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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AF41

Financial Assurance Requirements for Decommissioning Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The proposed amendments are in response to the potential deregulation of the power generating industry and respond to questions on whether current NRC regulations concerning decommissioning funds and their financial mechanisms will need to be modified. The proposed action would require power reactor licensees to report periodically on the status of their decommissioning funds and on the changes in their external trust agreements. Also, the proposed amendment would allow licensees to take credit for the earning on decommissioning trust funds.

DATES: Submit comments by November 24, 1997. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The NRC published an advance notice of proposed rulemaking (ANPR) for "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors" on April 8, 1996 (61 FR 15427). The NRC was seeking comments on its proposal to amend 10 CFR 50.2, 50.75, and 50.82 to require that electric utility reactor licensees provide assurance that the full estimated cost of decommissioning their reactors will be available through an acceptable guarantee mechanism if the licensees are no longer subject to rate regulation by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC) and do not have a guaranteed source of income. The proposed amendments would also allow licensees to assume a positive real rate of return on decommissioning funds during the safe storage period. Lastly, a periodic reporting requirement would be established.

The ANPR specifically requested comments on the above amendments and on six areas of consideration for decommissioning:

1. The timing and extent of deregulation of the electric utility industry;
2. Stranded costs;
3. Financial qualifications and decommissioning funding assurance for nuclear power plants;
4. Decommissioning funding assurance for a Federal Government licensee;
5. The status of decommissioning trust funds during the safe storage period; and
6. Reporting on the status of decommissioning funds.

In response, the NRC received 650 comments from 42 commenters, and the commenters have been classified into 4 groups. The largest group of respondents was utilities and utility groups (28 commenters), followed by public utility commissions and related organizations (9 commenters). Two public interest groups submitted

comments, as did a group of 3 commenters referred to as "other."

The discussion of the comments received is presented by general comment area and specific questions posed within each area. The questions appear in the order as presented in the ANPR, followed by the Commission's responses.

Discussion of Comments

A. Timing and Extent of Electric Utility Industry Deregulation

A.1 Likely Timetable

On the issue of the timing and extent of deregulation, most commenters addressed only the timing question. If commenters also discussed the question of extent, they generally only distinguished between deregulation of the wholesale market and deregulation of retail power sales, although timing estimates usually referred to retail deregulation. Almost half of the commenters did not take a position on the timing issue. Seven commenters stated that the timing of deregulation could not be predicted.

Several commenters stated only that they took the same position as the Nuclear Energy Institute (NEI), an organization that represents many nuclear utilities. NEI estimated that about ten years would be necessary to bring about restructuring and deregulation. A few commenters suggested that from five to ten years would be sufficient. Two commenters pointed to events in States that were scheduled to occur as early as 1998 and others predicted significant deregulation within five years or less or "rapidly." Two commenters suggested that deregulation would take place slowly and require a considerable time to complete.

A.2 Restructuring or Deregulation Scenario

Phases of Deregulation. Several commenters stated that an initial phase of deregulation of the generation or wholesale electricity market has already begun and is likely to continue. Utilities are now preparing for deregulation by undertaking cost reductions (e.g., workforce reductions, contract renegotiations, regulatory asset reductions, operating cost reductions), strategic alliances and mergers, and expansion into unregulated venues. Five commenters expressed their belief that a

second deregulatory phase would follow and lead to the restructuring of the transmission sector and to retail competition. However, many commenters noted that significant uncertainty exists regarding the breadth, timing, and implementation of the new competitive electricity business.

The pace of deregulation, according to one commenter, will be set by Federal and State regulation. One commenter stated that competition would be phased in slowly with existing generation assets being "kept whole" through standard regulated rates.

Ultimate Extent of Rate Regulation or Deregulation. Four commenters expect that electricity prices from generators will ultimately be largely deregulated or unregulated. One commenter stated that generation of electricity will become partially deregulated, but may not be fully deregulated if reliance on market forces does not adequately ensure safe and reliable generation supplies.

Nine commenters expect that transmission rates will remain subject to Federal Energy Regulatory Commission jurisdiction. Regional power markets (RPM) and independent system operators (ISO) (discussed below) would also fall under FERC jurisdiction, according to one commenter. Ten commenters anticipate that distribution (retail) rates are likely to remain subject to State jurisdiction. One of these commenters stated that distribution rates may be regulated under a price cap or incentive-based regulation.

Retail wheeling and pool-based pricing¹ will provide market pricing at all levels, including the retail level, according to one commenter. Three commenters believe that retail wheeling will become widespread.

One commenter indicated that nuclear power plants and non-utility generators, even if released from rate regulation by States or FERC, may remain under some forms of regulation, including State and Federal siting and environmental regulation.

Resulting Business and Industry Structure. Although one commenter stated that NRC should abandon any attempt to anticipate market structure, other commenters suggested that the following features might characterize the industry subsequent to deregulation and restructuring:

- Functional unbundling which is the divestiture of generation, transmission, or distribution systems.

- Many, and perhaps all, transmission systems operated on a State-wide or region-wide basis. An ISO will operate the system, coordinating energy production and delivery with demand and provide a pool-based spot market price for energy. RPMs or power market exchanges (PMEs) for competitive generation will accept bids from all generators that want to participate in the market, establish the clearing price, and determine the sequence of generator dispatch. Bilateral contracts for the direct purchase of power will also be allowed.

- Different treatment for nuclear generation than for other types of utility-owned generation. Even if nuclear generation is permitted to compete in an open market, some regulatory mechanisms may remain in place to ensure that nuclear-related costs (safety, security, waste disposal, decommissioning) are recovered by some means other than the market price of power. One of these commenters stated that regulated local distribution companies would end up owning nuclear generating plants.

- Continued economic viability for nuclear generation for many years as a result of marginal costs that are quite low. Another commenter argued, however, that there is no obvious deregulated market for many or most existing nuclear power plants because of the uncertainty of the costs of decommissioning and the disposal of high-level nuclear wastes. This commenter stated that neither NRC rulemakings nor short-term passage of time will resolve these issues. A third commenter asserted that competitive pressures will lead to the early retirement of some nuclear plants.

One commenter argued that, given the changes under consideration and already under way, it is no longer credible to assume that utilities can always raise rates or otherwise recover whatever costs are needed to safely operate and decommission nuclear plants. Another commenter suggested that if the NRC chooses to proceed with a rulemaking, the rule should accommodate both nuclear units subject to traditional regulation and nuclear units in the competitive markets.

A.3 Differences in State Policies and Implications

Commenters expressed viewpoints on the likely differences in State deregulatory efforts and policies. One commenter declared that all States will ultimately undergo restructuring and deregulation in some form. Nine commenters, however, suggested that some States may reject restructuring

entirely, regardless of what other States do.

Four commenters feel that States will possibly or probably be compelled by competitive forces to deregulate, particularly if neighboring States do so. One of these commenters added that States within a geographic region (where there are no physical barriers to electric transmission) are likely to migrate to a similar industry structure, either as a result of Federal legislation or market pressures. Two other commenters provided examples of market or political pressures that could affect neighboring States' decisions to deregulate.

One commenter stated that some regulators in States that already enjoy low-cost electric service appear reluctant to endorse competition because of concerns that indigenous utilities will seek to sell power to the external market where profit margins could be greater. Should market factors provide an advantage to States that foster competition (by allowing indigenous utilities to gain strength by acquiring market share), States that resist competition could put their utilities at a disadvantage. While State regulators may elect to defer the decision on competition, economic or social pressures could influence that decision.

Another commenter indicated that States implementing retail competition may face the risk that a utility in a neighboring State could obtain open access without reciprocal access being provided to in-State utilities seeking to enter the State that does not provide competition.

Three commenters remarked that reform may proceed at different speeds in different States because of local market and political pressures. One of these commenters recommended that NRC accommodate the varied pace to avoid hindering or forcing transitions.

In response to the ANPR's query regarding "hybrid" systems, one commenter believes that a hybrid system of regulation is likely to emerge as States deal with economic issues in a variety of ways. Another commenter stated that a hybrid system could exist for some time. A third commenter reported that, while a hybrid system could probably exist, it may not result in the least expensive electricity. Under a hybrid system, industry structure may vary from region to region. Other commenters, however, felt that a hybrid system is unlikely to prevail. They stated that a hybrid may be operationally cumbersome or even unworkable because the markets are not defined by State boundaries and

¹ Retail wheeling refers to the selling of bulk power to a retail customer by way of a third party's transmission system. Pool-based pricing is a pooling of electricity produced by various generators for resale to consumers.

because the grid is highly integrated and interdependent. One of these commenters also stated that a patchwork or hybrid system may reduce the opportunities to market some nuclear generation. Three commenters said they could not predict whether a hybrid system can exist or how one State's policies will affect its neighbors.

One commenter expressed concern that deregulation and reduced oversight at the State level may reduce the certainty that out-of-State partial owners of nuclear facilities will collect and expend decommissioning funds.

Response. The above questions were posed for comment so the NRC could obtain estimates on the timing of deregulation, phases, and possible different approaches that may be used in how States would address deregulation. These comments are being grouped under one response as they all contribute to whether the Commission should proceed with a proposed rule now. While the responses to this set of questions ran the gamut of opinion on this issue, the comments have not caused the Commission to change its position that it must act now to be in a position to respond to the upcoming changes in the electric utility environment that could affect protection of public health and safety. Increased competition could result in economic pressures that affect how licensees address maintenance and safety in nuclear power plant operations, as well as the availability of adequate funds for decommissioning. The comments received and the NRC staff's independent review of deregulation activities also indicate that NRC power reactor licensees are likely to have sufficient notice of changes in their regulatory regimes so as to be able to secure necessary financial assurance for decommissioning should they no longer qualify, in whole or in part, as electric utilities. (The staff notes that most, if not all, PUCs and FERC are addressing decommissioning funding assurance in their deregulation initiatives.) Hence, these comments reinforce the Commission's position that a rule is necessary and timely, given electric utility restructuring and the deregulation legislation being proposed or enacted in several States and by Congress.

B. Stranded Costs

Many commenters expressed the view that regulators are likely to allow prudently incurred stranded costs to be recovered in some manner. Many of these commenters felt this was particularly true for prudently incurred

decommissioning costs. Following are viewpoints typical of these comments.

The probability is high that regulatory mechanisms will be developed to replace cost recovery procedures established through "traditional" regulatory procedures. These mechanisms (e.g., wire charges, non-bypassable customer fees, including securitization, exit fees) may be different from current mechanisms, but the probability of recoverability under these mechanisms is no less than it would have been under conventional regulation. The mechanism chosen, and its associated equitable allocation of cost responsibility between customers and shareholders, will be determined through the inevitable give and take of the restructuring process, if one is implemented.

FERC, in Order 888, April 24, 1996, effectively established a precedent that, for electric sales under FERC jurisdiction, there will be full recovery of all costs that were prudently incurred, based on an expectation of serving customers in the future, but have or may become stranded as a result of moving to a competitive market. Although the FERC order pertains to wholesale markets, most believe the precedent has been set and the same standard will apply to stranded costs that result from retail competition. It is reasonable to assume that legislators and generators will take distinct precautions in relation to nuclear generation. Even if nuclear plants are permitted to compete on the same basis as other baseload generation, regulatory mechanisms must be in place to ensure that certain costs (safety, security, waste disposal, and plant decommissioning) are recovered by some means other than the market price of power. Plausible mechanisms that regulators could use to recover costs include competition transition charges and non-bypassable charges. One utility fully expects that there would be 100 percent recovery of nuclear stranded costs in a restructured electric industry.

