



RULEMAKING ISSUE

(Affirmation)

February 9, 2024

FOR: The Commissioners SECY-24-0014

FROM: Raymond V. Furstenau
Acting Executive Director for Operations

SUBJECT: FINAL RULE: ALTERNATIVES TO THE USE OF CREDIT RATINGS
(RIN 3150-AJ92; NRC-2017-0021)

PURPOSE:

The purpose of this paper is to obtain Commission approval to publish in the *Federal Register* the enclosed draft final rule (enclosure 1). This rule relates to U.S. Nuclear Regulatory Commission (NRC) regulations for approved financial assurance mechanisms for decommissioning for applicants and licensees that use parent-company and self-guarantees. If approved, the final rule will implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("the Dodd-Frank Act" or "Act"). This paper addresses no new commitments.

BACKGROUND:

In 2010, Congress passed the Dodd-Frank Act to "promote the financial stability of the United States by improving accountability and transparency in the financial system." In section 931(5) of 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." 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 [creditworthiness] of a

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security or money market instrument and any references to or requirements in such regulations regarding credit ratings.” 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 [creditworthiness] as each respective agency shall determine as appropriate for such regulations.”

As directed by the Dodd-Frank Act, the NRC staff reviewed the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) for any references to or requirements regarding credit ratings. In Part 30, “Rules of General Applicability to Domestic Licensing of Byproduct Material,” Appendix A, “Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning”; Appendix C, “Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning”; and Appendix E, “Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals,” require specified bond ratings from Moody’s or Standard and Poor’s to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and nonpower reactor applicants and licensees. In accordance with the Dodd-Frank Act, Appendices A, C, and E are being revised to remove these requirements and to rely instead on newly established standards of creditworthiness. The final rule also makes conforming changes to other regulations that cite or reference these appendices, including 10 CFR 30.35(f)(2), 10 CFR 40.36(e)(2), 10 CFR 50.75(e)(1)(iii)(c), 10 CFR 70.25(f)(2), and 10 CFR 72.30(e)(2).

DISCUSSION:

The objective of the NRC’s financial assurance requirements is to ensure that a suitable mechanism for financing the decommissioning of licensed facilities is in place in the event that a licensee is unable or unwilling to complete decommissioning. The amount of financial assurance obtained is often based on a site-specific cost estimate and must be increased if the cost estimate increases. Applicants and licensees must demonstrate reasonable assurance that funds will be available when needed for decommissioning to obtain and maintain a reactor license and certain materials licenses. Under the current regulations, a number of different types of financial instruments may be used to demonstrate financial assurance, including prepayment of funds; 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. The final rule revises NRC regulations that address parent-company and self-guarantees, as only these financial assurance mechanisms rely on credit ratings.

Financial tests exist in Appendices A, C, D, and E for each entity (a company; a parent company; or a nonprofit college, university, or hospital) from which the NRC accepts a guarantee to provide decommissioning funding assurance. The final rule would amend the regulations for financial tests that previously relied on credit ratings. Under the revised regulations, licensees or applicants seeking approval using creditworthiness criteria would submit information to demonstrate compliance with the new creditworthiness criterion, and the NRC would review the submission and determine each licensee’s creditworthiness. The NRC would conduct an independent review to evaluate the licensee’s risk of default based on a review of financial data. This review could include evaluation of financial data available from the licensee or applicant, open sources, and third parties, and may include credit ratings. The final rule would make conforming changes to the reporting requirement in paragraph III.E.(1) of Appendices C and E to increase the timeframe for reporting from 20 to 90 days. The current 20-day reporting requirement was based on bond ratings, which would be removed as a result

of the final rule. The new 90-day requirement would conform to existing reporting requirements in Appendices A and 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."¹

To allow impacted entities sufficient time to implement the provisions of the final rule, the staff has established a compliance date of 1 year after the effective date to allow all impacted entities a complete 1-year cycle to prepare their submissions to demonstrate creditworthiness under the new criteria.

Overview of Changes

The final rule would amend the NRC regulations as follows:

- Appendices A, C, and E would be revised to remove bond rating requirements and would replace them with a new criterion: creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.
- The title of Appendix D would be revised to read "Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies," and would include other revisions to provide an alternative criterion to that of Appendix C for commercial companies.
- The reporting requirement in Appendices C and E would be revised from 20 to 90 days, and would continue to read that 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.

Regulatory Analysis

The staff prepared a regulatory analysis (enclosure 2) on anticipated costs and benefits associated with implementing the draft final rule, including the development of, or modifications to, NRC guidance. The analysis determines that issuing the final rule and associated guidance will result in a total net overall cost of \$823,000. Of that amount, the NRC is expected to incur a cost of \$223,000, and licensees will incur a cost of \$600,000, using a 7-percent discount rate. Because the changes to the regulations are Compatibility D or reserved to the NRC, the Agreement States are not required to implement these changes to maintain adequacy and compatibility and will not incur any costs. The regulatory analysis indicates the draft final rule is not cost-beneficial; however, after consideration of all alternatives (see Section 3.3, "Other Alternatives Considered"), to comply with the statute in a manner that will impose the least impact on licensees, the staff recommends that the Commission proceed with the final rule.

