

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

[NRC-2008-0664]

RIN 3150-AI54

Variable Annual Fee Structure for Small Modular Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for light-water small modular reactors (SMR). Under the proposed variable annual fee structure, an SMR's annual fee would be calculated as a function of its licensed thermal power rating. This proposed fee methodology complies with the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90). The NRC will hold a public meeting to promote full understanding of the proposed rule and to facilitate public comments.

DATES: Submit comments by **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Comments received after this date will be considered if it is practicable to do so, but the NRC is able to ensure consideration only for comments received on or before this date. For additional information about the public meeting, see Section XII, "Public Meeting," of this document.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0664. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic e-mail reply confirming receipt, then contact us at 301-415-1677.

- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Arlette Howard, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1481, e-mail: Arlette.Howard@nrc.gov.

SUPPLEMENTARY INFORMATION:

EXECUTIVE SUMMARY:

The NRC anticipates that it will soon receive license applications for light-water SMRs. In fiscal year (FY) 2008, the NRC staff determined that the annual fee structure for part 171 of title 10 of the *Code of Federal Regulations* (10 CFR) fees, which was established in 1995, should be reevaluated to address potential inequities for future SMRs, due to their anticipated design characteristics. These characteristics include modular design, factory component fabrication, and thermal power capacities of 1,000 megawatts thermal (MWt) or less per module. These SMRs also may include safety and security design features that could ultimately result in a lower regulatory oversight burden for this type of reactor. Despite these significant differences, under the NRC's current fee structure, an SMR would be required to pay the same annual fee as a current operating reactor. OBRA-90 instructs the NRC to "establish, by rule, a schedule of charges fairly and equitably allocating" various generic agency regulatory costs "among licensees" and, "[t]o the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." Because of the significant anticipated differences between SMRs and the existing reactor fleet, applying the current fee structure to SMRs appears to be contrary to OBRA-90's requirement that the NRC's fees be "fairly and equitably" allocated among its licensees. Therefore, the NRC proposes to implement a variable annual fee structure for SMR licensees that would include a minimum fee, a variable fee, and a maximum fee based on an SMR site's cumulative licensed thermal power rating.

A draft regulatory analysis (Accession No. ML15226A588 in the NRC's Agencywide Documents Access and Management System (ADAMS)) has been developed for this proposed rulemaking and is available for public comment (see Section XIII, Availability of Documents).

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2008-0664 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2008-0664.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection 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 e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.

- **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.

B. Submitting Comments

Please include Docket ID NRC-2008-0664 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

A. Operating Reactor Annual Fee Structure

Over the past 40 years the NRC has assessed, and continues to assess, fees to applicants and licensees to recover the cost of its regulatory program. The NRC's fee regulations are governed by two laws: 1) the Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 483 (a)); and 2) OBRA-90 (42 U.S.C. 2214). Under OBRA-90, the NRC is required to recover approximately 90 percent of its annual budget authority through fees, not including amounts appropriated for Waste Incidental to Reprocessing, amounts appropriated for generic homeland security activities (non-fee items), amounts appropriated from the Nuclear Waste Fund, and amounts appropriated for Inspector General services for the Defense Nuclear Facilities Safety Board.

The NRC assesses two types of fees to meet the requirements of OBRA-90. First, licensing and inspection fees, established in 10 CFR part 170 under the authority of the IOAA,

recover the NRC's cost of providing specific benefits to identifiable applicants and licensees. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA-90, recover NRC's generic and other regulatory costs that are not otherwise recovered through 10 CFR part 170 fees during the fiscal year.

Under the current annual fee structure, SMRs would be required to pay the same annual fee as those paid by the operating reactor fee class. For the operating reactor fee class, the NRC allocates 10 CFR part 171 annual fees equally among the operating power reactor licensees to recover those budgetary resources expended for rulemaking and other generic activities which benefit the entire fee class. If 10 CFR part 171, in its current form, is applied to SMRs, then each SMR reactor would be required to pay the same flat annual fees as the existing operating reactor fleet, even though SMRs are expected to be considerably smaller in size and are expected to utilize designs that may reduce the NRC's regulatory costs per reactor.

