[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: Final rule and interim staff guidance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations for approved financial assurance mechanisms for decommissioning, specifically for parent-company and self-guarantees that previously required bond ratings issued by credit rating agencies and now is replaced with a demonstration of a creditworthiness criterion. This final rule implements the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 that directed agencies to amend their regulations to remove any reference to or requirement of reliance on credit ratings. This final rule affects applicants and licensees who are required to provide decommissioning financial assurance.

DATES: *Effective date:* This final rule is effective on **[INSERT DATE 30 DAYS AFTER**

DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. *Compliance Date*: Compliance with this final rule is required by **[INSERT DATE 395 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

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

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

- **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, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

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

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

SUPPLEMENTARY INFORMATION:

TABLE OF CONTENTS:

I. Background

A. Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[1] ("The Dodd-Frank Act" or "Act") to "promote the financial stability of the United States by improving accountability and transparency in the financial system."[2] In

[1] Public law 111-203.
[2] Public Law 111-203, Preamble.

the Act, Congress finds that "ratings on structured financial products have proven to be inaccurate" and that "[t]his inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy."[3] Section 939A of the Act directs Federal agencies to review regulations that require the use of an assessment of the creditworthiness of a security or money market instrument and modify any regulations identified by the review to remove "any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of [creditworthiness] as each respective agency shall determine as appropriate for such regulations."[4]

As directed by section 939A of the Dodd-Frank Act, the NRC reviewed its regulations for any references to, or requirements regarding, credit ratings. Appendices A, C, and E to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR), "Rules of General Applicability to Domestic Licensing of Byproduct Material," required specified bond ratings from Moody's or Standard and Poor's to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and non-power reactor applicants and licensees. In accordance with the Dodd-Frank Act, the NRC is amending these appendices by removing these requirements and relying instead on a newly established criterion for creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed. Conforming revisions are being made to other regulations that cite or reference these appendices, including §§ 30.35(f)(2), 40.36(e)(2), 50.75(e)(1)(iii)(c), 70.25(f)(2), and 72.30(e)(2).

[3] Public Law 111-203, Sec. 931(5).
[4] Public Law 111-203, Sec. 939A(b).

B. January 2023 Proposed Rule

The NRC published a proposed rule in the *Federal Register* on January 3, 2023 (88 FR 25). The document identified the NRC's approach for assessing an applicant or licensee's creditworthiness and requested comment. The proposed rule provided an overview of the proposed changes for both parent-company and self-guarantees as only these financial assurance mechanisms relied on credit ratings. For use of parent-company guarantees, the proposed revisions in appendix A to 10 CFR part 30 would have removed bond rating requirements and rely instead on a new criterion of creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed. For use of self-guarantees for commercial companies, the proposed revisions in appendix C to 10 CFR part 30 would have removed bond rating requirements and rely instead on a new criterion of creditworthiness that would demonstrate an adequate capacity to provide full and timely payment of the amount guaranteed. For use of self-guarantees for nonprofit colleges, universities, and hospitals, the proposed revisions to appendix E to 10 CFR part 30 would have removed bond rating requirements and rely instead on a new criterion of creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

In addition, the proposed rule discussed the proposed change to the title of appendix D to 10 CFR part 30 to read "Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies." This title change removes the term "That Have no Outstanding Rated Bonds" as appendix C provides alternative criteria for commercial companies.

The proposed rule also provided an overview of the revision of reporting requirements in appendices C and E to 10 CFR part 30, from 20 to 90 days. This revision requires that, at any time the applicant or licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the applicant or licensee will notify the NRC in writing within 90 days. The 20-day reporting requirement was based on bond ratings. The 90-day requirement conforms to existing reporting requirements in appendices A and D to 10 CFR part 30.

The NRC held a public meeting on January 25, 2023, to provide an overview of these changes and to help facilitate comments on the proposed rule. The NRC received two comment submittals on the proposed rule. The NRC analyzed the comments and considered them in the development of this final rule.

II. Current Requirements and Discussion of Changes

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.[5] 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, or use of a surety method, insurance, or other guarantee method, including a letter of credit, a parent-company guarantee, or a self-guarantee.[6] For each entity (a company, a parent-company, or a non-profit college, university, or hospital) from whom the NRC accepts a parent-company guarantee or self-guarantee, financial tests exist in appendices A, C, D, and E to 10 CFR part 30 to provide decommissioning funding financial assurance. This final rule amends the regulations for parent-company and self-guarantees, removing previously required bond ratings issued by credit rating agencies and replacing the bond rating requirement with a demonstration of a new creditworthiness criterion. Under the revised regulations, applicants or licensees will submit information to demonstrate compliance with the new creditworthiness criterion, and the NRC will review the submission and determine each licensee's creditworthiness. The NRC will 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, open sources, and third parties.

A. Parent-Company Guarantee

For use of parent-company guarantees, this final rule revises paragraphs II.A.2(i) and B of appendix A to 10 CFR part 30 to remove bond rating requirements and to rely

[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] §§ 30.35(f), 40.36(e), 50.75(e), 70.25(f), and 72.30(e).

instead on a new requirement: creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

A parent-company guarantee must be provided by the parent-company of the licensee. The regulations for parent-company guarantees are in appendix A, “Criteria Relating to Use of Financial Tests and Parent Company Guarantees for Providing Reasonable Assurance of Funds for Decommissioning.” For use of a parent-company guarantee, under this final rule the applicant or licensee must pass one of two alternative financial tests specified in appendix A to 10 CFR part 30. One test is for an entity to meet fixed financial metrics, while the second test requires the entity to provide information to the NRC (creditworthiness criteria) that will allow the NRC to make a creditworthiness determination, along with additional fixed financial metrics.