However, other commenters expressed some uncertainty. Some commenters thought cost recovery was appropriate, but did not address its likelihood. In some cases, commenters advocated specific NRC action to address the situation.

One commenter stated it is premature to speculate as to who will ultimately bear the responsibility for stranded costs (estimated between \$7 and \$17 billion in New Jersey alone). While FERC Order 888 addresses this issue for the wholesale market, that decision remains open to legal challenges that may affect its final outcome. Moreover, because

potential retail stranded costs are orders of magnitude larger than wholesale stranded costs, a different solution to this issue for retail competition may ultimately be deemed appropriate. Where stranded costs may be determined to be recoverable, it is conceivable that those costs will be recovered through some form of non-bypassable "wire" charge.

The commenter further stated that it is not clear how construction costs will be treated as State PUCs define policy for restructuring. FERC and some State PUCs already have proceedings under way to determine the amount and means of stranded cost recovery. There is also the possibility of Congressional action. NRC should take a proactive position with FERC and State regulators that potential stranded costs, including those that may be related to specific decommissioning cost obligations, should be recovered by the electric utility as part of their rates. (Several other commenters also suggested that NRC should aggressively lobby FERC and/or PUCs to allow utilities to recover stranded decommissioning costs.)

One PUC does not accept that any source of electrical generation is "non-competitive" per se, and thus does not accept that nuclear plants are non-competitive because of high construction costs. It is premature, an oversimplification of a complex issue, and a potential disincentive to mitigate costs to label any type of generation non-competitive at this early stage in restructuring. Even if nuclear generation is sold at less than current combined fixed and variable costs, the market price will probably exceed the variable component, so there will be some recovery of fixed costs. Costs that are not recoverable could be the subject of Federal or State stranded cost proceedings. Federal and State authorities must inquire whether the unit is necessary to the continued safe and reliable operation of the interconnected grid, and if the answer is yes, a proration of the costs may be necessary among all customer classes that benefit from the continued operation of the unit. If the unit is not necessary, it should be removed from service. The individual State commissions will have to decide who should bear the cost to prematurely shut down, as opposed to decommission, an uneconomic plant.

A commenter stated that the treatment accorded stranded investment or costs may vary from jurisdiction to jurisdiction and few generalizations are possible. The NRC should not become embroiled in individual rate proceedings or debates about particular

cost recovery mechanisms, but should instead define a clear policy that, from a public health and safety perspective, licensees must be allowed to maintain an adequate financial posture to support ongoing safe operation and decommissioning. The NRC's policy statement² should be a strong statement of its expectations. NRC should participate in the NARUC subcommittee addressing restructuring.

Some commenters stated that decommissioning obligations are qualitatively different from other stranded costs. FERC has not yet adopted a mechanism that provides for recovery of decommissioning costs. Order 888 provides for recovery of wholesale stranded costs through the "revenues lost" approach. However, this approach only accounts for and allows recovery of fixed costs already incurred by utilities and does not address costs that must be collected in the future. A better solution is for the Federal Government to assure the continuing recovery of decommissioning costs in utility rates, through non-bypassable fees to be paid by utility customers leaving the system, or through other surcharges tied to the use of transmission facilities. The NRC should support cost recovery initiatives and help educate State commissions on the importance of ensuring continued full collection of decommissioning costs.

Another commenter noted that the best ultimate assurance of the collection of the cost of decommissioning is the ability of the plant to operate at sufficiently low marginal costs to collect decommissioning costs in gross margins. The NRC could improve the likelihood of this outcome by (1) encouraging the IRS to allow payments for decommissioning costs to be generally deductible rather than deductible only if they are ordered by a regulatory agency and (2) strengthening utilities' efforts to recover stranded costs. As plants are further depreciated and the cost of nonnuclear generation escalates, existing plants will become more competitive.

Some commenters asserted that in the process of identifying well-run plants and seeking the sale or closing of the not-well-run plants, the problem of who should pay for unrecovered costs must be addressed. To the extent that the nonsalability is caused by problems created by poor management, the seller is responsible. If the NRC or another agency would undertake a program to address the problem of poorly

performing nuclear plants and encourage continued maintenance of efficiently operated plants, many of the questions asked by the ANPR might find answers. Timeliness in identifying poorly performing plants is critical because while the industry is reforming itself, the ability to affect the inventory of nuclear plants is at its highest level. Once plants have been evaluated, the NRC should be prepared with a task force to recommend an orderly plan for the disposition of those few plants and operators who will not be recommended for further operations.

A few commenters believed that the full burden of covering the costs, including decommissioning costs, of uneconomic nuclear plants should fall on utility shareholders rather than customers unless there is a compelling case otherwise.

Response. The Commission does not see a need to modify its position that its regulations need to be modified at this time to address the changing regulatory situation for power reactor licensees because of the comments received. Specifically, the Commission agrees with the commenters who hold the view that regulators are likely to allow prudently incurred stranded costs to be recovered in some manner and do not see a need to interfere in the financial regulation of nuclear power plants with respect to the question of stranded costs. Some of the comments, in which actions were proposed for the NRC's involvement with respect to stranded costs, were beyond the NRC's sphere of regulation. Examples include having the NRC identify poorly run plants, requiring the plants to be sold and for the Federal Government to be the purchaser of last resort and even run the plants if necessary.

The NRC has addressed the issue of stranded decommissioning costs elsewhere in this notice. However, the NRC is aware that stranded costs, insofar as their recovery affects a licensee's ability to obtain sufficient funds to protect public health and safety, must be addressed to ensure that they are being adequately handled. Further, States are considering a number of options for assessing non-bypassable charges to recover decommissioning costs, as well as other stranded costs. One such option is "securitization," which entails financing the recovery of stranded costs through issuance of bonds whose principal and interest would be repaid by an irrevocable, non-bypassable charge set by State statute on an electric utility's distribution customers. Because the income stream to repay the bonds would be securitized by the irrevocable, non-bypassable

charge, the bonds would be highly rated and would thus require a lower interest rate than riskier debt. Also, these securitized bonds would not be part of the utility's capital structure, and so would not reflect the higher cost of equity capital. The spread in interest cost between highly rated securitized debt and lower rated utility capital that includes both debt and equity makes securitization attractive to many states. The NRC believes that securitization has the potential to provide an acceptable method of decommissioning funding assurance, although other mechanisms that involve non-bypassable charges provide comparable levels of assurance and should not be excluded from consideration by State authorities.

As stated in the NRC's "Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" September 23, 1996 (61 FR 49711): "Notwithstanding the primary role of economic regulators in rate matters, the NRC has authority under the Atomic Energy Act of 1954, as amended, (AEA) to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety." The policy also goes on to explain that the NRC will work and consult more closely in the future with the National Association of Regulatory Utility Commissioners (NARUC), FERC, and the Securities and Exchange Commission (SEC) so that the NRC may express its positions on safety and encourage the various regulatory bodies to continue their allowances of adequate expenditures for plant safety. Lastly, the proposed reporting requirements of this rulemaking are seen by the NRC as a vehicle for the Commission to monitor this potential concern.

C. Nuclear Financial Qualifications and Decommissioning Funding Assurance

C.1 Funding Assurance if Plants Shut Down Prematurely

Most commenters accepted the premise of the question, whether costs of a shortfall in decommissioning funding of a prematurely shut down plant could be passed along to ratepayers. This conclusion was based in part on past experience and in part on a belief that State PUCs will develop methods to ensure that decommissioning costs are covered. Several commenters said that recovery from ratepayers or shareholders would depend on the plant management's responsibility for the premature shutdown. If management were deemed responsible, efforts would be made to have the shareholders pay for

² See Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry, (61 FR 49711; September 23, 1996).

decommissioning; but if the management were not deemed responsible, State PUCs would find methods to have the ratepayers provide the funds. Commenters noted that, in the past, decommissioning costs had been recovered for prematurely closed reactors (e.g., Dresden 1, Fort St. Vrain, San Onofre Unit 1, Trojan, Yankee Rowe). In a transition from full regulation to full competition, one commenter suggested a window to allow continued or possibly accelerated recovery. Another commenter said that a surcharge might be placed on customers. Under competition, recovery could be made through other revenue streams of the licensee, a non-bypassable fee, or debt or equity of the licensee. Two other commenters suggested that transmission charges would be the most likely source of funding. Retained earnings of the utility were suggested as a source of funds. Two commenters expected shareholders to be responsible for providing decommissioning funds in cases of premature shutdown.

Two commenters, including one PUC, conceded that PUCs might not have jurisdiction to require funding from ratepayers. Under such circumstances, one PUC stated, funding of decommissioning would be greatly dependent on the financial viability of the regulated firm. The risk of recovery would rest squarely on its shareholders. If the shareholders could not pay, the liability would then transfer to taxpayers. For this reason, the commenter suggested, decommissioning might be accorded special treatment.

One commenter argued that the solution to premature shutdown was for NRC to require assurance for decommissioning costs prior to approving reorganizations or license transfers. Potential funding shortfalls should be addressed, another argued, on a case-by-case basis, and might be avoided by sale of the nuclear plant to an entity better able to manage it effectively. Two others suggested that a proper funding mechanism would have to be identified and put into place at shutdown, without further specifying what that mechanism could be. In the opinion of one of these commenters, such funding could be a difficult problem because currently, on an aggregate basis, utilities' decommissioning costs are only about 25 percent funded (about \$9 billion out of \$35 billion), although plants are at about 43 percent of their aggregate service lives. Early underfunding could force high back-end funding, making the plants uncompetitive.

A commenter stated that, contrary to the planned 40-year operating life of nuclear power plants, material and operating evidence suggests plants' operating lives are closer to 15–25 years. Hence, the plan to recoup decommissioning costs of over a 40-year operating life may be unrealistic.

NEI took the position that the source of funds to shut down a plant prematurely would be different from company to company and would have to come from other ongoing revenue streams of the company or from alternative sources such as transmission or distribution charges, exit fees charged customers leaving the system, or other regulatory charges. NEI also supported NRC requirements for financial assurance, such as those currently found in 10 CFR 50.75. Five commenters stated that they explicitly adopted the NEI position.

Response. The Commission recognizes the importance of decommissioning funding assurance for prematurely shutdown plants and believes that its current case-specific approach, outlined in § 50.82, strikes the best balance between level of assurance and cost. The alternative of requiring accelerated funding for all plants over a defined period, to cover the possibility of premature shutdown at some plants, would be too arbitrary and would lead to wide variations in impacts on licensees. Accelerated funding results in the inequitable inter-generational problem of the present generation paying for the decommissioning costs, while the future generation may receive the benefits of future electricity generation without incurring the costs of decommissioning. Although the Commission is not proposing to expressly require accelerated funding to address premature shutdowns, to the extent that licensees no longer qualify, in whole or in part, as electric utilities, they will, in effect, have to "accelerate" funding by getting "up-front" forms of financial assurance. The staff expects, however, that PUCs and FERC will address decommissioning funding through cost recovery mechanisms. The Commission is aware that some plants have not operated for the full 40 years. However, it is likely that some plants will continue operating for the full 40 years and beyond. Therefore, the Commission does not believe any change is required for the planned 40-year life.

