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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AG52

Decommissioning Trust Provisions; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains a correction to an amendment included with the final regulations establishing licensing criteria for the decommissioning trust provisions for nuclear power plants that the Nuclear Regulatory Commission published in the **Federal Register** of December 24, 2002.

EFFECTIVE DATE: December 24, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1978; e-mail bjr@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction become effective on December 24, 2003. The final rule, published December 24, 2002 (67 FR 78332), amended parts 50 and 72 of 10 CFR Chapter 1. One of the amendments included in the final rule was to § 50.75(e). However, as a result of that amendment, paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) would be inadvertently removed from the NRC's regulations at § 50.75(e) when the December 24, 2002, final rule becomes effective. The NRC does not intend to remove these paragraphs.

Need for Correction

As published, the final regulations erroneously omit two paragraphs of § 50.75(e) that address the requirements for an external sinking fund sufficient to fund decommissioning costs for a nuclear power facility at the time permanent termination of operations is expected. This correction restores those paragraphs to 10 CFR Part 50.

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.

Accordingly, 10 CFR Part 50 is corrected by making the following correcting amendments:

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. 5841). 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, revise paragraph (e)(1)(ii) to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(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 administrative control of the licensee and its subsidiaries or affiliates in which the total amount of funds would be sufficient to pay decommissioning costs at the time permanent termination of operations is expected. An external sinking fund may be in the form of a trust, escrow account, or Government fund, with payment by certificate of deposit, deposit of Government or other securities, or other method acceptable to the NRC. This trust, escrow account, Government fund, or other type of agreement shall be established in writing and maintained at all times in the United States with an entity that is an appropriate State or Federal government agency, or an entity whose operations in which the external linking fund is managed are regulated and examined by a Federal or State agency. A licensee that has collected funds based on a site-specific estimate under § 50.75(b)(1) of this section may take credit for projected earnings on the external sinking funds using up to a 2 percent annual real rate of return from the time of future funds' collection through the decommissioning period, provided that the site-specific estimate is based on a period of safe storage that is specifically described in the estimate. This includes the periods of safe storage, final dismantlement, and license termination. 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 2 percent annual real rate of return up to the time of permanent termination. A licensee may use a credit of greater than 2 percent if the licensee's rate-setting authority has specifically authorized a higher rate. However, licensees certifying only to the formula amounts (*i.e.*, not a site-specific estimate) can take a pro-rata credit during the dismantlement period (*i.e.*, recognizing both cash expenditures and earnings the first 7 years after shutdown). Actual earnings on existing funds may be used

to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(A) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by "cost of service" or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are assumed to meet this condition.

(B) By a licensee whose source of revenues for its external sinking fund is a "non-bypassable charge," the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or 50.82 of this part.

* * * * *

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 03-6287 Filed 3-14-03; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2003-6]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Commission is amending its administrative fines regulations to reduce the civil money penalties for political committees with less than \$50,000 in financial activity in a reporting period that file reports late or that do not file them at all. The revised rules create two additional levels-of-activity brackets for such committees to make further distinctions in the amount of the civil money penalty assessed. The amendments also change the method for calculating the "level of activity" on which civil money penalties are based

for unauthorized committees by excluding certain non-Federal activity from the calculation. Additionally, these amended rules: clarify how late filers and non-filers will be notified of reason-to-believe findings, final determinations and other actions; and clarify the factors that will not be considered "extraordinary circumstances" when findings or penalties are challenged. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Dawn M. Odrowski, Attorney, at 999 E Street, NW., Washington, DC., 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules to make certain revisions to its administrative fines program. The program enables the Commission to adjudicate reporting violations of section 434(a) of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, by political committees and their treasurers who fail to file, or untimely file, required campaign finance disclosure reports. The adjudication employs a streamlined procedure that affords respondents due process rights and assesses a civil money penalty for violations based on published penalty schedules. The Commission established the administrative fines program in July 2000 pursuant to 2 U.S.C. 437g(a)(4). See Treasury and Government Appropriations Act, 2000, Pub. L. 106-58, 106th Cong. § 640, 113 Stat. 430, 476-77 (1999), as amended by the Treasury and General Government Appropriations Act, 2002, Pub. L. 107-67, 107th Cong. § 642, 115 Stat. 514, 555 (2001) and Explanation and Justification for Administrative Fines, 65 FR 31787 (May 19, 2000) and 66 FR 59680 (November 30, 2001). The sunset date of the program is December 31, 2003. See 11 CFR 111.30.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on administrative fines were transmitted to Congress on March 7, 2003.

Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking ("NPRM") on April 25, 2002 in which it sought comment on proposed rules amending the current administrative fines regulations based on its experience with the program. 67 FR 20461 (April 25, 2002). The NPRM sought comment on proposed amendments to lower the civil money penalties for all late- and non-filers, and to clarify how it notifies respondents in the administrative fines program of reason-to-believe findings and final determinations. The NPRM also sought comment generally on: (1) Whether to limit the scope of the civil money penalty reduction to those committees with less than \$50,000 in financial activity in a reporting period, or alternatively, to limit reduction to the fine schedule applicable to late- or non-filed non-election sensitive reports; (2) Whether to clarify that certain circumstances do not constitute "extraordinary circumstances" for purposes of challenging a reason-to-believe finding; and (3) Whether to revise the method of calculating the "level of activity" on which civil money penalties are based to exclude certain non-Federal activity.

The comment period closed on May 28, 2002. Comments were received from FEC Watch and from the law firm of Sandler, Reiff and Young.

11 CFR 111.35 If the Respondent Decides to Challenge the Alleged Violation Or the Proposed Civil Money Penalty, What Should the Respondent Do?

11 CFR 111.35(b) sets forth the requirements for written responses that a respondent may choose to make to challenge a reason-to-believe finding or a proposed civil money penalty. It contains specific circumstances that the Commission will consider in determining whether to levy a civil money penalty, including the existence of "extraordinary circumstances" that were beyond the respondents' control, that continued for at least 48 hours, and that prevented the timely filing of a report. Paragraph (b)(4) provides four broad examples of circumstances that the Commission will not consider to be "extraordinary." Respondents have raised a number of other defenses that the Commission has determined are not "extraordinary circumstances."

The NPRM sought comment as to whether 11 CFR 111.35 should be revised to state more specifically the kinds of circumstances that the Commission will not accept as an