

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**[NRC-2014-0161]**

**RIN 3150-AJ43**

**Financial Qualifications Requirements for Reactor Licensing**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule and draft guidance documents; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) proposes to amend its current reactor licensing financial qualifications (FQ) requirements of “reasonable assurance” to a review standard of “appears to be financially qualified” for construction and operation. The proposed rule would require the applicant to submit a plan describing how it will proceed to finance the construction and operation of the facility. In the proposed rule, license transfer applicants for facilities in decommissioning would continue to provide reasonable assurance that funds will be available for the decommissioning process. The proposed rule would also clarify the submissions required for license transfer applicants for facilities in decommissioning. Both new and revised draft guidance is provided for review and can be found in Section VIII “Availability of Guidance” of this notice.

**DATES:** Submit comments by **[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0161. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

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

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

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

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

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

**FOR FURTHER INFORMATION CONTACT:** Solomon Sahle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3781; e-mail: [Solomon.Sahle@nrc.gov](mailto:Solomon.Sahle@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Obtaining Information and Submitting Comments**

**A. Obtaining Information**

Please refer to Docket ID NRC-2014-0161 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0161.
- **NRC's Agencywide Documents Access and Management System**

**(ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “[ADAMS Public Documents](#)” and then select “[Begin Web-based ADAMS Search](#).” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdresource@nrc.gov](mailto:pdresource@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 at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

#### B. Submitting Comments

Please include Docket ID NRC-2014-0161 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

### A. History of NRC Financial Qualifications Requirements

The NRC derives its authority to review a license applicant's FQ from Section 182a of the Atomic Energy Act (AEA) of 1954, which provides, in part, that applications for a license be in writing and include the information that the Commission may determine to be necessary to decide "such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license." The AEA provides the Commission with broad authority as to what information to solicit with respect to FQ.

In 1968, the NRC revised § 50.33(f) of title 10 of the *Code of Federal Regulations* (10 CFR) and added appendix C, "A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses," to 10 CFR part 50. These changes introduced explicit criteria and guidance for demonstrating compliance with FQ regulations (33 FR 9704; July 4, 1968). Each applicant was required to submit information sufficient to demonstrate to the NRC its FQ to carry out the activities for which it sought the permit or license, in accordance with the regulations.

In 1984, the NRC amended its regulations to eliminate the FQ review for electric utility<sup>1</sup> applicants for operating licenses (OLs), while leaving intact the FQ review for electric utilities seeking construction permits (CPs) (49 FR 35747; September 12, 1984). Deregulation of the electric utility industry in the 1990s resulted in a new class of entities

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<sup>1</sup> "Electric utility" is defined in § 50.2, "Definitions," as any entity that generates or distributes electricity and which recovers the cost of this electricity, either directly or indirectly, through rates established by the entity itself or by a separate regulatory authority.

that could provide electricity to ratepayers but were not considered electric utilities; such entities are known as “merchant plants.”

To establish their FQ, electric utility applicants have historically relied on State regulation of utility rates to recover the cost of reactor construction and operation. Unlike traditional electric utility licensees, merchant plants sell the power they generate on the open market. These merchant plant applicants have no defined ratepayer base and, unlike electric utility applicants, cannot rely on such a base to demonstrate FQ. These merchant plants must, therefore, rely on alternative forms of financing such as third-party project-based financing or internal resources to finance their plants.

In a 2004 rulemaking (69 FR 4439; January 30, 2004) that applied to merchant plant licensees, the NRC discontinued FQ reviews for power reactors at the license renewal stage, except in limited circumstances. The objective of the rule was to reduce unnecessary regulatory burden on licensees seeking renewal of OLs. As stated in the 2004 rulemaking, the NRC performs FQ reviews during initial licensing<sup>2</sup> because the initial construction of a nuclear power reactor is a major financial undertaking that has significant implications for a company’s financial health. The rulemaking also noted the NRC’s position that there are no unique financial circumstances associated with license renewal, because the NRC has no information indicating a change to a licensee’s revenue and expenses due to license renewal.

Currently, under § 50.33(f) and appendix C to 10 CFR part 50, an applicant for an initial license or license transfer must demonstrate that it possesses or has “reasonable assurance” that it can obtain the funds necessary to construct and operate a

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<sup>2</sup> The terms “initial licensing” or “initial license,” as used in this document, refer to the initial nuclear reactor license issued by the NRC; the terms do not include the request for a renewal or extension of the term of an existing OL or transfer of an existing OL.

nuclear power plant.<sup>3</sup> These requirements also apply to applicants for a combined license (COL) for new reactors under 10 CFR part 52, which refers to the FQ requirements in 10 CFR part 50,<sup>4</sup> and to applicants for non-power production or utilization facility (NPUF)<sup>5</sup> licenses. Applicants are required to submit estimates of costs, identification of funding sources, and financial statements. Under § 50.33(f), electric utility applicants are exempt from submitting FQ information for reactor operations. By contrast, merchant plant and NPUF applications are substantively reviewed to ensure compliance with FQ requirements under § 50.33(f) for both construction and operation and appendix C to 10 CFR part 50 for construction. These merchant plant and NPUF FQ reviews are conducted using the standard review plan guidance contained in NUREG-1577, “Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance,” Revision 1, dated March 1999, or NUREG-1537, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content,” respectively.

## B. Challenges to Merchant Applicant Ability to Meet NRC Financial Qualifications Requirements

The NRC developed its current reactor FQ requirements and review process before the electricity markets in the United States were deregulated. All current operating nuclear power reactor licensees were found to be financially qualified at initial

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<sup>3</sup> The NRC staff conducts its review of license transfer applications under § 50.80, which requires an applicant to submit the same FQ information from 50.33 as would be required if the application were for an initial license. Accordingly, information needed to demonstrate FQ varies, depending on whether the license transfer is for a CP, OL, or COL. The NRC does not propose to change § 50.80.

<sup>4</sup> Under § 52.77, “Contents of Applications; general information,” the NRC requires COL applicants to provide all the information required under § 50.33, “Contents of Applications; general information.”

<sup>5</sup> A non-power production or utilization facility is a non-power reactor, testing facility, or other production or utilization facility, licensed under the authority of Section 103, 104a, or 104c of the Atomic Energy Act, as amended, that is not a nuclear power reactor or fuel reprocessing plant.

licensing on the basis of their status as rate-regulated electric utilities. However, merchant plant applicants, unlike electric utility applicants that can recover costs through the ratemaking process, might not have a predictable source of funds for construction or operation at the time of licensing. Without identified sources of funds, merchant plant applicants may not be able to meet the FQ requirements. Although the current rules contemplate applications from merchant plants, to date no merchant plant applicant has met the requirements of the FQ regulations at initial licensing.

