revising the words "sells a" to read "transfers title to the."

82. Section 3550.200 is amended by revising the OMB control number "0575–0166" to read "0575–0172" and by removing the third sentence.

Subpart E—Special Servicing

83. Section 3550.208 is amended by revising in paragraph (b) the reference to "paragraph (a)(6)" to read "paragraph (a)(5)" and by adding a new paragraph (a)(6) to read as follows:

§ 3550.208 Reamortization using promissory note interest rate.

* * * * *

(a) * * *

(6) Bring an account current where the National Appeals Division (NAD) reverses an adverse action, the borrower has adequate repayment ability, and RHS determines the reamortization is in the best interests of the Government and the borrower.

* * * * *

84. Section 3550.211 is amended in paragraph (c) by removing the last two sentences.

85. Section 3550.250 is amended by revising the OMB control number "0575–0166" to read "0575–0172" and by removing the third sentence.

Subpart F—Post-Servicing Actions

86. Section 3550.251 is amended in paragraph (c)(5)(i)(A) by revising the words "program-eligible applicants" to "eligible direct or guaranteed single family housing loan applicants" and by revising paragraphs (c)(4)(i) and (c)(4)(ii) to read as follows:

§ 3550.251 Property management and disposition.

* * * * *

(c) * * *

(4) * * *

(i) Program REO properties are reserved for eligible direct or guaranteed single family housing loans under this part or part 1980, subpart D of this title and nonprofit organizations or public bodies providing transitional housing during the first 60 days after the date of the first notice of sale, and during the first 30 days following any reduction in price or any other change in credit terms or other sale terms. After the expiration of a reservation period, program REO properties can be bought by any buyer.

(ii) An offer on a program REO property from a buyer who does not qualify for a direct or guaranteed single family housing loan may be submitted during a reservation period, but is considered to have been received on the day after the reservation period ends.

* * * * *

87. Section 3550.300 is amended by revising the OMB control number "0575–0166" to read "0575–0172" and by removing the third sentence.

Dated: December 16, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–32190 Filed 12–23–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93 and 98

[Docket No. 02–064–2]

Canadian Border Ports; Blaine and Lynden, WA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On November 8, 2002, the Animal and Plant Health Inspection Service published a direct final rule in the **Federal Register**. (*See* 67 FR 68021–68022, Docket No. 02–064–1.) The direct final rule notified the public of our intention to amend the regulations by removing Blaine and Lynden, WA, from the lists of Canadian border ports designated as ports of entry for the importation of certain animals, birds, poultry, and animal germ plasm into the United States. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as January 7, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

Authority: 7 U.S.C. 1622, 8303, 8306–8308, 8310, 8313, and 8315; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 17th day of December 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32295 Filed 12–23–02; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 72

RIN 3150–AG52

Decommissioning Trust Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations relating to decommissioning trust provisions for nuclear power plants. For licensees that are no longer rate-regulated, or no longer have access to a non-bypassable charge for decommissioning, the NRC is requiring that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Until recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised this type of oversight authority. With deregulation, this oversight may cease and the NRC needs to take a more active oversight role.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In a staff requirements memorandum (SRM) dated August 10, 1999, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. This SRM was in response to SECY–99–170 (July 1, 1999), "Summary of Decommissioning Fund Status Reports," in which the NRC staff noted that it intended to continue to review decommissioning trust agreements in license transfers on a case-by-case basis and impose appropriate conditions in the orders approving these transfers. In response to the SRM, the NRC staff issued a rulemaking plan for Decommissioning Trust Provisions, SECY–00–0002, on December 30, 1999. The plan called for amending 10 CFR 50.75 and revising Regulatory Guide

1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors." The Commission approved the plan on February 9, 2000, and directed the NRC staff to include specific trust fund terms and conditions necessary to protect funds fully in the rule itself. The Commission also suggested that sample language for trust agreements consistent with the terms and conditions within the rule be provided in the associated regulatory guide.

The NRC published a proposed rule for Decommissioning Trust Provisions on May 30, 2001 (66 FR 29244). That proposed rule required that the trust provisions be in a form acceptable to the NRC and contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. To accomplish this objective, the NRC proposed to modify paragraphs 10 CFR 50.75(e)(1)(i) and (ii), and to add a new paragraph, 10 CFR 50.75(h) to its regulations. The changes in § 50.75(e) specify that the trust should be an external trust fund in the United States, established under a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency. Paragraph 50.75(h) discusses the terms and conditions that the NRC believes are necessary to ensure that funds in the trusts will be available for their intended purpose.

In response to a comment, paragraph 72.30(c)(5) has been modified for consistency with § 50.75(e) and (h), as a conforming change. As an accompaniment to this rulemaking, the NRC has updated Regulatory Guide 1.159, to include sample trust fund language containing these terms and conditions. Draft Regulatory Guide DG–1106, the proposed revision 1 of Regulatory Guide 1.159, was published for comment along with the proposed rule.

II. Comments on the Proposed Rule

The Commission received 36 letters, from 34 commenters, containing approximately 280 comments on the proposed rule and draft regulatory guide. Seventeen of the commenters were licensees, 11 were representatives of utility groups (many of whose members are licensees), three were State agencies or commissions, one was the National Association of State Regulatory Utility Commissioners (NARUC), and two were investment management companies. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20852.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking at *http://ruleforum.llnl.gov*.

1. General Comments on the Proposed Action

Comments: Several of the commenters supported the NRC's goal to maintain regulatory oversight over nuclear decommissioning trust funds, where necessary, and agreed that the NRC may need to take a more active oversight role regarding decommissioning trust agreements. Two other commenters commended the NRC for undertaking this rulemaking and fully supported the NRC's efforts to ensure that a utility industry made more efficient through competition remains a safe and reliable industry. Similarly, one commenter said it understands and agrees with the NRC's concern that the decommissioning trust corpus be safeguarded from investment risks. The Nuclear Energy Institute (NEI) stated that "[u]pon taking into account the comments and suggestions for improvement * * *, NRC's proposed rulemaking and proposed guidance likely will enhance the assurance for decommissioning funding already provided by the industry and should improve public confidence that all nuclear power reactors will be properly decommissioned." Ten commenters endorsed NEI's comments. One of those commenters also endorsed the comments submitted by Winston & Strawn on behalf of the Utility Decommissioning Group and the Tennessee Valley Authority. However, one licensee stated that the NRC should withdraw the notice of proposed rulemaking because existing regulations from the NRC, the Internal Revenue Service (IRS), and the State regulatory agencies are more than adequate to protect the public health and safety. In their view, the proposed rulemaking is duplicative of existing requirements and would add unnecessary regulatory burden without a corresponding safety benefit.

This licensee also believes that the proposed rule is inconsistent with the NRC's regulatory burden reduction initiative. Another commenter expressed similar views and stated that the proposed rule may eliminate some of the flexibility of the existing rule. Yet another commenter opposing the rule said that if the NRC intends to continue to impose decommissioning funding conditions in individual licenses, there is no need for the rule.

Five commenters noted that given the wide variety of trust instruments in effect, it is fitting that the NRC not develop a uniform trust fund agreement that would be mandatory for all licensees. Another commenter stated that the NRC's proposed approach in adopting standard rules regarding decommissioning trust funds is superior to the existing NRC practice of applying specific license conditions on a case-by-case basis.

A commenter stated that NRC's discussion of Test 4 in the statement of considerations for the proposed rule describes that licensees "generally" prepare annual reports, etc. and does not specifically list annual calculation of the estimated cost as required by 10 CFR 50.75(b)(2). Further, the Test 4 description specifies that "* * * these reports can be supplied to the NRC upon request * * *." This availability upon request and the biennial reporting appear sufficient. The Test 4 discussion should justify removing 10 CFR 50.75(b)(2), or an explanation of the benefit of annual adjustments to the calculation vs. the biennial frequency of the funding status should be provided.

Response: With respect to the comments calling for the NRC to withdraw the rule, the Commission does not intend to do so. The Commission's position, as stated in the proposed rule (66 FR 29244) is that, "[u]ntil recently, direct NRC oversight of the terms and conditions of the decommissioning trusts was not necessary because rate regulators typically exercised such authority. With deregulation, this oversight may cease and the NRC may need to take a more active oversight role." Given that the NRC will not require (except in the one instance where all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before to permanent cessation of operations) the trust provisions of this rulemaking to be imposed on those licensees remaining under State or Federal Energy Regulatory Commission (FERC) regulation, the NRC does not interpret this action as being duplicative of

existing requirements and adding unnecessary regulatory burden.

With respect to the comment stating that there would be no need for the rule if the NRC continues to impose decommissioning funding conditions in individual licenses, the NRC has always believed that it is preferable and more efficient to adopt standard rules, as opposed to applying specific license conditions on a case-by-case basis.

As for the comment on the discussion of Test 4 in the statement of considerations for the proposed rule and the commenter's request to remove 10 CFR 50.75(b)(2), the NRC was not proposing any change to that section by this action and no change is presently under consideration. The NRC still intends to require licensees to calculate their estimated decommissioning costs annually, even if these values are not required to be submitted to the NRC annually.

Following is a listing of the specific comments on the proposed rule and the NRC's response to them. The comments on the draft regulatory guide are then listed and discussed.

2. Applicability of the Rule

Comments: One of the most often repeated comments dealt with the proposed rule's requirement to be applicable to all licensees, even if they are under FERC or State regulation. The commenters said that the NRC should more clearly explain its conclusion that the proposed rule is necessary to ensure that decommissioning funds will be available when needed. There is no evidence that any reactor licensee has lacked adequate funds to safely complete the decommissioning process. In effect, licensees would have to expend resources to address a problem that has yet to occur. Because licensees are required to report on their funding levels to the NRC every two years (10 CFR 50.75(f)(1)), the reports already allow the NRC time to fashion an appropriate remedy, should one be necessary, to protect public health and safety. The NRC has not reviewed current practices by State or Federal rate regulators to establish a baseline for evaluating any possible changes in the management of decommissioning trust funds in response to deregulation. Another layer of regulatory oversight should not be added where adequate regulatory safeguards exist, such as FERC and/or State oversight. One commenter stated that its State Public Utility Commission (PUC) approved the commenter's decommissioning funding collections and permits funding of items not included in the NRC's definition of "decommissioning." Therefore, additional NRC requirements regarding the use of these funds would hinder the commenter's ability to access and use the funds as approved by the PUC and would unnecessarily intrude on local ratemaking functions that are an exclusive province of State governments.

Two commenters stated that the NRC should include a way for licensees to ascertain whether a conflict of applicable standards between the NRC's proposed rule and existing State and Federal regulations requires the execution of an entirely new trust agreement. Also, the NRC should convene a conference with FERC and NARUC to explore conflicts between existing standards and the NRC's rule.

One commenter stated that licensees who are State entities and who have additional safeguards under State law should be exempt from the proposed rule because it is based on the premise that deregulation will remove existing accounting and financial controls on owners of nuclear power plants. These commenters argued that this rule is not applicable to California Municipal Utilities Association (CMUA) members, who operate under the same regulatory and legal restrictions that applied before the changes to the electric utility industry in California. CMUA members are public agencies bound by the same stringent investment restrictions after deregulation as before.

Two commenters stated that the proposed rule is duplicative of Internal Revenue Code requirements and IRS implementing regulations, that place additional restrictions on the use of qualified nuclear decommissioning trusts. The commenters assert that existing IRS requirements are sufficient to protect the NRC's interest in the proper use of decommissioning funds. Under the IRS regime, licensees may experience tax advantages under the Internal Revenue Code section 468A by commingling funds for all decommissioning purposes and depositing them in a tax "qualified" fund. The NRC should explicitly permit the use of funds for all decommissioning purposes and eliminate barriers in its regulations to the full collection of funds authorized by rate-setting authorities.

Two other commenters asserted that the final rule should acknowledge the potential of transfers from non-qualified portions of the trust to the qualified portions without the NRC's notice or approval. Similarly, the scope of the proposed rule is not clear because it does not articulate whether the amendments are applicable to all nuclear decommissioning trusts (qualified and unqualified), or whether the amendments are intended to apply to trusts that accumulate funds for expenses not within the NRC definition of "decommissioning."

An organization representing the nuclear power industry stated that because there are a variety of ways for licensees to comply with the rule that are equally as binding as the terms of the underlying trust agreement, 10 CFR 50.75(h)(1) should be revised to allow licensees alternatives for achieving rule compliance by inserting the words "investment guidelines for, or other binding arrangements governing" so that it would read: "Licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of, investment guidelines for, or other binding arrangements governing, the trust, escrow account, Government fund, or other account used to segregate and manage the funds * * *."

