

**From:** Tremaine Donnell  
**To:** Brian Richter  
**Date:** 5/23/01 9:39AM  
**Subject:** Part 50 Decommissioning Trust Provisions Proposd Rule

Brian,

Attached is the final package for Part 50 Decommissioning Trust Provisions, Proposed Rule.

## OMB SUPPORTING STATEMENT FOR

Proposed Rule, 10 CFR Part 50,  
Decommissioning Trust Provisions

Regulatory Guide 1.159  
Assuring the Availability of Funds for Decommissioning Nuclear Reactors

(3150-0011)

### Description of the Information Collection

In order for the NRC to protect licensees' decommissioning trust funds, the proposed rule is requiring licensees to review their existing trust agreements for consistency with the objectives and criteria of the proposed rule, and, if necessary, revise the trust agreements. Once the trust agreement is revised, the licensee would then need to submit a revised decommissioning funds status report to the NRC pursuant to 10 CFR 50.75(f). With respect to license transfers, the proposed rule specifies financial assurance conditions the NRC deems necessary in orders approving the transfers. Similarly, a licensee would be required to submit written notification to the NRC whenever a licensee proposes to make a disbursement or payment from the trust, escrow account, Government fund, or other account. As a condition for NRC staff approval, certain clauses (some of which parallel criteria in Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," and others of which parallel Federal Energy Regulatory Commission (FERC) requirements) have been required to be included in decommissioning trust agreements.

#### A. JUSTIFICATION

##### 1. Need and Practical Utility for the Collection of Information

10 CFR Part 50 provides certain requirements exclusive to domestic licensing of production and utilization facilities.

The NRC is proposing to amend its regulations on decommissioning trust agreements. The proposed action would explicitly state that the trust provisions must be acceptable to the NRC and contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. To accomplish this objective, the NRC is proposing to modify paragraphs 10 CFR 50.75(e)(1)(i) and (ii), and to add a new paragraph, 10 CFR 50.75(h) to its regulations. The changes in §50.75(e) specify that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. Paragraph 50.75(h) will reference the other paragraphs in §50.75 where necessary and will discuss the terms and conditions that the NRC believes are necessary to ensure that funds in the trusts will be available for their intended purpose. In that paragraph, licensees are required to submit written notification to the NRC whenever they intend to modify their trust or make a

disbursement or payment from it. As an accompaniment to this rulemaking, the NRC intends to update Regulatory Guide 1.159 to include sample trust fund language containing these terms and conditions.

Under deregulation, vertically integrated public utilities that generate electricity, own and manage the transmission system, and sell power to the ultimate consumers may gradually become less prevalent. Instead, generating facilities may be separated (i.e., "spun off") within a holding company structure or sold to power-producing companies that sell electricity as a commodity to other companies that service consumers. Currently, certain energy companies that are non-utility suppliers of electricity have begun acquiring nuclear power plants. After such acquisitions, State Public Utility Commissions (PUCs) and/or FERC may no longer have jurisdiction over the energy company obtaining the reactors. NRC is required to determine the suitability of transferring reactor licenses from the former licensee to a new licensee.

As part of its review of requests for license transfer in connection with the sale of nuclear power reactors, NRC staff have examined whether reasonable assurance of decommissioning funding will continue to be provided. As a condition for staff approval, certain clauses (some of which parallel criteria in Regulatory Guide 1.159 and others of which parallel FERC requirements) have been required to be included in decommissioning trust funds. This proposed rule attempts to address these concerns.

The information collection requirements of the amended 10 CFR Part 50 are identified below.

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

Paragraph 50.75(e)(1)(i) discusses the decommissioning financial assurance requirements of the prepayment method. Licensees shall establish a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities or other payment pursuant to a written agreement and maintain at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations relating to the prepayment deposit are regulated and examined by a Federal or State agency. Paragraph (e)(1)(ii) discusses the external sinking fund method of financial assurance. Licensees shall establish a trust, escrow account, Government fund, certificate of deposit, deposit of Government securities or other payment pursuant to a written agreement and maintain at all times in the United States with an entity that is an appropriate State or Federal government agency or an entity whose operations relating to the external sinking fund are regulated and examined by a Federal or State agency. The current regulations require the existence of a decommissioning trust agreement and the NRC position is that the current required agreement is a contract that previously had to have been written out of necessity between the two parties as a matter of detail and that the revised rule

language refers to it being "written" only as a matter of clarification and consistency. However, under this proposed rule, the Commission is proposing to additionally require licensees to revise their trust agreements, if necessary, to make them consistent with the proposed rule and the guidance provided in 50.75(h).

