

POLICY ISSUE
NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Caputo
SUBJECT: SECY-20-0056: Advance Notice of Proposed Rulemaking-Alternatives to the use of Credit Ratings (RIN 3150-AJ92)

Approved XX Disapproved _____ Abstain _____ Not Participating _____

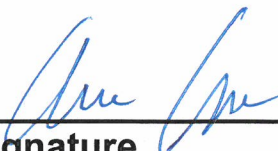
COMMENTS: Below XX Attached XX None _____

I approve the staff's request to publish an advance notice of proposed rulemaking (ANPR) that would solicit public comments to develop a proposed rule on decommissioning financial assurance mechanisms to comply with provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. I agree with the Chairman that because of the complexity of this issue and the potential for substantial adverse, unintended consequences, an ANPR is now the only process that seems both advisable and necessary to ensure consideration of all alternative financial assurance means.

I also approve the *Federal Register* notice and the Chairman's edits, as noted in the attached, which will finally solicit public comments to develop a proposed rule. The NRC has a wealth of technical expertise and years of rulemaking experience. It is my sincere hope that the lessons learned by the staff throughout this process in not adequately communicating with stakeholders before preparing a rule not be repeated in the future.

Entered in STARS

Yes X
No _____



Signature
11/12/2020

Date

AC Edits

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: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations that would alter financial assurance mechanisms approved by the NRC for the decommissioning of nuclear power plants and other nuclear facilities. This action specifically would amend provisions for parent company and self company guarantees that require bond ratings issued by credit rating agencies. This action would implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which directed agencies to amend their regulations to remove any reference to or requirements of reliance on credit ratings. Applicants and licensees who are required to provide decommissioning financial assurance may be affected. The NRC is soliciting public comment on potential approaches for amending the regulations and invites stakeholders and interested persons to participate. The NRC plans to hold a public meeting during the comment period to facilitate stakeholder participation.

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 Commission 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 <https://www.regulations.gov> and search for Docket ID NRC-2017-0021. When preparing and submitting your comments, see “Tips for Submitting Effective Comments” at https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: 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. If you do not receive an automatic e-mail 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, e-mail: 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 <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 e-mail to pdr.resource@nrc.gov.

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 <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 (the Dodd-Frank Act or the Act) to “promote the financial stability of the United States by improving accountability and transparency in the financial system.”¹ In the 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.”² In section 939A of the 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.”³

¹ Public Law 111-203, Preamble.

² Public Law 111-203, Sec. 931(5).

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

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.”⁴

As directed by section 939A of the Dodd-Frank Act, NRC has reviewed its regulations for any references to or requirements of reliance on credit ratings. Appendices A, C, and E to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR) provide methods for licensees and applicants to demonstrate that a self-guarantee or parent company guarantee provides a reasonable assurance of adequate funding for decommissioning. Those appendices provide an option ~~require based in part on~~ specified bond ratings from Moody’s or Standard and Poor’s credit rating agencies ~~to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and non-power reactor licensees and applicants. Absent the use of credit ratings, current NRC financial test criteria located at 10 CFR part 30, appendices A D, and E, for use of parent company guarantees and self-guarantees, rely in part on working capital liability-based test criteria.~~ In accordance with the Dodd-Frank Act, the NRC is considering amending these appendices to remove reliance on credit rating criteria. Other regulations that cite or reference these appendices may also be affected by a proposed rule. The other potentially affected regulations include § 30.35(f)(2); § 40.36(e)(2); 10 CFR part 40, criterion 9 of appendix A ~~to 10 CFR part 40~~; § 50.75(e)(1)(iii)(c); § 70.25(f)(2); and § 72.30(e)(2).

The NRC held a public meeting on October 30, 2019 (ADAMS Accession No. ML19276F107), where the NRC staff presented an analysis of the Dodd-Frank Act and its impact on the NRC regulations. The NRC staff also discussed the alternatives for implementing the requirements of the Dodd-Frank Act, the NRC staff’s recommendation for a proposed rulemaking, and the rulemaking timeline for the proposed rule. The proposed rulemaking would

⁴ Public Law 111-203, Sec. 939A(b).

have removed the provisions in Part 30 appendices A, C, and E providing the option to demonstrate the sufficiency of a guarantee based in part on a credit rating; thus, only the method based in part on financial ratios would have remained. The meeting participants shared a consensus view that the staff's initial rulemaking approach ~~to remove credit rating criteria and instead rely on existing financial test criteria for determining a licensee's credit-worthiness for use of a guarantee mechanism~~ would have a substantial negative impact on the availability of parent company guarantees and self guarantees (Public Meeting Summary, ADAMS Accession No. ML19322A692). 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 credit-worthiness that do not expose the industry to an unnecessary financial burden. In evaluating potential approaches, the NRC determined that it would be beneficial to solicit early stakeholder views on the approaches being considered before starting development of the proposed rule.

