(2) When an application that was received incomplete is completed, the date will be entered in the "Application Completed" field in the Application Processing Module of MRS. The County Supervisor will follow the requirements of paragraphs (b)(2) and (b)(3) of this section.

(3) Lenders who omit from an application necessary information as described in § 1980.113 will be notified as follows:

(i) No later than 5 calendar days after the receipt of the application, the County Supervisor will send to the lender a letter similar to FmHA Guide Letter 1980–B–1 (available in any FmHA office). The letter will:

(A) List the additional information needed.

(B) State that the application cannot be processed until all required information is received in the County Office.

(C) Set a specific due date for the information. This date will be 20 calendar days after the date of the letter.

(ii) When information is needed from other USDA Agencies, the County Supervisor will inform those Agencies and the lender of the information needed, and note the date of the request in the running record. For operating loan guarantee applications, the County Supervisor will request that the information be returned to the County Office within 15 calendar days of the date of receipt of the request.

(iii) If the necessary information has not been received from the lender 20 calendar days after the date of the first written notification of an incomplete application, the County Supervisor will immediately send to the lender a letter similar to FmHA Guide Letter 1980–B–2 (available in any FmHA office).

(A) The letter will again list the additional information needed, and state that the application cannot be processed until all the required information is received.

(B) The letter will set a due date of 10 calendar days from the date of the letter. It will further state that unless the lender supplies the required information or contacts the County Office by that date, the application will be withdrawn without further notice.

(C) A copy of this letter will be sent to the District Office at the same time.

(iv) If the lender has not contacted the County Office by the due date set in the second notification letter, the County Supervisor will then withdraw the application.

(v) All applications withdrawn will be handled in accordance with § 2033.7 of FmHA Instruction 2033–A (available in any FmHA office).

(b) *Complete applications.* (1) If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form 1980–25 and enter the date in the "Application Received" and "Application Completed" fields in the Application Processing Module of MRS.

(2) On the date all information necessary to process an application is received, a County Office official will send the lender FmHA Guide Letter 1980–B–3 (available in any FmHA office) notifying the lender that the application is considered complete.

(3) The date entered in the "Application Completed" field of MRS will establish the timeframes for eligibility and loan approval/disapproval.

* * * * *

7. Section 1980.115 is amended by redesignating paragraphs (a) and (b) as paragraphs (c) and (d) respectively; adding new paragraphs (a) and (b) and ADMINISTRATIVE paragraph C., and revising the introductory text to read as follows:

§ 1980.115 County Committee Review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements and meet the definition of "beginning farmer or rancher," as defined in § 1980.106 of this subpart. See § 1980.176(k) for County Committee actions relative to special OL assistance to beginning farmers or ranchers. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received.

(a) *County Committee timeframes.* When the County Office receives an application consisting of all information relative to the eligibility decision, the County Committee will meet not later than:

(1) Five calendar days after the application's receipt by the County Office if there is more than one application pending needing County Committee action.

(2) Fifteen calendar days after the application's receipt by the County Office if there are no other applications pending.

(b) *Notification of eligibility determination.* The County Supervisor will promptly notify both the lender and loan applicant in writing within 5 calendar days of the County Committee's determination.

* * * * *

Administrative

* * * * *

C. *Approval timeframes.* The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within 30 calendar days. If an application is not approved or disapproved 30 calendar days after all necessary information is received, the following steps will be taken:

(1) The County Supervisor will make sure that the data in the County Office MRS data base regarding the application are up-to-date, and that the reason it remains pending is noted. A selection of reasons is listed in MRS.

(2) Every week the District Director will generate a report, using the FmHA FOCUS Ad-Hoc Reporting System. based on the weekly upload of information from each County Office MRS data base. The District Director will note each complete application pending more than 30 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

(3) The Administrator will utilize MRS data and any other information available to comply with any statutory reporting requirements concerning the status of applications.

§ 1980.116 [Amended]

8. Section 1980.116 is amended by removing the words "as set out in subpart A of part 1910 of this chapter," from the last sentence.

Dated: November 8, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–31078 Filed 12–28–93; 8:45 am]

BILLING CODE 3410–07–U

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7 CFR Part 1955

RIN 0575–AB63

Providing Additional Notice to Indian Tribes and Tribal Members; Lease With Option To Purchase Farmer Program Farm Real Estate Properties

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to allow additional notification and bidding instructions when dealing with the acquisition of real estate which is located on a federally recognized Indian Reservation. It also deals with the manner in which FmHA is allowed to dispose of inventory farm property through the use of lease with an option to purchase.

