

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on December 24, 2003. However, if the NRC receives significant adverse comments on the direct final rule by December 22, 2003, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

#### List of Subjects in 10 CFR Part 50

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974,

as amended; and 5 U.S.C. 552 and 553, the NRC is 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. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

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

2. In § 50.75, the sixth sentence of paragraphs (e)(1)(i) and the sixth sentence of (e)(1)(ii), paragraph (h)(1)(i)(A), the first sentences of paragraphs (h)(1)(i)(B), (h)(1)(iv), and (h)(2), are revised, and a new paragraph (h)(5) is added to read as follows:

#### § 50.75 Reporting and recordkeeping for decommissioning planning.

\* \* \* \* \*

(e)(1) \* \* \*

(i) \* \* \* A licensee that has prepaid funds based on the formulas in § 50.75(c) of this section may take credit for projected earnings on the prepaid decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations.

(ii) \* \* \* A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations. \* \* \*

\* \* \* \* \*

(h)(1) \* \* \*

(i) \* \* \*

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner or operator of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before the publication date of this rule, and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

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

(iv) Except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. \* \* \*

(2) Licensees that are “electric utilities” under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall include a provision in the terms of the trust, escrow account, Government fund, or other account used to segregate