Stakeholder Engagement

The staff engaged with external stakeholders throughout the development of the rule and related regulatory activities. The staff held a public meeting on October 30, 2019 (Agencywide

¹ These existing tests in Appendix A and D, which do not rely on bond ratings, are not being changed by this rule.

Documents Access and Management System Accession No. ML19276F107), during which the staff presented an analysis of the Dodd-Frank Act, its impact on NRC regulations, and an initial rulemaking approach. In that initial approach, the NRC would have removed the provisions in 10 CFR Part 30, Appendices A, C, and E that relied on bond or credit ratings. The existing financial ratio metrics would have been relied on exclusively for parent-company guarantees and self-guarantees. At that meeting, industry participants stated that the staff's initial rulemaking approach would have a substantial negative impact on the availability of parent-company guarantees and self-guarantees (a summary of the public meeting is available at ML19322A692). Participants suggested that the NRC examine approaches taken by other federal agencies for implementing the Dodd-Frank Act requirements to identify alternative approaches for assessing a licensee's creditworthiness to determine the ability to rely on a guarantee mechanism for decommissioning. After evaluating alternative approaches, the staff determined that it would be beneficial to solicit additional stakeholder views on the approaches when developing the proposed rule, and it issued an advance notice of proposed rulemaking (ANPR) that was published in the *Federal Register* on December 21, 2020 (85 FR 82950).

In the ANPR, the NRC identified and requested comment on alternative approaches for assessing a licensee's creditworthiness. The NRC held a second public meeting on February 8, 2021 (ML21028A334), to present background information on section 939A of the Dodd-Frank Act, its impact on NRC regulations, and the staff's proposed approach for compliance. The NRC received six comment submissions on the ANPR (Docket NRC-2017-0021). Four comment submissions supported the use of modified or new financial metrics for standards of creditworthiness. One comment was partially in scope and not in support of the staff's proposed approach as described in the ANPR, and one comment was out of scope.

The NRC published a proposed rule in the *Federal Register* on January 3, 2023, (88 FR 25). The staff held a third public meeting on January 25, 2023 (ML23009B395), to facilitate comments on the proposed rule the staff provided background information on the NRC's decommissioning funding assurance requirements and the use of credit ratings. The staff discussed the proposed approach for implementing the requirements of the Dodd-Frank Act, the rulemaking timeline, and how to submit comments.

The public comment period for the proposed rule closed on March 20, 2023. The NRC received two comment submissions, one from the Nuclear Energy Institute (ML23080A186) and one from the Breakthrough Institute (ML23080A187). The staff identified 32 unique comments in the 2 submissions; however, staff made no changes to the rule language as a result of the public comments.

Implementing Guidance

The staff is issuing "Interim Staff Guidance on Creditworthiness Criteria for Parent and Self-Guarantees, Decommissioning Financial Assurance" (ML23244A202) to provide to the staff and applicants and licensees guidance related to the requirements in the final rule. Based on public comments, staff revised the draft guidance to specify what information is sufficient to meet the new creditworthiness standard. Specifically, the final guidance provides licensees with the methods available to licensees to demonstrate compliance with the financial tests, which will improve understanding of the resources necessary to submit the information.

Backfitting and Issue Finality Considerations

The NRC has not prepared a backfit analysis for the final rule because the amendments to the NRC's regulations in this final rule are required by the Dodd-Frank Act and therefore this final rule does not constitute backfitting under 10 CFR Parts 50, 70, and 72 or affect the issue finality of a 10 CFR Part 52 approval. In developing this determination, the staff followed the guidance in Management Directive 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," dated September 20, 2019 (ML18093B087).

RECOMMENDATIONS:

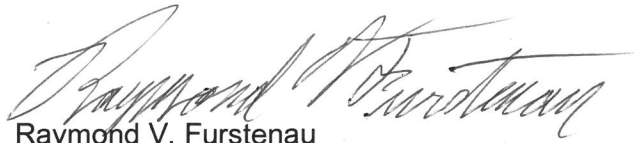
The staff recommends that the Commission approve publication of the enclosed draft final rule in the *Federal Register* and certify that this rule, if adopted, will not have a significant impact on a substantial number of small entities, to satisfy the requirement of the Regulatory Flexibility Act (5 U.S.C. 605(b)). The Office of Management and Budget (OMB) has determined that this is a not major rule under the Congressional Review Act.

If the Commission approves publication of the final rule, the staff will complete the following five activities:

- (1) The staff will publish the final rule in the *Federal Register*.
- (2) The staff will make publicly available the regulatory analysis for the final rule.
- (3) The final rule contains new information requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The staff will submit these requirements to OMB for its review and approval prior to publication of the final rule in the *Federal Register*.
- (4) The Office of Congressional Affairs will inform the appropriate congressional committees.
- (5) The staff will work with the Office of Public Affairs on an appropriate public communication when the final rule publishes in the *Federal Register*.

COORDINATION:

The Office of the General Counsel has no legal objection to this rulemaking package.

A handwritten signature in black ink, appearing to read "Raymond V. Furstenau", written in a cursive style.

Raymond V. Furstenau
Acting Executive Director
for Operations

Enclosures:

1. Final Rule- Alternatives to the Use of Credit Ratings
2. Regulatory Analysis Final Rule- Alternatives to the Use of Credit Ratings

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(RIN 3150-AJ92; NRC-2017-0021) DATED: February 9, 2024

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