Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 11585; March 10, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 63 FR 11585 on March 10, 1998, is adopted as a final rule without change.

Dated: May 26, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150–AF64

Self-Guarantee of Decommissioning Funding by Nonprofit and Non-Bond-Issuing Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to allow additional materials licensees and non-electric utility reactor licensees who meet certain financial criteria to self-guarantee funding for decommissioning. Certain commercial corporate licensees who issue bonds are presently allowed to self-guarantee funding if they meet stringent financial criteria. This rule allows nonprofit licensees, such as colleges, universities, and hospitals, as well as some commercial licensees who do not issue bonds, to self-guarantee funding provided they meet similarly stringent financial criteria. Allowing additional qualified licensees to use self-guarantee reduces licensee costs while providing adequate assurance that funds for decommissioning will be available when needed.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301)415–6203, e-mail cwp@nrc.gov.

SUPPLEMENTARY INFORMATION:

Licensees subject to 10 CFR parts 30, 40, 70, and 72, whose operations involve the use of substantial amounts of nuclear materials, and those subject to 10 CFR Part 50 who are applicants for, or holders of, operating licenses for production or utilization facilities must provide financial assurance for decommissioning funding by selecting from a variety of mechanisms: surety bond or letter of credit, prepayment, insurance, an external sinking fund coupled with a surety or insurance,[1] parent company guarantee for licensees that have a qualifying corporate parent, and, for certain financially strong corporations, self-guarantee. A statement of intent regarding obtaining funds to satisfy decommissioning obligations may be used by some licensees that are governmental entities (for example, public universities whose charter provides for a direct link to the State Government).

To date, self-guarantee has not been available to nonprofit licensees such as hospitals and universities, or to for-profit licensees who do not issue bonds, because the financial test for self-guarantee uses the rating of the bonds issued by the licensee as one measure of the licensee's financial resources and ability to fund decommissioning.

The NRC is extending the use of self-guarantee, previously limited to bond-issuing industrial corporations, to additional categories of qualified licensees. By selecting appropriate financial criteria for self-guarantee, this extension can be made without jeopardizing the present high level of financial assurance that the decommissioning obligation requires. Allowing qualified nonprofit and non-bond-issuing licensees to self-guarantee will reduce the costs of complying with NRC financial assurance requirements for those who meet the specified criteria.

[1] Pursuant to 10 CFR 50.75(e)(3), an electric utility can satisfy the decommissioning funding requirements with an external sinking fund, standing alone. This rulemaking does not apply to electric utilities and does not affect the NRC's Notice of Proposed Rulemaking that addresses decommissioning funding assurance issues associated with electric utility restructuring (see Financial Assurance Requirements for Decommissioning Nuclear Power Reactors—62 FR 47588, September 10, 1997). As part of this proposed rule, the NRC is considering amending its definition of ''electric utility'' and clarifying the distinction between financial assurance mechanisms applicable to power reactor licensees and non-power reactor licensees.

Background

On December 29, 1993 (58 FR 68726), as corrected on January 12, 1994 (59 FR 1618), the NRC published a notice of final rulemaking that allows financially strong corporations with A or better bond ratings the option of using self-guarantee as a mechanism for complying with the regulations on financial assurance for decommissioning. Self-guarantee was added to the list of financial assurance mechanisms as a cost-saving option for licensees that are able to meet the stringent financial test.

The NRC's decision to add self-guarantee to the list of approved financial assurance mechanisms for qualified licensees came in response to a petition for rulemaking filed by General Electric and Westinghouse (PRM–30–59, Notice of receipt published September 25, 1991 (56 FR 48445)). The petition presented a case for allowing self-guarantee as a cost-saving option for corporate licensees that are able to pass a stringent financial test.

Subsequent to the December 29, 1993, final rule, the Commission initiated a study to determine whether criteria could be developed and applied by NRC for nonprofit licensees and non-bond-issuing commercial licensees to use self-guarantee while maintaining the required level of confidence regarding the availability of decommissioning funds when needed. The study, ''Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges and Universities and Hospitals and by Business Firms that Do Not Issue Bonds,'' NUREG/CR–6514 [2] (June 1997), identified a variety of financial criteria that could be applied to additional categories of licensees regarding the use of self-guarantee. The financial criteria in this rule were selected by the NRC based on information in this report.