For one financial test, the parent-company must have the following: 1) two of the following three ratios: a ratio of total liabilities to total net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; 2) net working capital and tangible net worth, each at least six times the amount of decommissioning funds being assured by the parent-company guarantee for the total of all nuclear facilities or parts thereof (or prescribed amount, if certification is used); 3) tangible net worth of at least $21 million; and 4) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount, if applicable). This financial test is in the existing regulations and is unchanged in this final rule.

For the other financial test, the parent-company must have the following: 1) creditworthiness that demonstrates an adequate capacity to provide full and timely

payment of the amount guaranteed, if necessary; and; 2) total net worth at least six times the amount of decommissioning funds being assured by a parent-company guarantee for the total of all nuclear facilities or parts thereof (or prescribed amount, if certification is used); 3) tangible net worth of at least $21 million; and 4) assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost.

B. Self-Guarantee

A self-guarantee is a guarantee provided by the licensee. The NRC's regulations for self-guarantees are under: 1) appendix C to 10 CFR part 30, "Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning;" 2) appendix D to 10 CFR part 30, "Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies;" and 3) appendix E to 10 CFR part 30, "Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals."

The financial test alternatives consider accounting ratios, net worth, assets, operating revenues, and creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed.

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

this final rule, the financial test specified in appendix C to 10 CFR part 30, commercial companies must have the following: 1) tangible net worth calculated to exclude the net book value of the nuclear facility and site and any intangible assets of at least $21 million and total net worth at least 10 times the amount of decommissioning funds being assured (or prescribed amount if a certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee; 2) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the current decommissioning cost estimates (or prescribed amount if a certification is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee; and 3) creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

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

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

is used) for all decommissioning activities for which the company is responsible as a self-guaranteeing licensee for the total of all nuclear facilities or parts thereof (or the current amount required if certification is used); and 3) ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by total net worth less than 1.5. The self-guarantee criteria in appendix D differs from that of appendix C in that the applicant or licensee may seek, through appendix D, to qualify for use of the guarantee based solely upon meeting specific financial tests, and therefore would not have to meet the new demonstration of creditworthiness as presented in appendix C. This financial test is in the existing regulations and is unchanged in this final rule.

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

Under this final rule, in appendix E to 10 CFR part 30, the financial test for nonprofit colleges and universities is that the licensee must have unrestricted endowment consisting of assets located in the United States of at least $50 million or at least 30 times the current decommissioning cost estimates (or prescribed amount if a certification is used), whichever is greater. This test would be for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee for the total of all nuclear facilities or parts thereof (or the current amount required if certification is used) or creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

Under this final rule, in appendix E to 10 CFR part 30, nonprofit hospitals must meet one of two financial tests. One test requires 1) total revenues less total expenditures divided by total revenues must be equal to or greater than 0.04; 2) long-term debt divided by net fixed assets must be less than or equal to 0.67; 3) (current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55; and 4) operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license. The other test requires creditworthiness that demonstrates an adequate capacity to provide full and timely payment of the amount guaranteed, if necessary.

C. Other Revisions

Specifically, this final rule—

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

2) Revises the reporting requirement in paragraph III.E.(1) of appendix E to 10 CFR part 30 from 20 to 90 days, that at any time the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the

amount guaranteed, the licensee will notify the Commission in writing. The 20-day reporting requirement was based on bond ratings, which are removed as a result of this final rule, and the 90-day requirement conforms to existing reporting requirements in appendices A and D to 10 CFR part 30.

D. Compliance Date

To allow impacted entities sufficient time to implement this final rule, the NRC has established a compliance date of 1 year after the effective date. The effective date is 30 days after the date the final rule is published in the *Federal Register*. This compliance date allows all impacted entities a complete one-year cycle to prepare their submissions to demonstrate creditworthiness under the new criteria.

III. Opportunities for Public Participation

The NRC held a public meeting on October 30, 2019, where the NRC presented an analysis of the Dodd-Frank Act and its impact on the NRC's regulations. The NRC also explained its initial rulemaking approach, which would have removed the provisions in appendices A, C, and E to 10 CFR part 30 that relied on bond/credit ratings and instead relied exclusively on existing financial ratio metrics. During that meeting, the participants indicated that the NRC's initial rulemaking approach would have a substantial negative impact on the availability of parent-company guarantees and self-guarantees (Summary of Public Meeting to Discuss the Alternatives to the Use of Credit Ratings Proposed Rule, October 30, 2019). Participants recommended that the NRC examine approaches taken by other Federal agencies for implementing the Dodd-Frank Act requirements, which could help identify alternative approaches for assessing a

licensee's creditworthiness for purposes of determining a licensee's ability to rely on a guarantee mechanism for decommissioning. In evaluating potential approaches, the NRC determined that it would be beneficial to solicit additional stakeholder views on the approaches when developing the proposed rule.