Another commenter stated that it is not clear whether provisions in the proposed rule will supersede license conditions previously imposed in license transfer proceedings, or whether licensees with existing license conditions governing decommissioning trusts must apply to amend their licenses and whether these amendment applications would then be subject to hearings. The inference is that the proposed rule would be applicable to all existing and future reactors, as the rule is silent on the matter.

Response: The NRC acknowledges that the proposed rule could be burdensome for licensees still regulated by PUCs and FERC, with no significant improvement in the public health and safety. Therefore, the final rule will only apply to licensees that are no longer regulated by State PUCs or FERC, with the exception that all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations. The reason for this is that some licensees, even though continuing to be rate regulated, may make withdrawals without their rate regulator's knowledge. Given that any such withdrawals before permanent cessation of operations are likely to be very rare, the NRC believes that this requirement should not be burdensome. The NRC also excludes from this requirement any withdrawals from one decommissioning fund that are immediately deposited in another decommissioning trust fund either for one unit or between units (*e.g.*, from a non-qualified to a qualified trust fund).

This change would essentially eliminate the potential for conflicts of standards between NRC, and State and Federal regulations. These modifications also eliminate the need for a conference on this subject.

However, the NRC does not agree with the comments that IRS requirements are sufficient to protect the NRC's interest in the proper use of decommissioning funds because these requirements relate primarily to tax treatment of decommissioning funds and may not be sufficient to satisfy the NRC's public health and safety concerns.

As to the comment on the suggested revision to 10 CFR 50.75(h)(1), the change has been made because the NRC recognizes the benefit of allowing alternatives for achieving rule compliance that do not have any adverse impact on the public health and safety.

With respect to the comment seeking clarification about whether the proposed rule supersedes license conditions, the NRC's position is that licensees will have the option of maintaining their existing license conditions or submitting to the new requirements.

Lastly, in response to the same commenter's second question, the rule is to be applicable to all present and future licensees that are or will no longer be under FERC or State rate regulation or that otherwise meet the NRC's definition of "electric utility," with the same exception as noted above. All licensees will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations or if they are not made under a post-shutdown decommissioning activities report or license termination plan.

3. Notifications and Disbursements

Comments: The section of the proposed rule that generated the greatest number of responses (fourteen) from commenters related to notification of disbursements from the trust. Some commenters claim the 30-day notification is not needed because there is no basis for presuming that an independent trustee will disburse amounts held in the decommissioning trust fund for purposes other than those specified. The notification requirement would impose a significant regulatory burden on both the licensees and the NRC by creating a process for disbursement approvals for decommissioning funds without a public health and safety justification. There are no standards to guide licensees and the NRC staff on whether a disbursement would be permissible. The 30-day disbursement notification would be a major burden on licensees during decommissioning and even during decommissioning planning because notifications would be required frequently.

The commenter stated that at most, the rule should require a one-time notification before initial withdrawals for decommissioning or planning. Also, licensees may incur charges waiting for NRC approval while labor and resources have been staged and ready to work. Trust vendors or service providers would not appreciate having to wait 30 days for payment with the added risk of possibly having the payment disallowed by the NRC. Further, there may be cases where relatively minor day-to-day expenses are incurred or where expenses must be paid promptly and NRC review is not required to meet the agency's regulatory concerns. If so, the NRC could add a *de minimis* exception. These commenters suggested that the NRC could prohibit funds from making two or more simultaneous disbursements of 0.99 percent of trust principal in order to avoid the notification requirement of the proposed rule. The NRC has not identified any case where improper disbursements have been made from a decommissioning trust and does not have enough staff to review invoices from decommissioning contractors that would only increase paperwork.

With respect to the 30 day disbursement notice under proposed 10 CFR 50.75(h), another commenter stated that "Licensees that have complied with the requirements of 10 CFR 50.82(a)(4) regarding submittal of a Post Shutdown Decommissioning Activities Report (PSDAR) and control trust fund disbursements in accordance with the provisions of 10 CFR 50.82(a)(6), (a)(7), and (a)(8), should be exempt from any further restrictions on disbursements." This commenter suggested that its modification to the proposed rule is particularly appropriate because it allows licensees to use the 3 percent of decommissioning trust fund monies for planning activities before plant retirement as provided at 10 CFR 50.82(a)(8)(ii). There is little need for the NRC to require a 30-day advance notice from those facilities utilizing the trusts for pre-planning decommissioning activities. Also, the clarifying wording in Section 2.2.2.4 of DG–1106 needs to be included in 10 CFR 50.75(h)(1)(iii).

The commenter then suggested modifying proposed 10 CFR 50.75(h)(1)(iii) to allow plants in the process of being decommissioned to be grandfathered because the proposed requirement would not add any assurances that funding is available and would duplicate other notifications. Similarly, another commenter stated that 10 CFR 50.75 (h)(1)(iii) proposes to restrict disbursements or payments until final decommissioning has been completed. It is possible that State PUCs could require overfunded trusts to rebate money to ratepayers (rather than merely adjust the future collection rate). This commenter suggested that the rule should allow the NRC to approve such a disbursement following adequate review.

One commenter stated that NRC should revise the proposed 10 CFR 50.75(h)(1)(iii) to indicate the inclusion of nuclear decommissioning trusts (NDTs) in license transfers. In DG–1106, the NRC recognized that the 30-day notice should be provided to the NRC before disbursing funds, but should not apply to plants withdrawing funds under 10 CFR 50.82(a)(8)(i). This exception is not noted in the proposed rule. Another commenter stated that the proposed rule would duplicate reports for those plants active in decommissioning and that the rule should exempt those facilities involved in decommissioning under 10 CFR 50.82. Similarly, 10 CFR 50.75(h)(4) should be modified so that subsection (h) would not apply to any plant which already has an NRC-approved decommissioning plan. Another commenter stated that licensees who have docketed a PSDAR and a site-specific cost estimate under 10 CFR 50.82 should be exempt from the reporting requirements and adjustments to cost estimates of 10 CFR 50.75.

Several commenters noted that "ordinary expenses" or "ordinary administrative expenses" should be defined, and that those paid periodically from the trust should be exempt from the 30-day disbursement notification. Or, as a commenter noted, the NRC should clarify which specific expenses paid from a fund would require NRC notification. One commenter stated the definition should be consistent with Internal Revenue Code section 468A(e)(4)(B) where expenses are defined as "administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund."

Response: With respect to the comments on the 30-day notification for disbursements, the NRC needs to have this information in a timely fashion in order to effectively monitor licensees,

especially when a licensee is not in decommissioning under the PSDAR or an approved license termination plan under 10 CFR 50.82.

One concern with the 30-day disbursement notice was the problems it would potentially cause for licensees during the process of decommissioning or decommissioning planning. The proposed rule did not explicitly indicate that licensees who have complied with 10 CFR 50.82(a)(4) would be exempt from restrictions on disbursements. The NRC agrees with this comment and this change has been made in the final rule because, as a commenter noted, the proposed requirement would not add any assurances that funding is available and would duplicate notification requirements at § 50.82.

Other comments focused on the need for definitions of "ordinary expenses" and "ordinary administrative expenses." The NRC, as a matter of consistency and expediency, decided to make use of the IRS Code section 468A(e)(4)(B) definition of expenses where they are defined as "administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund."

For clarification and consistency, the final rule includes the words of Section 2.2.2.4 of DG–1106 in 10 CFR 50.75(h)(1)(iii), as suggested by one commenter. Further, the rule language has been changed throughout from "30 days" to "30 working days."

4. Restrictions on Funds

A. "Investment Grade"

Comments: Another major area of concern for twelve commenters in the proposed 10 CFR 50.75(h)(1)(i)(B) was the requirement that the trust hold only "investment grade" securities. As one commenter noted, a requirement of "investment grade" investments in the trust is unnecessary because of applicable standards under State law, the proposed 10 CFR 50.75(h)(1)(i)(C), and the "prudent investor" standard used and defined by the FERC. Adoption of a different standard by another regulatory agency would be problematic. The "prudent investor" standard should apply in situations where other regulators have not mandated an investment standard or specific investment restrictions to eliminate the possibility of conflicts between NRC and other requirements. Also, this requirement goes beyond conditions imposed in license transfer orders. Another commenter suggests that the "investment grade" standard apply at the time of purchase and not require immediate sale of the investment at the time of downgrade. This commenter stated that the use of the term "investment grade" in the proposed rule is not necessary and that the "prudent investor" standard, as defined in FERC regulations should be used. "Investment grade" is not clearly defined in the regulation, would be subject to the vagaries of future regulatory interpretation, and is unnecessarily restrictive.

Response: The NRC agrees that the term "investment grade" is redundant because the "prudent investor" standard is an appropriate standard defined by the FERC. (Equivalent standards established under State law would also be acceptable.) Therefore, "investment grade" was deleted from the final rule and "prudent investor" is used in its place.

B. Investment in Nuclear Power Reactor Licensees

Comments: Five commenters called for the elimination of the prohibition of a trust ownership of securities of other nuclear power reactor licensees, or for the NRC to set a limit on the amount of assets in entities owning one or more nuclear power plants. These commenters argued that the NRC has not provided a clear basis for categorically excluding investments in any entity with an ownership interest in a nuclear power plant. According to another commenter, the proposed prohibition in a trust's ownership interest in "one or more nuclear power plants" should be deferred to applicable investment guidelines under State law. One commenter stated that, by prohibiting investment in securities of other nuclear power plant licensees, NRC is implying the ownership of a nuclear power reactor is a risky investment. The commenter also stated that such a prohibition was possibly out of the NRC's jurisdiction. Further, placing these restrictions on fund managers is not practical and has no clear connection to protection of the public health and safety. Any final rule should permit a *de minimis* investment in otherwise prohibited securities.

The proposed "nuclear securities" restriction is very ambiguous as it would apply to fixed income investments. Investment opportunities that are limited by ambiguous regulations will unnecessarily result in lower investment returns than otherwise would be the case. Still another commenter pointed out that the proposed restriction on ownership of securities with nuclear exposure is inconsistent with use of the "prudent investor standard."

One commenter noted that public systems are concerned that the proposed rule not be used to prevent a municipal licensee from investing in securities issued by the State government, another municipality, or other instruments of the State in which the municipal licensee is located. If the NRC rejects this proposal, the commenters request that debt securities and like instruments already held in decommissioning trust accounts be exempted from this restriction.

Seven commenters opined that 10 CFR 50.75(h)(1)(i)(A) should be modified to clarify the term "non-nuclear sector mutual funds" and to permit investments in bank-maintained nonnuclear sector collective or commingled funds, such as "Common Trust Funds." One commenter did not find the proposed 10 CFR 50.75(h)(1)(i)(A) clear with respect to "any other entity owning one or more nuclear power plants" and asked: Is the rule intending to allow investment in securities of an entity that is part owner of a nuclear power plant? Is the rule intending to disallow investment in a mutual fund in which 2 percent of the fund is invested in securities of a parent company whose subsidiary is a minority owner of a foreign or domestic nuclear power plant? Is the term "nuclear power plant" inclusive of those being decommissioned and those licensed to operate?

One final related comment was that licensees, and trustees in the absence of directions from licensees, should be authorized to prudently allocate trust assets across the entire risk/return spectrum. Prudent diversification can be beneficial for all stakeholders.

Response: The proposed prohibition of ownership in securities of other nuclear power reactor licensees was instituted to forestall members of the nuclear industry from solely investing their nuclear decommissioning funds in each other's securities. Contrary to one commenter's assertion that the prohibition implies that nuclear power is a risky investment and possibly out of the NRC's jurisdiction, the NRC believes that this requirement is consistent with fund diversification.

The NRC agrees with the suggestion that the requirement permit a *de minimis* investment in otherwise prohibited mutual fund investments. The final rule sets the *de minimis* level at 10 percent of the total value of a decommissioning trust account, at or below which investments in securities of companies owning nuclear power plants would be allowed.

With respect to the comment referring to the ambiguity of the proposed restriction as it would apply to fixed income investments, the Commission continues to believe that such a restriction should apply. However, because the rule will not apply to licensees that meet the definition of "electric utility" and that a *de minimis* level of investment is now permitted, any effect of such a restriction should be substantially mitigated.

As to the comment suggesting that the proposed prohibition in the trust's ownership of municipal or State-owned nuclear power plants be deferred to applicable State law, by having the rule apply to only those licensees not meeting the NRC's definition of "electric utility" that includes cooperatives and public power entities, this issue is rendered moot. The concern relating to the proposed rule not allowing a municipal licensee from investing in securities issued by a State government is likewise rendered moot. The NRC notes that even if the proposed rule were adopted as written, it would not have prevented municipal licensees from investing in State instruments as long as those instruments were not specifically tied to the nuclear plants.