This action is necessary due to provisions in the Agricultural Credit Improvement Act of 1992 dated October 28, 1992, that requires the Agency to take certain actions when it becomes apparent that the Native American borrower owner/operator is unable to continue their operation. The intended effect is to ensure that timely and effective notification is made in order to allow real estate to be acquired either by the former owner/operator or the tribe in which the real estate is located.

DATES: Interim rule effective on December 19, 1993. Written comments must be submitted on or before January 28, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations, Analysis and Control Branch (RACB), Farmers Home Administration, USDA, room 6348, South Agricultural Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary West, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5437, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 690–4008.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this interim rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23 1983), Emergency Loans, Farm Operating Loans, and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion of Interim Rule

The purpose of this interim rule is to initiate the process of implementing provisions of the Agricultural Credit Improvement Act of 1992. Several sections of the Bill refer to the disposal of farm real estate. Section 16 states that if a farm has been classified as surplus and FmHA has been unable to sell the property, it would be permissible to offer the property for lease with an option to purchase to any party who may meet the requirements for FmHA assistance. Section 17 of the above mentioned Act requires that FmHA provide additional notice to those Native American borrowers who are unable to resolve their financial difficulties through present FmHA servicing action, that they could convey their property to FmHA and that FmHA will accept their offer under certain conditions. This section also provides that the tribe which has jurisdiction over the reservation on which the real estate is located will receive notification prior to acquisition by FmHA. This notice will inform the tribe that FmHA has offered the borrower an opportunity to convey the property to the government, and if action is not taken to convey the property, FmHA will foreclose the account and the Agency will bid either the market value or the debt owed to FmHA, whichever is greater, at the foreclosure sale. The only deviation from the amount of the authorized bid will be for an allowance related to the investigation and clean-up of environmental hazards, such as hazardous waste. Other changes of an editorial nature may also be included.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.3 is amended by adding, alphabetically, a definition for "Loans to Native Americans" to read as follows:

§ 1955.3 Definitions.

* * * * *

Loans to Native Americans. Farmer Program loans secured by real estate located within the boundaries of a federally recognized Indian reservation. The Native American borrower-owner is defined as the party who pledged real estate as collateral for an FP loan and is the tribe or a member of the tribe with control over the reservation.

* * * * *

3. Section 1955.9 is added to read as follows:

§ 1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian Reservation and owned by a Native American borrower-owner.

(a) The borrower-owner is a member of the tribe that has jurisdiction over the reservation in which the real property is located. An Indian tribe may also meet the Native American borrower-owner criterion if it is indebted for FP loans.

(b) A voluntary conveyance will only be accepted after all preacquisition primary and preservation servicing actions have been considered in accordance with subpart S of part 1951 of this chapter.

(c) When all servicing actions have been considered under subpart S of part 51 of this chapter and a positive outcome cannot be achieved, the following additional actions are to be taken:

(1) The County Supervisor will notify the Native American borrower-owner and the tribe by certified mail, return receipt requested, and by regular mail if the certified mail is not received, that:

(i) The borrower-owner may convey the real estate security to FmHA and FmHA will consider acceptance of the property into inventory in accordance with paragraph (d) of this section;

(ii) The borrower-owner must inform FmHA within 60 days from receipt of this notice of the borrower-owner's decision to deed the property to FmHA;

(iii) FmHA must inform the borrower-owner and the borrower-owner's spouse and children of leaseback/buyback rights;

(iv) A wetlands conservation easement may be placed on the real estate security which the borrower-owner deeds to FmHA and which FmHA leases or conveys back to the borrower-owner;

(v) The borrower-owner has the opportunity to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located, or counsel, to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under FmHA regulations;

(vi) If the borrower-owner does not voluntarily deed the property to FmHA,

(A) The Government may foreclose on the property;

(B) In the event of foreclosure, the property will be offered for sale;

(C) At the foreclosure sale, FmHA must offer a bid for the property that is equal to the fair market value of the property, or the outstanding principal and interest of the loan, whichever is higher;

(D) At the foreclosure sale, the property may be purchased by someone other than the Government; and

(E) If the property is purchased by another party, the property will not be placed in FmHA inventory and the borrower-owner will forfeit the rights and protections under FmHA regulations.

(vii) FmHA shall accept the offer of voluntary conveyance of the property unless a hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, is located on the property and will require FmHA to take remedial action to protect human health or the environment if the property is taken into inventory. In this case, a voluntary conveyance will be accepted only if FmHA determines that it is in the best interests of the Government to acquire title to the property.