C.2 When Does an Operator Cease To Be a Utility

On the question of when an operator of a nuclear power plant ceases to be a "utility" as defined in 10 CFR 50.2,

seven commenters interpreted the definition strictly and concluded that, if an operator ceases to satisfy the terms of the definition, the operator is no longer a "utility." Several commenters used almost the same formula: an operator would cease to be a "utility" when it ceases to provide service to retail or wholesale customers at rates set by a separate regulatory authority. One commenter supported a clarification of NRC's regulations that would establish its continued ability to require the proper accumulation of decommissioning funds, while two argued that the NRC should relax its definition to cover entities that purchase electricity and recover the costs from rates charged customers or from other revenue guarantees. Another commenter argued that NRC should seek additional assurance in advance of deregulation.

NEI stated the contrary argument, noting that it is not apparent that any licensee will fall outside the definition of "utility" in the near future, even after restructuring. NEI argued that as long as a licensee has adequate cost-recovery mechanisms under the authority of State or Federal regulations, it should continue to be considered a utility.

Other commenters argued that even after deregulation the price charged for electricity will be established by the regulatory process or in other ways that will mean a nuclear plant will continue to be an "electric utility." One stated that the term "electric utility" should be construed to include all entities that have been authorized by a State PUC, FERC, or other governing entity to recover decommissioning costs from customers. Two commenters expected plants to remain subject to State PUC jurisdiction, and therefore to satisfy the regulatory definition. Another argued that if a portion of a vertically integrated company is subject to cost recovery pricing, the definition is satisfied. Two said that if a plant sets its own rates for electricity, the definition is satisfied.

One commenter rejected the NRC's emphasis on an operator's satisfying the definition of utility, and argued that the emphasis should be on the financial viability of the entity responsible for decommissioning the unit.

Response. Consistent with the position taken in the ANPR, the NRC is proposing to revise its definition of "electric utility" to introduce additional flexibility to address potential impacts of electric industry deregulation. The Commission notes that the key component of the revised definition is a licensee's rates being established either through cost-of-service mechanisms or through other non-bypassable charge mechanisms, such as wire charges, non-

bypassable customer fees, including securitization or exit fees, by a rate-regulating authority. Several States are considering deregulation of future operations of nuclear power plants so that revenues will not be determined by cost-of-service but by market-set prices. Should a licensee be under the jurisdiction of a rate-regulating authority for only a portion of the licensee's cost of operation, covering only a corresponding portion of the decommissioning costs that are recoverable by rates set by a rate-regulating authority, the licensee will be considered to be an "electric utility" only for that part of the Commission's regulations to which those portions of costs pertain. For example, if a licensee were able to collect 40 percent of its decommissioning costs through rate-regulated activities, such as traditional cost of service regulation or use of non-bypassable charges, the remaining 60 percent of the costs would need to be accounted for in a manner consistent with methods acceptable for a licensee other than an electric utility. In this proposed rule, the definitions of several relevant terms are also provided for the first time in § 50.2. It is noted that some commenters misinterpreted the intent of the existing definition of "electric utility" with respect to entities that establish rates themselves. As stated in the proposed definition, those entities include only public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies. Therefore, the proposed definition is being proffered as clarification and to show the continued importance the NRC places on the role of regulatory authorities in the setting of electric utilities' rates with respect to the collection of funds for decommissioning and other costs. This is consistent with the NRC's draft policy statement.

C.3 Assurance Options

The following topics were discussed by commenters in response to the ANPR's questions relating to the options to be considered if an electric utility found itself operating a reactor that was no longer regulated by a rate-setting State or Federal body.

Full Up-Front Assurance. Most commenters opposed requiring all nuclear plants to provide full up-front assurance, often arguing that it is unnecessary or that it is overly burdensome to nuclear plant owners. Many commenters reminded NRC that deregulation does not inherently mean a total lack of regulation or a lack of cost recovery. One commenter believed NRC should, at the time of restructuring,

require only an assurance level commensurate with the completed percentage of the operating life of the plant. One commenter opposes advance funding on the grounds that doing so would incorrectly view all properly executed reorganizations as resulting in successor operators being unqualified to ensure decommissioning compliance.

One commenter believes that assurance should be provided before licensees are exposed to the full pressures of competition (3–5 years). Two commenters supported the idea of requiring assurance prior to NRC's approval of reorganizations that transfer control of a nuclear plant.

Many commenters favor requiring reasonable financial assurance for entities that cease to be rate-regulated utilities. Many of these commenters, and others, view NRC's current regulations as basically adequate to address these situations, although the regulations might expand upon the allowable methods of assurance.

Additional Financial Assurance Methods. Additional financial assurance methods suggested include continued rate-regulating entity determinations, an appropriate charge for decommissioning in contracts for the plant's output or in the transmission or distribution charges of the licensee or its affiliate if the charges are assigned to the licensee or its decommissioning fund, and exit fees charged against customers leaving the system. A few commenters would include any insurance for premature decommissioning caused by an accident. One commenter would allow utilities to establish any method that may be developed, including methods requiring approval of PUCs or FERC. Two others would allow assurance through a plan for gradually recovering decommissioning funds via rates and prices, even for deregulated entities. Others argued that NRC should offer the utilities flexibility and that each situation should be assessed on a case-by-case basis if and when it occurs.

Timing of Rulemaking. With regard to the timing of the rulemaking, a few commenters support prompt NRC regulatory action to ensure that adequate financial assurance is in place prior to restructuring, before waiting further to learn exactly how the industry will develop. Several other commenters, however, believe that rulemaking is premature until more is known about restructuring. Several commenters suggested that NRC already has the authority to approve or disapprove any transfer of license related to a merger or reorganization. Two commenters stated that NRC should evaluate the regulations only after further studies

that (1) identify those nuclear plants that are not likely to survive the imposition of competitive forces (i.e., those plants that are not run efficiently or that cannot be made to run well), or (2) develop quantitative measures for assessing the adequacy of decommissioning funds and rates of accrual. New rules, according to one commenter, should be timed to enable utilities to take advantage of stranded cost recovery.

Added Assurances for Safe Operation and Decommissioning. Many commenters voiced opposition to the ANPR's query regarding whether the NRC should require additional assurance for adequate funds for safe operation and decommissioning in anticipation of deregulation. One commenter argued that additional assurances in this area may not add to or strengthen the obligation already imposed by the terms and conditions of the license. Others reasoned it unnecessary, given other existing NRC requirements and FERC's framework for recovery of stranded costs, including decommissioning.

Only one commenter supported additional assurance for safe operation and decommissioning in anticipation of deregulation.

Joint Liability.³ In response to the ANPR's query regarding newly created organizations or holding companies being held jointly liable for decommissioning costs, four commenters supported the idea because of the added assurance it would provide. Three commenters would consider requiring joint liability on a pro rata basis, possibly taking into account the remaining years of licensed life. One commenter cautioned that jointly liable parties may disagree on decommissioning methods (e.g., prompt vs. deferred) because of the cash flow implications.

Numerous other commenters opposed the idea of joint liability, arguing that it was unnecessary, would inhibit flexibility, would weaken competitive position, or would undermine the separate corporate identity or the responsibility of the individual entities. Some of these commenters suggested that joint liability could be acceptable if it were an optional method of financial assurance.

One commenter stated that new owners and operators should have to assume the responsibilities and

³ The concept of joint liability is defined in Black's Law Dictionary (4th Ed.) as:

One wherein joint obligor has right to insist that co-obligor be joined as a codefendant with him, that is, that they be sued jointly.

liabilities of the previous owners and operators. Another stated that the financial assurance obligation should follow the owners and operators, whether regulated or unregulated, who have incentives to properly manage and operate the units.

Impacts. Many commenters claimed that requiring full up-front assurance would be overly burdensome to nuclear plant owners. Others argued that additional assurances could inhibit competitiveness relative to nonnuclear facilities, impede reorganization, aggravate potential stranded investment, or create additional problems for utilities, ratepayers, or taxpayers at a time when competitive forces are already causing economic concerns. Examples of such problems would include the difficulty for affiliated businesses to raise capital, or the need for affiliated entities to charge more for its services reducing its competitive position in the industry. Some commenters argued these effects could reduce the likelihood that decommissioning will be fully funded or could increase the likelihood of premature shutdown.

Response. The Commission is addressing most of these comments by revising the definition of "electric utility" and by instituting a reporting requirement. As to the issue of requiring full up-front funding in advance of deregulation, the Commission agrees with the commenters that such a requirement would be overly burdensome if applied to all licensees. However, given the proposed change to the definition of "electric utility" in this action, any licensee no longer overseen by a rate-setting regulatory authority, i.e., a licensee other than an electric utility, would need to comply with the decommissioning funding assurance requirements of § 50.75(e)(2) unless that licensee can otherwise conclusively demonstrate a government-mandated, guaranteed revenue stream for all unfunded decommissioning obligations. The options contained in that section include prepayment; an external sinking fund coupled with a surety method or insurance for any unfunded balance; or a surety method, insurance, or other guarantee method.

The Commission emphasizes that the changes to the definition of "electric utility" introduce additional flexibility to address deregulatory developments. Thus, the NRC would expect licensees to be more likely to continue to qualify, in whole or in part, as electric utilities under the revised definition. Although licensees who no longer qualify, in whole or in part, as electric utilities could encounter difficulties in securing

alternative decommissioning funding, experience to date indicates that PUCs and FERC are addressing decommissioning costs through various recovery mechanisms.

The timing of the rulemaking was addressed in the response to comments in section A of this notice. Any additional rulemaking in this area would result from experience gained from industry and regulatory actions. As several of the commenters stated, the NRC has the authority to approve or disapprove any transfer of license related to a merger or reorganization. Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80 provide that control over a license may not be transferred, directly or indirectly, unless the Commission consents to such transfer in writing.

The regulations do not explicitly impose joint liability on co-owners and co-licensees. As stated by some commenters, joint liability may create problems with respect to potential disagreement on decommissioning methods, the inhibition of flexibility, the weakening of competitive position, and the difficulty in implementation. Also, as some noted, joint liability may not be needed. The new owners and operators should assume the obligation to safely operate the facility and assure adequate funding for decommissioning, as they have the incentives to properly manage and operate the units. More importantly, however, is the fact that with the proposed modified definition of "electric utility," restructured entities would either have to have adequate coverage of decommissioning funding obligations through some non-bypassable cost recovery mechanism or would be required to provide the types of up-front assurance described in § 50.75(e)(2). Those licensees who remain utilities would have the funding assurance provided through being rate-regulated under § 50.75(e)(3). The Commission considers this level of assurance to be adequate and therefore sees no need to impose an additional regulatory obligation of joint liability on co-owners or co-licensees.

Lastly, with respect to the question of impacts, the Commission has considered the comments relating to potential impacts in arriving at the positions taken. The Commission understands that financial assurance would place a burden on licensees that may affect their competitiveness in a deregulated environment. The Commission has chosen to take an approach that would create no additional financial impact over present regulations for electric utilities and has also expanded the definition of electric

utility to accommodate types of rate regulation not previously anticipated. There are also sufficient existing options to demonstrate financial assurance for non-electric utilities. Entities without adequate financial capital may find it difficult to both finance up-front decommissioning funding and operate a nuclear power plant safely. These newly formed companies may not be good candidates for nuclear power plant ownership.