Some commenters wanted clarification of the term "non-nuclear sector mutual funds." This term can be understood in the context of the NRC's definition of "nuclear sector mutual funds." The NRC interprets these funds as being ones in which the fund invests primarily in entities owning nuclear power plants. Funds that invest in electric utilities would be nuclear sector mutual funds if the majority of the value of securities were from NRC licensees. As stated previously, a licensee may invest in nuclear sector mutual funds as long as its share of the licensee's portfolio is less than 10 percent.

In response to some of the specific questions asked, the NRC considers partial owners of a nuclear power plant to be the same as full owners and thus should be counted within the 10 percent *de minimis* restriction for their respective shares of decommissioning trust assets. The rule will disallow investment in a mutual fund in which at least 50 percent of the fund is invested in securities of a parent company whose subsidiary is an owner of a domestic nuclear power plant either fully or partially. Similarly, the term "nuclear power plant" is inclusive of those being decommissioned and those licensed to operate.

C. Fund Management

Comments: One commenter stated that the proposed 10 CFR 50.75(h)(1)(i)(D) should be deleted. The commenter's position is that the "prudent investor standard" implies that if the trusts may be more broadly diversified to include alternative investments such as private equity, then the company should be able to select funds and managers it considers the best qualified. This is not "day-to-day" management of the funds, but strategic management of the funds. Virginia Electric and Power Company suggested that day-to-day investment decisions should be defined as "the hands on management of a stock or bond portfolio, which includes making decisions to buy and sell individual stocks and bonds." It should not include formation of the trust's investment policy and the selection of investment advisors, mutual funds, pooled funds, collective funds, and limited partnerships. Licensees should be empowered to make strategic decisions to ensure that the best strategies and advisors are employed for the trust. Licensees' interests are aligned with those of the trust, they have superior knowledge of the decommissioning liability, and they have a broad base of financial and investment expertise. Requiring a third party manager to administer strategic investment decisions when the utility is well qualified to do so is fiscally inefficient and increases the cost of managing the funds.

Similarly, several commenters stated that the NRC should more specifically define the "day-to-day management" activities that would be prohibited by the rule. Alternatively, these commenters suggested that the NRC eliminate this prohibition entirely and allow licensees to prudently determine the level of their involvement necessary to adequately administer their decommissioning trust. Also, under the proposed 10 CFR 50.75(h) the NRC could interpret a trust investment direction as being "day-to-day investment management control" and cause the trust to pay for external investment management services to direct the trusts investment. This prohibition is overly broad. Licensees should be allowed to give some direction to fund managers when it comes to the licensee's decommissioning fund. A commenter suggested that this prohibition be eliminated, or, if the NRC has examples where licensees who have outside managers have engaged in "day-to-day management" of the fund in a detrimental way, this prohibition should be better defined. Another stated that the proposal is overly burdensome in that it would increase costs without providing any added protection of the public health and safety.

Several commenters stated that the NRC's proposed limitation on licensee involvement in investment decisions in 10 CFR 50.75(h)(1)(i)(D) should be changed to restrict licensees from engaging in this activity, rather than trustees who do not ordinarily engage in this type of activity. Also, it would require licensees to spend more money to use commercial investment management services without an adequate explanation from the NRC as to whether the benefits to be derived from this requirement, if any, would outweigh the added regulatory burden that would result. These commenters also stated that governmental agencies should be granted an exception from 10 CFR 50.75(h)(1)(i)(D) when decommissioning trust fund investments, as directed by the governmental agency, are limited to investments permitted for the investment of public funds under applicable State law. Further, the selling of the investments could conflict with an existing contract or require a licensee to suffer additional compliance costs. The NRC must recognize and accommodate circumstances when current State law already provides sufficient safeguards. These commenters concluded that 10 CFR 50.75(h)(1)(i)(D) would add costs, reduce accountability, and is unnecessary to achieve the stated purposes of the proposed amendments.

Similarly, another commenter stated that the proposed rule is flawed because it limits the right of public power owners to direct trust fund assets to investments that are permitted and regulated under State and local law, (*e.g.*, investments in securities issued by the State government of a municipal licensee or other State or local municipality) the selling of which would conflict with an existing contract or require a licensee to suffer additional compliance costs without Federal compensation, or that might affect the rights of public power minority owners upon license transfers of owner-operators. Two commenters said that an exception should be made to 10 CFR 50.75(h)(1)(i) for political subdivisions of States when investment management is addressed by State statute and meets "prudent man" standards.

One commenter representing several licensees suggested adding the following to the proposed 10 CFR 50.75(h)(1)(i)(D): "* * *, except in the case of passive fund management of trust funds where such management is limited to investments tracking market indices." The commenter stated that

this would permit passive index fund management by a licensee, its affiliates or subsidiaries, but would not constitute "day-to-day management." Passive index funds replicate the performance of established index funds and do not require active or day to day stock or security selection. Commenter asserted that these funds also satisfy the "prudent investor standard." Further, this activity could provide substantial cost savings to licensees, because the licensee, rather than an outside fund manager, can perform the mechanics necessary to participate in the index fund at a savings to the decommissioning trust fund. The commenter stated that the bottom line is that it is cheaper to run large amounts of index funds in-house by the sponsor than pay an investment manager several basis points to perform the same function.

Response: The Commission agrees with many of the comments raised in this section. For example, the limitation on fund management in the final rule was modified to state that licensees may provide day-to-day direction to the trustee for buying and selling index funds, such as "Standard and Poors 500." The final rule was further modified as the result of another comment by restricting licensee involvement in investment decisions as opposed to trustee involvement as was originally proposed. The comments calling for an exception for licensees that are governmental agencies or for licensees located in States in which State statutes mandate investment management were addressed in the final rule by specifying that § 50.75(h)(1) applies to those licensees that are not "electric utilities." Governmental agencies, by the NRC's definition in § 50.2 are considered electric utilities as are those licensees still under State regulation. The NRC agrees with the last comment that suggested a modification which would permit passive index fund management by a licensee, its affiliates or subsidiaries, and the final rule was changed accordingly. The proposed solutions have no negative impact on public health and safety, but they provide savings and efficiencies, and clarity compared to the proposed rule. Changes have been made in the regulatory guide to reflect these modifications.

D. Credit for Decommissioning Trust Earnings

Comments: Five commenters stated that NRC should allow licensees to take credit for decommissioning trust earnings through the entire projected decommissioning period. Other commenters stated that, even if a plant is dismantled and decommissioned after shutdown, the credit should be allowed during the dismantlement period because decommissioning activities will not be completed immediately after the termination of operation. Also, licensees should be allowed to assume up to a maximum of ten years of earnings credit through the decommissioning period. One commenter suggested modifying the proposed 10 CFR 50.75(h)(1)(iii) because in DG–1106, the NRC recognized that the 30 day notice should be provided to the NRC before disbursing funds but should not apply to plants withdrawing funds under 10 CFR 50.82(a)(8)(i). This exception is not noted in the proposed rule. The commenter also noted that their modification to the proposed rule is particularly appropriate because it allows licensees to use the 3 percent of decommissioning trust fund monies for planning activities before plant retirement as provided at 10 CFR 50.82(a)(8)(ii). There is little need for the NRC to require a 30-day advance notice from those facilities utilizing the trusts for pre-planning decommissioning activities. Another commenter noted that NRC should permit all licensees to take credit for expected earnings during operation using the 2 percent figure during the decommissioning period, at least for the period coincident with DECON (*i.e.*, approximately 7 years). This interpretation should also apply for a greater period if the licensee submits appropriate preliminary site-specific cost estimates and/or decommissioning planning information to the NRC.

Two commenters stated that 10 CFR 50.75(e)(1)(i) and (ii) should be modified to allow credit for decommissioning trust earnings during periods of safe storage, final dismantlement, and license termination, regardless of whether a licensee uses a site-specific cost estimate or the NRC "formula amount."

Lastly, a commenter noted that one possible interpretation of the regulations does not take into account the actual process by which decommissioning will occur. As a consequence, a licensee could end up collecting substantially more money than would be necessary for decommissioning funding simply because of unrealistic assumptions concerning the timing of decommissioning and expenditures for decommissioning shutdown. However, a licensee is not going to expend all decommissioning funds immediately after shutdown. Even when the licensee adopts an immediate dismantlement option for decommissioning, that process will still require several years to complete decommissioning. Although the withdrawals from the fund would be made on an ongoing basis, the assets retained would continue to grow. The commenter asserted that given the NRC's interpretation, licensees are being compelled to collect millions of dollars more during plant operation than will be necessary, even under the most conservative assumptions regarding the timing of decommissioning. The commenter suggested that clarification is needed regarding credit for projected earnings during periods of safe storage, final dismantlement, and license termination in the rule because the regulatory guidance is creating a requirement not directed by the rule.

Response: First, it should be noted that § 50.75(e)(1) and (2) also require full funding of decommissioning "at the time termination of operation is expected." Thus, the commenters have not provided a complete picture of the situation. Second, the generic formulas are based on immediate dismantlement as the assumed method of decommissioning. Therefore, those licensees certifying to formulas can not take a 2-percent credit into a SAFSTOR period. However, a 2-percent credit can be used when a site-specific estimate is explicitly based on deferred dismantlement. Third, credits may be timed for outlays for decommissioning expenses. Licensees certifying only to the formula amounts (*i.e.*, not a site-specific estimate) can take credit into the dismantlement period (*e.g.*, the first 7 years after shutdown.) The final rule has been revised to reflect these points.

E. Modifications to Trusts

Comments: Eight commenters stated that the NRC should define what is meant by a "material" modification to a trust that would require a 30-day advance notification to the NRC in more detail. If the proposed rule is adopted as written, the redundant reporting requirements should be deleted. The commenter further stated that the 30-day notification for licensees making material changes to trust agreements should not apply to those changes caused by State or Federal mandated changes. Lastly, the NRC should be required to notify licensees if there were no objections to proposed amendments.

Two commenters noted that the NRC should be aware that certain amendments to trust agreements in the proposed rule may require PUC approval. As an example, two other commenters noted that their PUCs approved the way the different types of decommissioning funds are handled in a single external trust, and any

significant change in this handling would require PUC notification and review. Therefore, the commenters wish to be able to continue with this commingling of funds through the completion of the commenters' plant decommissioning. The proposed 10 CFR 50.75(h)(1)(iii) would preclude such a commingling of funds in a single external trust account, because withdrawals from the fund under the proposed rule would be allowed only for radiological decommissioning costs. The commenter is concerned that the withdrawals it has been able to make would not be possible under the proposed rule, even though NRC has pre-approved: (1) The construction and associated costs of a dry storage facility; (2) the schedule for this construction and for incurring these costs; and (3) the schedule for and manner of (commingling) accumulating funds to cover these costs.

Two commenters suggested an addition to the rule that "* * * any amendment to the license of a utilization facility which does no more than delete specific conditions relating to terms and conditions of decommissioning trust agreements involves 'no significant hazards consideration.'" The commenters stated that licensees should be provided relief from any conflicts or inconsistencies between the final rule and specific license conditions. Licensees that currently have separate license conditions in this area should have the option to amend their licenses to remove those conditions. The commenters also stated that a generic finding of no significant hazards consideration would facilitate the review and approval of these administrative amendments.

Response: The NRC's definition of "material" modifications includes actions such as a change of a trustee, changes of provisions relating to withdrawals from the trust, changes relating to the beneficiary, changes relating to the duration or term of the trust, or other changes potentially affecting the ability of the trust agreement to provide reasonable assurance of decommissioning funds. Modifications that are not material would include, for example, changes in fee structures paid to a trustee, changes in arbitration provisions between the trustee and the licensee, changes in the investment advisor, if applicable, or investments, provided the changes comply with other aspects of this rule.

As to the second comment in this section relating to PUC approval, it has been noted that much of this rule will not apply to licensees under PUC regulation. Further, with respect to commingling of funds, the Commission does not object to that practice as long as the licensees are able to provide a separate accounting showing the amount of funds earmarked for radiological decommissioning versus utilities not subsumed under the NRC's definition of decommissioning in 10 CFR 50.2.

The last comment suggested an addition to the rule to provide relief from any conflicts or inconsistencies between the final rule and specific license conditions. Licensees will be able to decide for themselves whether they prefer to keep or eliminate their specific license conditions. Because these changes would be to conditions that resulted from license amendments (*i.e.*, license transfers) that already generically involve "no significant hazards" considerations, any amendments to conform or eliminate these conditions would likewise involve "no significant hazards."

