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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

RIN 3150-AG84

### Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to remove the requirement that non-electric utility power reactor licensees submit financial qualifications information in their license renewal applications, and to add a new requirement that electric utility licensees of nuclear power reactors who become non-electric utility entities without a license transfer must notify the NRC and submit information on their financial qualifications. The final rule will reduce unnecessary regulatory burden on licensees seeking renewal of operating licenses and ensure that licensees that become non-electric utility entities continue to be financially qualified to operate their facilities and maintain the public health and safety.

**EFFECTIVE DATE:** March 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** George J. Mencinsky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3093, e-mail [gjm@nrc.gov](mailto:gjm@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

Section 182.a. of the Atomic Energy Act of 1954, as amended (AEA), provides that "each application for a license \* \* \* shall specifically state such information as the Commission, by

rule or regulation, may determine to be necessary to decide such of the technical and financial qualifications of the applicant \* \* \* as the Commission may deem appropriate for the license." The NRC's regulations governing financial qualifications reviews of applications for licenses to construct or operate nuclear power plants are provided in 10 CFR 50.33(f).

Section 50.33(f)(2), adopted on September 12, 1984 (49 FR 35747), requires all applicants for initial operating licenses and renewal of operating licenses to submit financial qualifications information, except applicants for and holders of operating licenses for nuclear power reactors that are electric utilities. The exception for electric utilities was based on the premise that the cost-of-service ratemaking process ensures that electric utilities will have funds to operate their nuclear power plants safely. Because entities other than electric utilities do not have recourse to such ratemaking, they were required to submit information on financial qualifications in accordance with § 50.33(f), and the NRC was required to make a finding of financial qualification for these non-electric utility entities under § 50.57(a)(4).

In its 1991 License Renewal Rule, 10 CFR part 54 (56 FR 64943; December 13, 1991), the NRC reaffirmed that the basis of the 1984 rulemaking for eliminating financial qualifications reviews for electric utilities applies not only for the term of the original license, but also for the period of operation covered by a renewed license (56 FR at 64968). The License Renewal Rule left unchanged the requirement in § 50.33(f)(2) that license renewal applicants that are not electric utilities must submit financial qualifications information in their renewal applications. However, the section of the License Renewal Rule that contains the standards for issuance of a renewed license, 10 CFR 54.29, does not require a finding regarding financial qualifications for non-electric utility entities applying for license renewal. The revisions to 10 CFR part 54 published on May 8, 1995 (60 FR 22461), did not amend the requirements in 10 CFR 54.29. Thus, while non-electric utility entities are required to submit financial qualifications information under 10 CFR 50.33, there is no requirement under 10 CFR 54.29

for a finding of financial qualifications for non-electric utility entities.

Since the 1995 rulemaking, the NRC has received 40 requests for license renewals and has granted 23 renewed licenses for twelve plant sites to electric utilities. However, because of ongoing deregulation in the power market, new entities other than electric utilities may be created and become licensees of nuclear power plants. Some of these entities may decide to renew their licenses. Under the current rule, these entities would be required to submit financial qualifications information under § 50.33(f)(2).

NRC's case-by-case determination of financial qualifications is resource-intensive and may result in delays in approving renewal applications. The NRC has reviewed the license transfer process to determine if there is a basis in the regulatory process that would eliminate the need for such a finding at license renewal. The NRC determined that, with one exception, it does not need the financial qualifications information from license renewal applicants that are not electric utilities. The exception is when an existing nuclear power licensee transitions from an electric utility to an entity other than an electric utility without transferring its license. All license transfers involving non-electric utility applicants require consideration of the financial qualifications of the non-electric utility entity that holds or will hold the license. However, an electric utility licensee transitioning to a non-electric utility status without a license transfer would not be subject to an NRC review of financial qualifications for the licensee as a non-electric utility entity under current NRC rules. If not closed, this regulatory gap would prevent the NRC from making a generic determination that financial qualifications review is unnecessary at license renewal.

On June 4, 2002, the NRC published a proposed rule in the **Federal Register** (67 FR 38427). The rule proposed to remove the requirement that non-electric utility power reactor licensees submit financial qualifications information in their license renewal applications, and to add a new requirement that licensees of nuclear power reactors who are electric utilities reorganizing as or changing their status to non-electric utility entities without a

license transfer must notify the NRC and submit information on their financial qualifications. The proposed rule would reduce unnecessary regulatory burden on licensees seeking renewal of operating licenses and ensure that licensees reorganizing as or changing to non-electric utility entities continue to have financial resources to operate their facilities safely. The public comment period closed on August 19, 2002. Nine comments were received on the proposed rule.

## Discussion

After considering public comment, the NRC has decided to adopt the proposed rule unchanged as the final rule. The final rule will remove the requirement that non-electric utility power reactor licensees submit financial qualifications information in their license renewal applications. The final rule will also add a new requirement that licensees of nuclear power reactors who are electric utilities reorganizing as or changing their status to non-electric utility entities without a license transfer must notify the NRC and submit information on their financial qualifications. The final rule reduces unnecessary regulatory burden on licensees seeking renewal of operating licenses and ensures that licensees reorganizing as or changing to non-electric utility entities continue to be financially qualified to operate their facilities and maintain the public health and safety. These changes will increase regulatory clarity and strengthen the NRC's ability to protect public health and safety. The following discussion presents the basis and rationale for this action.

The NRC's regulations provide for an evaluation of the financial qualifications of an applicant for a nuclear power reactor operating license or a licensee at several points during a reactor's operating lifetime—at initial licensing, before license transfers, and when circumstances warrant an ad hoc request for additional financial information. In addition, the NRC monitors the financial trade press and other sources for information on licensees' financial situations.

