

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: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations for approved financial assurance mechanisms for decommissioning, specifically for parent-company guarantees and self-guarantees that require bond ratings issued by credit rating agencies. This direct final rule implements the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act). The Dodd-Frank Act directed agencies to amend their regulations to remove reference to or requirements that rely on credit ratings. Applicants and licensees that are required to provide decommissioning financial assurance may be impacted. The NRC is issuing interim guidance, “Interim Staff Guidance on Removal of Bond Ratings from Parent and Self-Guarantees, Decommissioning Financial Assurance,” for the implementation of the requirements in this direct final rule.

DATES: The direct final rule is effective **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, unless significant adverse comments

are received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of 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 Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0021. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. 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 <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **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.

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

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

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

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2017-0021.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

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

B. Submitting Comments

Please include Docket ID NRC-2017-0021 in your comment submission.

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

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

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the direct final rule process for this rule. The amendment to the rule will become effective on **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. However, if the NRC receives significant adverse comments on this direct final rule by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the *Federal Register*. Absent significant modifications to the proposed rule requiring republication, the NRC will not initiate a second comment period on this action.

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

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

a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

2) The comment proposes a change or an addition to the rule, and it is apparent

that the rule would be ineffective or unacceptable without incorporation of the change or addition.

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

For detailed instructions on filing comments, please see the ADDRESSES section of the companion proposed rule published in the Proposed Rule section of this issue of the *Federal Register*.

III. Background

Congress passed the Dodd-Frank Act to “promote the financial stability of the United States by improving accountability and transparency in the financial system.”¹ In the Dodd-Frank Act, Congress found that “ratings on structured financial products have proven to be inaccurate” and that “[t]his inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy.”² In Section 939A of the Dodd-Frank Act, Congress directed each Federal agency to “review any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings.”³ Section 939A further directed each such agency to “modify any such regulations identified by the review...to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations.”⁴

¹ Public Law 111-203, Preamble.

² Public Law 111-203, Sec. 931(5).

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

⁴ Public Law 111-203, Sec. 939A(b).

As directed by Section 939A of the Dodd-Frank Act, the NRC has reviewed its regulations for any references to or requirements regarding credit ratings. The three primary credit rating agencies include Moody's, Standard and Poor's, and Fitch. Appendices A, C, and E of part 30 of title 10 of the *Code of Federal Regulations* (10 CFR) require specified bond ratings from Moody's or Standard and Poor's to satisfy certain decommissioning financial assurance requirements for materials, power reactor, and non-power reactor licensees and applicants. In accordance with the Dodd-Frank Act, the NRC is amending these appendices to remove these requirements and rely instead on already existing alternative financial tests that do not contain a credit rating criterion. Other regulations that cite or reference these appendices would also be amended by this direct final rule, including: § 30.35(f)(2); § 40.36(e)(2); appendix A to 10 CFR part 40, criterion 9; § 50.75(e)(1)(iii)(C); § 70.25(f)(2); and § 72.30(e)(2).

IV. Discussion of Changes

Applicants and licensees must demonstrate reasonable assurance that funds will be available when needed for decommissioning in order to obtain and maintain a reactor license and certain materials licenses.⁵ Under current regulations, such a demonstration may be made by prepayment of funds, payment of funds into an external sinking fund, a surety method, insurance, or other guarantee method including a letter of credit, a parent-company guarantee, or a self-guarantee.⁶ This direct final rule revises the NRC's regulations that address parent companies or companies that provide a self-guarantee. Only these financial assurance mechanisms rely, in part, on credit ratings.

⁵ Section 182a of the Atomic Energy Act of 1954, as amended, provides that "Each application for a license...shall specifically state such information as the Commission, by rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant...as the Commission may deem appropriate for the license."

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

For each entity (a company, a parent company, or a non-profit college, university, or hospital) from whom the NRC accepts a guarantee to provide decommissioning funding assurance, financial tests exist in appendices A, C, D, and E to 10 CFR part 30 for entities with credit ratings and for entities without credit ratings. This direct final rule removes from the NRC's regulations those requirements that require financial tests that rely in part on credit ratings and retains those requirements that do not require the financial tests. Specifically, the direct final rule—

1) for use of parent-company guarantees, removes section II.A.2 from appendix A to 10 CFR part 30 and relies entirely on section II.A.1;

2) for use of self-guarantees for commercial companies, removes in its entirety appendix C to 10 CFR part 30 and relies entirely on appendix D; and

3) for use of self-guarantees for nonprofit colleges, universities, and hospitals, removes sections II.A.(1) and II.B.(1) from appendix E to 10 CFR part 30 and relies entirely on sections II.A.(2) and II.B.(2).