Public Comments on the Proposed Rule

The NRC published a notice of proposed rulemaking on April 30, 1997, (62 FR 23394). In response to this notice, 16 comments were received; 2 from States, 6 from colleges and universities, 3 from associations, 3 from

[2] Single copies are available from the NRC contact. Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555–0001; telephone (202) 634–3273; fax (202) 634–3343.

private corporations, 1 from a hospital, and 1 from the United States Enrichment Corporation. The commenters all supported the extension of self-guarantee to qualified nonprofit and non-bond-issuing commercial licensees. Although some commenters urged NRC to adopt the proposed rule as written, most favored some type of change to the financial criteria.

1. Financial Criteria for Colleges and Universities

The financial test criteria proposed for colleges and universities were an A or better bond rating or, for those not having a bond rating, unrestricted endowment of at least $50 million or 30 times projected decommissioning costs, whichever was greater. There were no comments regarding the A or better bond rating, but several commenters objected to the non-bond criteria as too conservative.

Comment: A commenter stated that the selected multiple of 30 times decommissioning costs is excessively conservative. NRC's basis for the 30 multiple is that an amount of money 30 times decommissioning costs invested at 3 percent would yield an annual amount sufficient to fund those costs. The commenter said that it should not be difficult to obtain secure investments yielding 6 percent; thus an appropriate multiple would be 15 based on investment yield.

Response: NRC's objective in selecting financial criteria was to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. However, for colleges and universities that do not issue bonds, lack of appropriate data on default risk made a financial assurance risk analysis impossible. For these licensees, NRC deliberately chose financial criteria which are conservative.

NRC did state in the preamble to the proposed rule, at 62 FR 32296, that ''[the multiple of 30 has been chosen because this would mean that any level of decommissioning costs could be covered by the annual return on an endowment invested at 3 percent.'' However, it is important to note that NRC was not assuming (1) that institutions will in fact finance decommissioning out of endowments; (2) that endowments can be expected in all circumstances to grow at a rate of at least 3 percent annually; or (3) that institutions can be expected to reallocate up to 3 percent of their spending from endowments in a one-year period. Rather, the criterion was selected to serve as a measure of the overall financial strength of the institution, indicating that NRC can reasonably assume that such a college or university can be allowed to self-guarantee for the costs of decommissioning because it possesses sufficient financial strength to obtain the necessary funds when they are needed.

Even assuming the premise of the commenter, NRC does not believe that reducing the multiple to 15, as the commenter suggests, is desirable. Although a real rate of return of 3 percent may appear low under the market conditions prevailing during certain periods, there is a substantial body of empirical evidence indicating that it is a reasonable assumption. If a licensee who has been relying on a self-guarantee is required to fully fund a trust fund for decommissioning in the year before the beginning of decommissioning, and the licensee relies on earnings from endowment to create the trust, it is the annual earnings of the endowment for the year immediately prior to the decommissioning that must equal the required amount. NRC has reviewed the information provided in Ibbotson Associates, Stocks, Bonds, Bills, and Inflation 1995 Yearbook, 1995, which published a summary of market results for the 69-year period from 1926 to 1995 for five categories of investments: small company stocks, large company stocks, long-term government bonds, long-term corporate bonds, and intermediate-term government bonds.

On a year-by-year basis, less risky investments, such as treasury bills, showed the most frequent positive returns, but their annual returns also were relatively low. Riskier investments showed a broad distribution of returns, from very good to very poor. Overall, however, with the exception of small and large company stocks, the average inflation-adjusted earnings (geometric mean) for these categories of investments were less than 3 percent. In a number of years, earnings for stocks also were less than 3 percent. Thus, real investment returns over a one-year period may not even match conservative earnings assumptions.

The study of endowment sponsored by the National Council of College and University Business Officers (NACUBO) published in 1995 also emphasized a concern for this earnings variability in its analysis of college and university endowment investment. First, NACUBO's study noted that current high rates of return cannot be expected to continue indefinitely. ''At a time when many public and private institutions are searching for ways to bridge the gap between revenues and expenditures, it is tempting to extrapolate these extraordinary returns into the future and to budget endowment spending accordingly. However, in this context it is instructive to note that for a representative group of institutions, the average annual real return after spending for the 10-year period ended June 30, 1994, is 4.1 percent, but for the 20 years ended June 30, 1994, it is 0.9 percent.'' (1994 NACUBO Endowment Study, National Council of College and University Business Officers, 1995, p. 4)

Therefore, the NACUBO study recommends strongly that institutions keep their spending from endowment below the rate proposed by the commenter. The report states that:

> Historical precedent indicates that a fund invested approximately 60 percent in domestic and foreign stocks, 30 percent in fixed income, and 10 percent in various other asset classes inevitably experiences recurring periods of absolute decline in market values over 3 years. Such a decline would trigger a reduction in spending for an institution sticking to a policy of spending a fixed percentage of a 3-year moving average of endowment market values * * * For fiscal year 1994, the average endowment spending rate reported by responding institutions is 6.0 percent. On average, the smallest endowments ($25 million and less) spent more (7.2 percent) than the largest (4.5 percent), and public institutions spent more (6.6 percent) than private institutions (5.7 percent) * * * With the sole exception of the 4.5 percent spent by the largest universities, these spending rates are not compatible with most institutions' stated intention to preserve the purchasing power of their endowment. Over time, it is possible (difficult, but possible) for the exceptionally well-managed institution to spend 6.0 percent of a 3-year moving average of endowment market values, and still preserve purchasing power. However, it is courting disaster to spend at an annual rate of 6.0 percent toward the tail end of a long bull market. (1994 NACUBO Endowment Study, 1995, p. 5)

Based on these considerations, the NRC continues to believe that a relatively conservative criterion, such as the 30 times requirement, is a reasonable criterion for the decommissioning self-guarantee test for colleges and universities. The NRC does not accept the commenter's recommendation to adopt a substantially less stringent criterion.

Comment: A commenter objected to the requirement that unrestricted endowment be at least $50 million or at least 30 times the decommissioning cost estimate, whichever is greater. The requirement should be compliance with either the $50 million figure *or* the 30 times decommissioning cost estimate, but not whichever is greater.

Response: As previously stated, NRC chose conservative financial criteria for

non-bond-issuing colleges and universities, aimed at assuring the financial viability of a licensee qualified to self-guarantee. This is the only requirement that would apply to non-bond-issuing colleges and universities, whereas non-bond-issuing hospitals or commercial licensees would be subject to multiple financial ratios as financial tests. It is designed to capture two measures of financial viability: (1) overall financial strength and (2) financial strength relative to size of decommissioning obligation. The overall financial strength of an institution is heavily dependent on the size of its unrestricted endowment. Specific ability to fund decommissioning expenses is measured by the ratio of unrestricted endowment to decommissioning costs. A financial test based only on ratio to decommissioning cost might allow an institution without adequate financial strength to pass if its decommissioning costs were low. A test based only on the size of the unrestricted endowment might be inadequate for those institutions with the highest decommissioning costs. Both threshold requirements are needed to provide assurance that an institution can meet decommissioning obligations when necessary.

Comment: A commenter stated that NRC's rationale for a multiple of 30 implies that decommissioning costs are paid from investment yields over a 1-year period. However, it is more realistic to assume that any decommissioning activities where financial assurance arrangements are involved will require considerable coordination with regulators and financial services involving 2 or 3 years to complete. This consideration also implies that the appropriate multiple should be 15 rather than 30.

Response: NRC recognizes that decommissioning may occur over a period longer than one year. The multiple of 30 was chosen without regard to how many years it would take to decommission a facility. The commenter is attempting to make this linkage the key factor in arriving at an appropriate multiple. However, following this line of reasoning, stretching out the time length of decommissioning would imply ever decreasing multiples.

NRC's objective is to ensure that decommissioning will take place on a timely basis. The financial assurance regulations are intended to assure that inadequate funding does not prevent timely decommissioning. Timely decommissioning may require that all decommissioning funding be available up front even though decommissioning activities are not completed within a single year. For this reason NRC's criteria for determining whether a licensee should be allowed to self-guarantee the costs of decommissioning must consider the possibility that the licensee will be required to fully fund decommissioning in the year immediately prior to the beginning of decommissioning activities. The licensee would fund a standby trust if either (1) the licensee no longer qualifies to use the self-guarantee to provide financial assurance for decommissioning, even if it was not yet required to conduct decommissioning, or (2) a licensee using a self-guarantee is required to carry out decommissioning. NRC currently does not allow licensees to consider the impact of earnings during the ''payout'' period (the period during which funds are being expended from the financial assurance standby trust to pay for decommissioning) in calculating the amount of funds that must be set aside for decommissioning. Therefore, the NRC disagrees with the commenter's suggestion that the expected duration of decommissioning activities should apply to the determination of the appropriate multiple.