Currently, there is one gap in the NRC's regulatory provisions for evaluating a power reactor licensee's financial qualifications. The NRC's current regulations do not require a financial qualifications review when a licensee transitions from an electric utility to an entity other than an electric utility without transferring control of its license. This final rule will rectify the regulatory gap by imposing a requirement that these licensees submit

financial qualifications information to the NRC. With the addition of this provision, the NRC believes it has a basis for concluding that non-electric utility licensees that are holders of operating licenses for nuclear power reactors need not submit financial qualifications information during the license renewal process.

With this final rule, the NRC believes that review of financial qualifications of non-electric utility licensee applicants at license renewal is not necessary. The resulting process for oversight of financial qualifications is sufficient to ensure that the NRC has adequate warning of adverse financial impacts so that the NRC can take timely regulatory action to ensure public health and safety and the common defense and security. The resulting process has two components: (1) A formal review of major triggering events, and (2) monitoring of financial health between the formal reviews due at the "triggering events." The relevant triggering events are (1) initial operating license application, (2) license transfer, and (3) transition from an electric utility to a non-electric utility, either with or without transfer of control of the license. In addition, the NRC can review a licensee's financial qualifications at any point during the term of the license if there is evidence of a decline in the licensee's financial health. The NRC believes that there are no unique financial circumstances associated with license renewal because the NRC has no information indicating a licensee's revenues and expenses change due to license renewal.

Between major triggering events, the NRC relies upon periodic monitoring of the financial health of licensees to detect whether additional regulatory scrutiny and action are necessary to assure public health and safety and the common defense and security. The NRC's current regulations require non-electric utility reactor licensees to submit 5 years of financial projections for license renewal applications. Because this financial qualifications information ages quickly and is of limited relevance years later, the NRC relies on a process of monitoring licensees throughout the term of their licenses for any indications that they may not have sufficient financial resources to operate their plants safely.

The current licensee monitoring process involves the review of financial and industry trade press as well as other publicly available information, such as Securities and Exchange Commission (SEC) submissions and Federal Energy Regulatory Commission (FERC) submissions. The NRC reviews this

information to identify changes in licensees' financial health, as well as indirect indicators of declining financial health such as layoffs or increasing technical problems. If the review of any of these sources indicates that a licensee's financial health may be deteriorating, the NRC can request additional financial information from the licensee as authorized by 10 CFR 50.33(f)(4) to confirm that a licensee has the financial resources to operate the facility safely. The financial information that the NRC can request under 10 CFR 50.33(f)(4) can be the same type of information required for an initial license application or a license transfer.

The following sections discuss the times in a licensee's term of license when financial qualifications are reviewed and the changes made by this final rule.

### *Initial Licensing Reviews*

The NRC performs financial qualifications reviews during initial licensing because the startup of a nuclear power reactor is a major financial undertaking that has significant implications for a company's financial health. The NRC's financial qualifications review process is contained in NUREG-1577, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," March 1999. These reviews form part of the licensing basis that the licensee must maintain for the 40-year term of the initial license and for any license renewal period. Financial qualifications reviews at the operating license stage distinguish between license applicants that are electric utilities, as defined in 10 CFR 50.2, and those that are not. Applicants other than electric utilities are required to submit estimates for total annual operating costs for each of the first 5 years of operation of the facility and to indicate the sources of funds to cover these costs. The NRC's evaluation of the financial qualifications of an entity other than an electric utility applicant is based on the submitted 5-year projections of income and expenses. In addition, the NRC considers current information from several major financial rating service publications, and other relevant information, may also be considered. As part of its evaluation, the NRC reviews the reasonableness of an applicant's assumptions and inputs to its projections. The NRC publishes the results of its evaluation in a safety evaluation report. The NRC's regulations do not require additional financial qualifications reviews at scheduled intervals.

### *License Transfer Reviews*

The NRC reviews financial qualifications during direct license transfers because a new licensee must be qualified to hold the license. A plant acquisition or the indirect transfer of a license through a transfer of control of a licensee can have significant implications for a licensee's financial health. A license transfer under 10 CFR 50.80 may occur at any time during the period of the license. The NRC reviews the financial qualifications of non-electric utility applicants seeking to become licensees through direct license transfers (plant sales), and considers changes in the financial qualifications of an existing licensee, whether or not it is an electric utility, that might occur in connection with an indirect license transfer occurring in connection with a merger, acquisition, or restructuring action. For license transfers, a non-electric utility applicant must submit all the information required under § 50.33(f). As with initial license financial qualifications reviews, the NRC uses NUREG-1577 as the basis for its review and publishes the results of its evaluation in a safety evaluation report. The NRC has performed financial qualifications reviews on over 75 license transfer applications in the last 5 years. The NRC expects that it will continue to review numerous licensees' financial qualifications in the next few years because of license transfers.

### *Reviews of Transition From an Electric Utility to a Non-Electric Utility*

The NRC will review financial qualifications when an electric utility licensee transitions to non-electric utility status without a license transfer because a licensee is no longer ensured the recovery of its costs through traditional cost-of-service rate regulation. Before this final rule, the NRC had no formal automatic process to evaluate the licensee's financial qualifications if such a transition occurred in the absence of a license transfer (although the NRC's monitoring process should identify such transitions and could trigger a request for additional information pursuant to § 50.33(f)(4)). Therefore, the NRC is promulgating 10 CFR 50.76, a requirement separate from § 50.33(f)(2). Section 50.76 requires licensees that are transitioning from an electric utility to non-electric utility status, without being required to request approval for license transfers, to submit financial information sufficient to allow the NRC to determine whether the licensee remains financially qualified to conduct the activities authorized by the license.

Although the NRC expects that this type of transition will occur rarely, if at all, this requirement will ensure that a financial qualifications review for non-electric utilities results from all relevant triggering events, thereby enhancing public confidence while maintaining regulatory efficiency and effectiveness. The relevant triggering events are (1) initial operating license application, (2) license transfer, and (3) transition from an electric utility to non-electric utility status without a license transfer.

Section 50.76 is created separately from § 50.33, because the latter section focuses on applicants rather than licensees.