Parent-Company Guarantees

Under the current section II.A.2 of appendix A to 10 CFR part 30, the NRC may accept a parent-company guarantee based in part on credit ratings. Under the direct final rule, which removes section II.A.2 of appendix A to 10 CFR part 30, these entities are required to meet the financial test in section II.A.1 of appendix A to 10 CFR part 30. This financial test contains two criteria that differ from the test in the current appendix A, section II.A.2. First, the licensee must meet two of the following three ratios: 1) a ratio of total liabilities to total net worth less than 2.0; 2) a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and 3) a ratio of current assets to current liabilities greater than 1.5. In addition, the licensee must have net working capital and tangible net worth each at least six times the amount of

decommissioning funds being assured. The other two criteria of the financial test in section II.A.1 are the same as in section II.A.2.

Self-Guarantees

Under the current appendix C to 10 CFR part 30, the NRC may accept a company self-guarantee based in part on credit ratings through use of the two risk-mitigation requirements of the Securities and Exchange Act requirement currently found in appendix C to 10 CFR part 30, criterion II.B.(1) and the immediate reporting requirement currently found in appendix C to 10 CFR part 30, criterion II.C. Under the direct final rule, which removes appendix C to 10 CFR part 30, those entities are required to meet the financial test in appendix D to 10 CFR part 30. The financial test in appendix D to 10 CFR part 30 contains a criterion that differs from the test in appendix C to 10 CFR part 30. That difference is that, in lieu of providing a certain credit rating, the licensee will be required to meet a ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5. Additionally, appendix D does not contain the two risk-mitigation requirements of the Securities and Exchange Act requirement currently found in appendix C to 10 CFR part 30, criterion II.B.(1) and the immediate reporting requirement currently found in appendix C to 10 CFR part 30, criterion II.C

Self-Guarantees for Nonprofit Colleges, Universities, and Hospitals

Under the current section II.A.(1) of appendix E to 10 CFR part 30, the NRC may accept a self-guarantee based on credit ratings from a nonprofit college or university. Under the direct final rule, which removes section II.A.(1) of appendix E to 10 CFR part 30, those licensees are required to meet the financial test in section II.A.(2) of appendix E to 10 CFR part 30. The financial test in section II.A.(2) requires an

unrestricted endowment consisting of assets located in the U.S. of at least \$50 million, or at least 30 times the total current decommissioning cost estimate, whichever is greater.

Under the current section II.B.(1) of appendix E to 10 CFR part 30, the NRC may accept a self-guarantee based on credit ratings from a nonprofit hospital. Under the direct final rule, which removes section II.B.(1) of appendix E to 10 CFR part 30, those licensees are required to meet the financial test in section II.B.(2) of appendix E to 10 CFR part 30. The financial test in section II.B.(2) requires the following: 1) a ratio of (total revenues less total expenditures) divided by total revenues must be 0.04 or greater; 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 100 times the total current decommissioning cost estimate.

Applicants and licensees who cannot meet the parent company or self-guarantee financial tests to demonstrate reasonable assurance that funds will be available when needed for decommissioning will have to use the alternative methods listed above.

V. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the NRC certifies that this direct final rule will not, if adopted, have a significant economic impact on a substantial number of small entities. This direct final rule affects NRC licensees who are required to provide decommissioning financial assurance. These entities do not fall within the scope of the definition of small entities as defined by the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VI. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available in ADAMS under Accession No. ML19024A309.

VII. Backfitting and Issue Finality

The NRC has not prepared a backfit analysis for this direct final rule because the proposed requirements are mandated by Congress and, therefore, are exempt from the NRC's provisions in 10 CFR 50.109, 70.76, 72.62, 76.76, and issue finality regulations in 10 CFR part 52. Further, these regulations do not apply to this direct final rule because the amendments do not involve backfitting as that term is defined in 10 CFR chapter I or are not inconsistent with the issue finality provisions in 10 CFR part 52.

VIII. 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).

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

The action is the amendment of the NRC's 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 parent-company guarantees and self-guarantees for providing reasonable assurance of funds for decommissioning. The amendment will remove from the options of financial tests those that include a credit rating criterion. Alternative financial tests that do not include a credit rating criterion will be retained and all parent-company guarantees or self-guarantees will be required to use such tests. The action is in response to the Dodd-Frank Act, which requires agencies to remove any reliance on or reference to credit ratings in their regulations.