The NRC published an Advance Notice of Proposed Rulemaking (ANPR) in the *Federal Register* on December 21, 2020 (85 FR 82950). The NRC held a second public meeting on February 8, 2021, to help facilitate comments on the ANPR. The ANPR identified alternative approaches for assessing a licensee's creditworthiness and requested comment on the alternative approaches. Comments received as a result of the ANPR can be found at https://www.regulations.gov, under Docket ID NRC-2017-0021.

The NRC published a Proposed Rule and draft guidance in the *Federal Register* on January 3, 2023 (88 FR 25). The NRC held a third public meeting on January 25, 2023 (ML23009B395), where the NRC provided background on the NRC's Decommissioning Funding Assurance Requirements and the use of credit ratings. The NRC discussed the proposed approach for implementing the requirements of the Dodd-Frank Act, the rulemaking timeline, and how to submit comments.

IV. Public Comment Analysis

The public comment period for the proposed rule and draft guidance closed on March 20, 2023. In the proposed rule, the NRC requested comments and asked 4 specific questions regarding the proposed requirements and draft guidance. The NRC received two comment submittals from the Nuclear Energy Institute and the Breakthrough Institute. The two submittals included 32 unique comments.

This analysis addresses four specific questions included in the request for comment on the proposed rule. This analysis also addresses general comments, which have been binned into six categories based on their relevance to particular topics.

Comments and NRC Responses to Specific Questions on the Proposed Rule

In Section IV of the Supplementary Information for the proposed rule, the NRC solicited comments on four specific questions. In the next paragraphs, these questions are restated, comments received from stakeholders are summarized, and the NRC's response to the public comments is presented.

Question 1: Would [the NRC's] proposed rule present additional risk to the public regarding reasonable assurance that NRC licensees have adequate funding to decommission their facilities? If yes, please explain.

Comments: (1) No. The current financial tests are sound, and the purpose of this rulemaking is simply to comply with the broad requirements in Section 939A to "remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standards of creditworthiness." The "final guidance and preamble to the final rule should be revised to clarify that an investment grade rating of an uninsured, uncollateralized, unencumbered bond issued by an SEC-registered NRSRO is one acceptable method of meeting the new creditworthiness prong of the agency's multi-pronged financial tests."

(2) The current NRC policies already consider multiple factors when ensuring that a company can meet its financial obligations: credit ratings are only one part of that determination. The current approach is sound, and this rulemaking should simply be

used to bring the NRC into compliance with the broad requirements of Section 939A to "remove any reference to or requirement of reliance on credit ratings."

Response: The NRC agrees that this final rule does not present any additional risk to the public regarding reasonable assurance that licensees have adequate funding for decommissioning. Additionally, the NRC agrees that its requirements need to come into compliance with the requirements of Section 939A to "remove any reference to or requirement of reliance on credit ratings." However, the NRC disagrees that final guidance and the preamble should be revised to reflect that an investment grade rating on an uninsured bond is "one acceptable method of meeting the new creditworthiness determination" based upon the unreliability of such ratings. Specifically, in view of Congress's determination that NRSRO ratings proved inaccurate and contributed to the mismanagement of risks by financial institutions and investors prior to and during the financial crisis of 2008-2009, the NRC determined that NRSRO credit ratings may be unreliable when evaluating the decommissioning funding provided through the use of a parent guarantee or self-guarantee. An NRSRO credit rating also may not provide sufficient information for the NRC to make a creditworthiness determination for use of guarantee mechanisms for decommissioning funding.

The NRC agrees that the current policy provides for consideration of multiple factors when ensuring that a company can meet its financial obligations; credit ratings are only one part of that determination. And this will still be the case under this final rule. The NRC, however, is removing consideration of credit ratings as a criterion in the rule, and in the guidance associated with this rule, provides examples of additional recommended financial data that can be provided by applicants and licensees. Credit ratings, if provided, will be evaluated in conjunction with NRC's assessment of fiscal

health of the guarantor based on financial information presented in the licensee's submission. No changes were made to the rule language as a result of these comments.

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

Comments: (1) The draft guidance should be revised to make it clear that the Commission's conclusions in the 2011 Decommissioning Planning Rulemaking remain sound and, therefore, production of the most recent uninsured, uncollateralized, and unencumbered, investment grade rating, as issued by an SEC-registered NRSRO, would continue to be sufficient to meet the new creditworthiness requirement.

(2) The draft guidance provides a list of the types of information that could be considered in the creditworthiness determination, but it does not provide a formula or other metric for what combination of information would be acceptable. This would mean that the applicant must make assumptions as to what combination of information would be deemed sufficient and acceptable. Further, the same combination of information could be subjectively found to be insufficient by a different reviewer for a different application. This is not consistent with the Clarity principle of good regulation. If the NRC determines that the provided information is not acceptable, further revisions and then a subsequent resubmission will be required. This challenges the Efficiency principle of good regulation. Clear metrics on what is necessary, without being overly prescriptive, will greatly increase the chance of the applicant providing a high-quality application that will not need later revisions, and which will avoid further delay and cost. Additional

guidance and clarification should be provided for licensees on what constitutes an acceptable amount and type of data and information.