C.4 Financial Test Qualifications

About half the commenters flatly opposed requiring licensees to demonstrate financial assurance by satisfying minimum standards of net worth, cash flow, or other financial measures.

Many of the commenters, including NEI and four commenters who adopted the NEI position, argued that such a test was not necessary or appropriate. If NRC is concerned about the financial condition of a particular licensee, three commenters said, an individualized case-by-case review would be more appropriate. Some commenters said that financial measures appropriate for investor-owned utilities would not be useful for cooperatives, or for utilities that do not have parent companies. Because generation and transmission companies typically are highly leveraged, with many of their assets in the nuclear generating facility, they cannot meet a test with a tangible net worth requirement of ten times the current decommissioning costs, but this does not mean that they cannot satisfy their financial obligations. A non-bypassable charge was suggested as an alternative.

Some commenters suggested that NRC should adopt more than one alternative test, none of which would be mandatory. Any alternative adopted should be consistent among owners, and should not discriminate against one class of owners, and should not be applied as a static one-time requirement. Other suggestions included a requirement that a firm demonstrate that it had "ample margins, subsequent to restructuring" to cover funding contributions or to cover decommissioning costs in the event of a premature shutdown. Another suggested disclosure standards, developed through the Financial Accounting Standards Board, for use in annual reports and 10-K filings, that would be reviewed by Federal regulators. Still another argued that measures of market value and cash flow, rather than net worth, were appropriate in a competitive environment, and that the ratio of available cash and cash equivalents to

unfunded decommissioning requirements would be the best measure of ability to support decommissioning, along with an assessment of the utility's competitive situation. Determining whether a utility had minimum cash flow sufficient to maintain its plants in a non-operating, interim stage prior to decommissioning, and the period of time the utility could sustain such cash flows, was suggested by one commenter.

One commenter suggested using a financial test as an indicator, from which a Federal agency could determine that the utility needed assurance of continued rate recovery of the decommissioning obligation.

Only two commenters endorsed a test of financial stability as a financial test qualification. One pointed to assets sufficient to fund an immediate decommissioning, or a minimum level of financial stability (measured through investment grade securities) or insurance, or a surety to cover decommissioning costs as three potentially acceptable mechanisms. The other approved of parent or self-guarantees, but noted that generators with nuclear facilities might have difficulty meeting the financial test criteria, including the investment grade bond rating requirement.

Response. With the proposed revision of the definition of "electric utility," licensees who no longer meet the new definition will need to comply with the requirements of § 50.75(e)(2), which describes the acceptable methods of financial assurance for decommissioning for a licensee other than an electric utility. These methods are flexible and contain at least four major categories of acceptable methods to ensure funding for decommissioning as identified in the previous response. Few commenters offered insights on other potential test qualifications, although several stated that the financial structure of utilities means that meeting the criteria in 10 CFR Part 30 could be problematic. The NRC would need to conduct additional research and analysis to determine which additional financial measures would be most useful and appropriate if a financial test requirement for parent or self-guarantee were pursued. Criteria could be identified and thresholds developed, but evolution of the industry might mean that the criteria would become outdated and misleading relatively quickly. Hence, the Commission will continue to evaluate this issue, but is not presently offering any changes to its financial test criteria.

C.5 PUC/FERC Certification

Only two commenters gave unequivocal support to the idea of requiring PUC/FERC certification. One encouraged NRC to undertake direct dialogue on certifications with the appropriate PUCs and FERC; the other stated that PUCs and FERC must undertake such certifications and that NRC should impress upon them the importance of doing so. A few PUCs, in the opinion of this commenter, such as California and New York, had already recognized the need to provide this assurance during restructuring. Two other commenters expressed optimism that State regulators would resolve the decommissioning funding problem in the transition to competition, with or without certification, but one went on to say that certification would probably be unnecessary. Of these, six adopted the NEI position, which was that without new Federal legislation it would be difficult to require legally binding certification from PUCs or FERC. Requiring a licensee to obtain such certification would place it in noncompliance, with no way of achieving compliance. If a licensee did obtain certification, however, NEI suggested that it be allowed to satisfy the financial assurance requirements using that mechanism.

Two commenters opposed to certification argued that it would be counter-productive because the utility would have no incentive to maintain adequate decommissioning funds. NARUC and several PUCs either opposed the idea or expressed strong reservations about it. NARUC noted first that no current commission can bind a future commission at either the Federal or State level. However, NARUC was confident that State PUCs would examine the causes of underfunding, if it occurred, and seek remedies. A PUC stated that it might not have the authority to certify that nuclear plant licensees under its jurisdiction would be allowed to collect decommissioning funds through rates after restructuring, and another PUC similarly stated that it could not give a blanket guarantee that all licensees would be allowed to collect revenues to complete decommissioning funding. A third PUC stated that no current commission could legally bind a future commission, so it could not identify an effective form of certification. Another PUC also expressed doubt about how certification would change current procedures, in which PUCs can adjust rates based on the cause for and the prudence of the underfunding. A different PUC noted that, in the past, ratemaking authorities

had allowed recovery and expected them to act in the future in the same way, but could not be certain that they would issue certifications. Another PUC stated that it already has and would maintain authority to ensure that utilities collect sufficient funds for decommissioning. One commenter pointed out that FERC has jurisdiction only over rates for wholesale sales of power. Over 80 percent of decommissioning costs are recovered through rates for retail power sales, over which PUCs have jurisdiction. Relying on State regulators would be particularly problematic for multi-State utilities. Another commenter stated that within five years the issue would become moot and certification would become impractical because of competition and evolving antitrust law. A public interest group had questions about whether PUCs and FERC could certify, but in any case thought NRC should concentrate instead on the licensees. Another commenter noted that since a significant portion of nuclear licensees' business are not FERC-regulated, FERC certification would have no relevance to them.

One commenter suggested procedures through which NRC could interact with State PUCs and FERC; the NRC could determine that a utility's rate of recovery for decommissioning was insufficient, and that determination could be the basis of an action by a PUC to modify the rates.

The final set of commenters argued that the question of certification was one that the PUCs and FERC should determine.

Response. The Commission does not plan to implement certification by the State PUC's or FERC because of the reasons given in many of the comments outlined above. Although "certification" initially appeared to the NRC to be an option meriting further consideration, since experience to date has indicated that PUCs and FERC are addressing decommissioning funding assurance through more viable mechanisms, the NRC is not pursuing this option further.

C.6 Impact of Accelerated Funding

Only a small number of commenters supported the idea of accelerating funding of decommissioning costs. Two expressed general support. Two provided quantitative analyses that suggested that the impact of accelerated funding would not create a large financial burden on either licensees or ratepayers. The Public Utility Commission of Texas reported analysis for three Texas plants that suggested that, for a ten-year recovery period, electric base rates would need to be

increased by about 0.5 percent and the fund earnings would be increased by about 50 percent. For a five-year recovery period, rates would increase by about 1 percent; total life-of-facility contributions by customers would be decreased by about 55 percent. In addition to arguments that the burden would not be great, another argument made in support of accelerated funding was that, after funding was completed, the licensees who had paid up their decommissioning funds would be in a better competitive position. Commenters also argued that earnings from the accelerated funding, because they would have a longer time to earn interest, would grow substantially and provide a gain to the licensees that they would not otherwise obtain.

Licensees both supporting and opposing accelerated funding noted that unless the Internal Revenue Service changed its rule on the deductibility of payments into the decommissioning trust fund, the accelerated payments would not be deductible. The NRC was urged to encourage the IRS to change the rule.

Almost three-quarters of the commenters opposed accelerated funding of decommissioning. Their arguments against the idea stressed (1) that it would adversely impact the competitive situation of nuclear licensees and (2) that it would be inequitable because the amount that each plant would have to supply in an accelerated payment would depend on the age of the plant and the amount it had previously paid in the its decommissioning fund. The financial marketplace, rather than regulation, should determine the speed with which funding is provided. Accelerated funding, in the view of some commenters, could not be accomplished through rate increases and would have to be paid by licensees' stockholders. One commenter argued that utility shareholders should bear the burden of decommissioning costs, but would not do so under accelerated funding. Other commenters argued that accelerated funding would shift the costs of decommissioning onto current ratepayers from future ratepayers. Commenters believed accelerated funding would lead to cash flow problems for licensees and could result in increased borrowing to cover cash outlays. Accelerated funding could lead to the shutdown of marginal facilities, which would be contrary to the intent of the policy and lead to additional shortfalls of decommissioning funding. One commenter argued that the amount of decommissioning funding that will ultimately be required is too uncertain

to be collected through accelerated funding.

Response. The Commission continues to be concerned with the availability and efficacy of financial assurance mechanisms for decommissioning for those licensees whose rate regulatory oversight by FERC or the State PUC's is substantially reduced or eliminated. Under the NRC's current regulations (and as proposed to be modified in this rule), licensees who no longer meet the definition of "electric utility" may use financial assurance mechanisms for decommissioning as defined in 10 CFR 50.75(e)(2), including (i) prepayment; (ii) an external sinking fund coupled with a surety method or insurance; (iii) a surety method, insurance, or other guarantee method, including parent company guarantees and self guarantees coupled with financial tests; and (iv), in the case of Federal, State, or local licensees, a statement of intent.

The Commission is concerned that these financial assurance mechanisms may not be available to some licensees and is thus asking for additional comment on alternative methods of financial assurance that would provide assurance equivalent to that already provided under the Commission's regulations. For example, in the advance notice of proposed rulemaking, the Commission raised the issue of whether requiring the acceleration of decommissioning funding over a shorter period of time (e.g., 10 years) than the period of the operating license would provide an equivalent level of assurance to current allowed mechanisms. As discussed above, most commenters stated their opposition to accelerated decommissioning funding. However, this opposition appeared to be predicated on the assumption that the NRC would require accelerated funding for all power reactor licensees, and not only those who no longer met the definition of "electric utility." Thus, the Commission is asking for additional comments on whether this, or some other equivalent assurance mechanism, should receive additional consideration in this rulemaking for those entities which would not be classified as "electric utilities."

C.7 Potential Shortfalls From Underestimates of Costs

Commenters suggested a range of responses to decommissioning shortfalls occurring as many as 50 years into the future, after a period of safe storage. None, however, clearly identified a source of funding to make up the shortfall.

NEI and eight additional commenters argued that there is a reasonable

probability that future cost estimates could decrease rather than increase because of several factors, including accumulated industry experience, application of new technologies, and reductions in the ultimate disposal volumes of decommissioning wastes. They also suggested that periodic re-estimates of decommissioning costs and adjustments to the rate of collection to reflect these re-estimates, both during operation and in the post-operation phase, could resolve the problem.

Several other commenters emphasized solutions that involved cost estimates. One PUC suggested that the NRC should allow utilities to use State-required facility-specific cost estimates if they were higher than NRC estimates. Two others suggested that NRC should review cost estimates every five years, with more frequent reviews as license termination approaches. The Utility Decommissioning Group predicted that shortfalls would be unlikely to arise suddenly or to be drastic. Two utilities also suggested that periodic reviews of cost estimates, coupled with increased collections as necessary, would remedy underfunding. Two other commenters made only the general statement that current procedures would be adequate, and any shortfalls should be handled through appropriate funding mechanisms.