(2) *Reserved.*

(d) When determining whether to accept a voluntary conveyance of a Native American borrower-owner's real property, the County Supervisor must consider:

(1) The cost of cleaning or mitigating the effects if a hazardous substance contamination is found on the property. A deduction equal to the amount of the cost of hazardous waste clean-up will be made to the fair market value of the property to determine if it is in the best interest of the Government to accept title to the property. FmHA will accept the property if clear title can be obtained and if the value of the property after removal of hazardous substances exceeds the cost of the hazardous waste clean-up.

(2) If the property is located within the boundaries of a federally recognized Indian reservation, and is owned by a member of the tribe with jurisdiction over the reservation, FmHA will credit the Native American borrower-owner's account based on the fair market value of the property or the FmHA debt against the property, whichever is greater.

4. Section 1955.10 is amended by removing the words ", 'Worksheet for Accepting a Voluntary Conveyance of Farmer Program Security Property into Inventory,' " from the ninth sentence of the introductory paragraph; by revising the reference "§ 1955.10(h)" to read "§ 1955.10(g)" in the last sentence of paragraph (f)(1) (iii); by redesignating paragraphs (f)(2) (i) and (ii) as paragraphs (f)(2) (iv) and (v) respectively; by adding new paragraphs (f)(2) (i), (ii), and (iii); and by revising the introductory text of paragraph (f)(2), and paragraphs (f)(3)(i)(M), (f)(3)(ii)(F), and (g)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* For CONACT loans to individuals, as defined in § 1955.3 of this subpart, where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must take certain action if it is to recommend that the borrower and any cosigner be released from liability.

(i) *Release from liability.* The County Committee must determine that the borrower(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration their assets and income at the time of the conveyance; and that the borrower and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and they must recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government. This action will be documented by checking the appropriate block on Form FmHA 440-2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert (FMI).

(ii) *Unsatisfied indebtedness.* If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value less prior lien(s) (if any) and the borrower will determine if the borrower wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in § 1955.18(f) of this subpart. When the FmHA debt less the market value and prior lien(s) exceeds $150,000, release of liability must be approved or disapproved by the Administrator or designee; otherwise, the State Director must approve or disapprove the release of liability. All cases requiring a release of liability will be submitted for review in accordance with Exhibit A (available in any FmHA office).

(iii) *Crediting accounts.* FmHA will credit the account of a Native American borrower-owner whose real property secured an FP loan with the fair market value or the FmHA debt against the property, whichever is greater. To receive such credit, the real property must be located within the boundaries of a federally recognized Indian reservation and the County Committee must certify that:

(A) The borrower-owner is a member of a tribe or the tribe.

(B) The property is located within the confines of a federally recognized Indian reservation.

* * * * *

(3) * * *

(i) * * *

(M) Form FmHA 440–2, executed in accordance with the FMI, when applicable.

(ii) * * *

(F) Form FmHA 442–3;

* * * * *

(g) *Closing of conveyance.*

(1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly. The property will be assigned an ID number and entered into the Acquired Property Tracking System through the Automated Discrepancy Processing System (ADPS) terminal in the County Office.

* * * * *

5. Section 1955.15 is amended by adding the words "or tribal" after the first occurrence of the word "State" in the second sentence of the introductory text of paragraph (d)(3)(i); by adding a sentence to the end of the introductory paragraph and paragraph (d)(1); and by revising the introductory text of paragraph (d)(3)(i)(A) and paragraphs (f) (1), (3), and (6) to read as follows:

§1955.15 Foreclosure by the Government of loans secured by real estate.

* * * For real property located within the confines of a federally recognized Indian reservation and owned by a Native American borrower, proper notice of voluntary conveyance must be given as outlined in § 1955.9 (c)(1) of this subpart.

* * * * *

(d) * * *

(1) * * * For real property located within the confines of a federally recognized Indian reservation owned by a Native American borrower-owner, an analysis of whether FmHA should acquire title must include facts which demonstrate the fair market value after considering the cost of clean-up of hazardous substances on the property.

* * * * *

(3) * * *

(i) * * *

(A) Payment in full [see Exhibit D of this subpart (available in any FmHA office)] may consist of the following means of fully satisfying the debt.