Additional Comments on the Draft Guidance. In addition to the responses provided to Question 2, the commenters stated that the associated guidance should be improved to provide additional clarity and predictability for both NRC staff and licensees, and that the draft guidance is not clear on what specific information would be sufficient to meet the new creditworthiness standard, which introduces unnecessary uncertainty into methods available to licensees to demonstrate compliance with the financial tests. Another comment stated that allowing use of credit ratings as a stand-alone support for meeting the new creditworthiness requirements eliminates unnecessary uncertainty with respect to the information necessary for a licensee to demonstrate that it meets the new creditworthiness prong on the financial tests.

Response: The NRC agrees in part with these comments. The NRC has revised the final guidance document to provide more details and clarity to the specific information and data needed from applicants and licensees to support a determination of creditworthiness. This will provide licensees more predictability in the information and resources necessary to submit the information.

The replacement of the NRSRO bond rating, with a creditworthiness analysis performed by the NRC, may require additional effort on the part of certain licensees for their first creditworthiness submittal. The financial information required to assess creditworthiness should address the fundamental fiscal health of the guarantor. Information provided about the guarantor will reflect basic balance sheet, income statement, and statement of cash flow data, associated financial ratios, and other

financial metrics traditionally considered for such credit-related assessments. Analyses performed by the NRC will be based upon a thorough review of financial data provided by the applicant or licensee, or from open sources or third parties, that will allow for a sound, informed decision regarding a prospective guarantor's creditworthiness for purposes of decommissioning funding. Examples of additional recommended financial data are provided in the guidance.

The NRC anticipates subsequent applicant or licensee submittals beyond that provided for the initial assessment of a guarantor's creditworthiness (the regulation requires guarantors annually pass such creditworthiness tests and provide documentation of continued eligibility), will reflect efficiencies gained by applicants and licensees in developing the information for NRC review, and by NRC in reviewing such submittals. While the preamble of the 2011 Decommissioning Rule stated that bond ratings, when used in conjunction with multi-prong financial tests, "will have an increased likelihood of providing reasonable assurance that the necessary decommissioning funding will be available when it is needed;" the Dodd-Frank Act and its direction to agencies to "remove any reference to or requirement of reliance on credit ratings" was not considered in the 2011 Decommissioning Rule. The NRC, consistent with Congress' determination, has concluded that no such single stand-alone metric may be relied upon for creditworthiness determination purposes. In view of Congress's determination that NRSRO ratings proved inaccurate and contributed to the mismanagement of risks by financial institutions and investors prior to and during the financial crisis of 2008-2009, the NRC has determined that NRSRO credit ratings may be unreliable when evaluating the decommissioning funding provided through the use of a parent guarantee or self-guarantee. An NRSRO credit rating also may not provide sufficient information for the

NRC to make a creditworthiness determination for use of guarantee mechanisms for decommissioning funding. No changes to the rule language were made as a result of these comments.

Question 3: Does the draft regulatory analysis capture all of the NRC and licensee costs required by [the NRC's] proposed rule?

Comments: (1) It is difficult to capture all the licensee costs because the draft guidance does not provide sufficient clarity about what information a licensee will need to provide to the NRC to meet the new creditworthiness standard.

(2) The draft guidance provides no durable assurance that the NRC staff's current estimates will hold true in the future.

Response: The NRC disagrees, in part, with these comments. The current provisions provide applicants and licensees with two options to pass a financial test: bond rating or a ratio test as found in 10 CFR part 30. This final rule eliminates the use of the bond rating and instead relies on a new creditworthiness assessment. The NRC recognized that there would be some increased costs initially to applicants and licensees who were previously able to use their bond ratings to meet the financial tests and, accordingly, the NRC used high estimates of labor hours to account for this uncertainty related to the initial reporting. The results of the Monte Carlo simulation developed for the draft regulatory analysis (ML21306A356) supporting the proposed rule contained the ranges of input variables. The NRC remains confident that its estimate, provided in the regulatory analysis for this final rule, of the time it would take for applicants and licensees to provide the initial creditworthiness assessment is reasonable.

However, in response to the comment regarding clarity, the NRC has made changes to the final guidance document to provide more detail and clarity to the specific information and data needed from applicants and licensees to support a determination of creditworthiness. This allows more predictability in the information and resources necessary for applicants and licensees in submitting their information.

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

Comment: The Dodd-Frank Act did not categorically prohibit reliance on credit ratings (including corporate bond ratings). Rather, the Act sought to prevent overreliance on credit ratings by Federal regulators and others. Therefore, issuer credit ratings, in addition to bond ratings, may be a useful tool to demonstrate creditworthiness of a parent-company or an applicant or licensee. In the context of the NRC’s regulatory framework, the Commission has already addressed the question of overreliance on the bond ratings used in the appendices to 10 CFR part 30 and concluded that the multi-pronged financial tests and other requirements adequately mitigate against any such overreliance. In addition, as described above in Section IV [Public Comment Analysis], the finding in Section 931 of the Act was focused on the inaccuracy of ratings on structured financial products, which are categorically different from the company bond

ratings traditionally used in the financial tests in 10 CFR part 30. Therefore, the proposed rule change, in conjunction with the changes to the rule's preamble and Draft Guidance recommended in these comments, strikes the appropriate balance between the need for literal compliance with the direction provided in Section 939A and the flexibility and discretion left for NRC as an implementing agency.