On February 12, 2016, the NRC issued a COL for South Texas Project, Units 3 and 4 (a merchant plant), using principles similar to those proposed in this rule.<sup>6</sup> The South Texas Project application relied on an NRC-approved exemption from the current FQ requirements. The exemption was based on Commission direction in SRM-SECY-13-0124, “Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications,” which states, “the staff should consider utilizing an exemption process to address existing and emergent cases...during the pendency of the rulemaking process and that anticipates the outcome of the proposed changes to the current financial qualification regulations.” The exemption and associated license conditions were also consistent with the draft regulatory basis for this rulemaking, discussed in “C. Regulatory Basis and Rulemaking,” which was being developed at the time.

### C. Regulatory Basis and Rulemaking

Following issuance of SRM-SECY-13-0124, the NRC staff developed a draft regulatory basis entitled, “Financial Qualifications for Reactor Licensing Rulemaking,” which was published for comment in the *Federal Register* on June 17, 2015 (80 FR

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<sup>6</sup> Nuclear Innovation N. Am. LLC (South Texas Project Units 3 & 4), CLI-16-02, 82 NRC 13, 47-48 (2016).



34559). The NRC conducted two public meetings related to the draft regulatory basis. The staff conducted the first public meeting on April 29, 2015, to discuss Section 7, “Proposed Financial Qualifications Requirements,” and the staff conducted the second meeting on July 8, 2015, during the public comment period. The NRC received three comment submissions on the draft regulatory basis during the comment period and a fourth after the public comment period closed. Comment submissions were received from the University of Florida (ADAMS Accession No. ML15190A386), the George Washington University Regulatory Studies Center (ADAMS Accession No. ML15222A298), the Nuclear Energy Institute (ADAMS Accession No. ML15217A059), and Coqui RadioPharmaceuticals Corporation (ADAMS Accession No. ML16120A098).

The NRC staff considered the public comments, documented its responses to all public comments in appendix A of the final regulatory basis (ADAMS Accession No. ML15322A185), and made appropriate changes to the final regulatory basis.

- 1) The draft regulatory basis contemplated changes to nuclear power reactor FQ requirements, while retaining current FQ requirements for NPUFs. The final regulatory basis and the proposed rulemaking address this inconsistency and provide proposed FQ requirements for NPUFs that are similar to those for nuclear power reactors.
- 2) The draft regulatory basis would have inadvertently expanded the scope of the requirements in § 50.33(f)(5),<sup>7</sup> broadening the focus beyond a licensee’s ongoing financial health. The final regulatory basis and the proposed rule rectify that inadvertent expansion. Thus, the proposed rule includes a recommendation to rescind requirements currently provided in § 50.33(f)(5), because this authority

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<sup>7</sup> Draft rule language in the draft regulatory basis had renumbered this provision as § 50.33(f)(4).

exists elsewhere in 10 CFR Chapter I and in the AEA.

- 3) Section 7 of the draft regulatory basis considered whether the applicant should also include a description of its management team as part of an applicant financial capacity plan (AFCP). Appendix A of the final regulatory basis addressed concerns raised by a commenter regarding this issue. Guidance supporting the proposed rule discusses the information that applicants would provide in the AFCP.
- 4) Two commenters stated that the support for rulemaking in the draft regulatory basis was insufficient to support the anticipated proposed rulemaking. Instead, these commenters recommended complete rescission of the current FQ requirements. The NRC concluded that the proposed FQ standard, if issued as a final rule, would give the NRC information that would allow it to determine whether an applicant has the financial capacity to move forward with its plans to safely construct and operate a nuclear power reactor or NPUF. The NRC is including questions in this document to request stakeholder feedback on this proposed rule, including a question regarding complete rescission of the current FQ requirements.

On November 16, 2016, the NRC staff notified the Commission of the completion of the final regulatory basis supporting the FQ rulemaking (ADAMS Accession No. ML16172A261). The final regulatory basis is available in ADAMS under Accession No. ML15322A185.

#### D. Reactors in Decommissioning

In the proposed rule, license transfer applicants for facilities in decommissioning would continue to provide reasonable assurance that funds will be available for the decommissioning process. After reviewing the FQ regulations in conjunction with the NRC's decommissioning funding regulations in §§ 50.75, 50.82, and 52.110, the NRC has determined that clarification is warranted. This discussion, and the resulting new regulatory provision proposed to address this issue, was not contemplated in the regulatory basis.

The NRC proposes to amend its current reactor licensing FQ requirements of "reasonable assurance" to a review standard of "appears to be financially qualified" for construction and operation. However, this proposed change to FQ requirements would not affect the NRC's decommissioning funding requirements. As under the current regulations, all applicants would be required to demonstrate reasonable assurance that funds will be available to decommission the facility.

The NRC is including clarification regarding the submissions required for license transfer applicants for facilities in decommissioning. The submissions required for license transfer applicants for facilities in decommissioning are consistent with the NRC's decommissioning funding regulations in §§ 50.75, 50.82, and 52.110, as appropriate for the facility and the stage of decommissioning activities.

In 1968, the NRC revised § 50.33(f) and introduced criteria and guidance for demonstrating compliance with the FQ regulations. This included the requirement for an applicant for an OL (at time of initial licensing or license transfer) to provide information to show that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operating costs as well as estimated costs for permanently shutting down the facility and maintaining it in a safe condition. In 1988, the NRC amended its

decommissioning regulations to set forth technical and financial criteria for decommissioning facilities (53 FR 24018; June 27, 1988). The purpose of the 1988 rulemaking was to ensure that decommissioning of all power reactors, NPUFs, fuel reprocessing plants, fuel fabrication plants, uranium hexafluoride production plants, and independent spent fuel storage installations would be accomplished in a safe and timely manner and that adequate licensee funds will be available for this purpose. The 1988 final rule required licensees to provide assurance that, at any time during the life of the facility through termination of the license, adequate funds will be available to complete decommissioning. The 1988 rule added a definition of “*decommission*” to the 10 CFR part 50 definitions section, § 50.2, added a new paragraph (k) to § 50.33, including § 50.33(k)(1), which requires applicants for OLs (initial or transferred)<sup>8</sup> to provide information in the form of a report as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility, and added a new § 50.75, which set forth requirements for decommissioning planning. The 1988 rule also removed the requirement from the FQ regulations in § 50.33 that applicants provide the estimated costs for permanently shutting down the facility and maintaining it in a safe condition.