* * * * *

(f) *Completion of foreclosure*—(1) *Foreclosure advertisement for organization loans subject to title VI of the Civil Rights Act of 1964.*—(i) The advertisement for foreclosure sale of property subject to title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later." At least 30 days before the foreclosure sale, the County Supervisor will notify, in writing, the Indian tribe which has jurisdiction over the reservation, and in which the real property is owned by a Native American member of said tribe that a foreclosure sale will be conducted to resolve this account, and will provide:

(A) Projected sale date and location;

(B) Fair market value of property;

(C) Amount FmHA will bid on the property; and

(D) Amount of FmHA debt against the property.

(ii) The purchaser will be required to sign Form FmHA 400–4, "Assurance Agreement," if the property will be used for its original or similar purposes.

* * * * *

(3) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in § 1955.5 (d) of this subpart. Costs will be charged as outlined in FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

(6) *Amount of Government's bid.* Except for FP loans and as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. For real property located within the confines of a federally recognized Indian reservation and which is owned by an FmHA borrower who is a member of the tribe with jurisdiction over the reservation, the Government's bid will be the greater of the fair market value or the FmHA debt against the property, unless FmHA determines that, because of the presence of hazardous substances on the property, it is not in the best interest of the Government to bid such amount, in which case there may be a deduction from the bid for the costs for hazardous material assessment and/or mitigation. For FP loans, except as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the amount determined by use of Exhibit G–1 of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA in accordance with FmHA Instruction 2024–A (available in any FmHA office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

* * * * *

6. Section 1955.18 is amended by revising the words "Part 1955 of this chapter" to the words "this part" in the last sentences of the introductory text of paragraph (b) and paragraph (c), and by revising the sixth sentence of paragraph (a) and paragraph (d) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(a) * * * For MFH projects with rental assistance, Form FmHA 1944–55 must be attached to Form FmHA 1965–19 indicating the status of the rental assistance while the property is in inventory. * * *

* * * * *

(d) *Inventory account.* The Finance Office will establish an inventory account under the Property ID Number assigned. The value of the property entered into the inventory account will be the market value as of the date acquired.

* * * * *

Subpart C—Disposal of Inventory Property

7. Section 1955.107 is amended by adding the words ",'County Committee Certification or Recommendation,'" following "Form FmHA 440–2" in

paragraph (d)(2) and by revising paragraph (a) to read as follows:

§ 1955.107 Sale of suitable property (CONACT).

* * * * *

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," is posted is the date the property is offered for sale. Farm property will be advertised for sale by publishing, as a minimum, three consecutive weekly announcements at least twice annually, in at least one newspaper that is widely circulated in the county in which the farm is located. Also, either Form FmHA 1955–40 or Form FmHA 1955–41, "Notice of Sale," will be posted in a prominent place in the County Office. If a program applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. The second advertisement will contain a paragraph that indicates that if no party purchases the property, FmHA will consider leasing the property with or without an option to purchase to any party that would be able to meet the eligibility and priority criteria established to purchase inventory farm property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale or lease by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria. Tribal Councils or other recognized Indian governing bodies having jurisdiction over Indian reservations as defined in § 1955.103 of this subpart shall be responsible for notifying those parties listed in § 1955.66 (d)(2) of subpart B of this part.

* * * * *

Dated: October 26, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–31077 Filed 12–28–93; 8:45 am]

BILLING CODE 3410–07–U

NUCLEAR REGULATORY COMMISSION

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

RIN 3150–AE16

Self-Guarantee as an Additional Financial Assurance Mechanism

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations for decommissioning licensed facilities to allow certain non-electric utility licensees to use self-guarantee as a means of financial assurance. The rule reduces the cost burden of financial assurance while providing NRC with sufficient assurance that decommissioning costs will be funded. This rule grants a petition for rulemaking (PRM–30–59) from General Electric Company and Westinghouse Electric Corporation and completes action on the petition.

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492–3734.

SUPPLEMENTARY INFORMATION:

Background

On January 11, 1993 (58 FR 3515), the NRC published a notice of proposed rulemaking that would allow self-guarantee as an additional mechanism for complying with the regulations on financial assurance for decommissioning. This action was in response to a petition for rulemaking (PRM–30–59) from the General Electric Company (GE) and the Westinghouse Electric Corporation (Westinghouse). The notice of receipt of the petition was published on September 25, 1991 (56 FR 48445). The petitioners requested that the NRC amend its decommissioning regulations contained in 10 CFR parts 30, 40, 50, 70, and 72 to provide a means for self-guarantee of decommissioning funding costs by certain NRC licensees who meet stringent financial standards and related reporting and oversight requirements. The petitioners proposed that electric utility reactor licensees under 10 CFR part 50 not be affected by the proposals in the petition.