Additionally, under the current annual fee structure, multimodule nuclear plants would be assessed annual fees on a per-licensed-module basis, as stated in the draft regulatory analysis, in the section titled "Identification and Preliminary Analysis of Alternative Approaches." For example, an SMR site with 12 licensed SMR modules with low thermal power ratings would have to pay 12 times the annual fee paid by a single large operating reactor, even if that single reactor had higher thermal power rating than the combined power of the 12 SMR modules; this disparity raises fairness and equity concerns under OBRA-90. The SMR licensees could apply for fee exemptions to lower their annual fees; however, fee exceptions are appropriate only for unanticipated or rare situations. OBRA-90 requires NRC to establish, by rule, a schedule of charges fairly and equitably allocating annual fees among its licensees. If the NRC anticipates up-front that its annual fee schedule will not be fair and equitable as applied to a particular class of licensees, then amending the schedule, rather than planning to rely on the exemption process, is the better course of action for complying with OBRA-90.

B. Advance Notice of Proposed Rulemaking Regarding an Annual Fee Structure for SMRs

In order to address any potential inequities described above, the NRC began re-evaluating its annual fee structure as it relates to SMRs. In March 2009, the NRC published an Advance Notice of Proposed Rulemaking (ANPR) for a variable annual fee structure for power reactors in the *Federal Register* (74 FR 12735, March 25, 2009). Although the ANPR nominally addressed the fee methodology used for all power reactors, its principal focus was on how to best adapt the existing fee methodology for future SMRs.

The NRC received 16 public comments on the ANPR from licensees, industry groups, and private individuals. These comments provided a wide range of input for agency consideration. Nine commenters supported adjusting the current power reactor annual fee methodology for small and medium-sized power reactors by some means. These commenters suggested basing the annual fee on either: a) a risk matrix, b) the thermal power ratings (in megawatts thermal, MWt), c) the cost of providing regulatory service, or d) an amount proportional to the size of the system based on megawatt (MW) ratings compared to a fixed baseline. Three commenters representing small reactor design vendors supported a variable fee rate structure as a means to mitigate the impacts of the existing fee structure on potential customers of their small reactor designs.

Other commenters not supporting the variable annual fee structure recommended the following changes to the fee methodology: a) reinstatement of reactor size as a factor in evaluating fee exemption requests under 10 CFR 171.11(c), b) establishment of power reactor subclasses, or c) performance of additional analysis before making any changes to the current fee structure. Two commenters expressed an unwillingness to subsidize operating SMRs at the expense of their own businesses and believed that the flat-rate methodology provided regulatory certainty and assisted the ability to make ongoing financial plans.

In September 2009, the NRC staff submitted SECY-09-0137, "Next Steps for Advance Notice of Proposed Rulemaking on Variable Annual Fee Structure for Power Reactors," to the Commission for a notation vote (ADAMS Accession No. ML092660166). The paper summarized the comments received in response to the ANPR and requested Commission approval to form a working group to analyze the commenters' suggested methodologies. The Commission approved the staff's recommendation in the October 13, 2009, Staff Requirements Memorandum (SRM) for SECY-09-0137 (ADAMS Accession No. ML092861070).

C. Evaluation of Four Alternative Annual Fee Structures for SMRs

The NRC subsequently formed a working group to analyze the ANPR comments, as well as position papers submitted to the NRC from the Nuclear Energy Institute (NEI), "NRC Annual Fee Assessment for Small Reactors," dated October 2010 (ADAMS Accession No. ML103070148); and from the American Nuclear Society (ANS), "Interim Report of the American Nuclear Society President's Special Committee on Small and Medium Sized Reactor (SMR) Generic Licensing Issues," dated July 2010 (ADAMS Accession No. ML110040946).

Four possible alternatives emerged from the working group's analysis of the public comments and the NEI and ANS position papers:

1. Continue the existing annual fee structure, but define a modular site of up to 12 reactors or 4,000 MWt licensed power rating as a single unit for annual fee purposes.
2. Create fee classes for groups of reactor licensees and distribute the annual fee costs attributed to each fee class equally among the licensees in that class.
3. Calculate the annual fee for each licensed power reactor as a function of potential risk to public health and safety using a risk matrix.
4. Calculate the annual fee for each licensed power reactor as a function of its licensed thermal power rating.

The NRC staff further concluded that the original Alternative 3, which calculated the annual fee for each SMR as a function of its potential risk to public health and safety using a risk matrix, did not warrant further consideration and analysis because of the technical complexities and potential costs of developing the probabilistic risk assessments necessary to implement this alternative.