Requirements for reactors in decommissioning are codified in §§ 50.82 and 52.110. Associated decommissioning funding requirements are codified in §§ 50.75, 50.82, and 52.110. A nuclear power reactor licensee formally begins the decommissioning process when it certifies its permanent cessation of operations and permanent removal of fuel from the reactor vessel under §§ 50.82(a)(1) or 52.110(a)(1) and (2). Once the NRC docket these certifications, the 10 CFR part 50 or 10 CFR part

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<sup>8</sup> Section 50.33(k) was subsequently amended to include COL applicants.

52 license no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel.

Under the NRC's current regulations, during a license transfer for an OL or COL, the applicant must submit information to meet the FQ requirements in § 50.33(f) and decommissioning funding requirements in § 50.33(k)(1). However, the information that applicants are required to submit during a license transfer for a decommissioning facility (after the §§ 50.82(a)(1) or 52.110(a)(1) and (2) certifications have been docketed by the NRC) is somewhat unclear. For example, § 50.33(k)(1) requires that applicants demonstrate reasonable assurance of obtaining decommissioning funding by providing information in the form of a report as described in § 50.75. The regulations in § 50.75 set forth requirements for decommissioning planning for power reactors and NPUFs. Once decommissioning commences, licensees must comply with additional requirements in §§ 50.82 or 52.110 to demonstrate reasonable assurance of decommissioning funding and to use decommissioning trust funds. Additionally, the § 50.75 reporting requirements do not apply to decommissioning facilities, which, upon submission of the certifications required by § 50.82(a)(1), are bound by the reporting requirements in § 50.82(a)(8). However, the regulations in § 50.33(f) and (k) do not explicitly reference the regulations in §§ 50.82 or 52.110.

Additionally, although the current FQ requirements in § 50.33(f) govern decommissioning facilities, the regulations do not clearly identify what submissions are required to demonstrate FQ for facilities in decommissioning. Moreover, the proposed rule would seek to clarify the meaning of "estimated operation costs" under § 50.33(f)(5) with respect to decommissioning facilities, because decommissioning facilities are no longer authorized to operate (i.e., generate electricity and hence, revenue in the case of

power reactors) once they have submitted the required certifications under §§ 50.82(a)(1) or 52.110(a)(1) and (2).

By issuing decommissioning funding assurance regulations in §§ 50.75, 50.82, and 52.110, the Commission intended to ensure that all licensees provide reasonable assurance that, at any time during the life of the facility through termination of the license, adequate funds will be available to complete decommissioning (61 FR 39278, 39295; July 29, 1996).<sup>9</sup> Therefore, the NRC is clarifying the information applicants must submit for a license transfer for a facility in decommissioning in accordance with the intent of the NRC's decommissioning funding regulations in §§ 50.75, 50.82, and 52.110.

Prior to or within two years following permanent cessation of operations, a power reactor licensee must submit a post-shutdown decommissioning activities report (PSDAR) to the NRC, under §§ 50.82(a)(4)(i) or 52.110(d)(1). The PSDAR must include a site-specific decommissioning cost estimate. Although the PSDAR is submitted for information only (the NRC does not approve the PSDAR), the PSDAR submission provides an opportunity for the NRC staff to review the current balance of the licensee's decommissioning trust funds, the planned decommissioning activities, and the site-specific cost estimates (including the projected cost of managing irradiated fuel). The NRC staff's review will allow the staff to informally confirm that the licensee has provided reasonable assurance that adequate funds will be available to complete decommissioning activities. For an NPUF licensee, the NRC, pursuant to § 50.82(b), performs a similar review concerning the licensee's proposed decommissioning plan.

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<sup>9</sup> In addition to the plain meaning of §§ 50.75 and 50.82, the preamble of the Commission's 1988 rule stated that the Commission's "objective" was to ensure that "sufficient funds are available to decommission the facility in a manner which protects public health and safety" and that the NRC "determined that the public health and safety can best be protected by promulgating a rule requiring reasonable assurance that at the time of termination of operations adequate funds are available so that decommissioning can be carried out in a safe and timely manner" (53 FR at 24031, 24037).

The current FQ regulations in § 50.33(f) require applicants to provide information sufficient to demonstrate to the Commission the financial qualification of the applicant to carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought. The NRC has determined that this demonstration for decommissioning facilities could reasonably be interpreted to include the projected costs for decommissioning the facility and managing irradiated fuel until the license has been terminated.

Therefore, the NRC is proposing to clarify the submissions required for license-transfer applicants for decommissioning power reactor facilities. Specifically, these applicants must demonstrate how they will provide reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and managing irradiated fuel through the submission of a revised site-specific decommissioning cost estimate, including a description of the remaining planned decommissioning activities along with a schedule for their accomplishment, as required by §§ 50.82(a)(4)(i) or 52.110(d)(1). These applicants must also include the information required in the decommissioning financial assurance status report required by § 50.82(a)(8)(v)-(vi) and the irradiated fuel management funding report required by § 50.82(a)(8)(vii) for the licensed facility.

License-transfer applicants for decommissioning NPUF facilities must demonstrate reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and managing irradiated fuel through the submission of an updated cost estimate for decommissioning as required by § 50.82(b)(4)(iv).

### III. Discussion

The specific objective of this proposed rule is to amend the current FQ requirements of “reasonable assurance” under 10 CFR part 50 with respect to reactor construction and operation to conform to the 10 CFR part 70 review standard of “appears to be financially qualified.”<sup>10</sup> Specifically, the proposed rule would amend § 50.33(f) to remove the requirement for a production or utilization facility applicant to demonstrate that it possesses or can provide reasonable assurance of obtaining the funds necessary for construction and operation and replace that requirement with an “appears to be financially qualified” standard. Additionally, the proposed rule would further revise § 50.33(f) for clarity and remove appendix C to 10 CFR part 50. In the proposed rule, applicants for facilities in decommissioning would continue to be required to provide reasonable assurance that funds will be available for the decommissioning process. The proposed rule would also clarify the submissions required for license transfer applicants for facilities in decommissioning. Under this proposed rule, an applicant would be required to submit an AFCP describing how it will proceed to finance the construction and operation of the facility. The AFCP would ensure that the applicant has both a well-articulated understanding of the size and scope of the project it is undertaking and the financial capacity to obtain the necessary financing prior to the start of licensed activities or the transfer of the license.

