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For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of June 2013.

**Andrew Persinko,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2013-15414 Filed 6-26-13; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

[NRC-2012-0299]

### Standard Format and Content for Post-Shutdown Decommissioning Activities Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 of Regulatory Guide (RG) 1.185, "Standard Format and Content for Post-shutdown Decommissioning Activities Report." This guide describes a method that the NRC staff considers acceptable for use in complying with the Commission's requirements regarding the submission of a post-shutdown decommissioning activities report (PSDAR).

**ADDRESSES:** Please refer to Docket ID NRC-2012-0299 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publically available, using the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0299. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS*

*Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 1 of Regulatory Guide 1.185 is available in ADAMS under Accession No. ML13140A038. The regulatory analysis may be found in ADAMS under Accession No. ML13140A039.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

#### FOR FURTHER INFORMATION CONTACT:

James Shepherd, Office of Federal and State Materials and Environmental Management Programs, telephone: 301-415-6712, email:

[James.Shepherd@nrc.gov](mailto:James.Shepherd@nrc.gov) or Edward O'Donnell, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-251-7455, email: [Edward.Odonnell@nrc.gov](mailto:Edward.Odonnell@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The NRC issued Revision 1 of RG 1.185 with a temporary identification as Draft Regulatory Guide, DG-1272, in the **Federal Register** on December 19, 2012 (77 FR 75198), for a 60-day public comment period. The public comment period closed on February 19, 2013, and the NRC did not receive any comments. This revision updates RG 1.185 to reflect lessons learned since its original issuance in 2000. It identifies the type of information that the PSDAR must contain and establishes a standard format for the PSDAR that the NRC staff considers acceptable. The PSDAR is required of nuclear power plant licensees before or within two years of permanent cessation of operations. The

report must include a description of the licensee's planned decommissioning activities, a schedule for the accomplishment of significant milestones, an estimate of expected costs, and a discussion of the licensee's evaluation of the environmental impacts associated with site-specific decommissioning activities.

Revision 1 of RG 1.185 represents the NRC staff's current guidance for future users and applications. Earlier versions of this regulatory guide, however, continue to be acceptable for those licensees whose licensing basis includes earlier versions of this regulatory guide, absent a licensee-initiated change to its licensing basis. Additional information on the NRC staff's use of this revised regulatory guide with respect to both current and future users and applications is set forth in the "Implementation" section of the revised regulatory guide.

##### II. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

##### III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the "Implementation" section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses.

Dated at Rockville, Maryland, this 19th day of June, 2013.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2013-15426 Filed 6-26-13; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2012-0109]

### Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory guide; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 5.29, “Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants.” This regulatory guide provides guidance on recordkeeping and reporting requirements with respect to material control and accounting. This guide applies to all nuclear power plants.

**ADDRESSES:** Please refer to Docket ID NRC–2012–0109 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2012–0109. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 of Regulatory Guide 5.29, is available in ADAMS under Accession No. ML13051A421. The regulatory analysis may be found in ADAMS under Accession No. ML13051A418.

- *NRC’s PDR:* You may examine and purchase copies of public documents at the NRC’s PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

**FOR FURTHER INFORMATION CONTACT:** Richard Jervey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7404; email: [Richard.Jervej@nrc.gov](mailto:Richard.Jervej@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The NRC is issuing a revision to an existing guide in the NRC’s “Regulatory Guide” series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 5.29 was issued with a temporary identification as Draft Regulatory Guide, DG–5028. This guide describes a method that the NRC staff considers acceptable to implement special nuclear material control and accounting system requirements for nuclear power plants. This guide applies to all nuclear power plants.

Part 74 of Title 10, of the *Code of Federal Regulations* (10 CFR), “Material Control and Accounting of Special Nuclear Material,” Subpart B, “General Reporting and Recordkeeping Requirements,” establishes the material control and accounting performance requirements for special nuclear material at nuclear power plants. The regulations at 10 CFR 74.11, “Reports of Loss or Theft or Attempted Theft or Unauthorized Production of Special Nuclear Material,” require, in part, that nuclear power reactor licensees notify the NRC of any such events within 1 hour of discovery. The regulations at 10 CFR 74.13, “Material Status Reports,” require nuclear power reactor licensees to submit material status reports for certain quantities of special nuclear material. The regulations at 10 CFR 74.15, “Nuclear Material Transaction Reports,” require nuclear power reactor licensees to complete transaction reports when transferring, receiving, or making adjustments to specified quantities of special nuclear material. The regulations at 10 CFR 74.19, “Recordkeeping,” require, in part, that nuclear power reactor licensees keep records that show the receipt, inventory (including location and unique identity), acquisition, transfer, and disposal of all special nuclear material in their possession. Additionally, 10 CFR 74.19 requires, in part, that licensees establish, maintain, and follow written material control and accounting procedures, and that they conduct physical inventories of special nuclear material at intervals not to exceed once every 12 months.

Regulatory Guide 5.29 endorses American National Standards Institute (ANSI) N15.8–2009, “Methods of

Nuclear Material Control—Material Control Systems—Special Nuclear Material Control and Accounting Systems for Nuclear Power Plants.” ANSI N15.8–2009 provides guidance on the control and accounting of (1) fuel rods that are separated from their parent assemblies; and (2) pieces of irradiated material that are separated as a result of fuel damage.