Comment: A commenter recommends that [based on the combination of investment yield of 6 percent and investment yields over 2 to 3 years rather than 1 year] the multiplication factor [be] reduced from 30 to 10 with ample conservatism.''

Response: For the reasons stated in responses to the preceding comments, NRC does not accept this recommendation.

2. Financial Criteria for Hospitals

The financial test criteria proposed for hospitals was an A or better bond rating or, for hospitals not having a bond rating, a financial ratios test consisting of the following:

(a) Liquidity—(current assets and depreciation fund, divided by current liabilities) greater than or equal to 2.55.

(b) Net Revenue—(Total revenues less total expenditures divided by total revenues) greater than or equal to 0.04.

(c) Leverage—(Long term debt divided by net fixed assets) less than or equal to 0.67.

(d) Operating Revenues at least 100 times decommissioning costs.

There were no comments regarding the bond rating criterion but there were several comments on the non-bond criteria.

Comment: A commenter believed that the selected multiple of 100 [hospital operating revenues at least 100 times decommissioning costs] was excessively conservative. It appears to reflect an expectation that the decommissioning will take a short time whereas a realistic time frame should be 2 years or more. NRC should consider a multiple of 30 or less to be appropriate.

Response: The requirement that hospital operating revenues be at least 100 times decommissioning costs is a criterion that NRC is proposing to use to determine whether a licensee has sufficient financial strength to self-guarantee. However, a potential consequence of self-guaranteeing could be the need to fully fund a trust fund in a short period of time if the licensee ceases to be capable of passing the self-guarantee test or if decommissioning must be carried out. As discussed above, the operating revenues multiple criterion does not reflect any expectation concerning the length of time during which decommissioning will occur. Therefore, NRC does not accept this recommendation.

Comment: A commenter found the rationale that requires hospitals to meet all four financial ratios tests unclear. This commenter believed that using only the operating revenues/decommissioning costs ratio would appear to provide reasonable assurance of ability to provide decommissioning funding.

Response: The financial ratios test for hospitals in the rule was carefully selected to provide a level of financial assurance risk similar to the financial assurance risk in the existing self-guarantee. The four ratios in combination represent the financial test that best achieves this goal. A financial test using just one of these ratios would not represent the same level of risk and would not provide an adequate level of financial assurance. Using only the ratio of operating revenues to decommissioning costs would completely ignore such determinants of financial strength as liquidity, indebtedness, and profitability. The financial test used for non-bond-issuing commercial licensees includes several ratios, not just one. The non-bond financial test for colleges and universities does use a single ratio, but it is the ratio of unrestricted endowment to decommissioning costs. Unrestricted endowment is a fund readily available to meet decommissioning expenses. Hospital operating revenues are different because these funds may not be readily available to meet decommissioning expenses due to other hospital costs.

3. Prohibition on Using a Guarantee in Combination With Another Financial Assurance Mechanism

Comment: Some commenters noted that provisions in 10 CFR 30.35(f)(2), 40.36(e)(2), 50.75(e)(2)(iii), 70.25(f)(2), and 72.30(c)(2) provide that neither a parent company guarantee nor a guarantee by an applicant may be used in combination with other financial methods to satisfy financial assurance requirements. These commenters wanted to know the reasons for these restrictions.

Response: This rule makes no change in the already existing prohibition against combining a parent or self-guarantee with another type of financial assurance mechanism. The issue of whether or not to allow such a combination is broader than the focus of this rule. The NRC has limited experience with parent and self-guarantee to date. It is expected that the NRC will periodically reevaluate its financial assurance program in the future and could reassess the need for the prohibition.

4. Insured Bond Ratings

Comment: Some commenters objected to the proposed financial criteria which deal with bond ratings. As proposed, for institutions that issue bonds, only a bond issuance that is ''uninsured'' may be used; an ''insured'' bond rating would not be eligible. The justification for this limitation is not warranted because bond insurers evaluate the financial condition of the prospective issuers and avoid issuing policies to universities that are not creditworthy. Consequently, the presence of bond insurance indicates that the issuer is in sound financial condition.

Response: Bond insurers evaluate the financial condition of the issuers of the bonds at the time the debt is insured. Bond rating agencies, such as Moodys and Standard and Poors, typically assign such bonds a triple-A rating because of the insured status of the bond.