F. Foreign Trustees

Comments: Two commenters stated that the rule should not preclude foreign financial institutions from serving as trustees (proposed 10 CFR 50.75(e)(1)(ii)) if a licensee can demonstrate that there would be an equivalent level of assurance. The proposed amendment to § 50.75(e) would require the trust to be overseen by an entity that is an appropriate State or Federal government agency or whose operations are regulated by a State or Federal agency. The commenters also stated that clarification is needed as to what this amendment would actually require, who would qualify as an appropriate agency, and what role that agency would have in the administration of the decommissioning trust. The amendment would also preclude the use of an insurance product, which the NRC presently allows, to satisfy decommissioning funding requirements. Many of the presently used insurance companies are domiciled outside of the U.S. The commenters further stated that it is not clear why there should be a requirement that only companies regulated by State or Federal agencies can be trustees for decommissioning purposes, when such a requirement does not apply to insurers used to satisfy financial assurance requirements for operating reactors.

Response: A licensee may have a foreign financial institution serving as trustee if the licensee can demonstrate to the NRC that there would be an equivalent level of assurance as there would be under a U.S. trustee. At a minimum, the foreign trustee would need to have a business branch in the U.S. that is regulated by a State or Federal entity. Also, the amendments in these regulations only apply to trust agreements, not insurance coverage. Thus, licensees who choose to use insurance for decommissioning assurance may use foreign insurers.

G. Non-radiological Decommissioning Funds

Comments: Seven commenters stated that the proposed 10 CFR 50.75(h)(1)(iii) fails to acknowledge the possible accumulation of trust funds for purposes of funding spent fuel management and non-radiological decommissioning costs, but that such an accumulation should be encouraged by the NRC. Several of the commenters suggested that restrictions should not apply to funds held in trust for purposes other than radiological decommissioning, *e.g.*, spent fuel storage or non-radiological decommissioning costs. The commenters asserted that a licensee cannot completely fulfill its NRC regulatory decommissioning obligation while fuel resides in the spent fuel pool and in keeping with the principle that the beneficiaries of the plant's production should pay the full life-cycle costs, respectively. Collection of these funds is usually encouraged or required by PUCs. Also, complete "greenfield" decommissioning is usually required if the property is not owned by the licensee. The commenters stated that if the NRC determines that these funds should be placed in separate trusts or sub-accounts to avoid the proposed restrictions, the NRC should provide licensees an opportunity to move these funds into separate trusts or accounts before the implementation of the new rule.

Alternatively, a commenter noted that NRC should clarify that the proposed 10 CFR 50.75(h)(1)(iii) disbursement restrictions apply only to funds held in trust for radiological decommissioning, not non-radiological decommissioning. Some decommissioning trust funds are required by non-NRC regulatory agencies to include decommissioning activities that NRC does not require and their estimates would then exceed those of the NRC. The commenter wishes to ensure its continued ability to protect ratepayers from any financial risks associated with nuclear decommissioning. However, the proposed 10 CFR 50.75(h)(1)(iii) would restrict disbursements from the trust, escrow account, Government fund, or other account to ordinary administrative expenses, decommissioning expenses, or transfer to another financial

assurance method until final decommissioning has been completed. The commenter suggested that even though separate trust funds could theoretically be established for NRC radiological decommissioning and other decommissioning activities, it would not necessarily be practical or cost-effective to require the physical demolition and waste disposition work activities to institute artificial accounting to ensure which fund pays for which activities. Likewise, if demolition funds were estimated assuming an area might be radiologically contaminated, those funds would have to be transferred to a different trust fund in order to pay for demolition if the area was determined to not be contaminated during the actual decommissioning.

Two commenters noted that the proposed rule and draft guidance restrict the use of the trust funds for specified purposes including "decommissioning expenses." The NRC's definition of "decommissioning" excludes a range of public benefit activities that rate-setting authorities often find necessary and appropriate for public funding, *e.g.*, returning a site to "greenfield" condition. The commenters stated that the proposed rule and guidance must clearly state that a nuclear decommissioning trust may disburse funds for these other purposes as long as funds have been authorized by a public rate-setting authority, such as a PUC, and have been collected for these purposes.

Additional commenters also noted that the NRC's rules on the use of decommissioning trust funds should permit cleanup of non-radiological substances and structures. Dual jurisdiction over the nuclear power industry gives States the authority over the economics of nuclear generation costs. New York State has exercised this authority by allowing utilities to place collected monies from ratepayers in the decommissioning trust funds to pay for both the radiological and non-radiological segments of the decommissioning process. These commenters suggested that the NRC should clarify that the funds may be used to remove non-radiological substances and structures, and restore the sites back to greenfield conditions. Also, the NRC should allow licensees to withdraw funds for non-radiological purposes before the completion of the radiological decommissioning activities.

For about 8 years, another commenter has been withdrawing monies from its trust fund under 10 CFR 50.82(a)(8)(i), as necessary to accomplish radiological decommissioning activities, spent fuel management activities, and some non-radiological decommissioning activities according to the expenditure schedule detailed in the plant-approved cost estimate and funding plan. This commenter stated that combining radiological decommissioning, non-radiological, and spent fuel funds has been economically and functionally advantageous.

Response: The first comment in this section calls on the NRC to encourage the accumulation of trust funds for the purposes of spent fuel management and non-radiological decommissioning costs. The collection of funds for spent fuel management is already addressed in 10 CFR 50.54(bb) where it indicates that licensees need to have a plan, including financing, for spent fuel management. Any NRC requirements with respect to the accumulation of funds for non-radiological decommissioning costs would be beyond the range of the NRC's legal authority. The NRC does not object to licensees mingling funds for decommissioning activities as defined by the NRC and for other activities outside the NRC's definition. However, if funds are mingled in this way, licensees need to ensure that separate sub-accounts are established so funds for each type of activity are appropriately identified.

As to the statement made by commenters that restrictions should not apply to funds held in trust for purposes other than radiological decommissioning, the Commission's position is that withdrawals for non-radioactive decommissioning expenses that do not affect the amount of funds remaining for radiation decommissioning costs are not covered by this rule. However, the Commission is not proposing that licensees institute separate trusts to account for the different types of activity. The Commission appreciates the benefits that some licensees may derive from their use of a single trust fund for all of their decommissioning costs, both radiological and not; but, as stated above, a licensee must be able to identify the individual amounts contained within its single trust.

The remainder of the comments relating to State jurisdiction and licensees already in decommissioning become moot because this rule will not apply to licensees under State or FERC regulation or to licensees withdrawing monies under 10 CFR 50.82.

H. Implementation of the New Rule

Comments: Eleven commenters noted that the proposed rule does not contain any plans for transition from the existing provisions to the new requirements. The rule provides neither a period for an effective date nor any plans for transition from existing trust agreements to the requirements of the proposed rule. These commenters stated that it is also not clear if the new rule only applies to licenses in a deregulated environment or licensees who are pursuing renewal or license transfer of all licenses. The NRC should clarify what actions licensees must take with regard to existing trust agreements and when these actions must be completed if the proposed rule becomes final. The NRC should allow licensees sufficient time to review and conform trust documents to comply with the final rule to avoid, or at least minimize, adverse financial impact on decommissioning funds resulting from compliance with the proposed rule. These commenters suggested that grandfathering or a reasonable transition period should be allowed for existing decommissioning funding arrangements that cannot be amended or terminated without substantial penalties.

One commenter stated that the implementation period should be no shorter than 90 days and that the rule should permit case-by-case extensions where there is good cause. A second commenter stated that a transition period of at least six months before the new requirements are made effective is needed. Another commenter suggested that the implementation period should be extended to a period of "not less than one year" because a small number of trustees act for a large number of licensees and their trusts. Still another commenter stated that the NRC needs to clearly state its expectations regarding when licensees are expected to modify their trust documents to conform to the proposed rule. The commenter proposed that for plants not undergoing license transfer or license renewal, a two-year period should be specified to allow for a smooth transition to the rule, following its effective date.

Another commenter pointed out that changes may require other non-NRC regulatory approvals. Still another commenter stated that the NRC should make it clear that its silence as to a proposed disbursement, or its approval after objection, will have no effect upon parties' rights under contracts or other regulations governing the expenditure of decommissioning funds. Lastly, another commenter suggested that the proposed investment limitations should be implemented to all new investments 90 days following the implementation of the rule. This commenter noted that requiring changes to the existing portfolios would result in increased

costs because of the fees and there are potential tax consequences. The last comment on this point stated that the implementation statement could include a clause requiring implementation of the rule if ownership will be changing or before elimination of State and FERC oversight of decommissioning funding during the implementation period.

Response: The Commission has decided that the implementation of this rule will be one year from its date of publication in the **Federal Register**. This should be sufficient to help licensees avoid negative financial impacts on the decommissioning funds. With respect to the point on parties' rights under contracts, the NRC does not believe that this rule will interpose the NRC in contractual disputes that do not affect protection of public health and safety. The last comment in this section is rendered moot because the rule will not, in general, apply to licensees under FERC or PUC regulation, or who otherwise meet the NRC's definition of "electric utility."

I. Backfit

Comments: A few commenters stated that the proposed action was, in fact, a backfit, contrary to the NRC's stated position. Therefore, a backfit analysis is required because the NRC already requires a decommissioning fund to be segregated from a licensee's assets and outside its administrative control, and permits withdrawals only for legitimate decommissioning expenditures. These commenters further stated that because the NRC is capable of imposing additional conditions when necessary in license transfer proceedings, the proposed rule does not appear necessary to protect the public health and safety. These commenters asserted that the NRC should not seek to invoke the "adequate protection" exception to the Backfit Rule in this case, but should perform the requisite analysis of costs and benefits under the standards of 10 CFR 50.109(a)(3).

Another commenter stated that an adequate backfit analysis has not been performed because the analysis does not mention how this 30-day notice before fund use during actual decommissioning activities will adversely affect licensees. This commenter asserted that the reliance on the effect of the loss of PUC/FERC jurisdiction and oversight due to deregulation fails to acknowledge or consider that many licensees are not deregulated and may never be fully deregulated. The NRC has not articulated why existing rules fail to ensure adequate protection and no example is given of a licensee who lacked financial assurance to complete decommissioning in a safe and timely manner. This commenter further stated that the NRC has not provided any analysis of how the NRC could more effectively ensure the availability of adequate funds for decommissioning in a more efficient and less restrictive manner.

Response: The NRC believes that by eliminating most of the requirements that "electric utility" licensees comply with the rule and by explicitly eliminating the requirement to provide advance notification of decommissioning fund expenditures when § 50.82 applies, the backfit concern is eliminated. Most of the comments related to the possibility of dual regulation, which is not the case under this final rule. Further, the rule language has been changed from "30 days" to "30 working days."

5. Other Comments

The following comments were submitted by one commenter each and do not fit into one of the major categories listed above.

Comment: The proposed rule does not correspond to the "Discussion" and "Section-by-Section Analysis" in the **Federal Register** notice. The rule's "Discussion" section focuses entirely on decommissioning trusts, but this focus is not reflected in the proposed rule. It is particularly unclear if the use of decommissioning trust funds is mandatory under 10 CFR 50.75(e) or if other less formal arrangements are also acceptable. The commenter recommends that use of the trust funds be mandatory unless there are compelling reasons that less formal arrangements can provide equivalent protection. The rule's "Discussion" section focuses entirely on decommissioning trusts, but this focus is not reflected in the proposed rule.

Response: After 1988 and as amended in 1998, the NRC, under 10 CFR 50.75 has allowed a variety of financial assurance mechanisms. However, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus and emphasis on trusts in this rule.

Comment: "* * * (T)he proposed rule itself would not require decommissioning trusts. An arrangement that is not a trust will not have a trust instrument and may not entrust decommissioning funds to someone with the fiduciary obligations of a trustee."

Response: As stated above, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus and emphasis on trusts in this rule.

Comment: Proposed 10 CFR 50.75 (e)(1)(i), states that "Prepayment is the deposit * * * of cash or liquid assets * * *" It then goes on to state that "Prepayment may be in the form of a trust, escrow account, Government fund, certificate of deposit, deposit of government securities, or other payment acceptable to the NRC." This commenter claims that "Trusts," "escrow accounts," and "Government funds" are not forms of prepayment.

Response: "Trusts," "escrow accounts," and "Government funds" may be used as forms of prepayment as long as they are established in accounts that are independent from the licensee. Further, certificates of deposit and deposits of Government securities are among those securities that could be deposited in a prepayment account.