No additional financial assurance mechanisms or financial tests are included. Only certain financial tests are removed, and the remaining financial tests are already available to all applicants and licensees. Requiring applicants and licensees to use these already existing financial tests does not lead to any increase in the effect on the environment of decommissioning activities.

Therefore, the Commission has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in subpart A of 10 CFR part 51 that this direct final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, 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 direct final rule.

X. Paperwork Reduction Act Statement

The burden to the public for the information collection(s) is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

This direct final rule is being issued prior to approval by the Office of Management and Budget (OMB) of these information collection requirements, which were submitted under OMB control numbers, 3150-0009, 3150-0017, 3150-0020, and 3150-0132. When OMB notifies the NRC of its decision, the NRC will publish a document in the *Federal Register* providing notice of the effective date of the information collections or, if approval is denied, providing notice of what action we plan to take.

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

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

- **Mail comments to:** Information Services Branch, Office of Information Services, Mail Stop: T-6-A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 or to Desk Officer for the Nuclear Regulatory Commission, Office of Information and Regulatory Affairs (3150-0009, 3150-0017, 3150-0020, and 3150-0132), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-1741, e-mail: 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.

XI. Congressional Review Act

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XII. Compatibility of Agreement State Regulations

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the *Federal Register* on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into compatibility Category A, B, C, D, NRC, or adequacy category Health and Safety (H&S). Compatibility Category A are 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 regulations of agreement material on a nationwide basis. Compatibility B are the 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 regulations 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, thus, 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 title 10 of the *Code of Federal Regulations*. These program elements should not be adopted by the Agreement States. The H&S are program elements that are required because of a particular health and safety role in a manner that embodies the essential objectives of the NRC program.

The final rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement States and NRC requirements. The proposed compatibility categories are designated in the following table:

Compatibility Table for the 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	Delete	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

The NRC invites comment on the compatibility category designations and suggests that commenters refer to Handbook 5.9 of Management Directive 5.9 (ADAMS Accession No. ML18081A070) for more information. The NRC encourages anyone

interested in commenting on the compatibility category designations in any manner to do so during the comment period.

XIII. Voluntary Consensus Standards

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

XIV. Availability of Guidance

The NRC is issuing interim guidance, "Interim Staff Guidance on Removal of Bond Ratings from Parent and Self-Guarantees, Decommissioning Financial Assurance," for the implementation of the requirements in this rule. The guidance is available in ADAMS under Accession No. ML18345A284. You may obtain information and comment submissions related to the draft guidance by searching on <http://www.regulations.gov> under Docket ID NRC-2017-0021.

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, 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 § 30.8, revise paragraph (b) to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and appendices A, D, and E to this part.

* * * * *

3. 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 corporations, 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 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:

* * * * *

4. In appendix A to part 30, section II, revise paragraphs A introductory text and B and remove and reserve paragraph A.2 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. To pass the financial test, the parent company must meet the criteria of paragraph A.1 of this appendix. For purposes of applying the appendix A criteria,

tangible net worth must be calculated to exclude all intangible assets and the net book value of the nuclear facility and site, and total net worth, which may include intangible assets, must be calculated to exclude the net book value and goodwill of the nuclear facility and site.

1. [Reserved]

* * * * *

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. 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.

* * * * *

Appendix C to Part 30 [Reserved]

5. Remove and reserve appendix C to part 30.

Appendix D [Amended]

6. In appendix D to part 30, remove the words “That Have No Outstanding Rated Bonds” from the title of the appendix.

7. In appendix E to part 30, section II, revise paragraphs A introductory text, A.(2), B introductory text, and B.(2), and remove and reserve paragraphs A.(1) and B.(1) 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. For colleges and universities, to pass the financial test a college or university must meet the criteria in paragraph II.A.(2) of this appendix.

(1) [Reserved]

(2) Applicant or licensee must have an unrestricted endowment 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 for certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals, to pass the financial test a hospital must meet the criteria in paragraph II.B.(2) of this appendix:

* * * * *

(1) [Reserved]

(2) All of the following tests must be met:

(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.

* * * * *

PART 40 – DOMESTIC LICENSING OF SOURCE MATERIAL

8. 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.

9. In § 40.36, revise paragraph (e)(2) 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 corporations, 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 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:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the Commission, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Commission within 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the Commission. An acceptable trustee includes an appropriate State or Federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

* * * * *

PART 50 – DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

10. 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.

11. 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 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. 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

12. 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.

13. 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 corporations, 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 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

14. 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.

15. 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 corporations, 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 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 at Rockville, Maryland, this ____ day of _____, 2019.

For the Nuclear Regulatory Commission.

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