For initial license applicants that cannot demonstrate that they have sufficient funding, the NRC would issue licenses with specific FQ license conditions. The conditions would be sufficient and specific to permit a ministerial review to verify that the

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<sup>10</sup> One of the criteria for approval of a 10 CFR part 70 license application is “that the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations in this part.” 10 CFR 70.23(a)(5).



licensee's financing plan is executed and funding is available prior to the start of licensed activities (i.e., construction and operation). Under the proposed rule, applicants with 50 percent or less of their funding at the time of application would be required to provide proposed FQ license conditions for initial CP, OL, or COL applications but not for license transfer applications, as the NRC would expect most applicants for a license transfer to be able to demonstrate that they have sufficient funding in their application, particularly for currently operating facilities. However, the proposed rule language does not prohibit license transfer applicants from proposing FQ license conditions. In certain scenarios (e.g., prior to the start of, or during, construction for a COL project), license transfer applicants might find license conditions advantageous as they may provide additional opportunity for coordinating sufficient resources to facilitate the transfer transaction, but may also introduce delays in continued licensed activities. The NRC is requesting public comments on this approach.

All current operating nuclear power reactor licensees were found to be financially qualified by the NRC at initial licensing on the basis of their status as rate-regulated electric utilities and their ability to recover costs through utility ratemaking processes. However, merchant plant applicants, unlike electric utility applicants, might not have a predictable source of funds for construction or operation at the time of licensing. Accordingly, without identified sources of funds, merchant plant applicants may not be able to meet the NRC's FQ requirements.

Similarly, applicants for NPUF licenses may rely on multiple sources of funding to finance the construction and operation of a proposed facility. Like merchant plant applicants, an applicant for an NPUF license may have unpredictable sources of funds at the time of initial licensing, which could impact the applicant's ability to meet the NRC's current FQ requirements. Also with regard to NPUFs, in a separate rulemaking

effort, the staff is proposing to rescind the current FQ requirements in 10 CFR 50.33(f)(2) (proposed 10 CFR 50.33(f)(3)) that require submission of financial information at the time of license renewal for NPUFs. That rulemaking would eliminate license renewal for certain classes of NPUFs and streamline the renewal process for other classes. That rulemaking would eliminate FQ requirements at time of renewal for those latter classes. (See 82 FR 15643 for the NPUF proposed rule.) The comment period on the proposed NPUF rulemaking closed on June 13, 2017, and the staff is evaluating comments received. If a final rule is issued rescinding the current FQ requirements for NPUFs at the time of license renewal, then the staff would remove the requirement in new paragraph (f)(3) that NPUF licensees provide FQ information at time of license renewal.

A. What action is the NRC proposing to take?

As directed by the Commission in SRM-SECY-13-0124, the NRC is proposing to amend the current FQ requirements of “reasonable assurance” under 10 CFR part 50 to conform to the 10 CFR part 70 standard of “appears to be financially qualified.” If approved as a final rule, the proposed rule would amend § 50.33(f) to remove the requirement for production and utilization facility applicants to demonstrate that they possess or have reasonable assurance of obtaining the funds necessary for construction and operation and replace that requirement with an “appears to be financially qualified” standard. Additionally, the proposed rule would make a conforming change to remove appendix C to 10 CFR part 50, “A Guide for the Financial Data and Related Information Required to Establish Financial Qualifications for Construction Permits and Combined Licenses,” which would no longer be necessary with the proposed changes to § 50.33(f). The proposed rule would require an applicant to submit an AFCP describing how it will proceed to finance the construction (if applicable, for license transfers) and operation of

the facility. This requirement would ensure that the applicant has both a well-articulated understanding of the size and scope of the project it is undertaking and the financial capacity to obtain the necessary financing when the applicant is ready to start construction.

For applicants that cannot demonstrate that they have sufficient funding, the NRC would issue licenses with specific FQ-related license conditions. Prior to the start of construction and operation of the reactor, the NRC would conduct a ministerial review to verify that the license conditions have been met.

The NRC staff conducts its review of license transfer applications under § 50.80, which requires an applicant to submit the same FQ information from § 50.33 as would be required if the application were for an initial license. Information needed to demonstrate FQ varies, depending on whether the license transfer is for a CP, OL, or COL. The NRC does not propose to change § 50.80.

Finally, the proposed rule would amend § 50.33(f) to clarify the requirements for license transfers for decommissioning facilities. Under the proposed rule, applicants for decommissioning facility license transfers would be required to show that they possess or have reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning and managing irradiated fuel.

B. What is the regulatory basis for this proposed rule?

The final regulatory basis is available in ADAMS under Accession No. ML15322A185.

C. What changes to NRC regulations are proposed, and which applicants or licensees will be affected?

This proposed rule would affect entities that are subject to § 50.33(f). The scope of this proposed rule includes applicants for reactor CPs, OLs, and COLs, as well as license transfer applicants. Proposed amendments to § 50.33(f) would remove the requirement for an applicant to demonstrate that it possesses or can provide reasonable assurance of obtaining the funds necessary for construction and operation and replace that requirement with an “appears to be financially qualified” standard. Other changes include the removal of appendix C to 10 CFR part 50. The revised FQ review standard would reflect the financial capacity of the applicant to obtain the necessary funding for the project.

In the proposed rule, applicants for facilities in decommissioning would continue to be required to provide reasonable assurance that funds will be available for the decommissioning process. After reviewing the FQ regulations in conjunction with the NRC’s decommissioning funding regulations in §§ 50.75, 50.82, and 52.110, the NRC has determined that clarification is warranted.

The NRC proposes to amend its current reactor licensing FQ requirements of “reasonable assurance” to a review standard of “appears to be financially qualified” for construction and operation. However, this proposed change to FQ requirements would not affect the NRC’s decommissioning financial assurance requirements. As under the current regulations, all applicants would be required to demonstrate reasonable assurance that funds will be available to decommission the facility.

The NRC is including clarification regarding the submissions required for license transfer applicants for facilities in decommissioning. The submissions required for license transfer applicants for facilities in decommissioning are consistent with the NRC’s decommissioning funding regulations in §§ 50.75, 50.82, and 52.110, as appropriate for the facility and the stage of decommissioning activities.

The proposed rule would provide a new process for FQ reviews for the various classes of applicants while maintaining public health and safety. The purpose of the staff's FQ review is to ensure that an applicant has the financial capacity to obtain funding, not to ensure that the project is completed. The staff contemplated various levels of funding that would indicate that an applicant would be able to obtain the remaining funds needed. The NRC staff has determined that an applicant with commitments for greater than 50 percent funding for proposed licensed activities has made a reasonable and sufficient demonstration of financial capacity—such an applicant would not be subject to license conditions for future verification. Given the high costs of nuclear power plant construction and operation, and the uncertainties associated with financing, the staff believes that if an applicant can demonstrate that it possesses greater than 50 percent of its funding at the time of application, then the applicant has made a reasonable and sufficient showing of financial capacity. Under the proposed rule, initial applicants with 50 percent or less of the necessary funding at the time of application would be subject to license conditions for future verification that sufficient funding is available prior to the start of licensed activities. Those applicants with funding of greater than 50 percent at the time of application, would be considered to have the financial capacity to proceed with the project, and hence, would appear to be financially qualified. Existing licensees would not have to meet these new requirements.