## II. Additional Information

DG–5028, was published in the **Federal Register** on May 14, 2012 (77 FR 28407), for a 60-day public comment period. The public comment period closed on July 16, 2012. Public comments on DG–5028 and the staff responses to the public comments are available under ADAMS Accession Number ML13051A437.

This regulatory guide is a rule as designated in the Congressional Review Act (5 U.S.C. 801–808). However, OMB has not found it to be a major rule as designated in the congressional Review Act.

## III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget (OMB) has not found it to be a major rule as defined in the Congressional Review Act.

## IV. Backfitting and Issue Finality

This regulatory guide provides guidance on recordkeeping and reporting requirements with respect to material control and accounting, as set forth in 10 CFR part 74. The regulatory position held in this guidance demonstrates the method that the NRC staff finds acceptable for an applicant or licensee to meet the requirements of the underlying NRC regulations.

The issuance of the guidance in this regulatory guide is not backfitting, as that term is defined in 10 CFR 50.109 or inconsistent with the issue finality provisions in 10 CFR part 52, because information collection and reporting requirements with respect to material control and accounting are not included within the scope of the NRC’s backfitting protections or part 52 issue finality provisions. Material control and accounting requirements are applicable to special nuclear material (SNM) licensees possessing SNM quantities greater than the part 74-specified threshold. Materials control and accounting are intended to ensure that SNM is not used, or diverted for use, in a manner that endangers public health and safety or the common defense and security. The requirements are focused

on the possession of SNM, and not with respect to its use in the operation of the nuclear power reactor. This is true even though the guidance in this regulatory guide is addressed to materials control and accounting at nuclear power plants. This regulatory guide reflects the physical and operational considerations of nuclear power reactors, which are different from other facilities possessing SNM above the part 74 specific threshold. The regulatory guide does not present more stringent guidance for materials licensees who are also power reactor licensees, as compared to guidance for those materials licensees who are not power reactor licensees. Therefore, the NRC does not regard the materials control and accounting requirements in part 74 as a general matter, or as applied to nuclear power reactors in the guidance of RG 5.29, as being within the scope of backfitting or issue finality provisions.

Applicants and potential applicants are not, with certain exceptions, protected by any issue finality provisions under part 52. This is because the issue finality provisions under part 52, with certain exclusions discussed below, were not intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are whenever an applicant references a part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. However, the scope of issue finality provided extends only to the matters resolved in the license or regulatory approval. Early site permits and design certification rules do not address or resolve compliance with material control and accounting requirements in 10 CFR part 74. Therefore, no applicant referencing an ESP or DCR is protected by relevant issue finality provisions with respect to the material control and accounting matters addressed in this regulatory guide.

Dated at Rockville, Maryland, this 19th day of June, 2013.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch,  
Division of Engineering, Office of Nuclear  
Regulatory Research.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69831; File No. TP 13-03]

### Order Granting Limited Exemptions From Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to ALPS ETF Trust, the VelocityShares Tail Risk Hedged Large Cap ETF, and the VelocityShares Volatility Hedged Large Cap ETF

June 21, 2013.

By letter dated June 21, 2013 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ALPS ETF Trust (the "Trust") on behalf of the Trust, the VelocityShares Tail Risk Hedged Large Cap ETF and the VelocityShares Volatility Hedged Large Cap ETF (each a "Fund" and, collectively, the "Funds"), any national securities exchange on or through which shares issued by the Funds ("Shares") may subsequently trade, ALPS Distributors, Inc., and persons or entities engaging in transactions in Shares (collectively, the "Requestors") requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act") and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. Each Fund seeks to track the performance of a particular underlying index ("Index"), which for each Fund is comprised of shares of exchange traded products ("ETPs"). Each Fund's underlying index reflects the performance of a portfolio consisting of an exposure to a large cap equity portfolio, consisting of three underlying ETFs which track the S&P 500 index ("Underlying Large-Cap ETFs") and a volatility strategy to hedge "tail risk" events (which are market events that occur rarely but may have severe consequences when they do occur), consisting of two underlying ETFs which reflect leveraged or inverse positions on the S&P 500 VIX Short-Term Futures Index ("Underlying Volatility ETFs"). The underlying index, at each monthly rebalance, consists of an 85% allocation to the Underlying Large-Cap ETFs and a 15% allocation to the Underlying Volatility ETFs. The Funds intend to operate as "ETFs of

ETFs" by seeking to track the performance of the respective underlying Index by investing at least 80% of their assets in the ETPs that comprise each Index. Each Fund also intends to enter into swap agreements designed to provide exposure to (a) the Underlying Volatility ETFs and/or (b) leveraged and/or inverse positions on the S&P 500 VIX Short-Term Futures Index directly. Except for the fact that the Funds will operate as ETFs of ETFs and intend to enter into swaps to obtain the leveraged and/or inverse exposure to the Underlying Volatility ETFs and/or the S&P 500 VIX Short-Term Futures Index, the Funds will operate in a manner identical to the ETPs that comprise each Index.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV") and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Funds will be listed and traded on the NYSE Arca (the "Exchange") or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- All ETPs that are invested in by the Funds will meet all conditions set forth in a relevant class relief letter,<sup>1</sup> will have received individual relief from the Commission, or will be able to rely on individual relief even though they are not named parties;
- At least 70% of each Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the

<sup>1</sup> Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).