Some commenters recognized that the problem of underfunding arising after the safe storage period could be serious. One public interest group did not suggest any remedy, stating only that NRC could be virtually certain that the funds accumulated for decommissioning would be insufficient. A utility suggested that the only solution would be to delay decommissioning activities to allow the decommissioning fund to accumulate additional earnings and to modify the decommissioning plans to reduce cash flow needs. Another suggestion was that NRC could require every licensee to adopt an investment strategy that would ensure that the decommissioning fund earned at least the rate of inflation measured by the consumer price index (CPI), and that NRC could require the utility to place additional money into the fund if necessary.

Several commenters recommended approaches to the problem that involved PUCs. Two suggested that underfunding would be remedied by application to the PUC. One suggested such PUC involvement would occur after the shortfall was identified, the other suggested that PUCs would take potential shortfalls into account prior to utility restructuring and that the shortfall would not occur until after

several years of competition. This commenter suggested that a wires charge could be used to ensure that such shortfalls did not occur. Three commenters said that NRC should intervene with State PUCs to ensure that shortfalls do not occur, either immediately or when the underfunding was recognized. A few commenters argued that the causes of the shortfall should be identified. If the plant's management was responsible, the additional decommissioning costs should be recovered from stockholders. NRC could require additional contributions if the invested decommissioning funds are insufficient. Alternatively, if the utility management is not responsible, customers should bear the additional cost. However, as one PUC noted, underestimates that are not identified until far into the future could become a social problem. If the underestimate is not identified until after the plant is removed from service, no ratepayers will be required to provide additional funding. If the company still exists and is solvent, shareholders may be held accountable, but only to the point of insolvency. Gross underestimates could very well bankrupt the company and place a significant burden on regulators and legislators to step in to fund completion of the decommissioning.

None of the commenters recommended increasing contingency factors to provide for potential shortfalls far in the future. Several argued that contingency factors are intended to address "unforeseeable cost elements" or that contingencies are inappropriate for some other reason. The size of such contingencies would be too arbitrary. In addition, some State PUCs would not apply larger contingencies, particularly since the current cost estimates already contain a significant contingency factor. Finally, one commenter argued that larger contingencies would lead to over-collection and distortion of prices for electricity. Seven commenters joined NEI in taking a position against the use of contingencies to address the problem of potential shortfalls occurring far in the future.

Response. The Commission sees its proposed reporting requirement as a way to keep informed of licensees' decommissioning funding status and potential underestimates of cost. However, the Commission has undertaken a study to analyze the actual costs incurred by the power reactor licensees that are in the process of decommissioning, and the Commission will act accordingly after studying those results. Further, the Commission has the authority to require power reactor

licensees to submit their current financial assurance mechanisms for NRC review, revision as necessary, and approval. The Commission reserves the right to take the following steps in order to assure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and either independently or in cooperation with either the FERC and the State PUC's, take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for accumulation of decommissioning funds.

C.8 Captive Insurance Pool

The idea of setting up a captive insurance pool to pay unfunded decommissioning costs did not obtain strong support. A few commenters endorsed it, with qualifications. One said that, in fact, the mechanism would more nearly resemble a mutual insurance pool, and listed a number of factors, including the size of premiums, when deregulation occurred, Federal mandates, the ability to recover costs, and the attitude of participants, that would determine success. Several commenters responded that if such a pool could be developed, it would be a useful or constructive mechanism.

NEI and six commenters taking the same position expressed doubts about the usefulness of such a pool, but suggested that the industry should examine it. They argued that in addition to an insurance pool, NRC should also consider approving self-insurance as an option.

Almost half the commenters expressed strong doubts about the insurance concept. No such product currently exists, and insuring against shortfalls in funding a known and planned event would be a novel concept, open to problems of adverse selection and moral hazard.⁴ Some commenters said it would be difficult to underwrite, and wondered whether in a competitive environment one company

⁴ "If the risk of the insurable event varies between potential buyers, if the buyers know their risk level better than the insurer, and if the coverage is not mandatory, then the worst risks will tend to buy the most insurance. As a result, the loss experience will tend to be higher than expected, premiums will increase, the best risks will leave the programs, and the process can cycle on itself until only the worst risks are left." This phenomenon is known as adverse selection. Moral hazard is defined as a general laxity in loss prevention, laxity in cost control, once a loss has occurred, and the intentional destruction of property. U.S. Nuclear Regulatory Commission, "Design, Costs, and Acceptability of an Electric Utility Self-Insurance Pool for Assuring the Adequacy of Funds for Nuclear Power Plant Decommissioning Expense," NUREG/CR-2370, December 1981.

would be interested in supporting the financial obligations of its competitors. A cross-subsidy of this sort, one said, was what deregulation was being undertaken to eliminate. Participation also might be affected by the policies of individual State PUCs. Premium setting would be difficult because of the possibility that utilities that had been prepared to pay their decommissioning costs would be reluctant to subsidize utilities that had not, and because premiums, to provide sufficient coverage, might need to be large. The pool could face the problem of motivating utilities to close plants when it would otherwise not be economic to do so, or motivating State PUCs to disallow the recovery of decommissioning costs through rates in reliance on the pool. Some utilities might underestimate their decommissioning costs, to keep their premiums low. A pool would increase costs of electricity because, in addition to decommissioning costs, insurance premiums would need to be recovered. Finally, one serious decommissioning shortfall might deplete the pool.

Other commenters stated flatly that they opposed the concept. Several said that it raised the problem of insuring against an event that a facility could choose to create (the moral hazard problem). An insurance pool would create, at the least, an incentive for less responsible utilities to underfund their decommissioning assurance, burdening responsible utilities with high insurance premiums. Some commenters argued that licensees demonstrating strong financial capability should not be required to participate. Reinsurance and diversification to larger pools would make better policy, in the view of one commenter.

Response. The Commission recognizes the problems associated with the concept of a captive insurance pool as identified by the above commenters, and believes that they are serious enough to eliminate this option from further consideration. The Commission is also of the opinion that those in favor of this option do not offer sufficient evidence that the identified problems can be overcome.

C.9 Other Options for NRC in Case of Limited Role for PUC or FERC

Commenters suggested a wide variety of financial assurance options for NRC to consider if PUC or FERC oversight is limited or eliminated. One utility suggested that financial assurance requirements should be focused on the financial viability of the responsible entity. Other utilities suggested, as nonregulatory showings, self-guarantees

or other tests of financial strength such as ownership of other revenue-producing assets (e.g., electricity transmission and/or distribution and/or natural gas operations). Another relevant factor could be whether the licensee has insurance for premature decommissioning caused by an accident. One commenter stated its opposition to the use of surety bonds and insurance because of cost and limited availability.

Two utility commenters suggested that regulatory approaches include mandated or allowed stranded cost recovery through a charge on distribution or transmission or some other charge on all electric power or energy sales, regulatory certification that such costs will be recovered, and other arrangements involving regulatory control such as priority dispatch for nuclear units. Another commenter suggested that NRC could request FERC to clarify Order No. 888 to make certain that competitive access or other transmission charges intended to recover stranded costs also include a load-proportionate contribution to fund decommissioning costs. Another commenter stated that NRC and FERC should urge Congress to adopt stranded cost legislation that will ensure recovery of decommissioning costs as the most prudent solution. The commenter specifically advocates a wires charge that would include decommissioning costs.

One commenter asked NRC to consider its actions in the event that a licensee enters into bankruptcy. In such a case, the NRC could enter the proceeding and argue that full funding for decommissioning must be fulfilled as the first priority. The commenter also asked NRC to consider proposing legislation that would amend the Bankruptcy Code to give first priority to nuclear decommissioning costs, as the Supreme Court has already held for hazardous waste cleanup costs.

NEI and several other commenters raised the possibility that NRC could rely on the Financial Accounting Standards Board's⁵ (FASB) financial disclosures for information in assessing the nature, timing, and extent of the company's commitment of its future resources.

According to one commenter, NRC should evaluate each utility's particular situation on a case-by-case basis to determine the degree of assurance needed depending on the financial

strength of the utility, the size of the remaining unfunded obligation, the age of the plant, and other factors as may be appropriate to the specific situation. Another believes NRC could retain control through licensing constraints and financial evaluations made when NRC approves transfers of assets and licenses.

A number of utilities commented that NRC need not identify all options immediately, but could ultimately authorize a number of alternative approaches, either based on 10 CFR 50.75 or on options that have not yet been recognized. A PUC commenter asked NRC to work collaboratively with States to explore, as necessary, alternative financial assurance mechanisms in the event that privately owned nuclear generators are no longer regulated.

One commenter suggested that NRC's support for existing Federal obligations to provide a national nuclear fuel repository would also contribute to the financial assurance of responsible nuclear decommissioning. Another called for financial assurance to be mandated at the Federal level, and a third said NRC should consider whether DOE responsibility can be developed for providing solutions to decommissioning.

Four commenters said no other options were necessary. They reasoned that current options are sufficient irrespective of PUC or FERC oversight, regulatory oversight is unlikely to be curtailed, and FASB standards and competitive pressures will provide sufficient assurance.

Response. The Commission believes that additional consideration of accelerated decommissioning funding or other alternative financial assurance mechanisms may be warranted, as discussed in its response at C.6. In addition, it should be pointed out that the Commission enters bankruptcy proceedings to protect the integrity of the decommissioning funding, as suggested by a commenter. Also, the Commission is proposing use of the FASB standard as a means for the reporting decommissioning obligations. Further, the Commission believes that the proposed change to the definition of "electric utility" will be adequate to address all contingencies with respect to financial assurance for decommissioning under deregulation. Further, the proposed reporting requirement will provide the NRC with the opportunity to be informed on the status of licensees' financial assurance for decommissioning.

D. Federal Government Licensee Use of Statement of Intent

Slightly fewer than half of the commenters (20 commenters) expressed an opinion on this question. Almost all commenters took the position that Federal licensees should be treated in the same way as non-Federal licensees. NEI argued that regardless of who owns the plant, a number of options for financial assurance should be allowed, and the current options should continue to be permitted. One commenter stated clearly that because Federal licensees were expected to face the same problems as other licensees, they should be required to set aside funds rather than rely on statements of intent. Several commenters pointed out that different treatment for Federal licensees could create competitive advantages for the Federal licensees. NRC should ensure that the playing field remained level. One licensee argued that if a financial assurance option, such as a statement of intent, meets NRC's criteria, it should be available for use by all licensees. Others took the position that the statement of intent should not be allowed, because it does not provide any assurance. Its use by Federal licensees means that the taxpayers are providing the assurance. One licensee questioned the long-term financial condition of the Tennessee Valley Authority (TVA). One commenter argued that use of tax exempt bonds provides a similar competitive advantage to those licensees who can issue them.

Only TVA took the position that ample reasons exist for continuing the use of statements of intent as provided under the current regulations. However, TVA also provided an extended description of the steps it has taken to use an external trust, "all requirements" contracts, and its power to issue indebtedness to ensure its decommissioning costs.

Response. The NRC's Office of the Inspector General published an Audit Report, "NRC's Decommissioning Financial Assurance Requirements for Federal Licensees May Not be Sufficient," OIG/95A-20, dated April 3, 1996. The report found that " * * * NRC's decision to allow Federal licensees to use a statement of intent * * * was based primarily on the assumption that the Federal Government would pay the financial obligations of the lone Federal licensee, * * * should it be unable to do so. However, based on our review of the U.S. Code and discussions with officials from the Department of the Treasury, the Office of Management and

⁵ The Financial Accounting Standards Board is a private body that establishes authoritative financial accounting and reporting standards in the United States.