NRC's concerns with accepting insured bonds as a criterion of financial assurance arise from the possibility that, over time, the insured bond rating could mask adverse changes in the financial condition of the bond issuer after the debt has been insured. The rule includes a requirement that the licensee must ascertain whether it continues to pass the financial test for self-guarantee every year. Furthermore, if the licensee no longer meets the test criteria, it must notify NRC and establish alternative financial assurance. However, insured bonds would continue to hold their rating, despite declines in the financial condition of the issuer.

The problem with an insured bond from the standpoint of financial assurance is that there is no criterion by which NRC can identify when a licensee/issuer no longer qualifies to self-guarantee. The bond can retain its high rating despite a decline in the financial strength of the issuer. Furthermore, the insurance coverage provided by the bond insurer, which is a guarantee of payment of principal and interest in accordance with the insured bond issue's payment schedule, will not provide any additional source of funding for decommissioning. NRC does not agree with the commenter's suggestion that it accept ratings on insured bonds as an acceptable criterion for self-guarantee.

5. Requirements for Financial Statements

Comment: Some commenters objected to the proposed requirement in Appendices D and E to 10 CFR Part 30 that licensees must conduct accounting by U.S. generally accepted accounting principles (GAAP). This does not recognize the increasingly multi-national nature of materials licensees. Foreign ownership of major material licensees is currently a reality (e.g., Siemens, ABB, Framatome) and can be expected to increase in the future. The selection of accounting practices to be used is a significant corporate decision affected by many factors. It is unreasonable to require that corporate practices of major multi-national firms be changed for a licensee to be allowed to provide self-guarantee of decommissioning funding. The rule should allow licensees to certify adequate assurance that funds will be available by using other recognized and accepted accounting principles.

Response: Financial statements prepared in accordance with foreign accounting principles rather than U.S. GAAP pose two problems from the standpoint of a financial test for self-guarantee. First, the financial test was developed based on an analysis of financial data for U.S. firms. Consequently, the financial test criteria may not be applicable or effective when used in conjunction with financial data that were prepared in accordance with foreign accounting practices. Second, allowing firms to rely on financial statements prepared according to accounting principles in use in their own country could place a heavy administrative burden on NRC. The examples cited by the commenter, for instance, might require NRC to know and apply German, Swiss, and French accounting principles to assess compliance with a financial test designed using U.S. GAAP. Finally, the present financial assurance regulations allow the use of a broad range of financial assurance mechanisms in part to ensure that licensees that are unable to use a particular mechanism have other alternatives available. NRC does not expect firms to change their accounting practices in order to make use of the financial test because a number of other options are available.

6. Financial Criteria for Non-Bond-Issuing Commercial Licensees

The financial test proposed for non-bond issuing commercial licensees was:

(a) Cash flow divided by total liabilities greater than 0.15.

(b) Total liabilities divided by net worth less than 1.5.

(c) Net worth greater than $10 million or at least 10 times decommissioning costs, whichever is greater.

Comment: A commenter objected to the net worth criterion of net worth greater than $10 million or at least 10 times estimated decommissioning costs. This discriminates against well-funded smaller firms that could easily self-guarantee smaller decommissioning projects, but could not meet the $10 million net worth requirement.

Response: The NRC's objective in setting financial criteria for non-bond-issuing commercial licensees was to make the financial assurance risk of these criteria equal to the financial assurance risk of the financial criteria for licensees that issue bonds (estimated to be approximately 0.13 percent per year). According to the analysis of potential financial criteria carried out as part of the proposed rule, the financial criteria in the proposed rule meet this objective.[3] Firms with smaller net worth have a larger default risk than larger firms. Thus, the $10 million net worth requirement is an essential part of the overall financial test. The NRC has retained this requirement in the final rule.

7. Decommissioning Cost Estimates

Comment: Several commenters raised the issue of how decommissioning costs were estimated. The NRC should encourage best available information estimates of decommissioning costs, based on historic plant experience in decommissioning and renovation, rather than commercial estimates by contractors that tend to be too high.

[3] ''Analysis of Potential Self-Guarantee Tests for Demonstrating Financial Assurance by Nonprofit Colleges, Universities, and Hospitals, and by Business Firms That Do Not Issue Bonds,'' NUREG/CR–6514, p. 4.7, June 1997.

Conservative assumptions, such as use of rates charged by contractors and high estimates of waste disposal costs, should not be used. A commenter also noted that assuming a period for short-lived isotopes to decay before decommissioning begins would be a realistic assumption. Also, a typical licensee will not have the maximum amount of material allowed by the license at the time of decommissioning.