Response: The NRC disagrees with this comment. While Section 931 of the Dodd-Frank Act discusses the issues with structured financial products that led to the 2007-2008 recession, Section 939A applies to "any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument." As used in the Dodd-Frank Act and the Securities Exchange Act of 1934, a security is broadly defined to include the types of bonds referenced in the NRC's current regulations. Therefore, the Dodd-Frank Act required the NRC to review its use of credit ratings in appendices A, C, and E to 10 CFR part 30 and modify identified regulations to remove any reference to or requirement of reliance on credit ratings. No changes to the rule language were made as a result of these comments.

General Comments and NRC Responses on the proposed rule.

The NRC received additional public comments on the proposed rule. The NRC separated these comments into six categories based on their relevance to particular topics.

Comment on the 2011 Decommissioning Rule and its impact to the NRC's response to the Dodd-Frank Act. In the 2011 Decommissioning Rule (76 FR 35512; June 17, 2011), the Commission concluded that bond ratings, as required when used with the multi-prong existing financial tests, are sufficient to demonstrate

creditworthiness. Specifically, the Commission explicitly considered the potential for over reliance on bond ratings and the associated regulatory implications in its 2011 Decommissioning Planning Rule, which was finalized nearly 1 year after promulgation of the Dodd-Frank Act. At that time, the Commission noted that "recent events and trends" suggest that "a high bond rating by itself does not necessarily signal financial strength" and "may not provide the additional assurance that the NRC is seeking." These concerns stemmed directly from the same 2007-2009 financial crisis that prompted promulgation of the Dodd-Frank Act. Specifically, the crisis "cause[d] the NRC to question the adequacy of the bond rating requirement to provide financial assurance." After consideration of the issue, the Commission concluded that the bond rating requirement in Appendices A and C to 10 CFR Part 30 should be coupled with another requirement, and that the minimum tangible net worth requirement "is an adequate accompaniment."

Response: The NRC disagrees in part with the comment. While the preamble of the 2011 Decommissioning Rule stated that bond ratings, when used in conjunction with multi-prong financial tests, "will have an increased likelihood of providing reasonable assurance that the necessary decommissioning funding will be available when it is needed;" at the time the 2011 Decommissioning Rule was being drafted, the Dodd-Frank Act and its command to agencies "to remove any reference to or requirement of reliance on credit ratings" was not considered in the 2011 Decommissioning Rule. Consistent with Congress' determination and to comply with the requirements of the Dodd-Frank Act, the NRC has concluded that no such single stand-alone metric may be relied upon for creditworthiness determination purposes. No changes to the rule language were made as a result of these comments.

Comment regarding the NRC's existing financial tests. The NRC's existing financial tests, which are multi-pronged, do not rely exclusively on bond ratings as an indicator of either a parent-company or self-guarantee licensees' ability to meet its obligations under such a guarantee. In the context of NRC's regulation of decommissioning funding assurance, it is the parent-company or licensees' ability to meet its obligations under the guarantee, and not the quality of any specific security or investment product that is at issue. Thus, the new creditworthiness element of the financial tests in the Appendices to 10 CFR Part 30 should not be viewed in isolation. Rather, it must be viewed in its proper context—as a single element in a set of multi-pronged financial tests designed to provide reasonable assurance of a parent-company or licensee's ability to meet its commitments under a guarantee, which is, in turn, one of several methods available to licensees to fund decommissioning. Therefore, the limited use of certain bond ratings (e.g., uncollateralized, uninsured, unencumbered) to meet the proposed creditworthiness standard would be one of several considerations (e.g., tangible net worth, total net worth, percentage of assets located in the U.S., annual confirmation that financial tests are met) used by the NRC to determine whether the guarantee method provides reasonable decommissioning funding assurance in a specific instance.

Response: The NRC agrees in part with this comment. The NRC agrees that the previous financial test included in the regulations was multi-pronged and did not rely exclusively on bond ratings as an indicator of either a parent-company or self-guarantee applicant or licensees' ability to meet its obligations under such a guarantee. The NRC's interpretation of Section 939A is that it requires the removal of language in appendices

A, C, and E to 10 CFR part 30 which required specified bond ratings from Moody's or Standard and Poor's to satisfy certain decommissioning financial assurance requirements for materials, power reactors, and non-power reactor applicants and licensees. However, individual bond ratings provided by NRSROs, reflect a credit rating agency's fiscal assessment, or grade, attributed to a bond and indicating the guarantor's credit quality. The rating represents the NRSRO's evaluation of a bond issuer's financial strength, or its ability to pay a bond's principal and interest in a timely fashion. The NRC's independent assessment of a proposed guarantor's fiscal health based upon financial information provided in the applicant or licensee's submission, may be further supplemented by third-party assessments, such as bond ratings, and accordingly the NRC will consider such information, if provided, in performing its creditworthiness evaluation. No changes to the rule language were made as a result of this comment.

Comments regarding 939A language and its intent. (1) The 939A language does not prohibit agencies from considering credit ratings as one factor among various others in the decision-making process.

(2) A qualitative benefit cited in the Regulatory Analysis is the increased public confidence in NRC's role as a responsible industry regulator that would result from the NRC modifying its regulations in accordance with Section 939A of the Dodd-Frank Act. The commenter does not object to the NRC modifying the regulations to comply with the admittedly broad direction provided in Section 939A. However, that modification can be accomplished, while also providing the reliability, clarity, and efficiency offered by allowing the continued use of investment grade ratings on uninsured, uncollateralized, unencumbered bond.