### *Screening of Financial and Nuclear Industry Trade Press and Other Information Sources*

To keep abreast of deregulation and other developments potentially affecting power reactor licensees, the NRC regularly screens the financial and trade press (e.g., Wall Street Journal, Barron's, Nuclear NewsLink, and Nuclear Energy Insight). Other information sources (e.g., State legislative reports, SEC and FERC submissions) also can be used. The NRC uses the foregoing to identify changes in licensees' financial health. A main purpose of this information review is to provide NRC with sufficient notification so that it can take regulatory action in a timely manner, when necessary. The NRC can then request additional information from licensees under § 50.33(f)(4).

Section 50.33(f)(4) states:

The Commission may request an established entity or newly formed entity to submit additional or more detailed information respecting its financial arrangements and status of funds if the Commission considers this information to be appropriate. This may include information regarding a licensee's ability to continue the conduct of the activities authorized by the license and to decommission the facility.

This section permits the NRC to require license applicants or licensees to submit relevant financial information on their qualifications to manage licensed activities safely at any time. The requested additional information can then be used to conduct a thorough financial qualifications review.

### *Retention of Nonpower Reactor Financial Reviews at License Renewal*

The NRC will retain the financial qualifications requirements in § 50.33(f)(2) for nonpower reactor (NPR) applicants that wish to renew or extend their licenses. There are currently 37 nonpower reactor licensees. Nonpower reactor licenses are generally renewed for 20 years. The NRC does not normally

follow changes in NPR licensee financial qualifications because NPR owners are primarily financially stable nonprofit educational or research institutions, either privately owned (3 corporate licensees and 28 academic licensees), State-owned (1 licensee), or Federally owned (5 licensees), and generally do not report financial information to sources readily available to the NRC. The limited publicly available reporting from these types of owners does not permit the same level of ongoing financial qualifications oversight as with power reactor licensees. Additionally, license transfers for NPRs and the associated financial reviews are rare. Given these factors, financial qualification problems with NPR licensees are not as likely to become known as problems with power reactor licensees. In some cases, the NRC has found financial weaknesses or ambiguities during NPR license renewals that it would not have discovered otherwise. Therefore, the NRC considers it appropriate to continue to review the financial qualifications of NPR licensees when they apply to renew their licenses.

### *Conclusion*

Section 50.33(f) requires all non-electric utility applicants for initial and renewed operating licenses, and § 50.80, in conjunction with § 50.33(f), requires all non-electric utility applicants for transferred licenses, to submit financial qualifications information. The NRC does not believe that there are any financial circumstances uniquely associated with license renewal that warrant a separate financial review. The NRC's regulatory processes for financial qualifications reviews adequately ensure that the NRC can take appropriate and timely regulatory action when warranted by changes in a licensee's financial qualifications. In contrast, there are valid regulatory reasons for conducting specified financial qualifications reviews at other license stages. The license stages are (1) at initial licensing, when an applicant's financial qualifications need to be determined in accordance with the AEA's requirements; (2) at the time of a license transfer, when new licensees need to be evaluated, or when deregulation initiatives may affect an applicant's or licensee's financial qualifications; or (3) during special circumstances, when ad hoc reviews under § 50.33(f)(4) may be warranted.

As a result, the NRC is promulgating a change in the requirement in the last sentence of § 50.33(f)(2) with respect to entities other than electric utilities seeking renewal of operating licenses for

nuclear power reactors. The final rule (1) eliminates the need for such entities to provide financial qualifications information as part of the license renewal process, (2) retains the existing requirement in § 50.33(f) for nonpower reactors to provide financial qualifications information, and (3) adds a new § 50.76, "Licensee's change of status; financial qualifications." Section 50.76 will require that any electric utility power reactor licensee that becomes an entity other than an electric utility without transferring control of the license must provide the same financial information that is required for obtaining an initial operating license. The final rule will not affect the submission of financial qualifications information and the need for a finding of financial qualifications to the extent presently required for license transfers.

The NRC believes this final rule is consistent with the NRC's Strategic Goals of making NRC activities and decisions more effective and efficient and reducing unnecessary regulatory burden. The final rule will help advance these goals by eliminating the need for "entities other than electric utilities" to submit information on financial qualifications (as is the case now for electric utilities) in connection with license renewal, and will make the financial qualifications review requirements consistent with the bases of the License Renewal Rule in 10 CFR part 54, which does not require a finding of financial qualifications for those power reactor licensees applying for a renewed nuclear power plant operating license. The final rule will not have an adverse impact on maintaining safety. The provisions in § 50.33(f)(4) already ensure that financial information can be obtained from a licensee whenever the NRC considers this information appropriate.

#### Resolution of Public Comments

The NRC received comments on the proposed rule from nine different organizations, including one State, three nonprofits, and five organizations in the nuclear power industry. Five commenters opposed the changes to § 50.33 and four commenters supported the changes to § 50.33. Two commenters opposed adding the new § 50.76, three commenters supported this change, and four commenters were silent on the creation of the new § 50.76. After considering the public comments, the NRC has decided to adopt the proposed rule on "Financial Information Requirements for Applications To Renew or Extend the Term of an Operating License for a Power Reactor" as final without changes. A summary of

the comments and the NRC's responses follows:

*Comment 1:* Four commenters support the NRC's proposed revisions to 10 CFR 50.33 to eliminate the requirement that non-electric utility power reactor licensees submit financial qualifications information during license renewal. One commenter agrees with the NRC's assessment that there are no unique financial circumstances associated with license renewal that warrant a separate financial review.

*Response:* No response necessary.

*Comment 2:* Two commenters agree with the proposal to add a requirement in 10 CFR 50.76 that electric utilities that transition to non-electric utility status without a license transfer should submit financial qualifications information.

*Response:* No response necessary.

*Comment 3:* Five commenters oppose the NRC's proposal to eliminate submission of financial qualifications information for non-electric utilities during license renewal. One commenter expresses concern that the changes to 10 CFR 50.33 would weaken protection of public safety. Another commenter states that eliminating this requirement will create an "information vacuum" that will place the NRC in a state of ignorance.