Comment: A commenter claimed an inconsistency on several bases between the words of the proposed § 50.75 (e)(1)(i) " * * * trust, escrow account, Government fund, certificate of deposit, deposit of Government securities, or other payment shall be established pursuant to a written agreement * * *" versus the following words in the "Section-by Section Analysis:" "The sentence would call for the trust to be an external trust fund held in the United States, established pursuant to a written agreement * * *". First, the commenter noted that "the apparent intent of the rule is to require decommissioning trusts for both prepayments and external sinking funds. Escrow accounts and certificates of deposit are not the same as trusts, although a certificate of deposit could be held within a trust." Next the commenter stated that the language is "confusing" in that "government funds, certificates of deposit, government securities and other payments are not 'established pursuant to a written agreement' but rather are types of funding." The commenter was not aware of licensees using Government funds for their decommissioning funding. The commenter stated that if these arrangements do not exist and are not expected to be created, the rule should be modified to delete any reference to them. However, if that is not the case and these arrangements do exist, the rule should be written to allow use of Government funds if they ensure the same level of certainty as decommissioning trusts.

Response: A major portion of the response to this comment is contained in the previous response. The intent of

the rule is not to require decommissioning trusts for prepayments and sinking funds, but to focus on making these trusts stronger. As indicated, the rule focuses on external trusts because almost all licensees use them. However, the final rule has been modified to state that similar provisions are to be included in escrow accounts and Government funds. Although the commenter apparently was not aware of licensees using Government funds for their decommissioning funding, one State has essentially established a Government fund for the nuclear plant located in its State.

Comment: The same commenter stated that "Government funds are, however, typically within the control of government bodies and may be used for the purposes allowed by law. Judicial enforcement of amended statutory provisions could be much more problematic than judicial enforcement of a trust agreement."

Response: NRC has traditionally granted deference to State ratemaking mechanisms. However, case law has long established Federal preeminence with respect to protection of public health and safety under the Atomic Energy Act of 1954, as amended.

Comment: A commenter stated that "If sinking fund payments and prepayments into external decommissioning trusts are used by virtually all nuclear power plant licensees * * * there would appear to be no good reason for confusing language that would allow less certain arrangements to maintain decommissioning funds."

Response: After 1988 and as amended in 1998, the NRC, under 10 CFR 50.75, has allowed a variety of financial assurance mechanisms. However, virtually all nuclear power reactor licensees have decided to make use of decommissioning trusts; hence, the focus of this rule on trusts. The NRC sees no need to limit the licensees' available options that the NRC has determined provide equivalent levels of assurance.

Comment: The Commission should clarify that replenishment of a decommissioning working capital fund would be a permissible disbursement from the decommissioning trust fund.

Response: Because the rule will not apply to those licensees operating under 10 CFR 50.82, the point is moot.

Comment: The disbursement process should provide an option for a licensee to be the party presenting the request for disbursements and the party to disburse the funds, rather than the fund trustee. Compliance with the regulations may result in significant cost for a licensee. Along these lines, the commenter believes that the NRC's estimate of 40–80 hours being required for a licensee to revise its trust agreement to comply with the proposed regulations is "unduly low." If the rule would result in a loss in the value of the fund, the existing trust arrangement should be "grandfathered" or the licensee should be able to seek a waiver from NRC on this requirement.

Response: The NRC agrees with the proposed option for a licensee to be the party presenting the request for disbursement and the party to disburse the funds. The change has been made to the rule to reflect this option. Even though there was only one commenter who questioned the 40 to 80 staff-hour estimate to revise a trust agreement and the Commission believes that its estimate was within the range anticipated by the other commenters, it has increased the estimated range up to 60 to 120 hours. The last comment referred to a potential loss in fund value because of the rule. The Commission does not see this as being a problem because of the allowance of *de minimis* levels of certain types of investments and the one-year implementation of the rule.

Comment: The proposed rule does not make clear if the transfer of nuclear plant ownership interests would be facilitated by more uniform decommissioning trust agreements, or if the NRC's intends to require uniform agreements. If the trustee is the sole entity authorized to submit requests for disbursements, this needlessly adds cost and delay to the process and provides no greater assurance of the availability of funds for decommissioning. The NRC should give licensees the option of being the party that submits the disbursement requests and that transmits payments to decommissioning contractors.

Response: The Commission is not advocating uniform agreements and is only seeking provisions that enhance public health and safety. Further, as indicated above, the Commission will allow disbursement requests to be submitted by a licensee.

Comment: In order to facilitate license transfers, the NRC should clarify that its regulation will have no effect on the allocation of rights, obligations, or liabilities established by contract or directly applicable orders. If uniform trust agreement provisions were required, they may create an unintended impediment to plant transfers in the future. The rule should state that the regulation would not affect in any manner the rights, obligations, and liabilities of the parties involved in the sale of a nuclear power plant ownership interest.

Response: The Commission agrees with the first comment that the "regulation will have no effect on the allocation of rights, obligations, or liabilities established by contract or directly applicable orders." With regard to uniform trust provisions, the NRC is not requiring uniform trust provisions except in specified areas, so the point is moot. Finally, the Commission disagrees with the last statement that "the regulation would not affect in any manner the rights, obligations, and liabilities of the parties involved in the sale of a nuclear power plant ownership interest." As stated earlier, the NRC is not mandating uniform trusts but will require certain provisions to protect public health and safety.

Comment: The NRC should convene a public technical conference to explore issues relating to the proposed regulation. Also, the NRC should gather more information and issue a revised notice of proposed rulemaking before proceeding.

Response: The NRC believes the final rule, which is not applicable to licensees still under State or FERC regulation, except as noted for the reporting requirement, clears much of the confusion apparently caused by the proposed rule. Therefore, the Commission does not believe a conference or the collection of additional information is necessary.

Comment: One commenter suggested that the NRC should provide guidance as to what its expectations are with respect to arbitration provisions often contained in trust agreements governing disputes between a trustee and grantor.

Response: The NRC has no position on arbitration positions contained in trust agreements because those provisions are beyond the NRC's legal authority.

Comment: The NRC should provide a list of the public and private companies that own or operate power reactors within the meaning of the rule.

Response: A complete list of licensees/owners of nuclear power plants may be found in "Owners of Nuclear Power Plants," NUREG/CR–6500, Rev. 2, (March 2002). The NRC intends to revise this publication approximately every 2 years.

Comment: One commenter stated that the rule should be revised to eliminate the unnecessary requirement for power reactor licensees that maintain an NRC-approved, site-specific decommissioning cost estimate and funding plan to also meet the minimum certification amount under 10 CFR

50.75(c). The rule should be revised to specify that for power reactor licensees that maintain NRC-approved site-specific decommissioning cost estimates and funding plans, the requirements of 10 CFR 50.75(c) do not apply. If such a rule revision is not made, then the subject statement in DG–1106 should be reworded or eliminated.

Response: The commenter is incorrect in indicating the rule should be revised. The Commission's position remains that the site-specific estimates may be used as a basis for a funding plan if the amount to be provided is "* * * at least equal to that stated in paragraph (c)(2) of * * *" (§ 50.75). The Commission does not intend to allow use of site-specific amounts lower than the formula values. The subject statement in DG–1106 has been addressed.

Comment: The NRC should consider conforming changes to 10 CFR 72.30, "Financial assurance and recordkeeping for decommissioning." 10 CFR 72.30(c) and (d) apply to Part 50 power plant licensees who store spent fuel in an Independent Spent Fuel Storage Installation under either a Part 72 specific license or a general license. Compliance between Parts 50 and 72 would be beneficial to both the NRC for enforcement purposes and licensees for compliance purposes.

Response: For the sake of consistency, 10 CFR 72.30(c)(5) is being modified to reflect the suggested compliance.

Comment: The commenter urged the NRC to continue to recognize the separate and cooperative roles State commissions and the NRC play in regulating nuclear utilities and to work with States on developing mechanisms to protect decommissioning funds.

Response: The NRC agrees with the comment. The rule will not be applicable to those licensees under State or FERC rate regulation, except as noted for the reporting requirement. Further, the NRC continues to work with the States through regular periodic contact with State regulatory authorities. Lastly, as the following comment indicates, the NRC believes that the rule continues to give State commissions the flexibility that they need to ensure the adequacy of decommissioning funds while protecting consumers within their jurisdiction.

Comment: A commenter stated that in specifying "that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or an entity whose operations are regulated by a State or Federal agency" the proposed rule continues to give State commissions the flexibility that they need to ensure the adequacy of decommissioning funds while protecting consumers within their jurisdiction.

Response: The NRC agrees with the comment.

Comment: The NRC should be careful to assure that State commission authority to achieve these goals is not inadvertently undermined. As proposed, the NRC's rulemaking appears to provide enough standardization to achieve the goal of ensuring the security of decommissioning funds while allowing enough generality to achieve the goal of maximizing after-tax yields.

Response: The Commission agrees with the comment. As indicated throughout this document, the NRC will not impose this rule on licensees remaining under State regulation, except as noted for the reporting requirement.

Comment: The NRC should clarify that nothing in its final rule will preempt any State authority from reviewing the transfer of a nuclear facility's assets out of rate base and the impact on ratepayers.

Response: The NRC will not do anything in this rule to preempt any State authority from reviewing the transfer of a nuclear facility's assets out of rate base and the impact on ratepayers. This is also consistent with the response to the preceding comment.

Comment: An investment management firm claimed the proposed rule would "unfairly damage" their business and also deprive nuclear power plant owners of "a significant investment area for diversification of nuclear decommissioning trust funds."

Response: The Commission believes the 10-percent *de minimis* limit on nuclear sector investments adequately addresses this concern.

Comment: Finally, several commenters stated that modifications should be made to the Draft Regulatory Guide to make it consistent with the changes made to the final rule.

Response: The Regulatory Guide has been modified to reflect the changes made to the final rule.

6. Comments on the Draft Regulatory Guide

Comments were also received on the draft regulatory guide DG–1106. The comments were grouped by section and responded to by the NRC.

I. Comments on Section 1

Comment: Section 1.1 should be modified to provide guidance for applying existing rules to potential new reactor designs that are not covered by the existing 10 CFR 50.75(c).

Response: The generic formulas can not apply if licensee is not a boiling water reactor or a pressurized water reactor, so any potential new reactor designs must be site specific. The guidance will be modified to highlight this fact.

Comment: Section 1.1.1 should recognize that the certification amounts in 10 CFR 50.75 are specific for BWRs and PWRs. Other reactor licensees need to certify they will have adequate funds for decommissioning; however, an exemption is not needed if the amount differs from the BWR and PWR specified formulas. This comment also applies to Section 2.6.1.

Response: As noted above, site-specific estimates would need to be developed.

Comment: The last sentence of Section 1.1.2 should read "The level of detail necessary to support the cost estimate is discussed in Regulatory Position 1.3."

Response: This change has been made.

Comment: The NRC's discussion of Test 4 describes that licensees "generally" prepare annual reports, etc., and does not specifically list annual calculation of the estimated cost as required by 10 CFR 50.75(b)(2). Further, the Test 4 description specifies that "* * * these reports can be supplied to the NRC upon request * * *" This availability upon request and the biennial reporting appears sufficient. The Test 4 discussion should justify removing DG Sections 2.2.8 and 1.2 or an explanation of the benefit of annual adjustments to the calculation versus the biennial frequency of the funding status should be provided.

Response: Section 50.75(f)(1) states that "Each power reactor licensee shall report, on a calendar-year basis, to the NRC by March 31, 1999, and at least once every 2 years thereafter on the status of its decommissioning funding for each reactor or part of a reactor that it owns." Further, the NRC regulations (10 CFR 50.75(c)) provide the tables for the minimum amounts for reasonable decommissioning financial assurance for PWRs and BWRs. Therefore, the Commission sees no need for removing Sections 1.2 and 2.2.8 of the regulatory guide (which refer to these parts) as the commenter requested. The Commission believes that the required biennial reports, along with the right to request more frequent reports because of certain circumstances to protect the public health and safety are the best vehicles to provide this necessary information.

Comment: The second and third paragraphs of Section 1.2 are confusing.

Response: The NRC believes that the comment and response immediately following adequately address this issue and clarify this Section.

Comment: In Section 1.2, the reader should be referred to the guidance provided in the most current revision of NUREG–1307 and then expressly state that the example given in the text is an example of a calculation for a specific year only. As written, there may be conflicting guidance between the NUREG and the Regulatory Guide in future years if each is not revised at the same time.

Response: This change has been made.

Comment: The last sentence of the last paragraph in Section 1.2 should be separated into a new paragraph because it applies to more than non-electric utility applicants and licensees.

Response: This change has been made.

Comment: The last paragraph in Section 1.2 should refer to Regulatory Position 1.4, not 1.5.