Response: The NRC agrees in part with the comment. The NRC clarified the implementing guidance to include the types of financial data that can be provided to demonstrate creditworthiness and make it clear that credit ratings may be submitted as part of an applicant's or licensee's demonstration of creditworthiness. The NRC will perform an analysis based upon a thorough review of financial data provided by the applicant or licensee, which may include information provided by open sources, and third-parties such as bond rating agencies and pro-forma financial projections, that will allow NRC to make sound, informed decisions regarding a prospective guarantor's creditworthiness for purposes of decommissioning funding. Examples of additional recommended financial data are provided in the clarified guidance. However, the NRC disagrees that modification can be accomplished by removing the reference to specified bond ratings from Moody's or Standard and Poor's in the regulations while allowing that same use through guidance. No changes to the rule language were made as a result of these comments.

Comment regarding 939A requirements applicable the NRC. The 939A language provides federal agencies with the discretion in implementing the Dodd-Frank Act requirements of removing any reference to or requirements of reliance on credit ratings.

Response: The NRC disagrees in part with this comment. While the NRC agrees that the Act provides discretion to the Agency to develop creditworthiness requirements to replace reliance on credit ratings, Section 939A applies to "any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security

or money market instrument." As used in Dodd-Frank Act and the Securities Exchange Act of 1934, a security is broadly defined to include the types of bonds referenced in the NRC's current regulations. Therefore, the Dodd-Frank Act requires the NRC to review and revise its use of credit ratings in appendices A, C, and E to 10 CFR part 30 and modify identified regulations to remove any reference to or requirement of reliance on credit ratings. No changes to the rule language were made as a result of this comment.

Comment on the type of structure financial products impacted by 939A. Although Section 939A is written broadly to require removal of "any reference to or requirement of reliance on credit ratings" from an agency's regulations, the corporate bonds referenced in the appendices to 10 CFR Part 30 are not the type of structured financial products that are the focus of the congressional finding found in Section 931 of the Act and cited in the preamble of the proposed rule.

Response: The NRC disagrees with this comment. While Section 931 of the Dodd-Frank Act discusses the issues with structured financial products that led to the 2007-2008 recession, Section 939A applies to "any regulation issued by such agency that requires the use of an assessment of the creditworthiness of a security or money market instrument." As used in the Dodd-Frank Act and the Securities Exchange Act of 1934, a security is broadly defined to include the types of bonds referenced in the NRC's current regulations. Therefore, the Act required the NRC to review and revise its use of credit ratings in appendices A, C, and E to Part 30 and modify identified regulations to remove any reference to or requirement of reliance on credit ratings. No changes to the rule language were made as a result of this comment.

Comment regarding the NRC's regulatory analysis. The regulatory analysis describes qualitative benefits including improvements in knowledge. The NRC states that "the modified reporting requirements will improve the NRC's knowledge of the financial stability of its licensees in terms of their decommissioning funding obligations. The proposed rule would also enhance the accountability and transparency of the NRC's financial assurance requirements. Bond ratings for financial products can be inaccurate and could contribute to the mismanagement of risks, which in turn could adversely impact a licensee's ability to meet its financial assurance requirements. The rule changes are designed to modify the NRC's financial assurance requirements that are part of the overall NRC strategy to maintain safety and protection of public health and the environment during decommissioning and decontamination of nuclear facilities." It is unclear how requiring licensees to submit additional undefined financial information will improve the NRC's knowledge of the financial stability of its licensees.

Response: The NRC disagrees with this comment. The NRC disagrees that the financial information to be provided by applicants or licensees to support creditworthiness is undefined. The financial data that is being requested was delineated in the draft regulatory guidance issued for comment; however, the NRC has added further information in the final guidance to provide more details and clarity to the specific information and data needed from applicants or licensees to support a determination of creditworthiness. As the NRC evaluates data and narratives submitted by applicants or licensees, as well as from open sources and third parties, the NRC will better

understand the financial stability of its applicants and licensees. No changes were made to the regulatory analysis as a result of this comment.

V. Discussion of Amendments by Section

The following paragraphs describe the specific changes in this final rule.

Section 30.35 Financial assurance and recordkeeping for decommissioning.

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

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

The NRC is amending appendix A to 10 CFR part 30 by revising paragraphs II.A.2(i) and B to replace the bond rating criteria with a new creditworthiness criterion.

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

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

Appendix D to 10 CFR Part 30 - Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies.

The NRC is revising the title of appendix D to 10 CFR part 30 to read “Alternative Criteria Relating to Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies.” The title change adds the word, “Alternative” while removing the phrase, “That Have no Outstanding Rated Bonds” and provides for alternative criteria to appendix C for commercial companies. The self-guarantee criteria in appendix D differs from that of appendix C in that the applicant or licensee may seek, through Appendix D, to qualify for use of the guarantee based solely upon meeting specific financial tests, and therefore would not have to meet the new demonstration of creditworthiness as presented in Appendix C.

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

The NRC is reordering and revising paragraphs II.A.(1) and (2) and II.B.(1) and (2), and revising paragraphs II.C.(1) and III.E to replace the bond rating criteria with a new creditworthiness criterion. In addition, the NRC is further revising paragraph III.E to increase the written notification requirement from 20 days to 90 days and making other conforming changes.

Section 40.36 Financial assurance and recordkeeping for decommissioning.

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

Section 50.75 Reporting and recordkeeping for decommissioning.