*Response:* The NRC disagrees that the changes to 10 CFR 50.33 will weaken protection of public health and safety or deprive the NRC of necessary information. The NRC's license transfer reviews have provided the NRC with financial information on current non-electric utility licensees, and will continue to do so for future license transfers. Moreover, the NRC's current process for monitoring the financial health of licensees, as previously described, is effective in ensuring that licensees have adequate financial resources to operate their facilities safely and provides sufficient information to allow the NRC to take timely regulatory action if a licensee's financial health deteriorates.

The commenter implies that the changes to 10 CFR 50.33 will allow financially weak licensees to continue to operate. The changes to 10 CFR 50.33 relate to when NRC reviews the financial status of licensees, not necessarily whether the licensee should continue to operate. The NRC believes that its primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs, which are not affected by this rulemaking.

*Comment 4:* Two commenters are concerned that in the wake of recent corporate financial and accounting

scandals, the NRC is considering relaxing its financial oversight of non-electric utility power reactor licensees. One commenter also states that Congress has acknowledged the need for more stringent oversight of corporate accounting and that the NRC's actions are incompatible with Congress's findings.

*Response:* The NRC disagrees with the commenters that this action is incompatible with recent experience or Congress's findings about the need for careful oversight. The NRC's purposes and responsibilities are different from agencies, such as the Securities and Exchange Commission (SEC), that are responsible for oversight of companies with respect to accounting or financial reporting improprieties. The NRC has no regulatory authority over corporate accounting methods. This action in no way relaxes the NRC's regulations that require all part 50 applications to be submitted under oath and affirmation (see 10 CFR 50.30) and that require all information submitted to be complete and accurate in all material respects (see 10 CFR 50.9). The NRC continues to possess the authority to impose sanctions for the submission of incomplete or inaccurate information. The NRC does not believe that this action has any relationship to recent financial reporting and accounting issues cited by the commenters.

*Comment 5:* One commenter states that in a U.S. General Accounting Office (GAO) report on the Commonwealth Edison and PECO merger, GAO pointed out that the NRC did not validate submitted information and the NRC approved the license transfers associated with the merger knowing that submitted pro forma financial information was inaccurate.

*Response:* The comment addresses whether information submitted to the NRC for a financial qualifications review is verified for accuracy and whether the NRC takes licensing actions based on information known to be inaccurate. The NRC's response to the GAO findings, with which the NRC disagreed, is contained in the GAO report. With respect to this rulemaking, however, which deals with the timing of a financial qualifications review, the comment does not pertain to whether a financial qualifications review specifically during license renewal is necessary, and, therefore, the comment is not relevant.

*Comment 6:* One commenter cites an NRC document (NUREG/CR-6617, October 1998) that suggests the NRC believes the financial health of power reactor licensees may suffer from deregulation. According to one

commenter, the document suggests that the economic pressures in a deregulated environment might hasten the closure of some power reactors. The commenter asserts that the fact that the NRC now believes that financial qualifications reviews are not necessary during license renewal is incompatible with the earlier findings.

*Response:* The NRC disagrees that this action is incompatible with the information in NUREG/CR-6617. The NRC is concerned with assuring that operating reactors are operated safely. If financial circumstances force reactors to cease operation, the NRC has other requirements in place with respect to decommissioning funds that provide reasonable assurance that a prematurely shutdown reactor is decommissioned and does not pose a public health and safety risk. The NRC's licensee monitoring process, as previously described, will provide adequate warning to ensure that the NRC can respond with timely regulatory action if a licensee's financial health suffers from deregulation. The license renewal application event has no particular bearing on a licensee's financial qualifications. If anything, undertaking to renew a license suggests that the licensee is projecting future profitability by continuing to operate the plant beyond its original operating license.

*Comment 7:* Three commenters are concerned that the NRC's reliance on trade press information is inadequate to track the financial health of non-electric utilities. One commenter states that since power reactor licensees operate in a competitive environment, they generally do not disclose financial information unless required to do so. The commenter states that as a minority owner of two power reactors, it has difficulty monitoring the financial qualifications of the plant operators. In addition, since power reactor licensees are generally organized as part of a complex holding company system, the trade press does not have sufficient information to report at a level below the holding company as a whole. One commenter states that the day-to-day informal monitoring of the trade press and limited annual reviews are not substitutes for a formal, rigorous, and disciplined review of a licensee's financial qualifications at license renewal.

*Response:* The NRC disagrees with the commenter's views that the NRC's processes are inadequate to monitor the financial health of non-electric utilities. As previously described, the NRC not only relies upon the trade press and licensee filings with other government agencies, it also has the benefit of

having onsite inspectors who may become aware of relevant information. Moreover, the NRC has the authority to request additional financial information directly from licensees at any time under 10 CFR 50.33(f)(4).

Monitoring the trade press is a common practice in the financial and investment community to screen the financial and business conditions of any business activity or entity. The NRC believes that its ongoing licensee financial monitoring process is necessary and is a better use of the NRC's resources than a formal financial qualifications review at license renewal because license renewal occurs at an arbitrary point in time during a licensee's operating license. On average, power reactor licensees apply for license renewal 14 years before their initial license expires. Thus the 5 years of projected operating expenses and revenues that non-electric utility power reactors are currently required to submit do not include the period to be covered by the renewed license. Therefore the information submitted is of limited value to the NRC in determining if the licensee will have adequate financial qualifications in the period to be covered by the renewed license.

The NRC does not agree that the situation of a minority owner with respect to financial information is the same as the situation of the NRC. The NRC possesses regulatory authority under § 50.33(f)(4) to obtain additional financial information from licensees at any time that is necessary to determine whether a licensee continues to be financially qualified.

