

# Proposed Rules

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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

[NRC–2010–0366]

#### Proposed Generic Communications Reporting for Decommissioning Funding Status Reports

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to clarify for licensees and external stakeholders the information that they should use and present to the NRC in the Decommissioning Funding Status (DFS) reports to ensure that the NRC staff, licensees, and stakeholders are using the same, correct figures and to prevent potential issues resulting from shortfalls in the licensee's decommissioning fund.

**DATES:** Comment period expires December 27, 2010. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to the Chief, Rules, Directives and Announcements Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop TWB–05–B01M, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** Notice.

**FOR FURTHER INFORMATION, CONTACT:** Aaron L. Szabo, at 301–415–1985 or by e-mail at [aaron.szabo@nrc.gov](mailto:aaron.szabo@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

### NRC Regulatory Issue Summary 2010–XXX

#### 10 CFR 50.75 Reporting for Decommissioning Funding Status Reports

##### Addressees

All holders of and applicants for a power reactor operating license or construction permit under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, “Domestic Licensing of Production and Utilization Facilities,” except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.

All holders of and applicants for a power reactor early site permit, combined license, standard design certification, standard design approval, or manufacturing license under 10 CFR Part 52, “Licenses, Certifications, and Approvals for Nuclear Power Plants.”

##### Intent

The NRC is issuing this RIS to clarify the reporting requirements of 10 CFR 50.75(f)(1) and 10 CFR 50.75(f)(2) regarding the status of decommissioning funding assurance.

In 2009, the NRC received the DFS reports for all the NRC licensed power reactors, including those undergoing decommissioning, as required by 10 CFR 50.75(f)(1) and (2). During the evaluation process for the DFS reports, the NRC staff determined that communication between the NRC and licensees could be enhanced. Therefore, the staff decided to provide this RIS to clarify the information that licensees should report to the NRC in the DFS reports to ensure standardization and consistency. This RIS does not replace any information provided in RIS 2001–07, Revision 1, “10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning,” dated January 8, 2009, and should be considered a supplement to it.

##### Background

SECY–07–0197, “Reactor Decommissioning Trust Fund Oversight by Other Agencies and Recommendations Regarding Further Commission Action,” issued November 2007, recommended to the Commission that the NRC staff begin to perform periodic spot-checks at the licensee's offices of the original statements and

other related documents sent to a licensee from its trustee that disclose the trust fund balance to ensure that the amounts reported to the NRC in the DFS reports are equivalent to the amount stated in the licensee's year-end bank statement.

The NRC has completed over half of the required spot-checks, ensuring in each case that the DFS report matched the licensee's submission and that the information provided to the NRC was correct.

In 2009, during the NRC staff's review of the DFS reports, the staff held conference calls and issued requests for additional information to ensure compliance with reporting regulations under 10 CFR 50.75(f). Also during the review, the NRC staff determined that stakeholders needed to be informed about the NRC's evaluation process for decommissioning funding assurance (DFA), as well as about the information that licensees should provide to the NRC when they submit their DFS reports. The current guidance that the NRC staff uses to evaluate the DFS reports appears in Office of Nuclear Reactor Regulation (NRR) Instruction LIC–205, Revision 3 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100550465).

Because of these issues, the NRC staff is clarifying for licensees and external stakeholders the information that they should use and present to the NRC in the DFS reports to ensure that the NRC staff, licensees, and stakeholders are using the same, correct figures and to prevent potential issues resulting from shortfalls in the licensee's decommissioning fund.

##### Summary of the Issue

On the basis of a review of recent DFS reports submitted to the NRC, the staff has identified two general categories in which DFS report submittals could be improved:

- (1) Format and content of submittal.
- (2) Site-specific proposals.

##### Format and Content of Submittal

Under 10 CFR 50.75(c)(2), the licensee must provide the most recent applicable regional data from the U.S. Department of Labor Bureau of Labor Statistics (BLS) when submitting the DFS report. The licensee should provide the month of December of the calendar year preceding the date of the report BLS

regional data, if available, for labor, and fourth quarter of the calendar year preceding the date of the report BLS regional data, if available, for energy; if either or both of those numbers are not available, then the licensee should use the latest available numbers and specify which month or quarter.