For construction, financial capacity would be reflected in an AFCP and a construction cost estimate at the time of application. The AFCP and cost estimate would provide the NRC with adequate information to determine whether the applicant appears to be financially qualified. Similarly, for operations, financial capacity would be reflected in an AFCP and estimates for the total annual operating costs for each of the first 5

years of operation of the facility. The AFCP and cost estimates would provide the NRC with adequate information to determine whether the applicant appears to be financially qualified. An applicant's financial capacity is not a predictive finding of the likelihood of an applicant to ultimately obtaining financing. Rather, an applicant's financial capacity reflects the applicant's level of understanding of the size and scope of the project, including the level of capital necessary to undertake the project, and it reflects the experience, skills, and expertise required to obtain proper financing and ultimately finance the project, when appropriate. For the NRC to find that an applicant appears to be financially qualified, the applicant must demonstrate its financial capacity through its construction cost estimate, estimated costs for operations, and its associated AFCP. Details regarding the content and substance of the AFCP can be found in the final regulatory basis<sup>11</sup> and in draft implementing guidance Draft Regulatory Guide (DG)-9004, "Financial Qualifications for Power Reactors and Non-power Production or Utilization Facilities" (ADAMS Accession No. ML17240A362).

The NRC is proposing rule language (under § 50.33(f)(4)) to require license conditions for an initial applicant with 50 percent or less of the necessary funding identified at the time of application. These license conditions are intended to confirm that sufficient funding is available prior to the start of licensed activities. The license conditions would be sufficient and specific to allow the NRC staff to conduct a ministerial review to verify that the licensee's financing plan is executed and funding is obtained prior to the start of licensed activities.

For an applicant seeking the transfer of a license of a decommissioning plant, an applicant's FQ for decommissioning under proposed § 50.33(f)(5) would be reflected in

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<sup>11</sup> Section 7.1, "New Review Standard—Appears To Be Financially Qualified and the Demonstration of Financial Capacity."

information that it submits to show that it possesses or has reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and management of irradiated fuel. Current regulations in § 50.82(a)(4)(i) and § 52.110(d)(1) require a power reactor licensee to submit a PSDAR prior to or within 2 years following the permanent cessation of operations. The NRC expects license transfer applicants to submit a revised site-specific decommissioning cost estimate, including a description of the remaining planned decommissioning activities along with a schedule for their accomplishment, as required by § 50.82(a)(4)(i). License transfer applicants may choose to submit a revised PSDAR to meet these requirements, but a revised PSDAR is not required and would not be subject to NRC review or approval as a part of the license transfer review. Alternatively, the transfer applicant could confirm that the information in the PSDAR submitted by the current licensee continues to demonstrate the projected activities, costs, and necessary funding to complete decommissioning remain valid. The NRC expects the applicant to also include the information required in the decommissioning financial assurance status report required by § 50.82(a)(8)(v)-(vi) and the irradiated fuel management funding report required by § 50.82(a)(8)(vii) for the licensed facility, or a certification that the information already submitted to the NRC remains valid.

License-transfer applicants for decommissioning NPUF facilities must demonstrate possession of funds, or how reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and managing irradiated fuel, will be provided through the submission of an updated cost estimate for decommissioning as required by § 50.82(b)(4)(iv). License transfer applicants for such facilities may choose to submit a revised decommissioning plan to meet these

requirements but are not required to do so. Any changes to an NPUF facility's approved decommissioning plan would be subject to NRC approval as described in § 50.82(b)(5).

Additionally, NRC staff is proposing changes to § 50.33(k)(1). The proposed changes are necessary to clarify that the requirement in this section would apply only to operating power reactors and NPUFs and not to facilities in decommissioning (which would be covered by proposed § 50.33(f)(5)). The proposed changes would also require additional information from applicants for facilities that are not yet in decommissioning, but are within 5 years of permanent cessation of operations (for power reactors) or within 2 years of permanent cessation of operations (for NPUFs).

Finally, NRC proposes removing the current provision in § 50.33(f)(5), which provides the Commission with broad authority to request additional financial information to assess the licensee's "ability to continue the conduct of activities authorized by the license and to decommission the facility." The NRC staff has other means to request this information and rarely used this provision to request additional financial information from existing licensees. The staff proposes to delete this provision based in part on comments received on the draft regulatory basis. One commenter questioned the need for § 50.33(f)(5) stating that, to the extent it was intended to apply to operating licensees, it was both unnecessary and misplaced in the "contents of application" section. The NRC has broad authority under the AEA and NRC regulations in §§ 50.54(cc), 50.54(f), and 2.102 to obtain information from its licensees and applicants, as necessary, to protect public health and safety. Further, if the NRC becomes aware of a licensee's degraded financial health, such information may be used in the planning of NRC inspection activities, as appropriate. In addition to rescinding the current provision in § 50.33(f)(5) and replacing it with language unrelated to the intent of the current provision, the NRC also intends to rescind NRC Interim Staff Guidance OL/FR-ISG-2014-01,



“Reviewing and Assessing the Financial Condition of Operating Power Reactor Licensees, including Requests for Additional Information,” consistent with the modifications that would be made by the proposed rule.

#### **IV. Specific Request for Comments**

The NRC is requesting comment from the public on the proposed rule and the draft implementation guidance documents. The NRC is particularly interested in points of view and responses to the following questions:

- 1) Is the NRC considering a reasonable approach to meet the objectives described in the SUPPLEMENTARY INFORMATION section of this document? Provide an explanation for your response.
- 2) In addition to implementation guidance provided in revised NUREGs and a draft regulatory guide developed by the NRC for the FQ rulemaking, would additional guidance or clarification of criteria help applicants to better understand information submission requirements necessary to meet the proposed rule? If so, what further guidance or clarification would be suggested?
- 3) As noted previously in this document, two commenters on the draft regulatory basis requested complete rescission of the FQ requirements. Section 182a of the Atomic Energy Act (AEA), provides, in part, that applications for a license include the information that the Commission may determine to be necessary to decide “such of the technical and financial qualifications of the applicant, the character of the applicant, the citizenship of the applicant, or any other qualifications of the applicant as the Commission may deem appropriate for the license.” The NRC is seeking additional input on whether complete rescission of

FQ requirements would undermine the NRC's ability to make the required statutory findings regarding an applicant's "technical and financial qualifications." Should the NRC consider any additional information on complete rescission of the NRC's applicant FQ requirements beyond that which was discussed in the final regulatory basis?