Response: This change has been made.

Comment: Section 1.3 also should be modified to provide guidance for applying existing rules to potential new reactor designs that are not covered by the existing 10 CFR 50.75(c).

The section needs to be further modified to clarify that licensees may provide for the funding of spent fuel management and non-radiological decommissioning costs.

Response: As noted above, any new reactor design application will need to contain site specific decommissioning cost estimates. In the responses to comments on the proposed rule, the Commission has indicated that licensees may provide for the funding of non-radiological decommissioning costs, that are not under the Commission's legal authority. Also, as indicated in those responses, 10 CFR 50.54(bb) addresses the funding of spent fuel management.

Comment: The commenter does not see a need for DG–1085, the draft regulatory guide discussing cost estimates, to be referenced in Section 1.3.

Response: The Commission sees nothing wrong in providing information on resources that will be available to assist licensees in this area.

Comment: Regulatory position 1.4.1 of DG–1106, states that "For licensees using site-specific cost estimates (*i.e.*, research and test reactor licensees, power reactor licensees not covered by 10 CFR 50.75(c), or * * *)" The commenter stated that it is not clear what is meant by "power reactor licensees not covered by 10 CFR 50.75(c)," since even licensees who are maintaining site-specific cost estimates are required to meet the minimum certification amount specified in 10 CFR 50.75(c). The commenter strongly supported this statement provided it accompanies an associated revision to the rule to eliminate the unnecessary requirement for power reactor licensees that maintain an NRC-approved, site-specific decommissioning cost estimate and funding plan to also meet the minimum certification amount in 10 CFR 50.75(c).

The rule should be revised to specify that for power reactor licensees that maintain NRC-approved, site-specific decommissioning cost estimates and funding plans, the requirements of 10 CFR 50.75(c) do not apply. If such a rule revision is not made, then the subject statement in DG–1106 should be reworded or eliminated.

Response: Licensees not covered by 10 CFR 50.75(c) would include non-PWR and non-BWR reactor designs or those undergoing decommissioning under § 50.82. With regard to the commenter's second comment requesting the elimination of the minimum certification amount in 10 CFR 50.75(c), the Commission has previously considered and rejected the option of allowing licensees to use site-specific estimates less than the minimum amounts. Licensees continue to have the option of submitting an exemption request to the Commission for a lower amount.

Comment: Two commenters noted that the last sentence of Regulatory Position 1.4.3 should be revised to replace the reference to "Regulatory Position 2.2.5." to "Regulatory Position 2.1.5."

Response: This change has been made.

Comment: Regulatory Position 1.5, which is referenced in several places of the draft regulatory guide, does not exist. It is not clear if Regulatory Position 1.2, 1.4, 2.2.8 or some other section was the intended reference.

Response: The intended reference is Regulatory Position 1.4 and this change has been made.

II. Comments on Section 2

Comment: In Section 2.1.5, the reference to "Regulatory Position 1.5" should read 1.4.

Response: This change has been made.

Comment: The last sentence in Section 2.1.5 should have "as needed" added to it.

Response: This change has been made.

Comment: The annual adjustment frequency in Section 2.1.5 for licensees that are no longer rate regulated or do not have access to a non-bypassable charge is too frequent. Short-term market fluctuations could lead to more frequent adjustments than truly necessary and result in greater administrative costs. Because, decommissioning is normally a long-term investment, frequent changes could lead to losses and increased investment costs. Although the fund's adequacy should be evaluated annually, annual adjustments may not be prudent.

Response: The last sentence of Section 2.1.5 has been revised to indicate that adjustments, as needed, to the amount of funds set aside should be made at least once every 2 years, in conjunction with the biennial reporting requirement by licensees that are no longer rate-regulated or do not have access to a non-bypassable charge. Licensees who remain rate regulated should make these adjustments at least every 6 years, in conjunction with rate cases.

Comment: Regulatory Position 2.2.1 of DG–1106 should be revised to "An applicant or licensee using an escrow account, certificate of deposit, or trust agreement * * * may use the sample wording for these methods contained in Appendices B.1, B.2, and B.3, respectively." This change is consistent with similar wording in Regulatory Position 2.3.1 of DG–1106.

Response: This change has been made.

Comment: The funding mechanism will not ensure that adequate information concerning funds is provided to the NRC. It is the licensee's responsibility to do so under the rule. Even the sample instruments in the appendices do not include NRC reporting requirements, nor should they (Section 2.2.1). Also, Section 2.2.2.5 should be revised to delete "terms relating to the provision of information to the NRC" from the description of key provisions of a trust.

Response: The Commission has deleted what was item (e), "it will ensure that adequate information concerning the funds is provided to NRC," from Draft Regulatory Guide Section 2.2.1. Also, the words "key terms relating to the provision of information to NRC" has been deleted from Section 2.2.2.5 of the Draft Regulatory Guide.

Comment: Replace the word "indicia" in Section 2.2.1 with another word.

Response: The word "indicia" was replaced with the word "indicators."

Comment: The methods listed in Section 2.2.1 should be identified in the same order as they are listed in the appendices (*i.e.*, the escrow account should be listed first because it is B–1, and the trust agreement should be listed last because it is B–3.)

Response: This change has been made for the sake of consistency.

Comment: The first sentence of Section 2.2.1 references Appendices B.1, B.2, and B.3. The appendices are labeled as B–1, B–2, and B–3. The titles should be consistent.

Response: This change has been made.

Comment: Section 2.2.2.1 should not indicate the need for identification of a license number and NRC docket number. This minor change would reduce the burden of nuclear decommissioning trust agreement amendments necessary to conform to the new NRC rule and guidance.

Response: The words "by license or NRC docket number" were deleted from the draft regulatory guide. As long as licensees use a plant name or other specific identifier, no specific use of docket or license number is necessary.

Comment: Section 2.2.2.2 should have reference to Section 468A eliminated because it is unnecessary. Also, the section should have an addition to indicate that there are existing nuclear decommissioning trust agreements that govern multiple trusts for multiple licensed facilities, an existing practice acceptable to the NRC.

Response: The second and last sentences at Section 2.2.2.2 have been modified to now read: "A single trust agreement may establish two or more Nuclear Decommissioning Funds when a nuclear power plant is owned by two or more licensees. Similarly, a trust agreement may contain both "qualified" and "non-qualified" decommissioning funds pursuant to Internal Revenue Code 468A." Trusts should be segregated by sub-accounts or some other means to clearly identify NRC-defined decommissioning costs for each unit.

Comment: Several commenters suggested a reconciliation of a 30-day notice for disbursements with DG–1106. They stated that the rule does not provide for the notice exception contained in the draft regulatory guide Section 2.2.2.4 and that no NRC notification should be required for any expenditure specifically permitted under any of the provisions of 10 CFR 50.82(a)(8), *i.e.*, the exception from notice requirements should include not only 10 CFR 50.82(a)(8)(i), but also 10 CFR 50.82(a)(8)(ii). Lastly, Section 2.2.2.4 should be revised to specifically describe the acceptable forms that a written notice of intent may take to begin expending funds for such purpose. Acceptable forms should include an NRC approval of a site-specific decommissioning cost estimate and funding plan that includes activity costs and schedules related to spent fuel management and non-radiological decommissioning.

Response: These comments are all addressed by the fact that decommissioning trust requirements of the final rule do not apply to licensees that are in decommissioning and thus subject to Part 50.82(a)(8). The regulatory guide was modified to address the comment.

Comment: The last sentence of Regulatory Position 2.2.2.5 does not contribute to the intent of this revision to the Regulatory Guide to provide more detailed guidance to assist in implementing the changes in the NRC's regulations. Some examples and/or characteristics of changes to trust agreements that would not be considered "material" would be of more assistance to licensees wishing to implement the new rule.

Response: As previously mentioned, in response to comments received on modifications to trusts, the NRC defines "material" modifications to include actions such as change of trustee, change of provisions relating to withdrawals from the trust, changes relating to the beneficiary, changes relating to the duration or term of the trust, or other changes potentially affecting the ability of the trust agreement to provide reasonable assurance of decommissioning funds. Modifications that are not material would include, for example, changes in fee structures paid to a trustee, changes in arbitration provisions between the trustee and the licensee, changes in investment advisor, if applicable, or investments, provided the changes comply with other aspects of this rule.

Comment: One commenter suggested that Section 2.2.3 be modified to reflect their comments relating to dual regulation regarding investment standards, re-phrasing the limitations on licensee involvement in investment decisions, and clarification regarding non-nuclear sector collective or commingled funds and pre-existing investments. Another revision in the section is suggested to conform the guidance to the explicit terms of proposed 10 CFR 50.75(h)(1)(i)(A).

Response: The Commission considers the proposed revision consistent with its position on dual regulation. The revision clarifies the Commission's intent and the change has been made.

Comment: This commenter referred only to paragraph C.2.2.3.3 of Draft Regulatory Guide DG–1106. The commenter urged NRC to drop its prohibition of trust agreements investing "in securities of other power reactor licensees or any entity owning or operating one or more nuclear power plants" and suggested that the direct investment be limited "to 10% or less of trust assets." The commenter also claimed that the proposed rule would "unfairly damage" their business and also deprive nuclear power plant owners of "a significant investment area for diversification of nuclear decommissioning trust funds."

Response: The final rule has been modified to allow licensees to own securities of other nuclear power plants, but to limit them to 10 percent or less of trust assets. As a result, Section 2.2.3.3 of the revised regulatory guide has also been modified.

Comment: A commenter proposed that the Commission delete Section 2.2.3.5 which recommends that those licensees not under FERC or PUC jurisdiction limit investments to "investment grade," as defined in that section. The commenter noted that use of the generally accepted term "prudent investor" standard, as defined by FERC negates the need for the NRC to make use of the term "investment grade."

Response: The Commission has modified the rule and the guidance so that only the term "prudent investor" standard is used. Section 2.2.3.5 has been deleted.

Comment: A commenter proposed that the NRC revise Section 2.2.8 to clarify how licensees may take credit for earnings during the decommissioning period. This is problematic for licensees that operate multiple, modular reactors at a single site.

Response: With respect to the modular reactors, the assumptions of earnings credit should track the estimated cash flows for decommissioning expenses for each module.

Comment: A few commenters noted that the draft regulatory guide contains guidance that is inconsistent with the rule. The 2-percent rate of return credit beyond the period of operation into the safe-storage period is not allowed in Section 2.2.8 of the regulatory guide, but allowed in proposed 10 CFR 50.75(e)(1)(i) and (ii). There are also inconsistencies with the handling of credit for periods of final dismantlement and license termination.

Response: As noted in response to a similar comment on the rule, the 2-percent credit can only be used for the period up to shutdown if the amount is

based on the formulas in § 50.75(c). If the amount is based on a site-specific study that explicitly includes SAFSTOR, the licensee can then take the 2-percent credit into the storage period.

Comment: In Section 2.3.1, the first sentence references Appendices B.4, B.5, and B.6. The appendices are labeled as B–4, B–5, and B–6. The titles should be consistent.

Response: This change has been made.

Comment: The third bullet in Section 2.3.2 is confusing.

Response: The bulleted item has been modified to read "For insurance, an original or conformed copy of the insurance policy."

Comment: The appendix in Section 2.4.2 is incorrectly identified in this section. The appendix referred to should be B–3.2.

Response: This change has been made.

Comment: The regulatory position referred to in Section 2.4.3 should be 2.2.5, not 2.2.2.

Response: This change has been made.

Comment: In Section 2.6.1, the information which the report must include incorrectly states that "any contracts upon which the licensee is relying pursuant to 10 CFR 50.75(e)(1)(ii)(C)." The commenter believed that 10 CFR 50.75(e)(1)(v) is the more appropriate reference. Further, the commenter suggested that this appears to be an ideal location to reiterate the guidance provided in Regulatory Issue Summary (RIS) 2001–07 for the biennial reports.

Response: The commenter is correct in noting that 10 CFR 50.75(e)(1)(v) is the more appropriate reference in this section and the change has been made. Reference to RIS 2001–07 was also added to Section 2.6.1.

Comment: The content of the periodic report on decommissioning funding as described in Section 2.6.2 appears excessive. If more detailed information is desired for a specific trust, the information can be looked at on a case-by-case basis.

Response: The second sentence of Section 2.6.2 has been modified to read "* * * although it would be helpful if they indicate broad categories of investments as a percent of the total trust portfolio * * *."

Comment: The next to the last sentence in Section 2.6.2 should read "* * * as provided in 10 CFR 50.75(e)(1)(i) or (ii)."

Response: This change has been made.