Budget and TVA, we believe NRC's assumption is questionable." The report also found " * * * that, although not required, TVA has established a fund dedicated to meet its decommissioning obligations. However, because this is an internal fund it can be used for other purposes. In fact, TVA had at one time temporarily depleted its decommissioning fund."

The majority of those who commented were opposed to allowing the TVA's use of a statement of intent, their reason basically being that all licensees should have the same "level playing field." The Commission, however, does not believe that the elimination of the statement of intent option for a Federal licensee can be justified on a public health and safety basis. The Commission believes that the risk of a Federal licensee not being able to fund its decommissioning expenses is remote, as the Commission is proposing to define a "Federal licensee" as having the full faith and credit backing of the Federal Government. The Commission considers the issue of whether TVA qualifies for the use of a statement of intent to be distinguishable from the question of whether other "Federal licensees" should have this option. Further, the Commission does not believe it to be in the public interest to foreclose the possibility of a future licensee with the full faith and credit backing of the Federal Government using a statement of intent. Hence, the Commission does not propose to eliminate the statement of intent as an option for Federal licensees, but realizes that this proposed definition may result in the TVA no longer being able to meet NRC's definition of "Federal licensee."

E. Trust Fund Earnings Credit for Extended Safe Storage Period

Two commenters opposed credits for earnings during extended safe storage, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning. Seventeen commenters, however, supported allowing credit for earnings on funds during extended storage periods. Some of these commenters argued that if credits for earnings are not allowed, more funds than necessary would be collected, thereby generating unwarranted expense for licensees and customers and possibly intergenerational inequities.

An additional eight commenters supported allowing earnings credits, not only for the extended safe storage period, but also for other periods:

- The period before safe storage, when funds are accumulated;
- The decommissioning period, when funds flow out of the trusts; and
- Both the accumulation and outflow periods.

Three commenters expressed the opinion that States should decide whether or not to allow credit for projected earnings.

One group of commenters understood that NRC's ANPR considered a net positive rate of return when assessing the status of decommissioning funding during a SAFSTOR period, and not that a licensee would be allowed to consider prospectively during the license term the possibility of a net positive rate of return over some extended period following shutdown and prior to actual decommissioning. These commenters felt that it would be largely irrelevant to start considering positive earnings during a SAFSTOR period because, by the time of termination of operations, licensees should have already accumulated sufficient funds to pay for decommissioning.

Another commenter disagreed with the position that excludes the benefit of future tax deductions (i.e., in "non-qualified" trust accounts) in determining the adequacy of a licensee's decommissioning funding program because the deductions will have value for those who assume the responsibility for decommissioning.

Response. The Commission is proposing to allow credit for earnings and believes that its existing implicit assumption of a zero rate of return is too conservative and not borne out by the data. The Commission is proposing licensees may take credit using a 2 percent real rate of return from the time of the funds' collection through the decommissioning period. As stated below, this proposed action provides licensees relief from current requirements with no adverse impact on public health and safety, licensees, or NRC resources, and the proposed reporting requirements would allow the licensees' decommissioning funds to be monitored by the Commission.

E.1 Real Rate of Return

Five commenters took the position that NRC should not specify a single allowable rate of return, but should allow licensees to take credit for any rate they can justify given their specific situation. Some of these commenters supported their positions by stating that licensees employ different investment strategies depending on factors such as the number of plants, when they expect to begin decommissioning, applicable State taxes, and whether the funds are

in a qualified or nonqualified trust. Another commenter suggested that plant-specific annualized rates could be justified based on historical data. Considerable judgment will be needed to develop the rate, argued one utility group, but no more judgment than is needed in developing decommissioning cost estimates.

Three commenters suggested that NRC use long-term, historical rates for the asset allocation employed, adjusted by the long-term, historical inflation rate.

Six commenters stated that NRC should not specify a single allowable rate of return, but should define the basis on which licensees may select an appropriate positive real rate.

Four commenters expressed the view that States should decide the rate, and a fifth commenter thought either States or FERC should decide the rate. Another commenter thought the rate should be determined by an (unidentified) "acceptable third party."

One commenter suggested an after-tax rate of 3 percent as reasonable and achievable with acceptable levels of investment risk (e.g., 50 percent equity, 50 percent fixed income). Another commenter proposed a rate of 3 percent because that rate is the historical real return on Treasury bonds. One commenter felt NRC should float the values based on contemporary 30-year Treasuries.

Two commenters opposed the use of a positive rate assumption for earnings during extended safe storage, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning.

Response. Based on the NRC review of historical data, real (i.e., inflation adjusted, after tax) rates of return using U.S. Treasury issues have been on the order of 2 percent. Therefore, the Commission proposes to use a 2 percent real rate of return throughout the decommissioning collection period as a default earnings amount and in the safe storage period as a specified amount. The NRC acknowledges that the historical data is subject to some degree of interpretation, and that a 3 percent real rate may be viewed by some as a "reasonable" measure for this parameter. While some may propose use of higher values based on other types of investments, the Commission believes the proposed value represents as close to a "risk free" return as possible and has increased confidence that the 2 percent value can be consistently achieved. Higher earnings amounts will be allowed during the period of reactor

operation if specifically approved by a rate-setting authority. To the extent that earnings in a given year prove to be greater than 2 percent, the balance of the fund will be greater than anticipated. Licensees may take this higher balance into account in calculating subsequent contributions to their sinking funds. This means the size of subsequent contributions will decrease, even though these subsequent contributions will still be based on a 2 percent earnings assumption. If rates turn out to be lower than this, 10 CFR 50.82 already provides that licensees are to adjust decommissioning funds during safe storage to reflect changes in cost estimates. Thus, there is little risk that there will be major shortfalls in decommissioning funds. Further, the proposed reporting requirements will allow the licensees' decommissioning funds to be monitored by the Commission.

E.2 Appropriate Time Period

Twelve commenters expressed the view that credit for projected earnings should be allowed over the full length of the extended safe storage period. An additional eight commenters also thought credit should be allowed for earnings projected over additional periods:

- The period before safe storage, when funds are accumulated.
- The decommissioning period, when funds flow out of the trusts.
- Both the accumulation and outflow periods.

Two more would allow commensurate credit for a period with site-specific schedules for funding and decommissioning. Another commenter noted that considerable judgment would be needed to determine the appropriate time period, but no more than would be needed to develop the decommissioning cost estimate. Four commenters, all PUCs or PUC groups, felt NRC should leave the issue of the length of the period to the States.

Only two commenters suggested that credit be limited to a fixed number of years. One of these suggested 10 years. The other proposed a maximum of 20 years, and a minimum of 5 years.

Two commenters opposed the use of positive earnings assumptions during any period, arguing that earnings assumptions could be manipulated and that earnings could otherwise act as a hedge against increases in the cost of decommissioning.

Response. The Commission proposes to allow licensees to take credit for earnings on external sinking funds from the time of the funds' collection through the decommissioning period. Because

the NRC is requiring the funding, it is reasonable for the NRC to provide for a positive rate of return on the collected funds, where justified. Further, the NRC is proposing a longer period in which credit should be allowed for earnings because the justification for allowing a positive rate of return over the safe storage period also holds for allowing credit from the time of fund collection through the decommissioning period. Again, the proposed reporting requirement provides the NRC with the ability to monitor licensees' decommissioning funds. Lastly, this proposed action provides licensees relief from current requirements with no adverse impact on public health and safety, licensees, or NRC resources.

F. Reporting on the Status of Decommissioning Funds

Many commenters supported a reporting requirement in light of concerns about decommissioning funding. Some of these felt that NRC should require relatively comprehensive reports because NRC's authority extends beyond that of FERC and the States, and because FERC and the States do not always require uniform information to be submitted at regular intervals. One commenter stated that an NRC regulatory amendment is needed even in the absence of deregulation to correct the flawed assumption that PUCs and FERC actively monitor decommissioning funds. The commenter stated that PUC and FERC monitoring efforts are, in most cases, limited in scope and may take place infrequently (i.e., when a rate case is filed). Each PUC is generally concerned only about its jurisdictional portion of the decommissioning funds, and FERC's jurisdiction is limited to only the wholesale portion of a company's sales. Moreover, many States do not have jurisdiction over municipal and cooperative agencies, some of which are owners or partial owners of nuclear plants. Therefore, the NRC may be the only regulating agency that can provide an effective and timely monitoring function for all the funds required for decommissioning.

Three commenters opposed a reporting requirement as unnecessary, while two others believed such a requirement was premature and could conflict with or be duplicative of information that may be required by forthcoming FASB standards. Two commenters stated that NRC requirements should not duplicate requirements of States or FASB. Lastly, a commenter stated that if PUC oversight is limited or eliminated, NRC

should assume oversight of decommissioning funds.

Response. The Commission is proposing that a periodic reporting requirement be implemented so that the Commission has appropriate assurance that licensees are collecting their required decommissioning funds. The benefits of obtaining this information through a reporting requirement, in terms of both determining licensee compliance with NRC decommissioning funding regulations and responding to Congressional and other requests, outweigh the minimal impact of the requirement and would be less burdensome to licensees and the NRC than relying on the existing NRC inspection process.

F.1 Contents

Three commenters stated that reporting requirements would be unobjectionable if they were minimal and limited to material of the nature historically provided to State regulators or in other financial reports. Similarly, others stated that NRC should rely on the same information as will be required by the proposed FASB statement regarding accounting for certain liabilities related to closure or removal of long-lived assets. Five commenters agreed with the NEI that reports should be kept as simple as possible. One commenter stated that comprehensive reports should be prepared for each facility, integrating information for all owners. Thus, if a facility has multiple owners, one consolidated report would be prepared with separate data for each owner attached. On the other hand, one commenter argued that reports should be based on the licensee's interest in the nuclear unit and not on a total unit basis.

One group of commenters stated that NRC could make the annual reports from plant operators available to the public, which would be consistent with the availability of information required under proposed FASB standards.

A PUC stated that New Jersey's reporting rules may be adequate for NRC's purposes.

Suggested contents for the reports included 50 items under the following general headings: Decommissioning Costs and Activities, Contributions, Trust Status and Activity, Other Financial Information, and several Miscellaneous Items.

Response. The Commission is in the process of issuing a draft regulatory guide on this proposed requirement which would endorse FASB draft standard No. 158-B, "Accounting for Certain Liabilities Related to Closure or Removal of Long-Lived Assets." The

NRC is endorsing this draft FASB standard as a means of providing guidance for licensees to comply with those portions of the NRC's regulations regarding a licensee's reporting on the status of its decommissioning funding. Licensees would comply with the FASB standard once it becomes final in order to remain consistent with generally accepted accounting principles. The NRC believes that the FASB standard would, if adopted, provide the required information. However, because of the ambiguity in the FASB standard with respect to whether the required information will be reported on a per-unit basis, the NRC has defined its reporting requirement to include such per-unit information. The NRC has reviewed the proposed contents of the reports on decommissioning funds to ensure that the needs of the agency are balanced versus the time constraints of the licensees in assembling the reports. The Commission is also proposing to require that any modifications to a licensee's external trust agreement also be reported.

F.2 Frequency

Several commenters stated that licensees should report on the status of decommissioning funds on an annual basis. Others believed reports should be required no more frequently than annually. NEI stated that NRC should not require licensees to report on the status of their decommissioning funds any more frequently than every 3 to 5 years. NEI noted that SEC rules and proposed FASB standards require utilities to disclose the decommissioning costs in financial statements.