Under the original decommissioning regulations (53 FR 24018; June 27, 1988), licensees were permitted to provide financial assurance for decommissioning funding through prepayment, insurance, surety bond, letter of credit, or parent company guarantee. Electric utilities were also allowed to establish an external sinking fund. The proposed rule sought public comments on amendments to parts 30, 40, 50, 70, and 72 to allow self-guarantee as an additional method of complying with the decommissioning requirements in those parts.

The objective of this rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The regulatory analysis developed for this rule estimates that the annual industry cost savings would be approximately $730,000 if all licensees meeting the criteria use the self-guarantee. This estimate is based on rather conservative assumptions (i.e., $750,000 total decommissioning cost per license); the actual cost savings may be considerably greater.

The cost savings would result from the elimination of the cost of third party financial assurance for licensees qualifying to use the self-guarantee. Annual fees for letters of credit, surety bonds, and other forms of third party financial assurance typically are approximately 1.5 percent of the amount of financial assurance provided.

A. Proposed Criteria

The proposed criteria for corporate self-guarantee included these financial criteria:

(1) Tangible net worth of at least $1 billion;

(2) Tangible net worth at least 10 times the 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) Assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the 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;

(4) A current bond rating of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

Procedural requirements proposed were:

(1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(2) The company shall provide the Commission with copies of all reports filed with the Securities and Exchange

Commission under section 13 of the Securities Exchange Act of 1934;

(3) The company's independent certified public accountant must compare the data used by the company in the financial test with the company's independently audited yearend financial statements;

(4) The company must repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(5) The company must notify NRC within 90 days of any matters that may come to the attention of the auditor 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.

The self-guarantee would be available only for an applicant or licensee having no parent company holding majority control of its voting stock.

B. Alternative Criteria

Because a majority of commenters on the notice of receipt of the petition questioned the need for the financial criteria to be so stringent, the Commission offered an alternative set of criteria to that of the petition as contained in the proposed rule. The alternative was the same financial criteria presented in the proposed rule, without the $1 billion net worth requirement.

A company's tangible net worth is an important factor in determining its bond rating. The rating itself, combined with the other criteria, may be a sufficient indicator of financial stability. Because all firms qualifying would need an A or better bond rating, this alternative may not be riskier in terms of financial assurance than the proposed rule. The regulatory analysis examined the effects on availability of the self-guarantee to licensees of deleting the $1 billion tangible net worth requirement from the financial criteria in the proposed rule, all other criteria remaining constant. The conclusion was that this alternative, if adopted, would allow an additional 7 firms to use the proposed self-guarantee. (Approximately 20 firms would qualify with the $1 billion criterion included.) The additional availability would save industry an estimated $130,000 annually and, since all firms would need an A or better bond rating, would maintain a high level of assurance. An A or better bond rating indicates that a company has substantial net worth. A company which merits an A or better bond rating has passed a stringent review by the independent ratings agencies of its ability to meet its financial obligations. A report by Moody's gives the default rate associated with companies whose bonds are rated A or above in 1 of the 3 years prior to default as only 0.13 percent annually.[1] In addition, all companies, irrespective of their overall size, must demonstrate that they possess tangible net worth of at least 10 times the 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 license and as parent grantor.

The alternate criteria, as well as the criteria in the proposed rule, do not apply to electric utilities. Electric utilities would be excluded from using self-guarantee under either set of criteria. Public comments were requested on this alternative financial criteria—the criteria in the proposed rule without the $1 billion tangible net worth requirement.

Minor Wording Changes

The proposed rule deleted the phrase "should the licensee default" from §§ 30.35(f)(2), 40.36(e)(2), 50.75(e)(1)(iii), 70.25(f)(2), and 72.30(c)(2) to accommodate self-guarantee.

Summary of Public Comments

The Commission received fourteen comment letters in response to the publication of the notice of proposed rulemaking. All but one of the letters supported a revision of the Commission's regulations to allow self-guarantee. The following is a summary of significant public comments and the Commission's response. A more detailed analysis of public comments has been prepared. This analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington DC.

Opposition to Self-Guarantee

One commenter opposed the proposed self-guarantee mechanism on the grounds that current capabilities of electronically transferring funds make self-guarantee meaningless even if a firm has initially demonstrated that it has the required assets. The commenter argued that recent failures of pensions and health benefits assured by self-guarantee indicate that self-guarantees cannot be trusted.