*Comment 8:* One commenter states that the aging of power reactors requires more, not less, financial oversight. The commenter cites the examples of corrosion in the reactor vessel head at the Davis-Besse reactor and cracking of reactor pressure vessel head penetration nozzles in pressurized water reactors. The commenter also states that as reactors age, licensees have conflicting demands of keeping the reactors operating and temporarily shutting them down to make necessary inspections and repairs. Licensees in poor financial health may be more likely to postpone these inspections and repairs, increasing the likelihood of an accident.

*Response:* The NRC disagrees with the commenter. The rule eliminates the burden of the unnecessary financial review so that the NRC can focus more resources on the technical aspects of power reactor license renewal. The Davis-Besse example cited by the commenter is principally a technical issue. Moreover, there does not appear to be any information available to the

NRC that suggests that the Davis-Besse situation was caused by a deterioration in the financial health of the licensee, and the commenter does not present any information today to show such a causal link. The NRC has not found a consistent correlation between licensees' poor financial health and poor safety performance. If a licensee postpones inspections and repairs that are subject to NRC oversight, the NRC has the authority to shut down the reactor or take other appropriate action if there is a safety issue.

*Comment 9:* Three commenters are concerned that non-electric utility power reactor licensees are organized as single-asset limited liability companies (LLCs), which they assert are designed to limit the liability of the parent companies in the event of the financial failure of the LLC and to shield the power reactor licensee from public scrutiny of its finances. One commenter states that, in some cases, the LLCs are foreign companies or exist only on paper. Another commenter states that a recent report shows that 25 power reactors are owned by LLCs. Another commenter states that the selection of the limited liability structure indicates that these owners recognize that their financial health is subject to substantial change. Because financial well-being is essential for power reactor licensees, this structure also signals a significant risk to the health and safety of the public.

*Response:* While LLCs provide limits on the liability of parent organizations, the same is true for traditional corporations that have parent companies. Regardless of whether a power reactor licensee is an LLC or another corporate form such as a wholly owned corporate subsidiary, the NRC has essentially the same opportunity to obtain relevant financial information about the licensee. The NRC may request and review, on a case-by-case basis, relevant financial information from the LLC licensee as authorized under 10 CFR 50.33(f)(4).

The NRC does not agree with the commenter's view that the use of the LLC structure indicates licensees anticipate substantial changes in financial health and signals significant risk to the health and safety of the public. The Commission retains the same enforcement and inspection authority regardless of the corporate structure and can ultimately shut any reactors down if they are not operated safely.

*Comment 10:* Two commenters state that because non-electric utility licensees lack the assured base of funding of electric utility licensees, they

increase the risk that there will be insufficient capital resources to operate the power reactor safely, as the non-electric utility licensees diversify into telecommunications, commodity and energy trading, high-risk financial activities, or other activities.

*Response:* The NRC disagrees with the commenters. The NRC has long determined that non-electric utilities can be licensed regardless of the fact that they do not have an assured base of funding. In this regard, the NRC has a full regulatory regime for licensing non-electric utilities that requires substantial financial information be submitted and reviewed, which is not the case for licensing reviews for electric utilities. In addition, the NRC has no basis for concluding that diversification will always threaten the financial well being of non-electric utility power reactor licensees.

*Comment 11:* One commenter states that disclosure and transparency to regulators is essential for ensuring that the NRC is not caught unaware of a deteriorating financial condition. Given the lack of transparency in the structures and finances of many publicly traded energy companies, the NRC seems out of step with the widely agreed-upon need for increased corporate disclosure.

*Response:* The NRC agrees that the NRC needs to be aware of changes in the financial condition of licensees and therefore, continues to monitor licensees' financial health. The NRC does not believe that the action being taken is somehow "out of step" with the "need for increased corporate disclosure" or inconsistent with the NRC's ability to obtain relevant corporate financial information. This action only removes one requirement to provide certain financial information at one point in time; it does not affect in any way the NRC's ability to require the submission of additional or more detailed financial information at any time the NRC needs such information.

*Comment 12:* One commenter believes that the NRC's current review of financial qualifications at initial licensing, before license transfers, and on an ad hoc basis is not adequate. The commenter states that the financial qualifications of a licensee at either initial licensing or at license transfer may have little relevance to the licensee's financial qualifications many years later when license renewal is sought. Because of our dynamic economy, a company's financial status can change significantly in a matter of months and thus several-year-old financial information is worthless.

*Response:* The commenter essentially is questioning the entire NRC financial qualifications regulatory process because the argument that financial information quickly becomes stale applies whether or not there is any decision to renew a license. The NRC agrees with the commenter that financial qualifications information eventually becomes out of date and is no longer relevant after the passage of time. That is the reason why the NRC has a two-pronged process for financial qualifications, with the second prong being continued monitoring of the financial health of licensees. This process provides a reasonable method to keep abreast of licensees' financial health to ensure sufficient financial resources are available to continue safe operation of nuclear power plants, as well as decommissioning plants when they permanently cease operation. For power reactor licensees, financial qualifications reviews at license renewal, which takes place at an arbitrary point in time, do not solve the problem raised by the commenter.

*Comment 13:* Three commenters state that license renewal is a particularly appropriate time to evaluate the financial requirements of power reactor licensees. The commenters state that non-electric utility power reactor licensee financial qualifications should be evaluated to ensure that there are sufficient financial resources to continue safe operation, make capital improvements, add spent fuel storage capacity, meet additional licensing conditions imposed because of September 11, 2001, events, meet decommissioning obligation, and meet public liability obligations under the Price-Anderson Act, in light of the economic conditions at the time of renewal.

*Response:* The NRC disagrees with the commenters' view that license renewal is a particularly appropriate time for a financial qualifications review given that it is just one point in time over potentially 60 years of plant operation. The NRC's process for regular monitoring of power reactor licensees meets the need to know whether licensees may not have sufficient financial qualifications and allows for adequate warning so that the NRC can request financial qualifications information and take regulatory action in a timely manner if necessary. With respect to the scope of financial qualifications analyses, the NRC is not proposing any changes to its financial qualifications analyses through this action.