Paragraph 50.75(h)(1) is a new section in which licensees using prepayment or an external sinking fund to provide financial assurance shall provide in the terms of the trust, escrow account, government funds, or other account used to segregate and manage the funds, necessary guidance and conditions for each agreement by requiring licensees to submit written notification to the NRC whenever a licensee proposes to materially amend its agreement. Similarly, paragraph (h)(1)(iii) requires licensees to submit written notification to the NRC whenever a licensee intends to make a disbursement or payment (other than for payment of ordinary administrative expenses) from the trust, escrow account, Government fund, or other account.

2. Agency Use of Information

The NRC's Office of Nuclear Reactor Regulation (NRR) is the recipient and reviewer of the biennial decommissioning funding status reports submitted by nuclear power reactor licensees. NRR reviews the submitted information to determine if licensees are accumulating sufficient funds for decommissioning. This is especially relevant in light of potential changes in the electric utility industry's regulatory environment and the potential impact on the adequate assurance of decommissioning funds. NRR has received and reviewed one round of submittals of these reports to determine the adequacy of decommissioning funding as a result of the Final Rule on Financial Assurance Requirements for Decommissioning Nuclear Power Reactors, published on September 22, 1998 (63 FR 50465). The NRC has begun reviewing the second round of these reports, which were due by March 31, 2001. The licensee requests for trust modification or disbursements from the trust are submitted to the Director of either NRR or the Office of Nuclear Material Safety and Safeguards (NMSS), as applicable, to give the NRC the opportunity to object to the licensee's proposed action.

3. Reduction of Burden through Information Technology

The NRC encourages the use of information technology whenever it would reduce the burden on a licensee. If licensees have the capability to submit signed copies electronically, they may do so.

4. Effort to Identify Duplication and Use Similar Information

The proposed requirements in 10 CFR Part 50 for licensees to submit, if necessary, a revised report on the status of decommissioning funds and financial assurance conditions in the case of license transfers would not duplicate

information currently collected by the NRC. NRC also has determined that no similar information is otherwise available to NRC staff on a timely basis. The Information Requirements Control Automated System (IRCAS) was searched for duplication, and none was found.

5. Effort to Reduce Small Business Burden

This rulemaking does not affect small businesses.

6. Consequences to Federal Program or Policy Activities if the Collection is not Conducted or is Conducted Less Frequently

Should the NRC not receive information on the status of a licensee's accumulation of the funds necessary for decommissioning because of a change in a licensee's trust agreement, or if NRC did not receive the necessary information relating to a license transfer, NRC might be unaware whether sufficient funds were being accumulated to adequately decommission the site.

7. Circumstances Which Justify Variation from OMB Guidelines

None.

8. Consultations Outside the NRC

The opportunity for public comment has been published in the Federal Register.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality of the Information

None.

11. Justification for Sensitive Questions

There are no questions regarding sensitive issues.

12. Estimated Burden and Burden Hour Cost

Section	No. of Respondents	Responses per Respondent	Burden Hours per Response	Total Burden Hours	Cost @ \$143/Hr
50.75(e)(1)(i) Review and revising trust agreements	55	1	8	440	\$62,920
	55	1	60	3,300	\$471,900

50.75(h)(1)(ii) Notification to NRC of material changes in trust agreement	55	1	8	440	\$62,920
50.75(h)(1)(iii) Notification to NRC of disbursements out of the ordinary	1	1	8	8	\$1,144
50.75(h)(1) Impact on 50.80(b)	20	1	8	(400)	(\$57,200)
Total	166			3,788	\$598,884

13. Estimates of Other Additional Costs

None.

14. Estimated Annualized Cost to the Federal Government

Section	No. of Responses	Burden Hours per Response	Total Burden Hours	Cost @ \$143/Hr
50.75(e)(1)(i) Review of revised trust agreements	55	3	165	\$23,595
50.75(h)(1)(ii) Review of notification of material changes in trust agreement	55	8	440	\$62,920
50.75(h)(1)(iii) Review of notification of disbursements out of the ordinary	1	8	8	\$1,144
Total	111		613	\$87,659

15. Reasons for Changes in Burden or Cost

The estimated burden has increased from 4,729,906 to 4,733,694 hours for this proposed rule because the requirement for each licensee to review its trust agreement will result in an estimated annual 8 burden hours per licensee for a total of 440 hours for 55 licensees and an estimated 3,300 burden hours for 55 licensees to review and amend their trust agreements.