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

Section 70.25 Financial assurance and recordkeeping for decommissioning.

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

Section 72.30 Financial assurance and recordkeeping for decommissioning.

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

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. The NRC has prepared a regulatory analysis of the impact of this final rule

on small entities. Some affected entities may qualify as small entities, but for those small entities the costs of the final rule would not constitute a significant negative impact (approximately $40,000 per entity using a 7 percent NPV). The NRC concludes that the final rule maintains a balance between the objectives of the Dodd-Frank Act and the Regulatory Flexibility Act and does not have a significant economic impact on a substantial number of small entities.

VII. Regulatory Analysis

The NRC has prepared a regulatory analysis to quantify the costs and benefits of this final rule, as well as to examine the qualitative factors to be considered in the NRC's rulemaking decision. The conclusion from the analysis is that this final rule and associated guidance would result in a cost to the industry (NRC applicants and licensees) and the NRC of $823,000 using a 7-percent discount rate. Though the regulatory analysis indicates the final rule is not cost-beneficial, the NRC is proceeding with the final rule because it is required by statute. The changes in this final rule were chosen as the most cost-effective method for complying with the statute. The NRC received public comments on the draft regulatory analysis; a summary of the comments and the NRC’s responses are found in Section IV. The regulatory analysis is available as indicated in Section XV, “Availability of Documents,” of this document.

VIII. Backfitting and Issue Finality

The amendments to the NRC's regulations in this final rule are required by the Dodd-Frank Act. As stated by the Commission in Management Directive 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," changes mandated by statute generally do not meet the definition of "backfitting" in the NRC's regulations. 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.

IX. Cumulative Effects of Regulation

Cumulative Effects of Regulation (CER) consists of the challenges applicants and licensees may face in addressing the implementation of new regulatory positions, programs, and requirements (*e.g.,* rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total burden imposed on applicants and licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the applicants or licensee's capability to implement those requirements, while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC's CER effort were met throughout the development of this final rule. The NRC engaged external stakeholders at public meetings and by soliciting public comments on the proposed rule and associated draft guidance document. The proposed rule and draft guidance (88 FR 25) were issued on January 3, 2023, for public

comment. A public meeting was held on January 25, 2023, to discuss the proposed rule and draft guidance. A Summary of the meeting is available in ADAMS, as provided in the "Availability of Documents" section of this document. The feedback from the public meeting informed the development of NRC's final rule.

To allow impacted entities sufficient time to implement the provisions of the final rule, the NRC has established a compliance date of 1 year from the effective date to allow all impacted entities a complete 1-year cycle to prepare reasonable assurance that funds will be available when needed for decommissioning.

X. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885).

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

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is

not required. The basis of this determination reads as follows: The action is the amendment of the NRC regulations, appendices A, C, D, and E to 10 CFR part 30, which concern the NRC's criteria relating to the use of financial tests and self- and parent-company guarantees for providing reasonable assurance of funds for decommissioning. In accordance with the Dodd-Frank Act, the NRC is amending these appendices to remove the requirements that rely on bond ratings and rely instead on newly established criteria for creditworthiness.

The newly established criteria for creditworthiness will have no effect on the environment.

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

XII. Paperwork Reduction Act Statement

This final rule contains amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection(s) of information was approved by the Office of Management and Budget, approval number 3150-0017,3150-0020,3150-0011, and 3150-0009.

The burden to the public for the information collection(s) is estimated to average 107.67 hours per response, (646 hours for 10 CFR part 30, 323 hours for 10 CFR part 40, 538.33 hours for 10 CFR part 50, 107.67 hours for 10 CFR part 70), including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the information collection.

The information collections contained in Parts 30, 40, 50 and 70 is being conducted to implement the provisions of the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 that directed agencies to amend their regulations to remove any reference to or requirement of reliance on credit ratings. Information will be used by the NRC to 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. Responses to this collection of information are required under Appendices A, C, and E to 10 CFR part 30 to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and non-power reactor applicants and licensees.

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

- **Federal rulemaking Website:** Go to http://www.regulations.gov and search for Docket ID NRC-2017-0021.

- **Mail comments to:** FOIA, Privacy, and Information Collections Branch, Office of Information Services, (T6-A10M), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or by e-mail to Infocollects.Resource@nrc.gov, and to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150-0017, 3150-0020, 3150-0011, and 3150-0009), Attn: Desk Officer for the Nuclear Regulatory

Commission, 725 17th Street NW, Washington, DC 20503; email: oira_submission@omb.eop.gov.

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.

XIII. Compatibility of Agreement State Regulations

Under the "Agreement State Program Policy Statement" approved by the Commission on October 2, 2017, and published in the *Federal Register* on October 18, 2017 (82 FR 48535), NRC program elements (including regulations) required for adequacy and having a particular health and safety component are those designated as Categories A, B, C, D, NRC, or Health and Safety (H&S). Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly

pattern in the regulation of agreement material on a national basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and therefore, do not need to be adopted by Agreement States for purposes of compatibility. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic Energy Act of 1954, as amended, or provisions of 10 CFR. These program elements should not be adopted by the Agreement States. Compatibility Category H&S are program elements that are required because of a particular health and safety role in the regulation of agreement material within the State and should be adopted in a manner that embodies the essential objectives of the NRC program. The NRC is not proposing to change the existing compatibility category designations. The compatibility category designations are listed in the following table:

Compatibility Table for the Final Rule

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

XIV. Availability of Guidance

NUREG-1757, Volume 3, Revision 1, “Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness,” is the primary guidance used to evaluate parent-company and self-guarantees submitted by 10 CFR Part 30, 40, 70, and 72 licensees for materials licenses. Regulatory Guide 1.159, “Assuring the Availability of Funds for Decommissioning Nuclear Reactors,” is used to evaluate parent-company and self-guarantees submitted by 10 CFR Part 50, reactor licensees.