*Comment 14:* One commenter states that the same rationale used for

maintaining the requirement for nonpower reactor licensees to submit financial qualifications information during license renewal applies to non-electric utility power reactors. The commenter notes that the NRC states in the proposed rule (67 FR 38429) that it has found financial weaknesses or other ambiguities during the review of nonpower reactor licensees' financial information in the license renewal process that it would not have discovered otherwise. The commenter states further that given the lack of information in the trade press about non-electric utility power reactors and because of the use of LLCs, a formal review process at the time of license renewal may disclose financial weaknesses that otherwise would not be discovered.

*Response:* The NRC disagrees that the same rationale used for nonpower reactor licensees applies to non-electric utility power reactor licensees. There are many nonpower reactor licensees that are nonprofit educational or research institutions, with either private, State, or Federal ownership, that do not report financial information to sources readily available to the NRC. Thus the NRC is not as able to monitor the financial health of these organizations on an ongoing basis. In addition, many nonpower reactor licensees are multipurpose, non-revenue-generating entities that require outside funding for financial support and thus are economically more risky. Accordingly, the NRC will continue to perform financial qualifications reviews as part of the renewal of nonpower reactor licensees, which typically occurs every 20 years. On the other hand, power reactor licensees are single-purpose, revenue-generating entities. Therefore, the NRC is able to review non-electric utility power reactor licensee financial information more readily on an ongoing basis.

*Comment 15:* One commenter states that the NRC should establish a more rigorous financial monitoring system that includes an annual review by the NRC of licensees' account books. The commenter states that the NRC needs to know the financial status of non-electric utility power reactor licensees before the information is published in the trade press.

*Response:* The NRC disagrees with the comment. The extensive annual financial audit process that the commenter suggests is not necessary for the NRC to achieve its oversight of licensees under the Atomic Energy Act and to ensure public health and safety and promote the common defense and security. Nor is it clear why the NRC

must know the financial status of non-electric utility licensees before information on their financial health is published in the trade press. The NRC's regulations require that all part 50 applications be submitted under oath and affirmation (*see* 10 CFR 50.30) and that all information submitted must be complete and accurate in all material respects (*see* 10 CFR 50.9). The NRC also possesses the authority to impose sanctions for incomplete or inaccurate information and, of course, possesses the authority to take action necessary to ensure the safe operation of nuclear facilities. For these reasons, the NRC believes its regulatory process and its financial monitoring system are adequate and sufficient to meet these goals.

*Comment 16:* One commenter states that the Regulatory Analysis disregards the value to the public health and safety of reviewing a non-electric utility power reactor licensee's financial qualifications at the time of license renewal.

*Response:* The NRC disagrees with the commenter that the Regulatory Analysis disregarded the value to public health and safety of review of financial qualifications at the time of license renewal. The financial qualifications review for power reactor relicensing occurs at an arbitrary point in time that has no distinct link to public health and safety. Public health and safety are primarily protected through the NRC's onsite inspection program, and the financial health of a licensee is verified through NRC's monitoring of publicly available financial information.

*Comment 17:* One commenter states that the NRC is not sufficiently independent of the industry that it regulates. The commenter mentions that the NRC has stated that case-by-case review of financial qualifications information might delay the approval of a license application. The commenter suggests this gives the impression that the NRC believes its duty is to approve renewal applications and not to thoroughly review and analyze them prior to accepting or rejecting applications. The commenter concludes that the license renewal process should be a truly rigorous process and not simply a rubber-stamping formality.

*Response:* The NRC disagrees with the comment that NRC is not sufficiently independent of the industry. The NRC is a fully independent regulator of the nuclear power industry. No licensing application's approval is a foregone conclusion. The NRC will continually conduct technical reviews until the licensee has performed all necessary actions as required in the regulations

before approving a license application. No licensing action is approved until all technical issues have been addressed. The NRC's commitment to thorough review and analysis of license renewal applications is reflected in the staff time to review those applications, which is on the order of 19,000 person-hours per application.

Nonetheless, to be an effective regulator, the NRC must also conduct its regulatory activities in protecting public health and safety and the common defense and security in a manner that is efficient and does not impose unnecessary regulatory burdens. This final rulemaking is directed towards ensuring that the NRC carries out its regulatory responsibilities in an efficient and cost-effective manner.

*Comment 18:* One commenter stated that the proposed regulatory language in § 50.76 is open ended and could cause confusion at the end of the 75-day period. The commenter suggested the following language should be added: "Financial qualifications information submitted in accordance with this section shall be regarded as accepted by the Commission upon receipt of a letter to this effect from the appropriate reviewing office of the Commission or 75 days after the submittal to the Commission, whichever occurs first."

*Response:* The NRC disagrees with the proposed addition. The NRC believes that the regulatory language is clear that information must be submitted no later than 75 days before an electric utility licensee ceases to be an electric utility. The commenter's proposal would change the regulation and require the NRC to take action within 75 days.

*Comment 19:* Two commenters disagree that there is a regulatory gap that must be filled by the addition of 10 CFR 50.76. One commenter states that the NRC has sufficient existing authority under 10 CFR 50.33(f)(4) to require applicants or licensees to submit financial qualifications information. In addition, licensees have an obligation to inform and obtain approval from the NRC for any changes that would constitute a transfer of license, and licensees must promptly report financial qualifications information that may have a significant implication for public health and safety. Therefore, the commenter believes the new requirement is unnecessary and unjustified. One commenter believes the new requirement is unnecessary and unwarranted and that the gap is perceived and not real since no problems were cited by the NRC. Thus, the new requirement is not necessary and would create only unnecessary burden with no benefit.