Response: This rulemaking makes no changes in the requirements for how licensees estimate decommissioning costs. Decommissioning cost estimates, or use of the certification amounts in 10 CFR Part 30, are already required by existing regulations on financial assurance. This rule simply adds an additional financial assurance mechanism to those already permitted in NRC regulations.

8. Agreement State Compatibility Status of Financial Assurance Regulations

Comment: Some commenters believed that the proposed regulations should be assigned a compatibility status of Level 1 with Agreement States. This will ensure consistent requirements for financial surety arrangements and will preclude the unintended creation of competitive disadvantages between facilities in Agreement States and Non-Agreement States.

Response: When the proposed rule was published in the **Federal Register** (see 62 FR 23394, April 30, 1997), it was designated as a Division 2 compatibility item in accordance with the compatibility policy in effect at that time. A Division 2 level of compatibility allowed an Agreement State to promulgate equivalent, or more stringent, financial assurance regulations than those of NRC.

Under the new ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' (see 62 FR 46517, September 3, 1997) Agreement States must adopt NRC regulations having particular health and safety significance and those necessary to maintain compatibility with the Commission's regulatory program.

The NRC financial assurance regulations, in effect when the new policy was implemented, were designated as having health and safety significance. Specifically, sections (a), (b), and (d) of Parts 30.35, 40.36 and 70.25, which require that licensees must consider the cost of decommissioning their facilities and that those costs must be provided for through a financial assurance mechanism, have particular health and safety significance and were designated as category H&S. Under the H&S category, Agreement States should adopt the essential objectives of these sections in order to maintain an adequate program. The remaining sections of the rule, including those which allow self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria, were designated as compatibility Category D. Category D means the Agreement States do not need to adopt a compatible rule.

The final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as compatibility Category D. Under compatibility category D, Agreement States may choose to maintain a more stringent rule by not adopting the self-guarantee option.

9. Requirement for Annual Passage of Financial Test

Comment: A commenter stated that Section II.C.(2) of Appendix E to Part 30 should be modified so a qualifying licensee would not have to repeat passage of the financial test for self-guarantee every year. University endowments are very stable. In addition, Section II.C.(3) provides sufficient assurance that NRC will be notified when a licensee no longer meets the criteria for self-guarantee.

Response: Although it is true that university endowments are relatively stable and Section II.C.(3) provides for notification, the provision for qualifying licensees to annually pass the test is retained in the final rule. For a self-guarantee program to provide adequate assurance of decommissioning funding, the annual ''requalification'' provision is necessary. NRC must have assurance of financial strength on a timely basis. A self-guarantee relies solely on the licensee's ability to fund decommissioning. There is no backup such as that provided by a third-party financial assurance mechanism. The requirement for repeating the financial test yearly is not unduly burdensome on a licensee and gives NRC information on the financial condition of the licensee on a timely basis. This requirement is not unique to colleges and universities or to this rule. It is found in the self-guarantee financial tests applicable to other types of licensees, both profit and nonprofit.

10. Use of Self-Guarantee by the United States Enrichment Corporation

Comment: The United States Enrichment Corporation (USEC) proposed that the NRC modify the language of the rule to include certificates (regulated by NRC under 10 CFR Part 76). USEC stated that it would benefit from the opportunity to reduce the costs of complying with NRC financial assurance requirements, which USEC estimated would presently cost in excess of $100,000 per year for letters of credit and surety bonds.

Response: Under 10 CFR 76.35(n), USEC (or the Corporation) is required to establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities that are the financial responsibility of the Corporation. The funding mechanisms currently listed in the regulation as potentially acceptable for use by the Corporation include prepayment, surety, insurance, and an external sinking fund, but do not include self-guarantee or statement of intent. The rule provides that the funding mechanism must ''ensure availability of funds for any activities that are required to be completed'' by the Corporation.

USEC was created pursuant to the Energy Policy Act of 1992. It is a wholly owned government corporation, whose powers are vested in a five-member Board of Directors appointed by the President of the United States and confirmed by the Senate. However, on July 25, 1997 a plan was approved by the President under which USEC will be sold either to another corporation or to the public through a stock offering. Under the USEC Privatization Act, Congress set certain restrictions on foreign involvement in USEC's privatization and required that a ''reliable and economical domestic source of enrichment services'' exist following privatization.