Response: NRC does not agree that a well-designed self-guarantee mechanism cannot be trusted to provide financial assurance. Self-guarantees have been used in a number of applications without incurring the problems pointed out by the commenter. The Environmental Protection Agency currently allows self-guarantee as a means of financial assurance for cleanup of hazardous waste treatment, storage, and disposal facilities. Because the qualification to use self-guarantee is based in large part on a specified bond rating, the NRC believes that it is tying the self-guarantee to an accurate measure of the financial strength of the self-guarantor. By requiring annual recertification, and submission of SEC reports, the NRC believes that potential problem situations will be identified and addressed in a timely manner.

Use of Self-Guarantee by Electric Power Utility Licensees

One commenter indicated that electric utilities licensed under Part 50, which are prohibited from using the proposed self-guarantee, should be allowed to use that option. The commenter, pointing to the Regulatory Analysis, argued that NRC's stated reasons do not create a strong technical basis for not allowing nuclear power licensees to use self-guarantee.

Response: The objective of the rule is to reduce the licensee's cost burden without causing adverse effects on public health and safety. The Commission already allows electric utilities to accumulate decommissioning funds in an external sinking fund. Unlike other licensees who are subject to financial assurance for decommissioning, electric utilities do not have to provide the full amount of required financial assurance "up front" but can instead build up their sinking funds over time. Thus, electric utilities already are permitted a cost-reducing financial assurance mechanism.

Requirement That 90 Percent of Total Assets Be in the U.S.

One commenter suggested dropping what is described as the requirement that self-guarantors demonstrate that 90 percent of their total assets are located in the United States, because otherwise some large, multinational companies will be excluded from using the self-guarantee simply because a majority of their assets may be outside the U.S.

Response: The proposed self-guarantee financial test included a provision requiring the self-guarantor to show that it had 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 a self-guaranteeing licensee and as parent-guarantor. A licensee using self-

[1] Corporate Bond Defaults and Default Rates, Moody's Special Report, January, 1991, p. 32.

guarantee does not have to show that 90 percent of its assets are in the United States. The licensee could show that it has assets in the U.S. amounting to at least 10 times decommissioning costs. A large, multinational corporation should readily be able to demonstrate that it has assets in the United States amounting to at least 10 times the decommissioning responsibilities.

Net Worth Criterion

Several commenters favored the self guarantee concept but argued for less stringent financial criteria.

Response: The Commission has considered various alternative financial criteria. It has decided to drop the $1 billion tangible net worth criterion. However, tangible net worth will be an important factor in the requirements for self-guarantee for several reasons:

(1) The financial criteria in the final rule contain the requirement that to qualify to use self-guarantee, a licensee must have tangible net worth at least 10 times decommissioning costs, and

(2) A company must have at least an A bond rating. The A or better bond rating indicates that a company has substantial net worth. Net worth is an important factor in comprising a bond rating.

Bond ratings are reviewed often, and changed in response to changes in the issuer's financial condition. A bond rating of A or better assures that the financial strength of a licensee offering a self-guarantee has been independently reviewed and affirmed. It provides an excellent guide to the ability of a company to meet its obligations. According to Moodys, default rates associated with companies whose bonds are rated A or above in 1 of the 3 years prior to default are 0.13 percent annually.[2]

The criteria for parent guarantee were given consideration as financial criteria for self-guarantee in the final rule. Under current NRC decommissioning regulations, the parent company of a licensee that meets the financial criteria in 10 CFR part 30, appendix A may guarantee that funds will be available to decommission the facility of its subsidiary licensee. The financial criteria for the NRC parent guarantee include a lower bond rating (BBB or Baa) requirement and a lower net worth times decommissioning cost requirement (6, rather than 10 times decommissioning costs) than the criteria in this rule.

The Commission has decided against using the criteria for parent guarantee in the rule. This is the first instance in which self-guarantee is being allowed under the Commission's decommissioning regulations. The Commission prefers that the more conservative criteria be used. At some future time, when the Commission has gained some experience with self-guarantee, it may consider an appropriate revision of the financial criteria.

Use of Self-Guarantee by Non-Profit Entities

Several commenters suggested that NRC should amend the proposed rule to allow universities and other non-profit entities to use self-guarantee. They argued that many non-profit entities have been in existence and been financially stable for long periods of time. These commenters proposed several alternative criteria, including size of endowments, that they said could be used to assess the financial strength of non-profit entities.