*Response:* The NRC disagrees with the commenters regarding the absence of a regulatory gap. The NRC believes that the transition from an electric utility to a non-electric utility is a significant event that requires regulatory review to ensure continued financial qualifications of the licensee lacking assured cost recovery. The fact that the NRC has authority to request financial qualification information is of no relevance in determining whether there is a regulatory gap. In the NRC's view, the regulatory gap exists because the current regulatory regime does not compel that the NRC be timely informed of changes in a licensee's cost recovery status when there is no license transfer. Because such notification would, in all likelihood, be followed by an NRC request for information, the final rule simply provides that electric utility licensees transitioning to non-electric utility status without a license transfer must provide the relevant financial qualifications information. The NRC also disagrees that the regulatory gap is only perceived because no problems have occurred to date. The lack of examples of problems does not support the conclusion that a regulatory gap does not exist. With this regulation, the NRC is being proactive and is attempting to prevent problems from occurring.

*Comment 20:* One commenter opposes the addition of 10 CFR 50.76 and states that the proposed rule would impose unnecessary regulatory costs due to collecting and submitting financial qualifications information and that this added burden may impact licensees' business decisions about whether to seek license renewals.

*Response:* The NRC disagrees with the commenter that the creation of 10 CFR 50.76 is unnecessary. The NRC strives to ensure that its regulations meet real regulatory needs and that unnecessary regulations are avoided. Consistent with this objective, the NRC believes that the proposed action is necessary to ensure NRC fulfills its regulatory responsibilities under the Atomic Energy Act. This change complements the existing regulations requiring power reactor licensees to submit financial qualifications information when they become non-electric utilities during a transfer of control of a license. Thus, under the final rule all licensees that transition from electric utilities to non-electric utilities will undergo financial qualifications review, regardless of whether the transition involves the transfer of control of an NRC license. Nor does the NRC believe that the cost of collecting and submitting the information to the NRC (*see* Regulatory



Analysis for a discussion of the projected costs of compliance with the final rule) will affect a licensee's decision on whether to seek renewal of its operating license in any material way.

*Comment 21:* One commenter states that the new requirement at 10 CFR 50.76 is unnecessary because (1) licensees have an obligation to inform, and obtain advanced approval from, the NRC of any changes that would constitute a transfer of the license, directly or indirectly, (2) licensees have an obligation to inform the NRC if changes in their financial qualifications may have significant implications for public health and safety, and (3) the NRC monitors the financial and industry trade press.

*Response:* The NRC disagrees with the commenter that the creation of 10 CFR 50.76 is unnecessary. Licensees' obligation to inform and obtain prior NRC approval of a license transfer is separate from the issue of the need for licensee notification and provision of information about financial qualifications when a licensee changes its status from an electric utility to a non-electric utility without an associated transfer of control of the license. Although licensees have an obligation to report significant changes in their financial qualifications, it is possible that some licensees could believe that they will remain financially qualified notwithstanding their change in status from an electric utility to a non-electric utility and thus not consider that event to be a reportable change in financial qualifications. Furthermore, while the NRC monitors the financial and industry trade press, the NRC believes that a licensee transition from electric utility to non-electric utility status is a significant event that automatically warrants a separate financial qualifications review. This type of review already occurs when the transition is associated with a license transfer. Section 50.76 would simply ensure that financial qualification reviews occur as part of a transition from an electric utility to non-electric utility status without a license transfer.

*Comment 22:* One commenter states that the new section creates additional regulatory issues and burdens without any corresponding safety benefit. A complicating issue that might arise is determining precisely what types of changes would cause a licensee to cease being an electric utility. The NRC and the licensee may disagree that a triggering event has occurred. If so the licensee may not notify the NRC before the 75-day deadline.

*Response:* The NRC disagrees with the commenter that the new section creates additional regulatory issues and burdens without any corresponding benefit. The benefit of this action is ensuring on at least one occasion that a licensee who transitions from electric utility to non-electric utility status without a license transfer will continue to have the resources necessary to operate the power plant in a manner that protects public health and safety and is consistent with the common defense and security.

With respect to disagreement on what constitutes a transition from electric utility to non-electric utility status, the commenter did not provide any discussion of such circumstances. The NRC is unaware of any significant misunderstandings of what constitutes an electric utility under 10 CFR 50.2. Therefore, the commenter does not appear to raise a significant issue.

*Comment 23:* One commenter suggests that, instead of the proposed regulatory changes, the NRC should update the definition of "electric utility" in 10 CFR 50.2 to reflect the changes that have occurred in the electric utility industry. For example, the definition should provide flexibility to include utilities that may no longer be subject to cost of service rate making. The commenter also suggests that the definition should be flexible enough to include entities other than traditional vertically integrated utilities, such as those that have desegregated their business into generating and transmission/distribution entities. The commenter concludes that the definition of electric utility should include (1) a generating company that is part of a diversified holding company or other corporate structure and (2) an entity that generates and sells electricity at market-based rates, at least so long as the company's market-based rate authority is governed by tariffs that are subject to the jurisdiction of a rate regulatory agency such as the Federal Energy Regulatory Commission.

*Response:* The commenter's suggestions would undermine the NRC's longstanding basis for not requiring financial qualifications reviews for electric utilities, which is that the recovery of costs is assured. Accordingly, the NRC does not believe that the commentator's suggestions warrant further consideration.

*Comment 24:* One commenter states that if the proposed changes to 10 CFR 50.33 are finalized, then the NRC should adopt and implement procedures to formally and continually monitor the financial qualifications of non-electric utility power reactor licensees.

*Response:* The NRC will consider the commenter's suggestion when the NRC's internal guidance for reviewing licensees' financial information is revised.

## Section-by-Section Analysis

### 10 CFR 50.33, Contents of Applications; General Information

Section 50.33(f)(2) is amended to state that power reactor applicants for license renewal need not provide financial qualifications information. Nonpower reactor applicants would continue to submit financial qualifications information in their applications. A new sentence is added to § 50.33(f)(2) to specify that nonpower reactor license renewal applicants must continue to submit financial qualifications information in their applications.