Although the NRC is not currently aware of any reason why it would be inappropriate to consider expanding the category of funding mechanisms available to the Corporation to demonstrate the availability of funds for the actions required under 10 CFR 76.35(n), NRC does not believe that it would be feasible to do so in the current rule. First, USEC was not included in any of the analyses performed to evaluate potential self-guarantee tests for demonstrating financial assurance. NRC believes that detailed analyses should be undertaken to ensure that all critical factors have been considered. Second, USEC's current and future situation with respect to the costs that it might incur is substantially different from those of the licensees included in the current rulemaking. In particular, the scope and type of activities that USEC must carry out under 10 CFR 76.35(n) are very different from those

conducted by hospitals and universities, and the non-bond issuing firms covered by the proposed rule.

Third, the exact size of the obligations that USEC might be required to cover is uncertain and will not be determined until a later date, although it is known that many of the costs will remain the responsibility of the U.S. Department of Energy (DOE). Under 10 CFR 76.35(n), DOE is responsible for those aspects of decontamination and decommissioning of the gaseous diffusion plants (GDPs) assigned to DOE under the Atomic Energy Act. DOE also is responsible for all environmental liabilities associated with the operation of the GDPs before July 1, 1993. According to USEC's Annual Report for 1996, ''[e]xcept for certain accrued liabilities that will be specified in a memorandum of agreement entered into prior to privatization, all environmental liabilities of the Company through the date of privatization will remain obligations of the U.S. Government.'' (Notes to Financial Statements: 7. Environmental Matters). Furthermore, as of June 30, 1996, USEC had accrued liability of $303 million for transportation, conversion, and disposition of depleted uranium currently stored at the GDPs. The 1996 Annual Report states that ''USEC is evaluating various proposals for the disposition of depleted uranium, and depending on the outcome of such evaluations, the Company may be able to reduce future cost accruals * * *. Pursuant to the USEC Privatization Act, all costs and liabilities related to the disposition of depleted uranium generated prior to the privatization date are the responsibility of DOE.'' Fourth, until privatization has occurred, important information about USEC's future corporate structure and ownership will remain uncertain. As noted above, Congress has allowed USEC to be sold either to another corporation or to the public through a stock offering. Thus, the form in which privatization occurs could affect the NRC's analysis of financial assurance alternatives. Because of the need to evaluate all of these factors, NRC has determined not to include 10 CFR part 76 in the current rulemaking.

Changes From the Proposed Rule

There are no changes from the proposed rule.

Section-by-Section Description of Changes

10 CFR Part 30

Section 30.35 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

Appendix D is added to 10 CFR Part 30 to establish requirements for self-guarantee by non-bond-issuing commercial licensees. Appendix E is added to 10 CFR Part 30 to establish requirements for self-guarantee for nonprofit college, university, and hospital licensees.

10 CFR Part 40

Section 40.36 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 50

Section 50.75 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond-issuing licensees.

10 CFR Part 70

Section 70.25 is amended to permit self-guarantee for financial assurance which can be used by qualified nonprofit licensees and non-bond issuing licensees.

10 CFR Part 72

Section 72.30 is amended to permit self-guarantee for financial assurance which can be used by qualified non-bond issuing licensees.

Compatibility of Agreement State Regulations

The current NRC regulation which allows self-guarantee of certain commercial corporate licensees who issue bonds if they meet stringent financial criteria is designated as compatibility Category D. This final rule change, which will extend the self-guarantee financial assurance option to other material and non-electric utility reactor licensees that meet certain financial criteria, is also designated as a compatibility Category D. Category D means the agreement States do not need to adopt a compatible rule. The Category D designation was determined in accordance with the new ''Policy Statement on Adequacy and Compatibility of Agreement State Programs,'' approved by the Commission on June 30, 1997. The final rule change does not involve a basic radiation protection standard, activities that have direct and significant effects in multiple jurisdictions, or essential objectives which an Agreement State should adopt to avoid conflicts, gaps, or duplications in the regulation of agreement material on a nationwide basis. Therefore, Category D has been assigned to these rule provisions.

Finding of No Significant Environmental Impact: Availability

The amendments will allow qualified nonprofit and non-bond-issuing licensees the option of using self-guarantee as a mechanism for financial assurance for decommissioning. For-profit corporate licensees that issue bonds are already allowed to use self-guarantee if they meet the regulatory criteria. Other licensees currently may elect to use a variety of financial assurance mechanisms, such as surety bonds, letters of credit, and escrow accounts to comply with decommissioning regulations. This action is intended to offer nonprofit and non-bond-issuing nuclear materials licensees and non-electric utility reactor licensees greater flexibility by allowing an additional mechanism for licensees that meet the financial criteria for use of self-guarantee.

