



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 25, 2019

Mr. Oliver A. Potts, Director
Office of the Federal Register
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740

Dear Mr. Potts:

Please publish this proposed rule concerning the **Revision of Fee Schedules; Fee Recovery for Fiscal Year (FY) 2019 [NRC-2018-0172, RIN 3150-AJ99]** under an exception to the Antideficiency Act, as amended by Public Law No. 101-508, 104 Stat. 1388 (31 U.S.C. § 1341) and explained by the Office of Legal Counsel Memoranda “Government Operations in the Event of a Lapse in Appropriations” dated August 16, 1995, and “Effect of Appropriations for Other Agencies and Branches on the Authority to Continue Department of Justice Functions During the Lapse in the Department’s Appropriations” dated December 13, 1995.

The U.S. Nuclear Regulatory Commission (NRC) proposes to amend the licensing, inspection, special project, and annual fees charged to its applicants and licensees. These proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90), 42 U.S.C. § 2214(c)(3), which requires the NRC to recover approximately 90 percent of its annual budget through fees (less certain amounts excluded from this fee-recovery requirement). President Trump signed the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019 on September 21, 2018, appropriating approximately \$911.0 million to the NRC. Based on that total budget authority, the NRC is proposing to collect \$781.9 million in fees in FY 2019 in accordance with its statutory obligations under OBRA-90 and FY 2019 appropriations. This proposed rule supports the NRC’s currently funded functions to license and regulate the nation’s civilian use of radioactive materials to protect public health and safety, promote the common defense and security, protect the environment, and fairly and equitably collect fees from the NRC’s licensees.

Delaying publication of this document would prevent or significantly damage the execution of these functions in both the short term and long term. In the short term, delaying publication of this rule could adversely impact the NRC’s fee-paying licensees because the NRC is proposing to add new fee categories to accurately reflect the cost of services provided, eliminate a fee category to fairly assess fees according to the terms of the license, and change the small entity fee structure to provide relief to small entities while assessing fees fairly. In the long term, delaying publication of this rule could impact the NRC’s ability to implement OBRA-90 and recover approximately 90 percent of its FY 2019 budget authority. If the NRC were not able to publish a timely fee rule in FY 2019, then there would be adverse impacts to the NRC’s ability to fairly collect fees in FY 2019 because the NRC would need to rely on the outdated FY 2018 fee

rule for FY 2019 fee collections. Reliance on the FY 2018 fee rule to collect fees in FY 2019 would lead to the NRC over-collecting fees because the NRC's budget authority decreased in FY 2019. In conclusion, publication in the *Federal Register* of this proposed rule is a funded function required by statute.

Please contact Ms. Michele D. Kaplan, at (301) 415-5256, should there be any questions.

Sincerely,

/RA/

Maureen E. Wylie,
Chief Financial Officer

Enclosure: Proposed Rule