D. Preferred Approach for an Annual Fee Structure for SMRs

The working group examined the alternatives and informed the NRC's Chief Financial Officer (CFO) that Alternative 4 was the working group's preferred recommendation because it allows SMRs to be assessed specific fee amounts based on their licensed thermal power ratings (measured in MWt) on a variable scale with a minimum fee and a maximum fee. Additionally, the variable portion of the fee allows for multiple licensed SMR reactors on a single site to be treated as a single reactor for fee purposes up to 4,000 MWt. The working group determined that these attributes best align with NRC requirements under OBRA-90.

The CFO submitted the final recommendations to the Commission in an informational memorandum dated February 7, 2011, "Resolution of Issue Regarding Variable Annual Fee Structure for Small and Medium-Sized Nuclear Power Reactors" (ADAMS Accession No. ML110380251). The memorandum described the results of the working group's efforts and its recommendation that the annual fee structure for SMRs be calculated for each newly licensed power reactor as a function of its licensed thermal power rating. The memorandum indicated that the staff intended to obtain Commission approval for the planned approach during the process for developing the proposed rule.

In FY 2014, the staff reviewed the analysis and recommendations in the 2011 memorandum and determined that they remained sound. However, the working group identified one additional area for consideration related to the maximum thermal power rating

eligible for a single annual fee.

In the FY 2011 memorandum, the CFO proposed an upper threshold of 4,000 MWt for multi-module power plants to be allocated a single annual fee. This value was comparable to the largest operating reactor units at the time (Palo Verde Nuclear Generating Station Units 1, 2, and 3 at 3,990 MWt each). Subsequently, a power uprate was approved for Grand Gulf Nuclear Station, Unit 1, which raised the maximum licensed thermal power rating to 4,408 MWt. Therefore, the working group recommended setting the single-fee threshold for a multi-module nuclear plant at 4,500 MWt on the SMR variable annual fee structure scale so that the maximum fee remains aligned with the largest licensed power reactor.

With this change, the staff submitted final recommendations to the Commission and requested approval to proceed with a proposed rulemaking for an SMR annual fee structure in a memorandum dated March 27, 2015, "Proposed Variable Annual Fee Structure for Small Modular Reactors" (ADAMS Accession No. ML15051A092). The Commission approved the staff's request to proceed with a proposed rulemaking on May 18, 2015, in SRM-SECY-15-0044 (ADAMS Accession No. ML15135A427).

III. Discussion

A. What action is the NRC proposing to take?

Based on the Commission's approval in SRM-SECY-15-0044, May 18, 2015 (ADAMS Accession No. ML15135A427), the NRC staff is proposing to implement a variable annual fee structure for SMRs. As detailed in the draft regulatory analysis, the NRC determined the current annual fee structure may not be fair and equitable for assessing fees to SMRs based on the unique size and characteristics of SMRs.

As explained in the Background section of this proposed rule, the NRC staff previously solicited public input regarding an annual fee structure for SMRs via an ANPR, and the NRC

staff submitted two papers to the Commission discussing alternative annual fee structures which resulted in the recommendation of the variable annual fee structure as the preferred approach. In FY 2015, for this proposed rule and draft regulatory analysis, the NRC staff further refined the original alternatives and concluded that a “no action alternative” should be added to serve as the baseline to compare against all other alternatives for this proposed rulemaking.

Therefore, the four alternatives analyzed for this rulemaking are as follows:

1. No action.
2. Continue the existing annual fee structure for all reactors but allow for “bundling” of SMR reactor modules up to a total of 4,500 MWt as a single SMR “bundled unit.”
3. Continue the existing annual fee structure for the current fleet of operating power reactors but establish a third fee class for SMRs with fees commensurate with the budgetary resources allocated to SMRs.
4. Continue the existing annual fee structure for the current fleet of operating power reactors but calculate the annual fee for each SMR site as a multi-part fee which includes minimum fee, variable fee and maximum fee.

As explained in the draft regulatory analysis for this proposed rule, the NRC staff analyzed Alternative 1 (the no action alternative) and has concluded that this alternative continues to be a fair, equitable and stable approach for the existing fleet of reactors. This is because previous agency efforts to manage cost and fee allocations at a more granular level proved to be labor intensive and resulted in minimal additional benefits to licensees when compared to the flat-fee approach (60 FR 32230; June 20, 1995). But for SMRs, the current fee structure could produce such a large disparity between the annual fees paid by a licensee and the economic benefits that the licensee gained from using the license that it would be contrary to OBRA-90. For example, a hypothetical SMR site with twelve SMR reactor modules would have to pay twelve times the annual fee paid by a single current operating reactor – almost \$54 million per year based on FY 2015 fee rule data. By comparison, Fort Calhoun, the smallest

reactor in the current operating fleet, would pay approximately \$4.5 million in annual fees. Such a result would be contrary to OBRA-90's requirement to establish a fair fee schedule, and therefore the no action alternative is unacceptable.