### 10 CFR 50.76, Licensee's Change of Status; Financial Qualifications

A new § 50.76 requires that a licensee changing from an electric utility to a non-electric utility entity (*i.e.*, a company that does not obtain revenue from the cost-of-service rate making process), in a manner other than a license transfer under 10 CFR 50.80, must submit the financial information required by § 50.33(f)(2) for obtaining an operating license. The section also requires that the licensee notify the NRC 75 days before the transition and provide the financial information at that time. The language of the proposed rule was changed slightly to spell out "seventy-five."

## Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

*Public Document Room (PDR).* The NRC Public Document Room is located at 11555 Rockville Pike, Public File Area O-1 F21, Rockville, Maryland.

*Rulemaking Web site.* The NRC's interactive rulemaking Web site is located at <http://ruleforum.llnl.gov>. The documents may be viewed and downloaded electronically via this Web site.

*The NRC's Public Electronic Reading Room (PERR).* The NRC's public electronic Reading Room is located at <http://www.nrc.gov/reading-rm.html>.

*The NRC staff contact (NRC Staff).* Single copies of the final rule, the Regulatory Analysis, and the Environmental Assessment may be obtained from George J. Mencinsky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.



Alternatively, you may contact Mr.

Mencinsky at (301) 415-3093 or via e-mail to [gjm@nrc.gov](mailto:gjm@nrc.gov).

Document	PDR	Web	PERR	NRC Staff
Regulatory Analysis .....	X	X	ML032460795	X
Environmental Assessment .....	X	X	ML032460815	X
Public Comments Received .....	X		ML032670833	X

### Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC eliminates the requirement that applicants for power reactor license renewal provide financial qualifications information and adds a new requirement for submission of financial information on electric utilities holding operating licenses for nuclear power reactors if the applicants cease to be electric utilities in a manner other than a license transfer under 10 CFR 50.80. This final rule would not constitute a standard that establishes generally applicable requirements, and the requirement to use a voluntary consensus standard is not applicable.

### Finding of No Significant Environmental Impact: Availability

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 is not a major Federal action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required.

This rulemaking will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released off site, and there is no increase in public radiation exposure. Therefore, there are no radiological impacts associated with the action. The rulemaking does not involve nonradiological plant effluents and has no other environmental impact. Therefore, no nonradiological impacts are associated with the action. Therefore, the NRC determines that there will be no off site impact to the public from this action.

The basis for NRC's finding is set forth in an Environmental Assessment on this final rule. The Environmental Assessment is available as indicated in the section under the Availability of

Documents heading. The NRC requested the views of the States on the environmental assessment for the rule and did not receive any comments from the States.

### Paperwork Reduction Act Statement

This final rule eliminates the burden on non-electric utility power reactor licensees to submit financial qualifications information upon license renewal as required by the current § 50.33(f)(2). The public burden reduction for this information collection is estimated to average 100 hours per request. Power reactor licensees that transition from electric utility to non-electric utility power reactor entities without transferring the license would be required to provide this information under a new § 50.76. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

### Public Protection Notification

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

### Regulatory Analysis

The Commission has prepared a Regulatory Analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Regulatory Analysis may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Single copies of the analysis may be obtained from George J. Mencinsky, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415-3093, e-mail [gjm@nrc.gov](mailto:gjm@nrc.gov).

### Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C.

605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

### Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule. The final rule will (1) permissively relax the current requirement in § 50.33(f) for submission of financial qualifications information by entities other than electric utilities seeking renewal of their nuclear power plant operating licenses, and (2) impose a new requirement for submission of financial information on electric utilities who hold operating licenses for nuclear power reactors and, then cease to be electric utilities in a manner other than a license transfer under 10 CFR 50.80. These information collection and reporting requirements do not constitute regulatory actions to which the backfit rule applies. In addition, with respect to the permissive relaxation in § 50.33(f), such relaxations do not "impose" a requirement, which is an essential element of "backfitting" as defined in § 50.109(a)(1).

Accordingly, the final rule's provisions do not constitute a backfit and a backfit analysis need not be performed. However, the staff has prepared a regulatory analysis that identifies the benefits and costs of the final rule and evaluates other options for addressing the identified issues. As such, the regulatory analysis constitutes a "disciplined approach" for evaluating the merits of the final rule and is consistent with the intent of the backfit rule.

### 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 of OMB.

#### List of Subjects in 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.

■ For the reasons set forth 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 part 50.

### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. 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. 444, 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. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 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 and 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).

■ 2. In § 50.33, paragraph (f)(2) is revised to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(2) If the application is for an operating license, the applicant shall submit information that demonstrates the applicant possesses or has reasonable assurance of obtaining the funds necessary to cover estimated operation costs for the period of the license. The applicant shall submit estimates for total annual operating

costs for each of the first five years of operation of the facility. The applicant shall also indicate the source(s) of funds to cover these costs. An applicant seeking to renew or extend the term of an operating license for a power reactor need not submit the financial information that is required in an application for an initial license. Applicants to renew or extend the term of an operating license for a nonpower reactor shall include the financial information that is required in an application for an initial license.

\* \* \* \* \*

■ 3. Section 50.76 is added to read as follows:

#### § 50.76. Licensee's change of status; financial qualifications.

An electric utility licensee holding an operating license (including a renewed license) for a nuclear power reactor, no later than seventy-five (75) days prior to ceasing to be an electric utility in any manner not involving a license transfer under § 50.80, shall provide the NRC with the financial qualifications information that would be required for obtaining an initial operating license as specified in § 50.33(f)(2). The financial qualifications information must address the first full five years of operation after the date the licensee ceases to be an electric utility.

Dated at Rockville, Maryland, this 26th day of January 2004.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

*Secretary of the Commission.*

[FR Doc. 04–1942 Filed 1–29–04; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–82–AD; Amendment 39–13444; AD 2004–02–09]

RIN 2120–AA64

#### Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–

9–87 (MD–87), and MD–88 airplanes. This action requires a one-time visual inspection to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

**DATES:** Effective March 5, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes was published in the **Federal Register** on May 23, 2003 (68 FR 28175). That action proposed to require a one-time visual inspection to determine if discrepant circuit breakers are installed, and corrective action if necessary.

#### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.