- 4) The NRC is proposing rule language to require license conditions for an initial applicant with 50 percent or less of the necessary funding identified at the time of application. As previously noted, this approach would not be required for license transfer applicants. However, the proposed rule language does not prohibit license transfer applicants from proposing FQ license conditions. Should the NRC consider allowing the use of such conditions for the transfer of a license prior to construction, during construction, and/or during operations?
- 5) The NRC is considering an additional change to 10 CFR part 50—the deletion of 10 CFR 50.71(b). This requirement to submit annual financial reports, including certified financial statements, may be burdensome for some licensees and permit holders and of limited utility to the NRC. Further, the information in these reports may be outdated—more up-to-date information may be readily available from public sources. The NRC is soliciting public comments on the utility of this provision, its burden on licensees and permit holders, and whether the requirement should be retained.

## **V. Section-by-Section Analysis**

### *Section 50.33 Contents of applications; general information*

This proposed rule would make minor editorial changes to improve clarity in the introductory text to § 50.33.

*Section 50.33 Paragraph (d)*

This proposed rule would add the words “individual” and “applicant” in place of the pronoun “it” when referring to applicants.

*Section 50.33 Paragraph (f)*

This proposed rule would revise § 50.33(f) to require the applicant to provide information that is sufficient to demonstrate to the NRC that the applicant appears to be financially qualified.

The exclusionary language for electric utility OL applicants in the current preamble paragraph (f) is retained but moved to proposed paragraph (f)(1). Proposed preamble paragraph (f) also adds language to address the retention of current requirements for decommissioning power reactor facilities, essentially an OL or COL for which the NRC has docketed the certifications required under §§ 50.82(a)(1) or 52.110(a)(1) and (2), (i.e., regarding permanent cessation of operations and permanent removal of fuel from the reactor vessel). This exclusionary language also pertains to an NPUF that has permanently ceased operations. The exception for decommissioning power reactor facilities anticipates applications for license transfers for reactors in decommissioning. Applicants for such license transfers during decommissioning are addressed in proposed paragraph (f)(5).

Proposed paragraph (f)(1) addresses an electric utility’s application for a CP or a COL; proposed paragraphs (f)(1)(i) and (ii) identify the information required to be submitted to the NRC along with a utility’s application. This information includes in

paragraph (f)(1)(i) submission of the total construction cost estimate and related fuel cycle cost information and in paragraph (f)(1)(ii), submission of an AFCP. The AFCP and cost estimate should provide the NRC with adequate information to determine whether the applicant appears to be financially qualified.

Proposed paragraph (f)(2) addresses applicants other than electric utilities, such as merchant plants, NPUFs, or production facilities licensed under 10 CFR part 50. Applicants that are applying for a CP under proposed paragraph (f)(2)(i) would be required to provide—1) estimates of the total construction cost and related fuel cycle cost information ((f)(2)(i)(A)); and 2) an AFCP ((f)(2)(i)(B)). Applicants that are applying for an OL under proposed paragraph (f)(2)(ii) would be required to provide—1) estimates for the total annual operating costs for each of the first five years of operation of the facility ((f)(2)(ii)(A)); and 2) an AFCP ((f)(2)(ii)(B)). Non-utility applicants that are applying for a COL under proposed paragraph (f)(2)(iii) would be required to provide information that is required in proposed paragraphs (f)(2)(i) and (f)(2)(ii).

This proposed rule would move the FQ requirements for NPUF licensees applying for license renewal from current paragraph (f)(2) to proposed paragraph (f)(3). This proposed rule would revise paragraphs (f)(4) and (5) in their entirety.

Proposed new paragraph (f)(4) requires applicants with 50 percent or less of its funding identified at the time of application to include proposed license conditions with its application. The license conditions would allow the NRC to verify that sufficient funding has been obtained at least 60 days prior to the start of licensed activities.

Proposed new paragraph (f)(5) addresses requirements for power reactor applicants for an OL or COL for which the current licensee has certified permanent cessation of operations and permanent removal of fuel from the reactor vessel and for

applicants for an NPUF for which the current licensee has permanently ceased operations ((f)(5)(ii)). Current paragraph (f)(5) will be deleted.

*Section 50.33 Paragraph (k)*

This proposed rule would remove paragraph (k)(2) and paragraph (k)(1) would be revised and redesignated as (k). The proposed revisions would distinguish the requirement in this section to be applicable to only operating power reactors and NPUFs, excluding facilities in decommissioning. The proposed changes would also require additional information be reported as required in § 50.75(f)(3) and (4).

*Appendix C to 10 CFR Part 50 - A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses*

This proposed rule would adopt an FQ standard of “appears to be financially qualified,” and the detailed financial information in appendix C to 10 CFR part 50 would no longer be necessary. Therefore, the NRC proposes to remove appendix C to 10 CFR part 50 in its entirety.

**VI. Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power reactors and NPUFs. The companies, universities, and government agencies that own these facilities do not fall within the

scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

## **VII. Regulatory Analysis**

The NRC has prepared a draft regulatory analysis (RA) for this proposed rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. In summary, the draft RA concludes that the proposed rule would result in net benefits to future 10 CFR parts 50 and 52 license applicants and license transfer applicants. The simulation analysis in the draft RA shows that the estimated mean benefit for this proposed rule is \$762,000, with 95-percent confidence that the benefit ranges from (\$0.69 million) and \$2.93 million, using a 7-percent discount rate. The results also show that there is a 73 percent level of confidence that the proposed rule is cost beneficial. A reasonable inference from the uncertainty analysis is that proceeding with the proposed rule represents an efficient use of resources and averted costs to the NRC and industry. The rule is deemed cost beneficial to industry.

The NRC requests public comment on the draft RA; the full analysis is available as indicated in the “Availability of Documents” section of this document. Comments on the draft RA may be submitted to the NRC as indicated under the ADDRESSES section of this document.

## **VIII. Backfitting and Issue Finality**

The NRC has determined that the backfit rule does not apply to this proposed rule. The changes to the regulations under consideration by the NRC would not meet

the definition of “backfitting,” as that term is defined in § 50.109, “Backfitting” (also referred to as the “Backfit Rule”), nor would it be inconsistent with the issue-finality provisions of 10 CFR part 52.<sup>12</sup> Backfitting is defined in § 50.109(a)(1) as the modification of or addition to systems, structures, components, or design of a facility or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position.

The changes described by the proposed rule would not constitute backfitting. The Backfit Rule is intended to ensure that, once the NRC issues a license, the NRC does not arbitrarily change post hoc the terms and conditions for operating under the license or in the regulations that applied when the license was issued. Accordingly, an applicant for a license (whether initial or transferred) has no backfitting protection until the license has been issued.<sup>13</sup> Therefore, the Backfit Rule would not apply to this proposed rule, which would result in changes to the application requirements for CPs, OLs, and COLs.