Small modular reactor licensees could apply for annual fee exemptions under 10 CFR 171.11(c). The fee exemption criteria considers the age of the reactor, number of customers in the licensee's rate base, how much the annual fee would add to the per kilowatt-hour (kWh) cost of electricity, and other relevant issues. But as described in SECY-15-0044, there are no guarantees that an application for an exemption would be approved, decreasing regulatory certainty. And, OBRA-90 requires the NRC to establish, by rule, a schedule of charges fairly and equitably allocating annual fees among its licensees. Therefore, if the NRC anticipates up-front that its annual fee schedule will not be fair and equitable as applied to a particular class of licensees, then amending the schedule, rather than planning to rely on the exemption process, is the far better course for complying with OBRA-90.

Also, as explained in the draft regulatory analysis for this proposed rule, the NRC staff evaluated Alternative 2, which continues the existing annual fee structure for all reactors and allows for the bundling of the thermal ratings of SMRs on a single site up to total licensed thermal power rating of up to 4,500 MWt, which is roughly equivalent to the licensed thermal power rating of the largest reactor in the current fleet. Alternative 2 provides more fairness to SMRs than Alternative 1 because it allows SMR licensees to bundle their SMRs on a single site. For smaller SMR facilities, however, Alternative 2 would still create great disparities among facilities in terms of the annual fees they pay relative to the economic benefits they stand to gain from their NRC licenses. Consider, for illustrative purposes, an SMR site with only one NuScale reactor module. This licensee for this site would still be required to pay the full annual fee but could only spread the fee over 160 MWt-about \$31,123 per MWt as explained in the draft regulatory analysis. In contrast, the licensee for an SMR site featuring 12 NuScale reactor modules would pay only \$2,594 per MWt in annual fees as explained in the draft regulatory

analysis. Alternative 2, therefore, goes only part of the way towards addressing the fairness and equity concerns that prompted this rulemaking, while leaving significant potential for disparities from one SMR licensee to another, in terms of the economic benefits the licensee would be able to receive from its NRC license relative to the annual fees assessed. As with Alternative 1, SMR licensees could apply for annual fee exemptions under 10 CFR 171.11(c). But again there are no guarantees that an exemption would be approved, decreasing regulatory certainty. For these reasons, and as further explained in the draft regulatory analysis, the NRC staff finds Alternative 2 to be an unacceptable approach.

Alternative 3, as explained in the draft regulatory analysis for this proposed rule, would entail creating a separate fee class for SMRs with fees commensurate with the budgetary resources allocated to SMRs, similar to the operating reactor and research and test reactors fee classes. This alternative would establish a flat annual fee that is assessed equally among the licensees in the SMR class. Although this approach has proven to be fair and equitable for the current fee classes, this approach applied to SMRs would be unfair due to the potential various sizes and types of SMR designs. In particular, a single per-reactor fee could prove unduly burdensome to SMRs with low thermal power ratings (such as 160 MWt for a single NuScale SMR) when compared to SMRs with higher rated capacities (such as 800 MWt for a single Westinghouse SMR). Additionally, Alternative 3 is similar to the “no action” alternative in the sense that fees are based per licensed reactor or module rather than on the cumulative licensed thermal power rating. This alternative, therefore, fails to address the fee disparity created for SMRs using multiple small modules rather than fewer, larger reactors with a similar cumulative thermal power rating. It is the NRC’s intent to select an SMR fee alternative that is fair and equitable for the broadest possible range of SMR designs. Flat-rate alternatives such as this one are inconsistent with the “fair and equitable” requirements of OBRA-90 when applied to a fee class with the wide range of SMR thermal power capacities as described by reactor designers to date. As with the previous alternatives, SMR licensees could apply for annual fee

exemptions under 10 CFR 171.11(c). But again there are no guarantees that an exemption would be approved, decreasing regulatory certainty. For these reasons, and as further explained in the draft regulatory analysis, Alternative 3 is an unacceptable approach.