Comment: Regulatory Position 2.7 is redundant and would be more pertinent and focused if it were replaced with "In 10 CFR 50.82(a)(9), submittal of a license termination plan is required at the time a licensee applies for termination of license. The license termination plan must include an updated site-specific estimate of remaining decommissioning costs, as described in detail in NUREG–1700, "Standard Review Plan for Evaluating Nuclear Plant Reactor License Termination Plans," and RG 1.179, "Standard Format and Content of License Termination Plans for Nuclear Power Reactors.'"

Response: The point raised by the commenter is valid and the change has been made.

III. Comments on the Appendices

Comment: The definitions of "qualified decommissioning funds" and "non-qualified decommissioning funds" should be added to the glossary of financial terms provided in DG–1106, Appendix A.

Response: The NRC uses the terms in reference to Section 468A of the Internal Revenue Code. A footnote has been added to Section 2.1.5 to clarify this reference.

Comment: The methods of financial assurance contained in DG–1106, Appendix B appear to contradict the requirements and allowances in 10 CFR 50.75(e).

Response: Appendix B was modified to note that the examples provided in the appendix are for some of the mechanisms allowed in NRC regulations.

Comment: Appendix B–1, paragraph 4 should include that remaining funds should be returned to the licensee or other specified party upon receipt of documentation of license termination.

Response: This requested change was not made. Although the Commission has no objection to those words being contained in a trust fund provision it is beyond NRC's jurisdiction.

Comment: Section 5 of Appendix B–3 "Sample Trust Fund" should be revised to reflect the obligations imposed by proposed 10 CFR 50.75(h)(1)(ii) and a commenter's proposed 10 CFR 50.75(h)(1)(iii).

Response: This comment reflects the Commission's position that withdrawals made under § 50.82(a)(8) will not be subject to the 30-working day notification requirement. Section 5 of Appendix B–3 was revised.

Comment: Section 6 of Appendix B–3 "Sample Trust Fund" should be revised to reflect a commenter's statement regarding non-nuclear sector collective or commingled funds and pre-existing investments. Section 6(b) should be deleted because it is an issue that should be addressed in negotiations between the licensees and trustees. Other changes are also proposed to account for a commenter's proposed dual regulation regarding investment standards, the proposed 10 CFR 50.75(h)(1)(i)(D), and the proposed modification on the limitations on licensee involvement in investment decisions.

Response: Section 6 has been modified to reflect the Commission's clarification on non-nuclear sector collective or commingled funds and pre-existing investments. Section 6(b) has not been modified because this language has been included only as part of a sample of a trust agreement and does not reflect any NRC requirement that this language be included. Other modifications have been made to reflect the Commission's position on dual regulation, day-to-day investment decisions and licensee involvement in investment decisions.

Comment: Section 8 of Appendix B–3 "Sample Trust Fund" subsections should be renumbered to correct a typographical error.

Response: This change has been made.

Comment: Section 15 of Appendix B–3 "Sample Trust Fund" should be modified to reflect the requirements of the proposed 10 CFR 50.75(h)(1)(ii).

Response: This section has been modified to reflect the 30-working day notification of amendments to the trust agreement.

Comment: Appendices B.3.2.2 and B.3.3 should be changed to B–3.2.2 and B–3.3 to be consistent with titles of other appendices.

Response: These changes have been made.

Comment: In Appendix B–6.5, Item 9, the 120-day time frame should be changed to 180 days to allow sufficient time for action, because the period also included notification and the NRC's review time. Also, in Item 10, the 30 days should be changed to 90 days to allow sufficient time to prepare, review, and approve an alternative financial assurance mechanism.

Response: These changes have been made.

IV. Comments Referring to No Specific Section of the Regulatory Guide

Comment: Appropriate changes should be made to Regulatory Guide 1.159 to correspond to the final rule.

Response: The necessary changes were made.

Comment: Even though neither insurance nor long term contracts are used by many licensees, it would be useful for the NRC to provide guidance for each as it does for the other methods of financial assurance.

Response: First, the guide was written to address the standard, most widely used industry financial assurance methods, which includes trust agreement and guarantees but not insurance and long term contracts. Second, long-term contracts and insurance policies are likely to vary so much that it would be difficult to develop sample language that could encompass all uses of these mechanisms. However, the NRC will consider adding sample language for these mechanisms after it has gained more experience with their use by licensees.

Comment: DG–1106 should include guidance for the application of the self-guarantee as allowed by 10 CFR 50.75(e)(1)(iii)(C).

Response: When using the self-guarantee mechanism, a licensee needs to pass the financial tests as discussed in 10 CFR part 30, Appendix C—Criteria Relating to Use of Financial Tests and Self Guarantees for Providing Reasonable Assurance of Funds for Decommissioning.

Comment: The commenter suggested modifications to DG–1106 to clarify the NRC's guidance for applying the existing rules to potential new reactor designs that are not covered by the current formula amount in 10 CFR 50.75(c).

Response: As indicated above, new reactor designs will be required to use site-specific decommissioning cost estimates.

Comment: The guide is inconsistent in the use of recommendations and requirements.

Response: The NRC staff reviewed the guide and made changes where necessary. Of course, requirements should only be used in reference to being in compliance with regulations and recommendations in reference to approved ways of meeting requirements, often contained in guidance.

Comment: The notification for disbursements and material changes ought to apply to the licensee, rather than the trustee. The proposed rule would require the licensee to notify the NRC of material changes to the trust, while the guide states the trustee is responsible.

Response: Sections 2.2.2.4 and 2.2.2.5 of the guide has been changed to indicate that the licensee is responsible for notifying the NRC of material changes to the trust.

Comment: Estimated tax deductions should be allowed to be assumed to cover taxes on earnings that will be due when investments are sold to meet decommissioning expenses.

Response: The NRC has a long standing policy of not allowing estimated future tax deductions as part of a means to provide decommissioning funding assurance.

Comment: The sample agreements in the appendices do not reflect that the rule permits use of funds for decommissioning planning. They would not allow disbursements until decommissioning is in progress. Spending money on planning before starting decommissioning is a prudent use of funds, when possible.

Response: Spending funds on planning for decommissioning before permanent shutdown is not precluded by this rulemaking and guidance. The NRC will consider clarifying the timing of the use of trust funds for planning in the future.

Comment: For power reactors, a Post Shutdown Decommissioning Activities Report (PSDAR) is submitted rather than a plan until the License Termination Plan is submitted later in the decommissioning. The sample agreements refer to plans and procedures.

Response: The guidance has been reviewed to check for consistency. Changes in the words "plans," "procedures," and "reports" were made for clarity where necessary.

Comment: Some of the samples include certification that the licensee is required to commence decommissioning. For most power reactors, the licensee has decided to commence decommissioning rather than being required to do so.

Response: Changes were made to the sample trust fund agreements to indicate that decommissioning "has commenced," not that it was "required."

Comment: Ongoing activities may give rise to a need for additional work not anticipated at the time of the last "request." Also, guidance does not appear to exist regarding specificity requirements associated with the required fund use requests. Overly broad requests may defeat the purpose of the rule while more specific requests may exclude emergent work activities for 30 days. The proposed rule and the draft guidance are inconsistent with respect to expectations relative to the new 30-day disbursement requirement.

Response: The Commission believes that it has addressed this concern by noting that this rule will not be applicable to those licensees in decommissioning under § 50.82.

Comment: One commenter concurred that the trust wording in DG–1106 is not expected to be adopted by the licensees, but believes that the NRC should clarify that directions in the proposed rule that certain trust provisions should be included by power reactor licensees in their trusts does not imply that the general language in the regulatory guide sample trust should be used by power reactor licensees.

Response: This position has been included in the statement of considerations of the final rule.

The Final Rule

The final rule clarifies the Commission's position that these new requirements are applicable only to those licensees that are no longer regulated by a State Public Utility Commission (PUC) or the Federal Energy Regulatory Commission (FERC), with the exception that all power reactor licensees, both rate regulated and otherwise, will be required to notify the NRC in advance of decommissioning trust withdrawals if these withdrawals are made before permanent cessation of operations. Further, any nuclear power plant that is no longer operating and under § 50.82 requirements is not affected by this rule. Also, this rule makes a conforming change to § 72.30.

Section-by-Section Analysis

Section 50.75(e)

This section is amended by the addition of information to both paragraphs 50.75(e)(1)(i), which describes the prepayment method of financial assurance, and 50.75(e)(1)(ii), which describes the external sinking fund method of financial assurance. The modifications clarify that the trust must be an external trust fund held in the United States, established under a written agreement with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. Additional information is also included about a licensee's taking credit for projected earnings on decommissioning funds.

Section 50.75(h)

This is a new section that implements the following conditions applicable to certain power reactor licensees. The trust agreement must prohibit trust investments in securities or other obligations of the reactor owner or its affiliates, successors, or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in securities of a licensee or parent

company whose subsidiary is an owner of a foreign or domestic nuclear power plant. The trust agreement must limit investments to no more than 10 percent of their trust assets in any entity owning one or more nuclear power plants. The trust agreement must stipulate that the agreement cannot be amended in any material respect without 30 working-days prior written notice to the NRC, and that no amendment to the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. The trust agreement must stipulate that the trustee, investment advisor, or anyone else directing investments made by the trust should adhere to a "prudent investor" standard. The trust agreement must provide that no disbursements or payments from the trust (other than for payment of routine administrative expenses or for withdrawals being made pursuant to 10 CFR 50.82(a)(8)) may be made by the trustee until the trustee has first given the NRC 30 working-days prior written notice, and that no disbursements or payments from the trust may be made if the trustee receives written notice of objection from the NRC within that notice period. The person directing the investment of the funds may not use the licensee or its affiliates or subsidiaries as the investment manager for the funds or accept day-to-day management direction of the funds' investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds when this management is limited to investments tracking indices.

Section 72.30(c)(5)

This section has been modified to make it consistent with the requirements contained in 10 CFR 50.75(e) and (h).

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland.

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

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). Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov.*

Document	PDR	Web	PERR	NRC Staff
Comments received	X		X	
Regulatory Analysis	X	X	ML020910259	X
Regulatory Guide, 1.159, Rev. 1	X	X	ML020910282	

A free single copy of Draft Regulatory Guide DG–1106 may be obtained by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or E-mail: *DISTRIBUTION@nrc.gov,* or Facsimile: (301) 415–2289.

Copies of NUREGS may be purchased from The Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20302–0001; Internet: *bookstore.gpo.gov;* (202)512–1800. Copies are also available from the National Technical Information Service, Springfield, VA 22161–0002; *http://www.ntis.gov;* 1–800–533–6847 or, locally, (703) 605–6000. Some publications in the NUREG series are posted at NRC's technical document Web site *http://www.nrc.gov/NRC/NUREGS/indexnum.html.*

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations relating to decommissioning trust provisions for nuclear power plants. This action does not constitute the establishment of a standard that contains generally applicable requirements.

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 revision to the NRC's regulations provides licensees with a codification of requirements and guidance that will specify more fully the provisions of the decommissioning trust agreements. These changes would not result in any increased impact on the environment from decommissioning activities as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988) and Draft Supplement 1 (NUREG–0586, Draft Supplement 1, October 2001).[1] Therefore, promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC.

The NRC requested public comments on any environmental justice considerations that may be related to this issue. No comments were received on this issue.

The NRC requested the views of the States on the environmental assessment for this rule. No comments were received from the States on this issue.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paper Work Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for this information collection is estimated to average 6600 to 13,200 hours, including the time for reviewing instructions, searching existing data sources,

[1] Copies of NUREG–0586 and Draft Supplement 1 to NUREG–0586 are available for inspection or copying for a fee from the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, Maryland 20555–0001. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone (202) 512–1800); or from the National Technical Information Service (NTIS) by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *BJS1@nrc.gov*; and to the Desk Officer, Office of Information and Regulatory Affairs NEOB–10202 (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

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 regulatory analysis is available as indicated under the Availability of Documents heading of the **SUPPLEMENTARY INFORMATION** section.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does 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 Regulatory Analysis for the final rule also constitutes the documentation for the evaluation of backfit requirements. No separate backfit analysis has been prepared. As defined in 10 CFR 50.109, the backfit rule applies to

* * * modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position * * *.

The amendments to NRC's requirements for decommissioning trust provisions of nuclear power plants require that decommissioning trust agreements be in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. Also, as nuclear power reactors have been sold, the NRC has stipulated in connection with license transfers that certain terms and conditions be added to decommissioning trusts. These sales may involve transfers of nuclear power reactors from regulated public utilities to firms that are not regulated as public utilities. Because rate regulators may, as a consequence of utility deregulation, cease to exercise direct oversight over decommissioning trusts, the Commission directed the NRC staff to initiate a rulemaking to require that decommissioning trust agreements are in a form acceptable to the NRC.