## **IX. Cumulative Effects of Regulation**

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging extensively with external stakeholders throughout this rulemaking and related regulatory activities. Public involvement has included: 1) a request for comment on the

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<sup>12</sup> Hereinafter, references to the Backfit Rule include references to the issue finality provisions of 10 CFR part 52.

<sup>13</sup> The exception to this principle is a COL applicant that references an already-issued design certification or early site permit, but this exception is not applicable to the FQ requirements.

draft regulatory basis document on June 17, 2015, and 2) two public meetings that supported the development of the final regulatory basis document, held on April 29, 2015, and July 8, 2015. The NRC will conduct a public meeting on the proposed rule; see Section XIV "Public Meeting" of this notice for more information. Additionally, the NRC is requesting CER feedback on the following questions:

1. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?
2. Are there unintended consequences? Does the proposed rule create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?
3. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports the proposed rule.

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



## **XI. National Environmental Policy Act**

The proposed rule concerns amendments to 10 CFR part 50 that are categorically excluded, consistent with § 51.22(c)(3)(i), as the proposed amendments relate to procedures for filing and reviewing applications for CPs and OLS under 10 CFR part 50. The proposed amendments, if promulgated, would also apply to 10 CFR part 52 combined license applications. Therefore, no further environmental review is necessary.

## **XII. Paperwork Reduction Act Statement**

This proposed rule amends a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The proposed rule would reduce the burden for the existing information collection. This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

*Type of submission, new or revision:* Revision

*The title of the information collection:* 10 CFR part 50 “Financial Qualifications Requirements for Reactor Licensing”

*The form number if applicable:* Not applicable.

*How often the collection is required or requested:* On occasion, when submitting an initial application or license transfer to construct or operate a nuclear power reactor or NPUF.

*Who will be required or asked to respond:* Future nuclear power reactor and NPUF applicants.

*An estimate of the number of annual responses:* 5 responses over the next three years, or 1.67 responses annually.

*The estimated number of annual respondents:* 5 responses over the next three years, or 1.67 responses annually.

*An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* New nuclear power reactor and NPUF applicants would be required to submit information showing they appear to be financially qualified as well as an AFCP showing how they will finance construction and operation of the facility, which would take 1,601 hours per application. This represents a burden hour savings of 1,979 hours per applicant compared to the current requirement to show reasonable assurance of FQ. The NRC expects to receive five license applications or license submittals within the OMB information collection period of three years following publication of the final rule with a total burden savings of 9,895 hours (or 3,298 hours burden savings annually).

*Abstract:* The proposed rule would replace the requirement for power reactor and NPUF applicants to demonstrate that they possess or can provide reasonable assurance of obtaining the funds necessary for construction and operation with an “appears to be financially qualified” standard. An applicant would be required to submit an AFCP describing how it will proceed to finance the construction and operation of the facility. The NRC needs this information to evaluate whether the applicant has both a well-articulated understanding of the size and scope of the project it is undertaking and the financial capacity to obtain the necessary financing prior to the start of licensed activities.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of the burden of the proposed information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the proposed information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the OMB clearance package and proposed rule is available in ADAMS under Accession No. ML17172A564 or may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, MD 20852. You may obtain information and comment submissions related to the OMB clearance package by searching on <http://www.regulations.gov> under Docket ID NRC-2014-0161.

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

- **Federal rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0161.
- **Mail comments to:** Information Services Branch, Office of Information Services, Mail Stop: T-2 F43, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Brandon F. DeBruhl, Desk Officer, Office of Information and Regulatory Affairs (3150-0011), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-0710; e-mail: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

Submit comments by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

### **XIII. Availability of Guidance**

The NRC is issuing draft guidance for implementation of the proposed requirements in this rulemaking. The guidance documents include a new draft regulatory guide, DG-9004, "Financial Qualifications for Power Reactors and Non-power Production or Utilization Facilities;" revision to NUREG-1577, "Standard Review Plan on Power Reactor and Non-power Production or Utilization Facility Financial Qualifications and Decommissioning Funding Assurance (Revision 2);" and revision to NUREG-1537, "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content," Parts 1 and 2 (Revision 1). The guidance documents are available in ADAMS under Accession Nos. ML17240A362, ML17237A161, ML17251A470, and ML17251A501, respectively. You may obtain information and comment submissions related to the draft guidance by searching on <http://www.regulations.gov> under Docket ID NRC-2014-0161.

The draft guidance provides methods acceptable to the NRC staff for complying with the proposed revised FQ requirements. The guidance applies to applicants for, or holders of, an initial CP, OL, or COL under 10 CFR part 50 or 10 CFR part 52, as well as applicants for approval of direct or indirect transfers of facility licenses. The guidance also provides NRC staff instruction for conducting reviews and analyses of FQ information intended to demonstrate compliance with the amended FQ requirements in § 50.33.

The draft guidance explains how the revised FQ review standard will reflect the financial capacity of the applicant to obtain the necessary funding for construction and operation of a power reactor or non-power production or utilization facility. Specifically, the guidance explains the requirement for the NRC to find that an applicant appears to be financially qualified, which includes the applicant satisfactorily demonstrating its financial capacity by providing: 1) a construction cost estimate, when appropriate, to ensure that the applicant understands the size and scope of the project; and 2) an AFCP with information detailed enough for the NRC to conclude that the applicant has both the understanding of the project requirements and the financial capacity to obtain or provide financing, when appropriate. The revised draft guidance also will explain the use of license conditions to: 1) ensure funding is available prior to the start of licensed activities; and 2) to find that the applicant has financial capacity when funding is not otherwise committed.

You may submit comments on the draft guidance documents using the methods listed in the ADDRESSES section of this document.

#### **XIV. Public Meeting**

The NRC will conduct a public meeting on the proposed rule and draft implementation guidance documents, and will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting at: <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

#### **XV. Availability of Documents**

The documents identified in the following table are available to interested persons as indicated.