Ultimately, the NRC staff analyzed the mechanics of the variable annual fee structure under Alternative 4 and determined that it is the best approach for assessing fees to SMRs in a fair and equitable manner under OBRA-90. Unlike the current fee structure, this approach recognizes the anticipated unique characteristics of SMRs in relation to the existing fleet. In comparison to Alternative 2, this approach ensures that all SMRs are treated fairly, rather than just those whose licensed thermal power rating ranges between 2,000 - 4,500 MWt. Unlike Alternative 3, the variable annual fee structure assesses a range of annual fees to SMRs based on licensed thermal power rating, rather than assessing a single flat fee that could apply to potentially a very wide range of SMRs.

The variable annual fee structure computes SMR annual fees on a site basis, considering all SMRs on the site up to a total licensed thermal power rating of up to 4,500 MWt to be a single bundled unit that would pay the same fee as the current operating fleet. The variable annual fee structure has three parts; a minimum annual fee (the average of the research and test reactor fee class and the spent fuel storage/reactor decommissioning fee class), a variable fee charged on a per-MWt basis for bundled units in a particular size range below the typical current operating fleet reactor size, and a maximum annual fee equivalent to the annual fee charged to current operating fleet reactors.

Bundled units with a total licensed thermal power rating at or below 250 MWt would pay a flat minimum fee; for example, based on FY 2015 fee rule data, the fee would be \$154K as explained in the draft regulatory analysis. This minimum fee is consistent with the principle that reactor-related licensees in existing low-fee classes may not generate substantial revenue, yet still derive benefits from NRC activities performed on generic work. Therefore, they must pay more than a *de minimis* part of the NRC's generic costs. By calculating the minimum fee for

SMRs within the range of annual fees paid by other low-fee reactor classes, this methodology satisfies OBRA-90's fairness and equity requirements because it ensures consistent NRC treatment for low-power and low-revenue reactors.

Fees for bundled units with a total licensed thermal power rating greater than 250 MWt and less than or equal to 2,000 MWt would be computed as the minimum fee plus a variable fee based on the bundled unit's cumulative licensed thermal power rating. The variable fee should generally correlate with the economic benefits the licensee is able to derive from its NRC license and will ensure that similarly rated SMRs pay comparable fees.

For a bundled unit with a licensed thermal power rating comparable to a typical large light-water reactor that is greater than 2,000 MWt and less than or equal to 4,500 MWt, the maximum annual fee assessed to the licensee would be the same fee that would be paid by a reactor licensee in the current operating fleet. This approach ensures comparable fee treatment of facilities that stand to derive comparable economic benefits from their NRC-licensed activities.

For SMR sites with a licensed thermal power rating that exceeds 4,500 MWt, the licensee would be assessed the maximum fee for the first bundled unit, plus a variable annual fee for the portion of the thermal rating above the 4,500 MWt and less than or equal to 6,500 MWt for a second bundled unit (the licensee would not incur a second minimum fee for the same SMR site). If a site rating exceeds the 6,500 MWt level and is less than or equal to 9,000 MWt, the maximum fee would be assessed for each bundled unit. The NRC considered avoiding the second variable portion of the fee structure and simply doubling the annual maximum fee for the second bundled unit; however, this would be unfair if the site's second bundled unit had a small licensed thermal power rating. Similar to the other three alternative fee structures, this method would have failed to address the inequity of the size of the bundled unit versus the size of the fee the licensee would have to pay.

Therefore, as demonstrated in the draft regulatory analysis, the NRC staff concludes the variable annual fee structure allows SMRs to pay an annual fee that is commensurate with the economic benefit received from its license and that appropriately accounts for the design characteristics and current expectations regarding regulatory costs. This complies with OBRA-90's requirement to establish a fee schedule that fairly and equitably allocates NRC's fees.

B When would these actions become effective?

Generally, the NRC allows an adequate time (30 to 180 days) for a final rule to become effective. The time for the final rule to become effective depends on the scope of the rulemaking, the availability of associated guidance, and the complexity of the final rule. With regard to this proposed rule, the NRC proposes that the final rule become effective 30 days from its publication in the *Federal Register*.

C. What should I consider as I prepare my comments to the NRC?

When submitting your comments, remember to:

1. Identify the rulemaking (RIN 3150-A154) and Docket ID NRC-2008-0664)
2. Explain why you agree or disagree with the proposed rule; suggest alternatives and substitute language for your requested changes.
3. Describe any assumptions and provide any technical information and/or data that you used.
4. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
5. Provide specific examples to illustrate your concerns, and suggest alternatives.
6. Explain your views as clearly as possible.
7. Submit your comments by the comment period deadline as stated in the DATES

section of this proposed rule.