Under 10 CFR 50.75(f), the licensee must submit the amount of decommissioning funds accumulated at the end of the calendar year. In some cases, licensees who recover their costs in rates are authorized to accumulate funds outside the decommissioning account until a determination is made by their rate regulator regarding whether the funds will be deposited into the account. Funds held outside the decommissioning trust using a method not listed in 10 CFR 50.75(e) should not be included in the amount of funds reported as accumulated. In some cases, the licensee has accumulated funds in its decommissioning trust greater than needed to satisfy the minimum amount required by NRC regulations or has commingled funds set aside to satisfy the NRC requirement with other decommissioning-related funds; if so, the licensee must report the total accumulated amount in its decommissioning trust for radiological decommissioning, pursuant to NRC regulations, and may, separately report the amount accumulated for State costs, spent fuel management costs, or other purposes. The licensee needs to preserve the distinction between NRC-determined cost estimate and all other decommissioning cost estimates in their reports.

The licensee should report the actual amount accumulated for decommissioning, as defined by the NRC's regulations. When performing spot-checks of decommissioning fund accounts, the NRC staff discovered that some licensees provided the book value of their Decommissioning Trust Fund (DTF) balance instead of the market value. Although the book value has usually been a lower amount than the market value, the market value is a more accurate measure of the worth of the DTF, because it is the value of the DTF if liquidated on the date reported. Licensees should avoid providing the book value and consider providing the market value for their DTF balance. The DFS reports will allow the NRC staff to track the amounts in all licensees' DTFs to determine financial market trends and ensure that licensees are following all NRC regulations.

When submitting the DFS report, if the licensee provides a schedule of the annual amounts remaining to be collected, the licensee should avoid

providing an aggregated amount and instead provide the amounts in a year-by-year breakdown that gives the source of the annual amounts remaining to be collected (*i.e.*, rate-recovery or non-bypassable charges, as allowed under 10 CFR 50.75(e)(ii)(A) or (B)). If a licensee is relying on any contracts under 10 CFR 50.75(e)(i)(v) as the source of the annual amounts remaining to be collected, the licensee should identify the contracts and provide the amounts to be collected on an annual basis. The licensee may also provide the NRC with the regulatory order stating the amounts and length of the schedule.

If the licensee claims a greater than 2 percent real rate of return, in accordance with 10 CFR 50.75(e)(1)(i), the licensee should provide the rate-setting authority order permitting a greater real rate of return or other documentation granting the higher rate, including inflation and other escalation factors. The licensee should also indicate whether the higher real rate of return has been allowed during the decommissioning period.

Under 10 CFR 50.75(f), the DFS report must state the modifications to the method of providing DFA. This includes, but is not limited to, adding or eliminating funding methods, changing existing methods (for example, changing the terms of contractual obligations or the face amount of a surety, insurance, or other guarantee method), and changing the commingling of funds (creating subaccounts, moving funds from one unit to another within the same site). Any material changes to the trust agreement must also be reported in the DFS report (Note: under 10 CFR 50.75(h)(1)(iii), material changes to the trust agreement require prior written notification to the NRC).

#### *Site-Specific Proposals*

Licensees are required to provide a site-specific cost estimate five years prior to cessation of operations. However, if a licensee chooses to submit a site-specific cost estimate prior to that time, it must be equal to or greater than the NRC minimum, as calculated in 10 CFR 50.75(c), and be accompanied by the same information required for the site-specific study required under 10 CFR 50.75(f)(3). It should be consistent with the cost assessments made in the most recently submitted site-specific cost estimate to the NRC, Federal Energy Regulatory Commission, state public utilities commission, or other regulatory body. The licensee should provide a reference and citation to any site-specific cost estimate submitted to another regulatory body. If the licensee does not provide this information, the NRC staff may determine the site-

specific method to be insufficient as submitted and only allow the licensee to use the regulatory formula, with no credit for safe store, unless more information is provided.

The detailed site-specific study should have a year-by-year cost breakdown combined with the overnight cost (cost without inflation or cost escalation) of decommissioning the plant using constant dollars for the year reported. The NRC staff evaluates the site-specific method using the following steps: (1) Applying the current revision of NRR OI LIC-205 to calculate the growth of the fund during operations, (2) for each year during decommissioning, (a) subtracting the annual cost to be incurred and then (b) providing a 2 percent real rate of return, unless a higher rate has been allowed, and (3) repeating step (2) for each year of the decommissioning period until either the decommissioning period is completed or the DTF is depleted.