Two commenters suggested reporting at 5-year intervals. One of these suggested that interim status reports could be required on an annual basis.

One commenter stated that NRC should require no more frequent reporting beyond FASB requirements. Another commenter stated that reports should be no less frequent than specified by the Securities and Exchange Act of 1934.

One commenter suggested that NRC consider more frequent reporting for plants approaching the end of commercial operation and for plants experiencing operating problems. One commenter stated that the timing of required reports should parallel that of other reports such as FERC Form 1, SEC 10-K, and annual financial reports. Similarly, two commenters felt that annual reports should be caused by NRC by September 30 of the following year. Two commenters stated that interim reports could be required for significant

events (e.g., merger, acquisition, financial deterioration). This commenter also suggested that limited or negative growth of the fund in a given year due to overall market conditions should not automatically trigger adjustments to funding levels but rather that a 3- to 5-year time frame should be used.

Response. The Commission is proposing that every licensee submit its initial report on the status of decommissioning funds to the NRC within 9 months after the effective date of this rule, and at least once every 2 years thereafter. Annual submission is not being proposed as an option because the NRC believes it can adequately review licensee financial assurance status for decommissioning biennially while reducing licensee reporting burden. However, the licensee(s) of any plant that is within 5 years of its planned end of operation would be required to submit its report annually.

G. Comments on Topics Not Specifically Raised in the ANPR

Commenters suggested several actions that NRC had not asked about specifically in the ANPR. First, a commenter stated that NRC should require sites to be decommissioned to "green field" status, consistent with FERC guidelines.

Response. The Commission's position is that once radioactive contamination of the reactor facility is removed to a level acceptable to the NRC, there is no longer a health and safety concern preventing the NRC license from being terminated.

A commenter suggested the imposition of a mandatory insurance requirement for licensees to cover fund shortfalls at the time of premature decommissioning in States where accelerated collection from ratepayers and intergenerational subsidies are not allowed.

Response. The Commission does not agree with the commenter on the need for mandatory insurance. As stated in the response to comments on Stranded Costs, Section B, the previously referenced "Draft Policy Statement on the Restructuring and Economic Deregulation of the Electric Utility Industry" stated that the NRC has the authority "to take actions that may affect a licensee's financial situation when these actions are warranted to protect public health and safety." The Commission believes that there are enough alternatives available to address the potential problems caused by premature decommissioning so that mandatory insurance would not be required.

One commenter stated that the requirements for subaccounts should be waived. Their position is that licensees that have contributed monies to a single trust fund for multiple decommissioning-related purposes be required simply to demonstrate to the NRC that there are or will be sufficient assets in the trust fund, in the aggregate, to pay for the NRC-defined decommissioning cost of the nuclear unit and for any other decommissioning-related purposes identified in the trust agreement.

Response. The Commission is not concerned with the details of how a licensee keeps accounts for decommissioning as long as a licensee is able to demonstrate, on a per-unit basis, the amount of funds identified and available for the required decommissioning purposes. Thus, the Commission accepts the commenter's position in general, although it notes that there is no current requirement, only guidance, relating to the use of subaccounts.

A commenter stated that NRC should undertake as a priority task the identification of nuclear plants that do not perform well. For plants with performance problems, NRC should take aggressive steps to persuade the operator to sell the plant to another operator at a price that recognizes its market value or to terminate the license. In some cases, particularly when plants were financed with bond indentures or other instruments that limit the owner's ability to sell the plant or impose conditions on such sales, these restrictions would need to be identified in the process of identifying well-run plants. Further, the commenter states that if the plant does not produce a price acceptable to the operator, the Federal Government will offer a price that will provide the operator with some fraction of the purchase price and take over control and ownership, including any decommissioning fees that have been collected. The Federal Government would restart any plant it believes can continue as a source of power and will decommission the others from public funds.

Response. The Commission does not see its position as one to force a licensee to sell its plant. While the NRC does aggressively attempt to identify poorly performing plants through such processes as the "Watch List," the decision as to whether another entity should become the operator of a facility is for the owners of that facility to make. Although the NRC would have to approve any transfer of control over any power plant license under Section 184 of the Atomic Energy Act and 10 CFR

50.80, the NRC is reluctant to become involved in the business decision-making processes of the licensees on such matters. As to the NRC taking over poorly performing plants, the Atomic Energy Act confers "takeover" authority on the NRC only in extremely limited circumstances. See Section 108 of the Atomic Energy Act (42 U.S.C. 2138) limiting such authority to circumstances where " * * * the Congress declares that a state of war or national emergency exists * * * "

A commenter stated that the NRC should develop a reliable, sound estimate (or method of estimating) decommissioning costs, and should update the estimates on a regular basis to incorporate technological and other changes.

Response. The Commission is planning to revise its estimates of decommissioning costs after it obtains actual plant-specific data from ongoing decommissioning projects.

Another commenter stated that NRC should sponsor technical conferences on decommissioning so the pace of technological resolutions for cleaning up and decommissioning plants could be increased.

Response. While the proposed action is not a suggested rulemaking, the Commission is taking the suggestion under consideration. However, the Commission is aware of a number of deregulation and decommissioning conferences that have been held or are being planned.

A commenter stated that the NRC should ask separately about other financial issues because changes to the definition of "electric utility" could have implications in contexts other than decommissioning, such as general financial qualifications reviews for initial licensing and related license amendments, from which utilities are now exempted.

Response. While the Commission is not presently asking questions on other financial issues, it is attempting to address the concerns by proposing revisions to Part 50 to be consistent with the proposed change in the definition of "electric utility."

A commenter stated that NRC should delay action as the Texas PUC has initiated three regulatory investigation projects focusing on the restructuring and partial deregulation of the electric industry in that State. Further, the State has not developed a formal policy on many of the issues set forth in the ANPR.

Response. It is because of the number and variety of State actions being proposed in the areas of deregulation and restructuring that the Commission

is proposing this rulemaking now. The Commission wishes to prepare for any new types of nuclear power generating licensees resulting from the States' actions. However, the Commission is well aware that this proposed rulemaking may not be the last action for it to undertake in this area.

One commenter stated that the Commission should support revisions to Internal Revenue Code Section 468A regarding deductibility for contributions to an external fund.

Response. The commenter does not make a suggestion as to what should be done in this rulemaking. Rather, the suggestion goes to questions regarding consideration of whether any changes to the U.S. Code are needed to address decommissioning financial assurance, in particular any changes to the Bankruptcy Code. This matter will be addressed separately by the NRC as part of its input to an inter-agency review process for the development of proposed legislation.

Lastly, a commenter stated that the NRC should hold all licensees to the same high standard for assurance of decommissioning funds. Previously, the NRC had one standard for non-utility licensees and a much more lenient standard for rate-regulated utilities. NRC must establish strict and thorough standards for the collection, investment, segregation, and reporting of decommissioning funds and those standards must apply to all licensees, including those that have traditionally been considered regulated utilities.

Response. The Commission position is that it is not necessary to impose any additional decommissioning funding requirements on those entities that meet the proposed definition of "electric utility." However, as explained above, the Commission believes that those entities that no longer meet the proposed definition should be required to meet the more "strict" standards. The Commission also believes that most power reactor licensees would be allowed to fund decommissioning costs through non-bypassable charges.

To summarize, the Commission's underlying philosophy of financial assurance for decommissioning is unchanged. Basically, those licensees that remain "electric utilities" by the Commission's revised definition should follow the same financial assurance regulations as before. However, the Commission believes that this proposed rulemaking provides for adequate protection in the face of a changing environment that was not envisioned when the existing rule was originally written. Further, with deregulation, the Commission does not believe that it

would be able to identify all the potential types of licensees to which it will be exposed. Therefore, new and unique restructuring proposals will necessarily involve ad hoc reviews by the NRC. Further, the Commission will exercise direct oversight of such reviews to maintain consistent NRC policy toward new entities. In addition to the proposed definition revisions, the Commission is proposing two other modifications. The first is to require power reactor licensees to periodically report on the status of their decommissioning funds and changes to their external trust agreements. Second, the Commission is proposing to allow licensees to take credit for the earnings on decommissioning trust funds. The Commission does not see the need to take actions proposed by some commenters that would, in its view, strain licensees unnecessarily, because of licensees' competing needs.

Section-By-Section Description of Changes

10 CFR Part 50

Section 50.2 is amended to revise the definition of "electric utility" in response to deregulation of the electric generating industry. The section also is amended by the insertion of definitions of previously undefined terms that aid in the understanding of the NRC's rulemaking position. Further, "Federal licensee" is defined, so that the characteristics of a licensee that may make use of a statement of intent as a mechanism to satisfy financial assurance requirements for decommissioning is clarified. Sections 50.43, 50.54, 50.63, 50.73, and 50.75 are amended to replace the term "licensees" or a similar term depending on the context for the term "electric utility" to be consistent with the proposed changes to 10 CFR 50.2.

Section 50.43 is amended so States are added to regulatory agencies as those entities to which the Commission will give notice of application for a class 103 license for a commercial power generation facility.

Section 50.54(w) is amended by requiring that power reactors, as opposed to electric utilities, obtain insurance in the manner prescribed.

Section 50.63 is amended so that licensees, as opposed to the originally used term utilities, are required to provide specific material for NRC review relating to reactor core and associated systems.

Section 50.73 is amended to refer to "licensee" rather than "utility" personnel in stating the information required to be reported regarding

personnel errors related to matters requiring a Licensee Event Report.

Section 50.75 is amended in three paragraphs to include the definitional change in the reporting and recordkeeping for decommissioning planning.

Section 50.75 also is amended to allow licensees to take 2 percent credit on earnings for prepaid trust funds and external sinking funds, to institute a reporting requirement for licensees on the status of their decommissioning funding and on changes to licensees' external trust agreements.

Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the advance notice of proposed rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number 1-(800) 303-9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT-100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and data bases also have a "Help/Information Center" option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321-3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321-3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State Systems," then selecting "Regulatory Information Mall." At that point, a menu will be displayed that has an option "U.S. Nuclear Regulatory Commission" that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing "/go nrc" at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the

"Return to FedWorld" option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP that mode only provides access for downloading files and does not display the NRC Rules Menu.

You may also access the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format) if your web browser supports that function.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415-6215; e-mail CAG@nrc.gov.

Finding of No Significant Environmental Impact: Availability

The NRC is proposing to amend its regulations on financial assurance requirements for the decommissioning of nuclear power plants. The proposed amendments are in response to the likelihood of deregulation of the power generating industry and resulting questions on whether current NRC regulations concerning decommissioning funds and their financial mechanisms will need to be modified. The proposed action would revise the definition of "electric utility" contained in 10 CFR 50.2, would add a definition of "Federal licensee" to address the issue of which licensees may use statements of intent, and would require power reactor licensees to report periodically on the status of their decommissioning funds and on the changes in their external trust agreements. Also, the proposed

amendments would allow licensees to take credit for the earning on decommissioning trust funds.