IV. Discussion of Proposed Amendments by Section.

The following paragraphs describe the specific changes proposed by this rulemaking.

Section 170.3 Definitions.

The NRC proposes to add definitions for “bundled unit,” “small modular reactor (SMR),” and “small modular reactor site (SMR site).”

Section 171.5 Definitions.

The NRC proposes to add definitions for “bundled unit,” “maximum fee,” “minimum fee,” “small modular reactor (SMR),” “small modular reactor site (SMR site),” “variable fee,” and “variable rate.”

Section 171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

The NRC proposes to redesignate current paragraph (e) as new paragraph (f) and add new paragraphs (e)(1), (e)(2) and (e)(3) to define activities that comprise SMR annual fees and the time period the NRC must collect annual fees from SMR licensees.

V. Draft Regulatory Analysis.

The NRC has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The NRC requests public comment on the draft regulatory analysis. The draft regulatory analysis is

available as indicated in the “Availability of Documents” section of this document. Comments on the draft analysis may be submitted to the NRC as indicated under the ADDRESSES section of this document.

VI. Regulatory Flexibility Certification.

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

VII. Backfitting and Issue Finality.

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required. A backfit analysis is not required because these amendments do not require the modification of, or addition to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

VIII. Plain Writing.

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document

to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on the proposed rule with respect to the clarity and effectiveness of the language used.

IX. National Environmental Policy Act.

The NRC has determined that this proposed rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this proposed rule.

X. Paperwork Reduction Act.

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Voluntary Consensus Standards.

The National Technology Transfer and Advancement Act of 1995, Public Law 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is proposing amend its licensing, inspection, and annual fee regulations to establish a variable annual fee structure for SMRs. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XII. Public Meeting.

The NRC will hold a public meeting to describe and explain the rationale for the variable annual fee structure and to accept questions from the public on this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting in the *Federal Register*, on Regulations.gov, and on the NRC's public meeting Web site at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting at: <http://www.nrc.gov/public-involve/public-meetings/index.cfm>.

XIII. Availability of Documents.

The documents identified in the following table are available to interested persons as indicated.

DOCUMENT	ADAMS ACCESSION NO.
Summary of ANPR Comments	ML14307A812
ANS Position Paper, "NRC Annual Fees for Licensees"	ML110040946
NEI Position Paper, "NRC Annual Fee Assessment for Small Reactors"	ML103070148 ML110380260
Memorandum to the Commission, "Resolution of Issue Regarding Variable Annual Fee Structure for Small and Medium-Sized Nuclear Power Reactors," February 7, 2011	ML110380251
SECY-15-0044, "Proposed Variable Annual Fee Structure for Small Modular Reactors", March 27, 2015	ML15051A092
Staff Requirements Memorandum - SECY-15-0044, "Proposed Variable Annual Fee Structure for Small Modular Reactors", May 15, 2015	ML15135A427

Draft Regulatory Analysis for Proposed Changes to 10 CFR Part 171 “Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC”	ML15226A588
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List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

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 parts 170 and 171:

PART 170 - FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

2. In § 170.3, add, in alphabetical order, the definitions for *bundled unit*, *small modular reactor (SMR)*, and *small modular reactor site (SMR site)* to read as follows:

§ 170.3 Definitions.

* * * * *

Bundled unit is a measure of the cumulative licensed thermal power rating for one or more SMRs located on a single SMR site. One bundled unit is less than or equal to 4,500 MWt.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of light-water power reactors having a licensed thermal power rating less than or equal to 1,000

MWt per module. This rating is based on the thermal power equivalent of a light-water SMR with an electrical power generating capacity of 300 MWe or less per module.

Small modular reactor site (SMR site) is the geographically bounded location of one or more SMRs and a basis on which SMR fees are calculated.

* * * * *

PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

3. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2214; 44 U.S.C. 3504 note.

4. In § 171.5, add, in alphabetical order, the definitions for *bundled unit*, *maximum fee*, *minimum fee*, *small modular reactor (SMR)*, *small modular reactor site (SMR site)*, *variable fee* and *variable rate* to read as follows:

§ 171.5 Definitions.

* * * * *

Bundled unit means a measure of the cumulative licensed thermal power rating for one or more SMRs located on a single SMR site. One bundled unit is less than or equal to 4,500 MWt.