This revision to the NRC's regulations simply adds one more financial assurance mechanism to the mechanisms currently available. It does not affect the cost of decommissioning materials and non-power reactor facilities. Allowing self-guarantee for additional types of licensees does not lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988, (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988).[4] Promulgation of this rule does not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule would not be 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 staff is not aware of any other documents related to the environmental

[4] Copies are available at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–2249); or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW., Washington, DC; the PDR's mailing address is Mail Stop LL–6, Washington, DC 20555; telephone (202) 634–3273; fax (202) 634–3343.

impact of this action. The foregoing constitutes the environmental assessment and finding of no significant impact for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0017, –0020, –0011, –0009, and –0132.

The public reporting burden for this information collection is estimated to average 9 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a document used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Clark Prichard, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6203.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ''major rule'' and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would expand the number of options available to licensees to comply with the Commission's financial assurance requirements, thus enhancing the flexibility of these regulations. It is estimated that this rule would result in significant cost savings to qualifying licensees.

Backfit Analysis

The NRC has determined that backfitting provisions (10 CFR 50.109 and 72.62) in the parts of the Commission's regulations that are being amended by this rulemaking do not apply to this rule because the rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) or 72.62(a). The rule extends the self-guarantee alternative for demonstrating decommissioning financial assurance to qualified non-profit and non-bond-issuing licensees. Extending the availability of this option does not impose a new burden on licensees of commercial power reactors or independent spent fuel storage installations (ISFSI's). Accordingly, the rulemaking does not constitute a backfit and a backfit analysis was not prepared for this final rule.

List of Subjects

10 CFR Part 30

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

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

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. 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: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8, paragraph (b) is revised 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, 30.50, 30.51, 30.55, 30.56, and Appendices A, C, D, and E of this part.

* * * * *

3. In § 30.35, the introductory text of paragraph (f)(2) is revised 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, letter of credit, or line 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. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to this part. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs 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. 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 or 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. New Appendices D and E to Part 30 are added to read as follows:

Appendix D to Part 30—Criteria Relating To Use of Financial Tests and Self-Guarantee for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have no Outstanding Rated Bonds

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test a company must meet the following criteria:

(1) Tangible net worth greater than $10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(2) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

(3) 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.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

(1) The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters that may 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.

(2) After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of paragraph II.A of this appendix, the licensee must send notice to the NRC of intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the NRC. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the NRC of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

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

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities, to pass the financial test a college or university must meet either the criteria in Paragraph II.A.(1) or the criteria in Paragraph II.A.(2) of this appendix.

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, 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 if 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 either the criteria in Paragraph II.B.(1) or the criteria in Paragraph II.B.(2) of this appendix:

(1) For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P) or Aaa, Aa, or A as issued by Moodys.

(2) For applicants or licensees that do not issue bonds, all 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.

C. In addition, to pass the financial test, a licensee must meet all the following requirements:

(1) The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform NRC within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

(2) After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to the NRC of its intent to establish alternative financial assurance as specified in NRC regulations. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that—

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, and/or return receipt requested, to the Commission. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the Commission's regulations within 90 days following receipt by the Commission of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the Commission has terminated the license or until another financial assurance method acceptable to the Commission has been put in effect by the licensee.

D. The applicant or licensee must provide to the Commission a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Commission, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of ''A'' or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. In § 40.36, the introductory text of paragraph (e)(2) is revised 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, letter of credit, or line 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. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. 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. 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 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

7. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

8. In § 50.75, the introductory text of paragraph (e)(2)(iii) is revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(2) * * *

(iii) 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, letter of credit, or line 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. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a

guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. 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. 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 or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.

* * * * *

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for Part 70 continues to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. In § 70.25, the introductory text of paragraph (f)(2) is revised 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, letter of credit, or line 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. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. 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. 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 or 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 AND HIGH-LEVEL RADIOACTIVE WASTE

11. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

12. In § 72.30, the introductory text of paragraph (c)(2) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(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, letter of credit, or line 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. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in appendix C to part 30. For commercial corporations that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in appendix D to part 30. 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 or 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:

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Dated at Rockville, Maryland, this 22nd day of May, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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