The NRC is issuing “Interim Staff Guidance on Creditworthiness Criteria for Parent and Self-Guarantees, Decommissioning Financial Assurance,” for the implementation of the requirements in this final rule. This interim staff guidance updates and supersedes all guidance for licensees with respect to the financial tests, reporting information, and model guarantee agreements required to utilize a parent-company or self-guarantee for decommissioning financial assurance. The guidance document is available in ADAMS. You may access information and comment submissions related to the guidance by searching on http://www.regulations.gov under Docket ID NRC-2017-0021.

The interim staff guidance provides revised guidance to be used by applicants and licensees with respect to the financial tests, reporting information, and model guarantee agreements required to utilize a parent-company or self-guarantee for decommissioning financial assurance. The NRC has elected to issue the interim staff guidance because NUREG-1757 and RG 1.159, are not currently scheduled to be

updated for several years. The process of updating these guidance documents involves a major review and evaluation by the NRC and stakeholders and will take several years to complete.

XV. Availability of Documents

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

DOCUMENT	ADAMS ACCESSION NO. / *FEDERAL REGISTER* CITATION
Alternatives to the Use of Credit Ratings October 30, 2019, Public Meeting, dated October 30, 2019	ML19276F011 (package)
Advance Notice of Proposed Rulemaking, "Alternatives to the Use of Credit Ratings," dated December 21, 2020	85 FR 82950
Alternatives to the Use of Credit Ratings (Frank-Dodd Act) Advance Notice of Proposed Rulemaking February 8, 2021, Public Meeting, dated February 12, 2021	ML21028A334 (package)
Interim Staff Guidance on Creditworthiness Criteria for Parent and Self-Guarantees, Decommissioning Financial Assurance, September, 2023	ML23244A202
Regulatory Analysis for Proposed Rule: Alternatives to the Use of Credit Ratings, dated 2022	ML21306A356
Alternatives to the Use of Credit Ratings, Proposed Rulemaking, January 3, 2023	88 FR 25
Regulatory Analysis - Final Rule- Alternatives to the Use of Credit Ratings, dated October 2023	ML23254A149
Comment Letter from Doug True on behalf of the Nuclear Energy Institute, March 21, 2023	ML23080A186
Comment Letter from Dr. Adam Stein and Leigh Anne Lloveras on behalf of the Breakthrough Institute, March 20, 2023	ML23080A187
OMB Clearance Package, dated [Month Day, Year]	ML21306A357 (package)

Summary of January 25, 2023, public meeting regarding the Alternatives to the Use of Credit Ratings, February 23, 2023	ML23054A002
NUREG-1757, Volume 3, Revision 1, “Consolidated Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness”	ML12048A683

List of Subjects

10 CFR Part 30

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

10 CFR Part 40

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

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 70

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

10 CFR Part 72

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is 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: Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

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

§ 30.35 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

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

* * * * *

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

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

* * * * *

II. * * *

A. * * *

2. * * *

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

* * * * *

B. The parent company's independent certified public accountant must compare the data used by the parent company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the parent company's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the parent company's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test meets the requirements of paragraph A of this section. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

* * * * *

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

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

* * * * *

II. * * *

A. * * *

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

B. * * *

(2) The company's independent certified public accountant must compare the data used by the company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the company's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the company's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test meets the requirements of paragraph A of this section. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

* * * * *

III. * * *

E. (1) If, at any time, the licensee becomes aware of information that is material to its capacity to provide full and timely payment of the amount guaranteed, the licensee

will notify the Commission in writing within 90 days.

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

* * * * *

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

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

* * * * *

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

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

* * * * *

II. * * *

A. * * *

(1) An unrestricted endowment(s) consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self--guaranteeing licensee.

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

B. * * *

(1) For applicants or licensees:

(a) (Total revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self--guaranteeing license.

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

C. * * *

(1) The licensee's independent certified public accountant must compare the data used by the licensee in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. The accountant must evaluate the licensee's off-balance sheet transactions and provide an opinion on whether those transactions could materially adversely affect the licensee's ability to pay for decommissioning costs. The accountant must verify that the information provided to demonstrate passage of the financial test meets the requirements of section II of this appendix. In connection with the auditing procedure, the licensee must inform the NRC within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

* * * * *

III. * * *

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

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

* * * * *

PART 40 – DOMESTIC LICENSING OF SOURCE MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

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

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

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

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

* * * * *

PART 50 – DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96-295, 94 Stat. 783.

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

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

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

* * * * *

PART 70 – DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

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

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).

Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)).

Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234).

Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237).

Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

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

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

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

* * * * *

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

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

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

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

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(e) * * *

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

decommissioning must contain the following conditions:

* * * * *

Dated: Month XX, 2024.

For the Nuclear Regulatory Commission.

Carrie Safford,
Secretary of the Commission.