These proposed changes could have the following effects on nuclear power reactor licensees: (1) Potentially requiring licensees who have been "deregulated" to secure decommissioning financial assurance instruments that provide full current coverage of projected decommissioning costs, (2) limiting the types of licensees that can qualify for the use of Statements of Intent to satisfy decommissioning financial assurance requirements, (3) requiring periodic reporting on the status of their accumulation of decommissioning funds, thus leading to the potential for the NRC to require some remedial action if the licensee's actions are inadequate, and (4) permitting licensees to assume a real rate of return of two percent per annum, or such other rate as is permitted by a Public Utility Commission or the Federal Energy Regulatory Commission, on their accumulated funds. These actions are of the type focused upon financial assurances and mechanisms to assure funding for decommissioning and are not actions that would have any effect upon the human environment. Neither this action nor the alternatives considered in the Regulatory Analysis supporting the proposed rule would lead to any increase in the effect on the environment of the decommissioning activities considered in the final rule published on June 27, 1988 (53 FR 24018), as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988).⁶

Promulgation of these rule changes would not introduce any impacts on the environment not previously considered by the NRC. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR Part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted in reaching this

⁶ Copies of NUREG-0586 are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW. (Lower Level) Washington, DC 20555-0001; telephone (202) 634-3273; fax (202) 634-3343. Copies may be purchased at current rates from the U.S. Government Printing Office, P.O. Box 370892, Washington, DC 20402-9328; telephone (202) 512-2249; or from the National Technical Information Service by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161.

determination, and the NRC staff is not aware of any other documents related to consideration of whether there would be any environmental impacts of the proposed action. The foregoing constitutes the environmental assessment and finding of no significant impact for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork 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 public reporting burden for this information collection is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden, to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet electronic mail at 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.

Comments to OMB on the information collections or on the above issues should be submitted by October 10, 1997. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless it

displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Brian J. Richter, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6221, e-mail bjr@nrc.gov.

The Commission requests public comment on the draft analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (March 29, 1996), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing, operation, and decommissioning of nuclear power plants. The companies that own these plants do not fall in the scope of the definition of "small entities" set forth in the NRC's size standards (10 CFR 2.810).

Backfit Analysis

The regulatory analysis for the proposed rule also constitutes the documentation for the evaluation of backfit requirements, and 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 of 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 proposed amendments to NRC's requirements for the financial assurance of decommissioning of nuclear power plants would revise the definition of "electric utility," define "Federal licensee," and add several associated

definitions; add new reporting requirements pertaining to the use of prepayment and external sinking funds; impose new reporting requirements for power reactor licensees on the status of decommissioning funding that specify the timing and contents of such reports; and permit power reactor licensees to take credit for a 2 percent annual real rate of return on funds set aside for decommissioning from the time the funds are set aside through the end of the decommissioning period. These proposed actions are necessary to ensure that nuclear power reactors provide for adequate protection of the health and safety of the public in the face of a changing environment not envisioned when the reactor decommissioning funding regulations were promulgated.

Although some of the changes proposed to the regulations are reporting requirements, which are not covered by the backfit rule, other elements in the proposed changes could be considered backfits because they would modify or clarify procedures with respect to (1) acceptable decommissioning funding options under various scenarios, (2) what licensees may use statements of intent, and (3) permitted credit for real rates of return on funds set aside for decommissioning. The NRC has determined to treat this action as an adequate protection backfit, because the action is necessary for the NRC to maintain assurance of adequate funding for power plant decommissioning, particularly in the face of the uncertainties associated with electric utility restructuring and deregulation. Accordingly, these proposed changes to the regulations are required to satisfy 10 CFR 50.109(a)(5) and a full backfit analysis is not required pursuant to 10 CFR 50.109(a)(4)(ii).

List of Subjects in 10 CFR Part 50

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

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

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

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

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 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, and 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 § 50.2 the definition of *Electric Utility*, is revised and the definitions of *Cost of service regulation*, *Federal licensee*, and *Non-bypassable charges* are added in alphabetical order to read as follows:

§ 50.2 Definitions.

Cost of service regulation means the traditional system of rate regulation in which a rate regulatory authority allows an electric utility to charge its customers all reasonable and prudent costs of providing electricity services, including a return on the investment required to provide such services.

Electric utility means any entity that generates, transmits, or distributes electricity and that recovers the cost of this electricity through rates established by a regulatory authority, such that the rates are sufficient for the licensee to operate, maintain, and decommission its nuclear plant safely. Rates must be established by a regulatory authority either directly through traditional cost of service regulation or indirectly through another non-bypassable charge mechanism. An entity whose rates are established by a regulatory authority by mechanisms that cover only a portion of its costs will be considered to be an

“electric utility” only for that portion of the costs that are collected in this manner. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates are included within the meaning of “electric utility.”

Federal licensee means any NRC licensee that has the full faith and credit backing of the United States Government.

Non-bypassable charges means those charges imposed by a governmental authority which affected persons or entities are required to pay to cover costs associated with operation, maintenance, and decommissioning of a nuclear power plant. Affected individuals and entities would be required to pay those charges over an established time period.

3. In § 50.43, paragraph (a) is revised to read as follows:

§ 50.43 Additional standards and provisions affecting class 103 licenses for commercial power.

(a) The Commission will give notice in writing of each application to such regulatory agency or State as may have jurisdiction over the rates and services incident to the proposed activity; will publish notice of the application in such trade or news publications as it deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and will publish notice of the application once each week for 4 consecutive weeks in the **Federal Register**. No license will be issued by the Commission prior to the giving of such notices and until 4 weeks after the last publication in the **Federal Register**.

4. In § 50.54, the introductory text of paragraph (w) is revised to read as follows:

§ 50.54 Conditions of licenses.

(w) Each power reactor licensee under this part for a production or utilization facility of the type described in §§ 50.21(b) or 50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an

equivalent amount of protection covering the licensee's obligation, in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, provided that:

5. In § 50.63, paragraph (a)(2) is revised to read as follows:

§ 50.63 Loss of alternating current power.

(a) ***(2) The reactor core and associated coolant, control, and protection systems, including station batteries and any other necessary support systems, must provide sufficient capacity and capability to ensure that the core is cooled and appropriate containment integrity is maintained in the event of a station blackout for the specified duration. The capability for coping with a station blackout of specified duration shall be determined by an appropriate coping analysis. Licensees are expected to have the baseline assumptions, analyses, and related information used in their coping evaluations available for NRC review.

6. In § 50.73, paragraph (b)(2)(ii)(J)(2)(iv) is revised to read as follows:

§ 50.73 Licensee event report system.

(b) ***(2) ***(ii) ***(J) ***(2) ***(iv) The type of personnel involved (i.e., contractor personnel, licensed operator, nonlicensed operator, other licensee personnel.)

7. In § 50.75, paragraphs (a), (b), (d), (e)(1)(i), (e)(1)(ii), and (e)(3) introductory text are revised and paragraphs (f)(1), (2), and (3) are redesignated as paragraph (f)(2), (3), and (4) and a new paragraph (f)(1) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

(a) This section establishes requirements for indicating to NRC how reasonable assurance will be provided that funds will be available for decommissioning. For power reactor licensees it consists of a step-wise procedure as provided in paragraphs (b), (c), (e), and (f) of this section. Funding for decommissioning of electric utilities is also subject to the regulation of agencies (e.g., Federal Energy Regulatory Commission (FERC) and

State Public Utility Commissions) having jurisdiction over rate regulation. The requirements of this section, in particular paragraph (c), are in addition to, and not substitution for, other requirements, and are not intended to be used, by themselves, by other agencies to establish rates.

(b) Each power reactor applicant for or holder of an operating license for a production or utilization facility of the type and power level specified in paragraph (c) of this section shall submit a decommissioning report, as required by 10 CFR 50.33(k) of this part containing a certification that financial assurance for decommissioning will be provided in an amount which may be more but not less than the amount stated in the table in paragraph (c)(1) of this section, adjusted annually using a rate at least equal to that stated in paragraph (c)(2) of this section, by one or more of the methods described in paragraph (e) of this section as acceptable to the Commission. The amount stated in the applicant's or licensee's certification may be based on a cost estimate for decommissioning the facility. As part of the certification, a copy of the financial instrument obtained to satisfy the requirements of paragraph (e) of this section is to be submitted to NRC.

* * * * *

(d) Each non-power reactor applicant for or holder of an operating license for a production or utilization facility shall submit a decommissioning report as required by 10 CFR 50.33(k) of this part containing a cost estimate for decommissioning the facility, an indication of which method or methods described in paragraph (e) of this section as acceptable to the Commission will be used to provide funds for decommissioning, and a description of the means of adjusting the cost estimate and associated funding level periodically over the life of the facility.

(e)(1) * * *

(i) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. A licensee may take credit on earnings on the prepaid decommissioning trust funds using a 2 percent annual real rate of return from the time of the funds' collection through the decommissioning period, if the

licensee's rate-setting authority does not authorize the use of another rate.

(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 licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. A licensee may take credit for earnings on the external sinking funds using a 2 percent annual real rate of return from the time of the funds' collection through the decommissioning period, if the licensee's rate-setting authority does not authorize the use of another rate.

* * * * *

(3) For an electric utility, its rates must be sufficient to recover the cost of the electricity it generates, transmits, or distributes. These rates must be established by a regulatory authority such that they are sufficient for the licensee to operate, maintain, and decommission its plant safely. The Commission reserves the right to take the following steps in order to assure a licensee's adequate accumulation of decommissioning funds: review, as needed, the rate of accumulation of decommissioning funds; and either independently or in cooperation with either the FERC and the State PUC's, take additional actions as appropriate on a case-by-case basis, including modification of a licensee's schedule for accumulation of decommissioning funds. Acceptable methods of providing financial assurance for decommissioning for an electric utility are—

* * * * *

(f)(1) Each power reactor licensee shall report to the NRC within 9 months after [the effective date of the final rule], and at least once every 2 years thereafter on the status of its decommissioning funding for each reactor facility or part of a reactor facility that it owns. The information in this report must include, at a minimum: the amount of decommissioning funds estimated to be required pursuant to 10 CFR 50.75(b) and (c); the amount accumulated to the date of the report; a schedule of the annual amounts remaining to be collected; the assumptions used regarding rates of escalation in decommissioning costs, rates of earnings in decommissioning trust funds, and rates of other factors (e.g.,

discount rates) used in funding projections; and any modifications occurring to a licensee's current trust agreement since the last submitted report. Any licensee for a plant that is within 5 years of the projected end of its operation shall submit such a report annually.

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Dated at Rockville, Maryland, this 4th day of September, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST-97-2881; Notice No. 97-9]

RIN 2105-AC65

Computer Reservations System (CRS) Regulations

AGENCY: Office of the Secretary, Transportation

ACTION: Advance notice of proposed rulemaking

SUMMARY: The Department is initiating this rulemaking to determine whether it should continue or modify its existing rules governing airline computer reservations systems (CRSs). Unless extended by the Department, the existing rules (14 CFR part 255) will expire on December 31, 1997. It is the Department's preliminary position that the rules should be continued, probably with revisions.

DATES: Comments must be submitted on or before November 10, 1997. Reply comments must be submitted on or before December 9, 1997.

ADDRESSES: Comments must be filed in Room PL-401, Docket 49812, U.S. Department of Transportation, 400 7th St. S.W., Washington, D.C. 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commenter should file six copies of its comments.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, 400 Seventh St. S.W., Washington, DC 20590, (202) 366-4731.

SUPPLEMENTARY INFORMATION: The Department adopted its rules governing CRS operations—14 C.F.R. part 255—because CRSs had become essential for