The new requirement for a licensees to notify the NRC in writing of material changes to its trust agreements results in an increase in burden of 8 hours each for approximately 55 licensees for a total of 440 burden hours.

The burden for licensees to make disbursements other than the ordinary is 8 hours for 1 notification for a total burden increase of 8 hours annually.

The burden associated with the application to transfer a license would be reduced from 200 to 180 hours for each of 20 licensees annually for a total decrease of 400 hours.

The net increase in burden hours is 6,648 hours. The number of responses has increased from 7,907 to 8,073.

16. Publication for Statistical Use

None.

17. Reason for not Displaying the Expiration Date

The requirement will be contained in a regulation. Amending the Code of Federal Regulations to display information that, in an annual publication, could become out of date would confuse the public.

18. Exceptions to the Certification Statement

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods are not employed in the collection of information.

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: Proposed Rule, 10 CFR Part 50, Decommissioning Trust Provisions
3. The form number if applicable: Not applicable.

4. How often the collection is required: Written notification to the NRC is required when a licensee needs to materially amend its trust agreement to make it consistent with the proposed rule and guidance, or when a license transfer is planned, or whenever a licensee intends to make a disbursement or payment (other than for ordinary administrative expenses) from the trust, escrow account, Government fund, or other account.
5. Who will be required or asked to report: Part 50 licensees.
6. An estimate of the number of responses: 166 responses (Approximately 110 licensees would need to revise their trust agreements, approximately 55 will make material changes to its trust agreement and 1 licensee will make an out of the ordinary disbursement.
7. The estimated number of annual respondents: Approximately 110 licensees per year.
8. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 3,788 hours
9. An indication of whether Section 3507(d), Pub. L. 104-13 applies: Applicable.
10. Abstract: The NRC is proposing to amend its regulations on decommissioning trust agreements to require that the trust provisions

contain general terms and conditions that the NRC believes are required to ensure that funds in the trusts will be available for their intended purpose. The proposed amendment would require that the trust should be an external trust fund in the United States, established pursuant to a written agreement and with an entity that is a State or Federal government agency or whose operations are regulated by a State or Federal agency. The amendment would also require a licensee to notify the NRC in writing when it proposes to materially amend its agreement and when a licensee intends to make a disbursement or payment (other than payment of ordinary administrative expenses). As an accompaniment to this rulemaking, the NRC intends to update Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," to include sample trust fund language, terms, and conditions.

Submit, by (insert date 30 days after publication in the Federal Register), comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate 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 information be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. The proposed rule indicated in "The title of the information collection" is or has been published in the Federal Register within several days of the publication date of this Federal Register Notice. Instructions for accessing the electronic OMB clearance package for the rulemaking have been appended to the electronic rulemaking. Members of the public may access the electronic OMB clearance package by following the directions for electronic access provided in the preamble to the titled rulemaking.

Comments and questions should be directed to the OMB reviewer by (insert date 30 days after publication in the Federal Register):

Amy Farrell  
Office of Information and Regulatory Affairs (3150-0011)  
NEOB-10202  
Office of Management and Budget  
Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-7318.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415-7233.

Dated at Rockville, Maryland, this 23<sup>rd</sup> day of May, 2001.

For the Nuclear Regulatory Commission

RA

Brenda Jo. Shelton, NRC Clearance Officer  
Office of the Chief Information Officer

Comments and questions should be directed to the OMB reviewer by (insert date 30 days after publication in the Federal Register):

Amy Farrell  
 Office of Information and Regulatory Affairs (3150-0011)  
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 Office of Management and Budget  
 Washington, DC 20503

Comments can also be submitted by telephone at (202) 395-7318.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415-7233.

Dated at Rockville, Maryland, this 23<sup>rd</sup> day of May, 2001.

For the Nuclear Regulatory Commission

RA  
 Brenda Jo. Shelton, NRC Clearance Officer  
 Office of the Chief Information Officer

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\* see previous concurrence

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