Response: NRC plans to begin shortly a study of extending the availability of cost-saving financial assurance alternatives to non-profit entities other than universities. A similar study for universities will be deferred until after planned rulemaking on fee recovery. However, including these non-profit entities in the self-guarantee program established by this rulemaking presents certain problems. The analysis which was prepared to evaluate the financial criteria in the proposed rule did not include non-profit entities. In order to extend the use of self-guarantees to non-profit entities, new criteria would have to be developed to assess the financial strength of the non-profit licensees. Development of financial criteria to assess the qualifications of a non-profit entity to provide a self-guarantee is likely to require detailed consideration of the different financial accounting methods used by medical institutions. The financial accounting and reporting of non-profit entities are unique and substantially different from the accounting and reporting of for-profit entities.

The financial reporting practices of public and private hospitals generally follow standards for these institutions established by the American Institute of Certified Public Accountants. Development of financial criteria for a self-guarantee for hospitals also would involve analysis of the various accounting funds utilized and establishment of adequate criteria.

NRC's review of decommissioning financial assurance submissions identified third-party financial mechanisms, such as surety bonds and letters of credit, as well as escrows and trusts, as the financial mechanisms used most often by private non-profit entities. In a few instances, private non-profit entities have sought to use parent company guarantees. Publicly owned non-profit entities, particularly public universities, have sought to use statements of intent (a financial assurance mechanism available only to government licensees). To the extent that non-profit entities have been able to make use of guarantees or statements of intent, cost saving financial assurance alternatives already exist for those licensees.

The Commission anticipates that in the future it will carry out a study of potential self-guarantee criteria for non-profit licensees other than universities. Because of the time required for such a study however, it cannot include non-profit entities in the self-guarantee program established by this rulemaking. The NRC will review the situation relative to universities after its planned rulemaking on fee recovery.

Requiring Additional Written Commitment by Self-Guarantors

One commenter recommended adding a requirement that self-guarantors execute a binding commitment to make the necessary funds available for decommissioning. Under this recommendation, in addition to submitting proof of the required financial strength, the self-guarantor would also have to submit a written agreement that, upon issuance of an order by the Commission to undertake decommissioning, the licensee will set up a trust fund in favor of the Commission, or obtain other surety accessible to the Commission.

Response: The addition of a written commitment is a useful suggestion. A provision is being included in the self-guarantee requirements calling for the licensee to provide the Commission with a written guarantee (a written commitment by a corporate officer) stating that the licensee will fund and carry out the required decommissioning activities, or, upon issuance of an order by the Commission, it will set up and fund a standby trust with sufficient funds to carry out the required decommissioning activities based on the current cost estimates.

Changes From the Proposed Rule

There are only three changes from the proposed rule. First, the specific $1 billion tangible net worth criterion has been deleted from the financial criteria required for a non-electric utility licensee to use self-guarantee. The

[2] Corporate Bond Defaults and Default Rates, Moody's Special Report, January 1991, p. 32.

financial criteria included in the final rule are:

(1) Tangible net worth 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.

(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 current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

As used by the ratings agencies, an A rating marks a discrete point on the ratings scale, different from A−. An A− or lower rating would not be acceptable.

The second change is the addition of the requirement for the licensee to provide the Commission with a written guarantee.

The third change is that additional language has been added to Appendix B to clarify procedural requirements for notification of the Commission and provision of alternate financial assurance if a licensee no longer meets the requirements for self-guarantee.

Agreement State Compatibility

Section 72.30 is assigned Division 4 compatibility, since regulation of independent storage of spent nuclear fuel and high-level radioactive waste are functions reserved to the NRC pursuant to the Atomic Energy Act.

Sections 30.35, 40.36, and 70.25 are currently considered Division 2 compatibility. The addition of the self-guarantee mechanism for providing the required financial guarantee does not change the division of compatibility. Division 2 compatibility allows the Agreement States flexibility to be more stringent. The agreement States must provide mechanisms in their regulations, but due to the specific State financial regulations, certain mechanisms may not be acceptable in their States. Limiting the mechanisms to a subset of those provided for in the NRC regulations is within the flexibility provided in Division 2 compatibility.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(10)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*). These requirements have been approved by the Office of Management and Budget, approval numbers: 3150–0017, –0020, and –0009.

The public reporting burden for this collection of information is estimated to average 19 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, –0020, and –0009), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. 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 W. Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555 telephone (301) 492–3734.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The licensees affected by this rule do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards of the NRC applicable to a small business (56 FR 56671; November 6, 1991).

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 30

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

10 CFR Part 40

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

10 CFR Part 50

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

10 CFR Part 70

Criminal penalty, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Penalty, 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. 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: 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 appendix A and B to 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) * * *

(1) * * *

(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 of this part. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of this part. A guarantee by the applicant or licensee may not be used in combination with any other financial methods 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. A new appendix B is added to part 30 to read as follows:

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

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 all of the following criteria:

(1) Tangible net worth 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.