#### **Backfit Discussion**

This RIS provides regulatory clarification and does not represent a new or different staff position regarding the implementation of 10 CFR 50.75, "Reporting and Recordkeeping for Decommissioning Planning." It requires no action or written response beyond that required in 10 CFR 50.75. Any action by addressees to implement changes to their reporting procedures in accordance with the clarifications in this RIS is strictly voluntary, ensures compliance with current regulations, and therefore is not a backfit under 10 CFR 50.109, "Backfitting." Consequently, the NRC staff did not perform a backfit analysis.

#### **Federal Register Notification**

To be done after the public comment period.

#### **Paperwork Reduction Act Statement**

This RIS contains and references information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0011.

#### **Public Protection Notification**

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

If you have any questions about this regulatory issue summary, please contact the person listed below or the

NRR project manager for your specific nuclear power plant.

#### Contact

Please direct any questions about this matter to Aaron L. Szabo at 301-415-1985 or by e-mail at [aaron.szabo@nrc.gov](mailto:aaron.szabo@nrc.gov).

#### End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

Dated at Rockville, Maryland, this 19th day of November 2010.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Deputy Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-29738 Filed 11-24-10; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE-2008-BT-TP-0010]

#### Compliance Testing Procedures: Correction Factor for Room Air Conditioners

**AGENCY:** Office of the General Counsel, Department of Energy (DOE).

**ACTION:** Petition for rulemaking; request for comment.

**SUMMARY:** On November 15, 2010, the Department of Energy received a petition for rulemaking from the Association of Home Appliance Manufacturers (AHAM). The petition, requests the initiation of a rulemaking regarding compliance testing procedures for room air conditioners. The petition seeks temporary enforcement forbearance, or in the alternative, a temporary industry-wide waiver or guidance, to allow use of a data correction factor in compliance testing procedures for room air conditioners. Public comment is requested on whether DOE should grant the petition

and proceed with a rulemaking procedure on this matter.

**DATES:** Comments must be postmarked no later than December 27, 2010.

**ADDRESSES:** Any comments submitted must reference "Petition for Rulemaking: Correction Factor for Room Air Conditioners." Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [AHAM2-2008-TP-0010@ee.doe.gov](mailto:AHAM2-2008-TP-0010@ee.doe.gov). Include "Petition for Rulemaking" in the subject line of the message.

- *Postal Mail:* Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Please submit one signed original paper copy.

**FOR FURTHER INFORMATION CONTACT:** Subid Wagley, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 287-1414, e-mail: [subid.wagley@ee.doe.gov](mailto:subid.wagley@ee.doe.gov). Betsy Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-7796, e-mail: [elizabeth.kohl@hq.doe.gov](mailto:elizabeth.kohl@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provides among other things, that "[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." (5 U.S.C. 553(e)). Pursuant to this provision of the APA, AHAM petitioned the Department of Energy for the issuance of a new rule, as set forth below. In publishing this petition for public comment, the Department of Energy is seeking views on whether it should grant the petition and undertake a rulemaking to consider the proposal contained in the petition. By seeking comment on whether to grant this petition, the Department of Energy takes no position at this time regarding the merits of the suggested rulemaking.

The proposed rulemaking sought by AHAM would allow manufacturers of

room air conditioners to use a correction factor that is not currently included in the regulations governing DOE's compliance testing procedures. The petition seeks temporary enforcement forbearance, or a temporary industry-wide waiver or guidance, to allow use of this methodology. The Department of Energy seeks public comment on whether DOE should grant the petition and proceed with a rulemaking procedure on this issue.

Issued in Washington, DC, on November 18, 2010.

**Scott Blake Harris,**  
*General Counsel.*

Set forth below is the full text of the Association of Home Appliance Manufacturers' petition:

**Before the U.S. Department of Energy**  
November 15, 2010

#### Petition for Rulemaking

#### Petition of the Association of the Home Appliance Manufacturers for Temporary Enforcement Forbearance, a Temporary Industry-Wide Waiver Or Guidance To Allow Use of DOE—Proposed Correction Factor for Room Air Conditioner Testing

Pursuant to 5 U.S.C. 553(e), the Association of Home Appliance Manufacturers (AHAM) files this petition.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs. AHAM, relevant to this petition, represents the manufacturers of the vast majority of room air conditioners.

This petition requests temporary enforcement forbearance, or in the alternative, a temporary industry-wide waiver or guidance, to allow use of a data correction factor for room air conditioners that DOE currently