* * * * *

Maximum fee is defined as the highest fee paid by a single bundled unit. It is applied to all bundled units on an SMR site with a licensed thermal power rating greater than 2,000 and less than or equal to 4,500 MWt and is equal to the annual fee paid by existing fleet power reactors.

Minimum fee means one annual fee component paid by the first bundled unit on a site with a cumulative licensed thermal power rating of 2,000 MWt or less. For the first bundled unit on a site with a licensed thermal power rating of 250 MWt or less, it is the only annual fee that a licensee pays.

* * * * *

Small modular reactor (SMR) for the purposes of calculating fees, means the class of light-water power reactors having a licensed thermal power rating less than or equal to 1,000 MWt per module. This rating is based on the thermal power equivalent of a light-water SMR with an electrical power generating capacity of 300 MWe or less per module.

Small modular reactor site (SMR site) means the geographical bounded location of one or more SMRs and a basis on which SMR fees are calculated.

* * * * *

Variable fee means the annual fee component paid by the first bundled unit on a site with a licensed thermal power rating greater than 250 and less than or equal to 2,000 MWt. For additional bundled units on a site, the variable fee is calculated based on the licensed thermal power rating equal to or less 2,000 MWt.

Variable rate means a per-MWt fee factor applied to the first bundled unit on a site with a licensed thermal power rating greater than 250 and or less than or equal to 2,000 MWt, or to

additional bundled units on a site above the 4,500 MWt threshold based on the licensed thermal power rating equal to or less than 2,000 MWt. The factor is based on the difference between the maximum fee and the minimum fee, divided by the difference in the variable fee licensed thermal rating range (either 1,750 MWt for the 2,000 MWt for first bundled unit or 2,000 MWt for additional bundled units).

* * * * *

5. In § 171.15, redesignate paragraph (e) as paragraph (f), and add new paragraph (e) to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses

* * * * *

(e)(1) Each person holding an operating license for a small modular reactor issued under part 50 of this chapter or that holds a combined license issued under part 52 of this chapter after the Commission has made the finding under 10 CFR 52.103(g) shall pay the annual fee for each license held during the fiscal year in which the fee is due.

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

Bundled Unit Thermal Power Rating*	Minimum Fee	Variable Fee	Maximum Fee
First Bundled Unit			
0-250 MWt	TBD	N/A	N/A
> 250 ≤ 2,000 MWt	TBD	TBD	N/A
> 2,000 ≤ 4,500 MWt	N/A	N/A	TBD
Additional Bundled Units			
> 4,500 ≤ 6,500 MWt	N/A	TBD	N/A
> 6,500 ≤ 9,000 MWt	N/A	N/A	TBD

*Note that the total annual fee paid is cumulative for the first bundled unit and each additional bundled unit.

(3) The annual fee is assessed for the same activities listed for the power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee.

* * * * *

Dated at Rockville, Maryland, this 16th day of October 2015.

For the Nuclear Regulatory Commission.

/RA/

Maureen E. Wylie
Chief Financial Officer

* * * * *

(e)(1) Each person holding an operating license for a small modular reactor issued under part 50 of this chapter or that holds a combined license issued under part 52 of this chapter after the Commission has made the finding under 10 CFR 52.103(g) shall pay the annual fee for each license held during the fiscal year in which the fee is due.

(2) The annual fees for a small modular reactor(s) located on a single site to be collected by September 30 of each year, are as follows:

Bundled Unit Thermal Power Rating*	Minimum Fee	Variable Fee	Maximum Fee
First Bundled Unit			
0-250 MWt	TBD	N/A	N/A
> 250 ≤ 2,000 MWt	TBD	TBD	N/A
> 2,000 ≤ 4,500 MWt	N/A	N/A	TBD
Additional Bundled Units			
> 4,500 ≤ 6,500 MWt	N/A	TBD	N/A
> 6,500 ≤ 9,000 MWt	N/A	N/A	TBD

*Note that the total annual fee paid is cumulative for the first bundled unit and each additional bundled unit.

(3) The annual fee is assessed for the same activities listed for the power reactor base annual fee and spent fuel storage/reactor decommissioning reactor fee.

* * * * *

Dated at Rockville, Maryland, this 16th day of October 2015.
For the Nuclear Regulatory Commission.

/RA/
Maureen E. Wylie
Chief Financial Officer

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