III. Regulatory Objectives

Under current regulations, 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.⁵ Such a demonstration may be made by prepayment of funds, payment of funds into an external sinking fund, use of a surety method, insurance, or other guarantee method including a letter of credit, a parent company guarantee, or a self guarantee.⁶ The only financial assurance mechanisms in NRC regulations that rely, in part, on credit ratings are parent company guarantees and self guarantees. The NRC is

⁵ 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."

⁶ 10 CFR 30.35(f), 40.36(e), 50.75(e), 70.25(f), and 72.30(e).

considering amendments to current regulations that would remove reliance on and reference to credit rating criteria for these mechanisms.

IV. Specific Considerations

The NRC is seeking stakeholders' input on the following specific areas related to its regulations covering parent company guarantees and self-~~guarantees~~ that require partially based on bond ratings issued by credit rating agencies. The NRC asks that commenters provide the bases for their comments (*i.e.*, the underlying rationale for the position stated in the comment) to enable the agency to have a complete understanding of the comments.

Absent the use of credit ratings, ~~current~~ alternate NRC financial test criteria located at 10 CFR part 30, appendices A, D, and E, ~~for use of parent company guarantees and self guarantees,~~ rely in part on working capital liability-based test criteria which certain licensees, including potentially credit-worthy power reactor licensees, may have difficulty meeting. The NRC is considering additional alternative approaches for determining the ability of a company or its parent to guarantee decommissioning funds based on an evaluation of licensee's creditworthiness. The NRC is seeking input from the public on this matter to inform the development of a proposed rule. The NRC is particularly interested in comments and supporting rationale on the following:

Question 1) Are there licensees that meet the current credit rating-based financial test for a guarantee that would ~~not longer~~ be able to meet the alternate working capital and liability-based financial tests currently presented in 10 CFR part 30 appendices? Would such licensees be able to meet the decommissioning funding assurance requirements using one or more other funding assurance methods allowed for by regulation (*i.e.*, prepayment, surety bond, insurance, external sinking fund, ~~etc.~~)?

Question 2) Modified or new financial metrics for assessing creditworthiness: Please provide your views on financial statement metrics or other quantifiable financial characteristics that could be reported by licensees to assess a licensee's creditworthiness and hence, its ability to use a parent company guarantee or self guarantee mechanism for providing reasonable assurance that decommissioning funding will be available ~~for the decommissioning process~~ (see § 50.75, "Reporting and recordkeeping for decommissioning planning"). Suggested metrics should differ from the current working capital and liability-based metrics currently presented in 10 CFR part 30 appendices cited in the Background to this notice and include pass or fail criteria limits.

Question 3) Independent agency determination: Please provide your views on the NRC performing an independent, risk-informed, performance-based determination of a licensee's credit-worthiness. The NRC would seek to determine the licensee's risk of default based on its review of financial data while providing some degree of flexibility on the part of licensees. This could include evaluation of financial data available from the licensee, open-sources, and from third parties, including credit ratings.

Question 4) Should the NRC consider other alternative financial test criteria not presented above to assess an applicant's or licensee's use of a guarantee to provide reasonable assurance of funds for decommissioning? If yes, please provide details of the alternative criteria and the financial data needed for its use.

Commenters are encouraged to provide specific suggestions and supporting basis for their suggestions. Comments received in response to this request will be considered in the development of any subsequent proposed rule. The NRC will provide another opportunity for public comment for any subsequent proposed rule developed before it is finalized.

V. Public Meeting

During the comment period, the NRC will conduct a public meeting to discuss the rulemaking and answer questions. The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting at: <https://www.nrc.gov/public-involve/public-meetings/index.cfm>. In addition, the meeting information will be posted on <https://www.regulations.gov/> under Docket ID NRC-2017-0021.

VI. 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.

VII. Rulemaking Process

The NRC does not intend to provide a detailed response to individual comments submitted on this advance notice of proposed rulemaking; however, the NRC will evaluate all public input in the development of a proposed rule on financial assurance mechanisms approved by NRC for the decommissioning of nuclear power plants and other nuclear facilities. If NRC determines a need for supporting guidance, NRC will also issue the draft guidance for public comment.

Dated at Rockville, Maryland, this xxth day of Xxxxx, 202X.

For the Nuclear Regulatory Commission.

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