, Congress directed each Federal agency to “review any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.”<sup>3</sup> Section 939A further directed each such agency to “modify any such 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 credit-worthiness 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 has reviewed its regulations for any references to or requirements regarding credit ratings. Appendices

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<sup>1</sup> Public Law 111-203, Preamble.

<sup>2</sup> Public Law 111-203, Sec. 931(5).

<sup>3</sup> Public Law 111-203, Sec. 939A(a)(1)-(2).

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

A, C, and E to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR) 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 licensees and applicants. In accordance with the Dodd-Frank Act, the NRC is proposing to amend these appendices to remove these requirements and rely instead on already existing alternative financial tests that do not contain a credit rating criterion. Other regulations that cite or reference these appendices would also be impacted by the proposed rule, including: § 30.35(f)(2); § 40.36(e)(2); appendix a to 10 CFR Part 40, criterion 9; § 50.75(e)(1)(iii)(C); § 70.25(f)(2); and § 72.30(e)(2).

#### **IV. 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 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

#### **V. Paperwork Reduction Act Statement**

This proposed rule contains new or amended information collection requirements that are 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 (OMB) for review and approval of the information collection requirements.

*Type of submission, new or revision:* Revision

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

*The form number if applicable:* N/A

*How often the collection is required or requested:* One-time

*Who will be required or asked to respond:* Applicants and licensees who are required to provide financial assurance for decommissioning funds.

*An estimate of the number of annual responses:* 16

*The estimated number of annual respondents:* 12

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 324 hours.

*Abstract:*

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 directed agencies to amend their regulations to remove any reference to or requirements of reliance on credit ratings. In accordance with the Dodd-Frank Act, the NRC is amending its credit rating requirements and will rely instead on already existing alternative financial tests that do not contain a credit rating criterion. Applicants and



licensees who relied on bond ratings as their financial instrument for financial assurance of decommissioning funds will now have to submit an alternative financial test.

NRC is seeking public comment on the potential impact of the information collections 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 burden 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 information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed and copied for a fee at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. The OMB clearance package and proposed rule will be available on the NRC's Web site, <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>, for 60 days after the signature date of this document.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above previously stated issues, by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** to the Information Services Branch (T6 A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by e-mail to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV) and to the OMB reviewer at: OMB Office of Information and Regulatory Affairs: OMB clearance numbers (3150-0009, 3150-0017, 3150-0020, and 3150-0132), Attn: Desk Officer for the Nuclear Regulatory Commission,

725 17th Street, NW Washington, DC 20503; e-mail: oira\_submission@omb.eop.gov.  
Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after 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.

### **VI. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the requirements for approved financial assurance mechanisms for decommissioning. This action does not constitute the establishment of a standard that contains generally applicable requirements.

### **VII. Availability of Guidance**

The NRC is issuing interim guidance, "Interim Staff Guidance on Removal of Bond Ratings from Parent and Self-Guarantees, Decommissioning Financial Assurance," for the implementation of the proposed requirements in this rule. The guidance is available in ADAMS under Accession No. ML18345A284. You may obtain information and comment submissions related to the draft guidance by searching on

<http://www.regulations.gov> under Docket ID NRC-2017-0021. You may submit comments on this draft regulatory guidance by the methods outlined in the ADDRESSES section of this document.

Dated at Rockville, Maryland, this \_\_\_\_ day of \_\_\_\_\_, 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,  
Secretary of the Commission.