Although some of the changes to the regulations are reporting requirements that are not covered by the backfit rule, other elements in the changes are considered backfits because they would modify, supplement, or clarify the regulations with respect to: (1) The fact that the NRC will need to exercise greater oversight of decommissioning trust funds as State Public Utility Commissions reduce their oversight as a result of deregulation within the electric power generation industry, and (2) the NRC exercising more oversight of decommissioning trusts in evaluating license transfer applications. The NRC has concluded on the basis of the documented evaluation required by 10 CFR 50.109(a)(4) and set forth in the regulatory analysis, that the new or modified requirements are necessary to ensure that nuclear power reactor licensees provide for adequate protection of the public health and safety in the face of a changing competitive and regulatory environment not envisioned when the reactor decommissioning funding regulations were promulgated, and that the changes to the regulations are in accord with the common defense and security. Therefore, the NRC has determined to treat this action as an adequate protection backfit under 10 CFR 50.109(a)(4)(ii). Consequently, a backfit analysis is not required and the cost-benefit standards of 10 CFR 50.109(a)(3) do not apply. Further, these changes to the regulations are required to satisfy 10 CFR 50.109(a)(5).

This is not to say that any non-compliance with this rule would place the public health and safety or the common defense and security in immediate jeopardy. Instead, the NRC views these requirements to be necessary to ensure that in the future, at the conclusion of plant operation, adequate funds will be available for decommissioning.

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

10 CFR Part 50

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

10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, and Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 50 and part 72.

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, 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, 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, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (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 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).

2. In § 50.75, the introductory text of paragraph (e)(1) and paragraphs (e)(1)(i) and (e)(1)(ii) are revised, and a new paragraph (h) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e)(1) Financial assurance is to be provided by the following methods.

(i) *Prepayment.* Prepayment is the deposit made preceding the start of operation or the transfer of a license under § 50.80 into an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. Prepayment may be in the form of a trust, escrow account, or Government fund with payment by, certificate of deposit, deposit of government or other securities or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the prepayment deposit is managed are regulated and examined by a Federal or State agency. A licensee that has prepaid funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the prepaid decommissioning trust funds, using up to a 2 percent annual real rate of return from the time of future funds' collection through the projected decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has prepaid funds based on the formulas in § 50.75(c) of this section may take credit for projected earnings on the prepaid decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (i.e., not a site-specific estimate) can take a pro-rata credit during the immediate dismantlement period (i.e., recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used to calculate future fund needs.

(ii) *External sinking fund.* An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the external sinking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (i.e., not a site-specific estimate) can take a pro-rata credit during the dismantlement period (i.e., recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

* * * * *

(h)(1) Licensees that are not "electric utilities" as defined in § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the arrangements governing the trust, escrow account, or Government fund, used to segregate and manage the funds that—

(i) The trustee, manager, investment advisor, or other person directing investment of the funds:

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of the power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before the publication date of this rule, provided further that these restrictions do not apply to 10 percent or less of their trust assets in securities of any other entity owning one or more nuclear power plants.

(B) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in investing or otherwise, required by State or Federal law or one or more State or Federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. The term "prudent investor," shall have the same meaning as set forth in the

Federal Energy Regulatory Commission's "Regulations Governing Nuclear Plant Decommissioning Trust Funds" at 18 CFR 35.32(a)(3), or any successor regulation.

(ii) The licensee, its affiliates, and its subsidiaries are prohibited from being engaged as investment manager for the funds or from giving day-to-day management direction of the funds' investments or direction on individual investments by the funds, except in the case of passive fund management of trust funds where management is limited to investments tracking market indices.

(iii) The trust, escrow account, Government fund, or other account used to segregate and manage the funds may not be amended in any material respect without written notification to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the proposed effective date of the amendment. The licensee shall provide the text of the proposed amendment and a statement of the reason for the proposed amendment. The trust, escrow account, Government fund, or other account may not be amended if the person responsible for managing the trust, escrow account, Government fund, or other account receives written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period; and

(iv) Except for withdrawals being made under 10 CFR 50.82(a)(8), no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30-working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC.

(2) Licensees that are "electric utilities" under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8), no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. The disbursement or payment from the trust, escrow account, Government fund or other account may be made following the 30-working day notice period if the person responsible for managing the trust, escrow account, Government fund, or other account does not receive written notice of objection from the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, within the notice period. Disbursements or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, other than for payment of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed. After decommissioning has begun and withdrawals from the decommissioning fund are made under 10 CFR 50.82(a)(8), no further notification need be made to the NRC.

(3) A licensee that is not an "electric utility" under § 50.2 and using a surety method, insurance, or other guarantee method to provide financial assurance shall provide that the trust established for decommissioning costs to which the surety or insurance is payable contains in its terms the requirements in paragraphs (h)(1)(i), (ii), (iii), and (iv) of this section.

(4) Unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility that does no more than delete specific license conditions relating to the terms and conditions of decommissioning trust agreements involves "no significant hazards consideration."

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. 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 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (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, 2224 (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).

4. In § 72.30, paragraph (c)(5) is revised to read as follows:

§ 72.30 Financial assurance and recordkeeping for decommissioning.

* * * * *

(c) * * *

(5) In the case of licensees who are issued a power reactor license under Part 50 of this chapter, the methods of 10 CFR 50.75(b), (e), and (h), as applicable.

* * * * *

Dated at Rockville, Maryland, this 18th day of December, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–32403 Filed 12–23–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ASO–25]

Amendment of Class E5 Airspace; Tampa, FA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E5 airspace at Tampa, FL. A Localizer Runway 23 Standard Instrument Approach Procedure (SIAP) has been developed for Vandenberg Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

EFFECTIVE DATE: 0901 UTC, March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On October 16, 2002, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Tampa, FL (67 FR 63858). This action provides adequate Class E airspace for IFR operations at Vandenberg Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Tampa, FL.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Tampa, FL [Revised]

Tampa International Airport, FL
(Lat. 27°58′32″ N., long. 82°31′59″ W.)
St. Petersburg-Clearwater International Airport
(Lat. 27°54′39″ N., long. 82°41′14″ W.)
MacDill AFB
(Lat. 27°50′57″ N., long. 82°31′17″ W.)
Peter O Knight Airport
(Lat. 27°54′56″ N., long. 82°26′57″ W.)
Albert-Whitted Airport
(Lat. 27°45′54″ N., long. 82°37′38″ W.)
Vandenberg Airport
(Lat. 28°00′50″ N., long. 82°20′43″ W.)
Clearwater Air Park
(Lat. 27°58′35″ N., long. 82°45′31″ W.)
Vandenberg Localizer
(Lat. 28°00′40″ N., long. 82°20′55″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tampa International Airport, St. Petersburg-Clearwater International Airport, MacDill AFB, and Peter O Knight Airport, and within a 6.3-mile radius of Albert-Whitted Airport, and Clearwater Air Park, and within a 6.7-mile radius of Vandenberg Airport and within 4 miles south and 8 miles north of the Vandenberg Localizer northeast course extending from the 6.7-mile radius to 16 miles northeast of the airport; excluding that airspace within the Zephyrhills, FL, and Lakeland, FL, Class E airspace areas.

* * * * *

Issued in College Park, Georgia, on December 11, 2002.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 02–32415 Filed 12–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30345; Amdt. No. 439]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, January 23, 2003.

Rules and Regulations

Federal Register
Vol. 68, No. 51
Monday, March 17, 2003

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG52

Decommissioning Trust Provisions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to an amendment included with the final regulations establishing licensing criteria for the decommissioning trust provisions for nuclear power plants that the Nuclear Regulatory Commission published in the **Federal Register** of December 24, 2002.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1978; e-mail *bjr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction become effective on December 24, 2003. The final rule, published December 24, 2002 (67 FR 78332), amended parts 50 and 72 of 10 CFR Chapter 1. One of the amendments included in the final rule was to § 50.75(e). However, as a result of that amendment, paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) would be inadvertently removed from the NRC's regulations at § 50.75(e) when the December 24, 2002, final rule becomes effective. The NRC does not intend to remove these paragraphs.

Need for Correction

As published, the final regulations erroneously omit two paragraphs of § 50.75(e) that address the requirements for an external sinking fund sufficient to fund decommissioning costs for a nuclear power facility at the time permanent termination of operations is expected. This correction restores those paragraphs to 10 CFR Part 50.

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, and Reporting and recordkeeping requirements.

Accordingly, 10 CFR Part 50 is corrected by making the following correcting amendments:

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—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 § 50.75, revise paragraph (e)(1)(ii) to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(ii) External sinking fund. An external sinking fund is a fund established and maintained by setting funds aside periodically in an account segregated from licensee assets and outside the administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the external linking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (*i.e.*, not a site-specific estimate) can take a pro-rata credit during the dismantlement period (*i.e.*, recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used

to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(A) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by "cost of service" or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are assumed to meet this condition.

(B) By a licensee whose source of revenues for its external sinking fund is a "non-bypassable charge," the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or 50.82 of this part.

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Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2003—6]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission is amending its administrative fines regulations to reduce the civil money penalties for political committees with less than $50,000 in financial activity in a reporting period that file reports late or that do not file them at all. The revised rules create two additional levels-of-activity brackets for such committees to make further distinctions in the amount of the civil money penalty assessed. The amendments also change the method for calculating the "level of activity" on which civil money penalties are based for unauthorized committees by excluding certain non-Federal activity from the calculation. Additionally, these amended rules: clarify how late filers and non-filers will be notified of reason-to-believe findings, final determinations and other actions; and clarify the factors that will not be considered "extraordinary circumstances" when findings or penalties are challenged. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Dawn M. Odrowski, Attorney, at 999 E Street, NW., Washington, DC., 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules to make certain revisions to its administrative fines program. The program enables the Commission to adjudicate reporting violations of section 434(a) of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, by political committees and their treasurers who fail to file, or untimely file, required campaign finance disclosure reports. The adjudication employs a streamlined procedure that affords respondents due process rights and assesses a civil money penalty for violations based on published penalty schedules. The Commission established the administrative fines program in July 2000 pursuant to 2 U.S.C. 437g(a)(4). *See* Treasury and Government Appropriations Act, 2000, Pub. L. 106–58, 106th Cong. § 640, 113 Stat. 430, 476–77 (1999), as amended by the Treasury and General Government Appropriations Act, 2002, Pub. L. 107–67, 107th Cong. § 642, 115 Stat. 514, 555 (2001) and Explanation and Justification for Administrative Fines, 65 FR 31787 (May 19, 2000) and 66 FR 59680 (November 30, 2001). The sunset date of the program is December 31, 2003. *See* 11 CFR 111.30.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on administrative fines were transmitted to Congress on March 7, 2003.

Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking ("NPRM") on April 25, 2002 in which it sought comment on proposed rules amending the current administrative fines regulations based on its experience with the program. 67 FR 20461 (April 25, 2002). The NPRM sought comment on proposed amendments to lower the civil money penalties for all late- and non-filers, and to clarify how it notifies respondents in the administrative fines program of reason-to-believe findings and final determinations. The NPRM also sought comment generally on: (1) Whether to limit the scope of the civil money penalty reduction to those committees with less than $50,000 in financial activity in a reporting period, or alternatively, to limit reduction to the fine schedule applicable to late-or non-filed non-election sensitive reports; (2) Whether to clarify that certain circumstances do not constitute "extraordinary circumstances" for purposes of challenging a reason-to-believe finding; and (3) Whether to revise the method of calculating the "level of activity" on which civil money penalties are based to exclude certain non-Federal activity.

The comment period closed on May 28, 2002. Comments were received from FEC Watch and from the law firm of Sandler, Reiff and Young.

11 CFR 111.35 If the Respondent Decides to Challenge the Alleged Violation Or the Proposed Civil Money Penalty, What Should the Respondent Do?

11 CFR 111.35(b) sets forth the requirements for written responses that a respondent may choose to make to challenge a reason-to-believe finding or a proposed civil money penalty. It contains specific circumstances that the Commission will consider in determining whether to levy a civil money penalty, including the existence of "extraordinary circumstances" that were beyond the respondents' control, that continued for at least 48 hours, and that prevented the timely filing of a report. Paragraph (b)(4) provides four broad examples of circumstances that the Commission will not consider to be "extraordinary." Respondents have raised a number of other defenses that the Commission has determined are not "extraordinary circumstances."

The NPRM sought comment as to whether 11 CFR 111.35 should be revised to state more specifically the kinds of circumstances that the Commission will not accept as an