(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 current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poors (S&P), or Aaa, Aa, or A as issued by Moodys.

B. To pass the financial test, a company must meet all of the following additional requirements:

(1) The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

(2) The company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements 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 company no longer passes the test.

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

C. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send immediate notice to the Commission of its intent to establish alternate financial assurance as specified in the Commission's regulations within 120 days of such notice.

III. Company Self-Guarantee

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

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Commission. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Commission, as evidenced by the return receipt.

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 licensee will promptly forward to the Commission and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

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 will provide notice in writing of such fact to the Commission within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of Section II.A. of this appendix.

F. 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.

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 § 40.8 paragraph (b) is revised to read as follows:

§ 40.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and appendix A to this part.

* * * * *

7. 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or licensee may not be used in combination with any other financial methods 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

8. 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).

9. In § 50.8 paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.63, 50.64, 50.65, 50.71, 50.72, 50.75, 50.80, 50.82, 50.90, 50.91, and appendices A, B, E, G, H, I, J, K, M, N, O, Q, and R to this part.

10. In § 50.75 the introductory text of paragraph (e)(1)(iii) and paragraph (e)(2)(iii) are revised to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(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. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

* * * * *

(2) * * *

(iii) A surety method, insurance, or other guarantee method. 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods 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

11. 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).

12. 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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A

guarantee by the applicant or the licensee may not be used in combination with any other financial methods 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

13. 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).

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

§ 72.30 Decommissioning planning including financing and recordkeeping.

* * * * *

(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 of 10 CFR part 30. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. 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 B of 10 CFR part 30. A guarantee by the applicant or the licensee may not be used in combination with any other financial methods 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:

* * * * *

Dated at Rockville, MD, this 2d day of December 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–31767 Filed 12–28–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 780

Patent Compensation Board Regulations

AGENCY: Department of Energy (DOE).

ACTION: Final Rulemaking.

SUMMARY: Today's rule amends the Department's Patent Compensation Board regulations to comply with the North American Free Trade Agreement, commonly referred to as "NAFTA," and its implementing legislation. These regulations are amended in response to the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903) where the Administration expressed its intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103–159, vol. 1.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Hagarman, Office of the Assistant General Counsel for Intellectual Property (GC–42), U.S. Department of Energy, Washington, DC 20585, (202) 586–3499.

SUPPLEMENTARY INFORMATION:

I. Background.
A. Discussion.
II. Procedural Requirements.
A. Review Under Executive Order 12866.
B. Review Under Executive Order 12778.
C. Review Under the Regulatory Flexibility Act.
D. Review Under the Paperwork Reduction Act.
E. Review Under Executive Order 12612.
F. Review Under the National Environmental Policy Act.
G. General.

I. Background

A. Discussion

The effect of Article 1709(10) of NAFTA is to limit the extent to which a government that is a party to NAFTA may allow the use of a patent without the patent owner's permission, i.e., compulsorily license a patent.

Section 104(b) of the North American Free Trade Agreement Implementation Act (Act), Pub. L. 103–182, provides that appropriate officers of the United States may issue necessary regulations to ensure that a provision of NAFTA, such as Article 1709(10), is fully effective on the date that NAFTA enters into force, subject to the restriction that the effective date of such regulations is no earlier than the date of entry into force. Section 101(b) of the Act authorizes the President to exchange notes with the Government of Canada or Mexico, providing for entry into force, on or after January 1, 1994. On page 14 of the Statement of Administrative Action on NAFTA that was submitted to Congress under section 1103 of Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2903), there is an expression of the Administration's intent to amend regulations as required to implement U.S. obligations under the agreement at the time NAFTA enters into force. House Document 103–159, vol. 1.

Section 153 of the Atomic Energy Act authorizes the Department of Energy (DOE) to issue compulsory licenses under certain conditions, 42 U.S.C. 2183. The DOE regulations (10 CFR part 780), which implement section 153, set forth the procedures to be followed when compulsorily licensing a patent. The DOE regulations include the requirements of paragraphs (a) and (i)–(l) of Article 1709(10). 10 CFR 780.10 and 780.30. However, all of the requirements of each of paragraphs (b)–(h) of Article 1709(10) are not so included.

Article 1709(10) of NAFTA reads as follows:

Where the law of a Party allows for use of the subject matter of a patent, other than that