<b>DOCUMENT</b>	<b>ADAMS ACCESSION NO.</b>
U.S. Nuclear Regulatory Commission, Final regulatory basis, "Financial Qualifications for Reactor Licensing Rulemaking"	ML15322A185
U.S. Nuclear Regulatory Commission, "Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications," Commission Paper SECY-13-0124.	ML13057A006
U.S. Nuclear Regulatory Commission, "Staff Requirements—SECY-13-0124—Policy Options for Merchant (Non-Electric Utility) Plant Financial Qualifications," Commission Paper SRM-SECY-13-0124.	ML14114A358
Comment from University of Florida on Draft Regulatory Basis for Financial Qualifications for Reactor License Rulemaking.	ML15190A386
Comment from Coquí RadioPharmaceuticals Corp. on NRC's Financial Qualifications for Reactor Licensing Draft Regulatory Basis.	ML16120A098
Comment from NEI on NRC Draft Regulatory Basis Supporting Financial Qualifications Rulemaking.	ML15217A059

DOCUMENT	ADAMS ACCESSION NO.
Comment from The George Washington University Regulatory Studies Center Comment on the Nuclear Regulatory Commission's Draft Regulatory Basis Financial Qualifications for Reactor Licensing.	ML15222A298
U.S. Nuclear Regulatory Commission, "Public Meeting on Financial Qualifications for Merchant Plant Combined License Applicants," Public Meeting Transcripts.	ML13022A446 [January 8, 2013]  ML12291A816 [October 11, 2012]
U.S. Nuclear Regulatory Commission, "Meeting to Discuss the Proposed Financial Qualifications Requirements Included in the Draft Regulatory Basis for the Rulemaking on Financial Qualifications for Reactor Licensing," Meeting Summary.	ML15126A402 [Summary of April 29, 2015 meeting dated May 6, 2015]
U.S. Nuclear Regulatory Commission, Regulatory Analysis (RA), "Financial Qualifications Requirement for Reactor Licensing Proposed Rule – Draft Regulatory Analysis"	ML17172A559
NUREG-1577, Revision 2, "Standard Review Plan on Power Reactor and Non-Power Production or Utilization Facility Financial Qualifications and Decommissioning Funding Assurance"	ML17237A161
Draft Regulatory Guide DG-9004, "Financial Qualifications for Power Reactors and Non-power Production or Utilization Facilities"	ML17240A362
NUREG-1537, Part 1, Revision 1, "Format and Content - Financial Qualifications and Decommissioning Funding Assurance"	ML17251A470
NUREG-1537, Part 2, Revision 1, "Standard Review Plan and Acceptance Criteria - Financial Qualifications and Decommissioning Funding Assurance"	ML17251A501

Throughout the development of this rule, the NRC may post documents related to this rule, including public comments, on the Federal rulemaking Web site at <http://www.regulations.gov> under Docket ID NRC-2014-0161. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: 1) Navigate to the docket folder (NRC-2014-0161) click the "Sign up for

E-mail Alerts” link; and 3) enter your e-mail address and select how frequently you would like to receive e-mails (daily, weekly, or monthly).

### **List of Subjects in 10 CFR Part 50**

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, 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.

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 proposing to adopt the following amendments to 10 CFR part 50:

#### **Part 50 - Domestic Licensing Of Production And Utilization Facilities**

1. 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.



2. In § 50.33, revise the introductory text, and revise paragraphs (d), (f), and (k) to read as follows:

**§ 50.33 Contents of applications; general information.**

Each application must include the following information:

\* \* \* \* \*

(d)(1) If applicant is an individual, state individual's citizenship.

(2) If applicant is a partnership, state the name, citizenship, and address of each partner and the principal location where the partnership does business.

(3) If applicant is a corporation or an unincorporated association, include the following information:

(i) The state where the applicant is incorporated or organized and the principal location where the applicant does business;

(ii) The names, addresses, and citizenship of the applicant's directors and of its principal officers;

(iii) Whether the applicant is owned, controlled, or dominated by an alien, a foreign corporation, or foreign government, and if so, give details.

\* \* \* \* \*

(f) Except for a power reactor for which the NRC has docketed the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel required under § 50.82(a)(1) or § 52.110(a)(1) and (2), or a non-power production or utilization facility that has permanently ceased operations, information sufficient to demonstrate to the Commission that the applicant appears to be financially qualified to

carry out, in accordance with regulations in this chapter, the activities for which the permit or license is sought.

(1) For an electric utility applicant, no information under this paragraph is required for a license to operate a utilization facility of the type described in § 50.21(b) or § 50.22; for a construction permit or combined license an electric utility applicant must include the following:

(i) Estimates of the total construction costs of the facility, including any related fuel cycle costs, and

(ii) An Applicant Financial Capacity Plan that will inform the NRC's review of whether the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations in this part.

(2) Applicants that are not electric utilities must include the following:

(i) For a construction permit:

(A) Estimates of the total construction costs of the facility, including any related fuel cycle costs, and

(B) An Applicant Financial Capacity Plan that will inform the NRC's review of whether the applicant appears to be financially qualified to engage in the proposed activities in accordance with the regulations in this part.

(ii) For an operating license:

(A) Estimates for the total annual operating costs for each of the first 5 years of operation of the facility, and

(B) An Applicant Financial Capacity Plan describing how the applicant intends to cover the estimated operating costs, including documentation of sources of funds to cover each of the first 5 years of operation.

(iii) An applicant for a combined license must submit the information in paragraphs (f)(2)(i) and (ii).

(3) An applicant seeking to renew or extend the term of an operating license for a power reactor is not required to submit the same financial information that is necessary in an application for an initial license. However, applicants to renew or extend the term of an operating license for a non-power production or utilization facility must include the financial information that is required in an application for an initial license.

(4) For those applications, other than those for a transfer under § 50.80 or § 52.105 of this chapter, that do not identify greater than 50 percent funding, the applicant must provide proposed license conditions that would allow the NRC to verify that sufficient funding has been obtained at least 60 days prior to the start of licensed activities.

(5)(i) If the application is for a power reactor, for which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a)(1) and (2) of this chapter, the

applicant must submit information that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and managing irradiated fuel. The applicant must submit a site-specific decommissioning cost estimate, including a description of the remaining planned decommissioning activities along with a schedule for their accomplishment as required by § 50.82(a)(4)(i). In its submission, the applicant must include the information required in the decommissioning financial assurance status report required by § 50.82(a)(8)(v)-(vi) and the irradiated fuel management funding report required by § 50.82(a)(8)(vii) for the licensed facility.

(ii) If the application is for a non-power production or utilization facility that has permanently ceased operations, the applicant must submit an updated cost estimate for decommissioning as described in § 50.82(b)(4)(iv) that demonstrates that the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated costs for decommissioning the facility and managing irradiated fuel.

\* \* \* \* \*

(k) Except for a power reactor for which the NRC has docketed the certifications required under § 50.82(a)(1) or § 52.110(a)(1) and (2), or a non-power production or utilization facility that has permanently ceased operations, information in the form of a report, as described in § 50.75, indicating how reasonable assurance will be provided that funds will be available to decommission the facility. The application must include the information that is required under § 50.75(f)(3) and (4), as applicable.

### **Appendix C to Part 50 [Remove and Reserve]**

3. Remove and reserve appendix C to 10 CFR part 50.

Dated at Rockville, Maryland, this day     of     , 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.