

NUCLEAR UTILIZATION OF KEYNOTE ENERGY ACT

SEPTEMBER 7, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 1320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1320) to amend the Omnibus Budget Reconciliation Act of 1990 related to Nuclear Regulatory Commission user fees and annual charges, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Nuclear Utilization of Keynote Energy Act”.

SEC. 2. NUCLEAR REGULATORY COMMISSION USER FEES AND ANNUAL CHARGES THROUGH FISCAL YEAR 2020.

(a) **IN GENERAL.**—Section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

- (1) in clause (iii), by striking “and” at the end;
- (2) in clause (iv), by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:

“(v) amounts appropriated to the Commission for the fiscal year for activities related to the development of a regulatory infrastructure for advanced nuclear reactor technologies.”.

(b) **REPEAL.**—Effective October 1, 2020, section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is repealed.

SEC. 3. NUCLEAR REGULATORY COMMISSION USER FEES AND ANNUAL CHARGES FOR FISCAL YEAR 2021 AND EACH FISCAL YEAR THEREAFTER.

(a) **ANNUAL BUDGET JUSTIFICATION.**—

(1) **IN GENERAL.**—In the annual budget justification submitted by the Commission to Congress, the Commission shall expressly identify anticipated expenditures necessary for completion of the requested activities of the Commission anticipated to occur during the applicable fiscal year.

(2) **RESTRICTION.**—The Commission shall, to the maximum extent practicable, use any funds made available to the Commission for a fiscal year for the anticipated expenditures identified under paragraph (1) for the fiscal year.

(3) **LIMITATION ON CORPORATE SUPPORT COSTS.**—With respect to the annual budget justification submitted to Congress, corporate support costs, to the maximum extent practicable, shall not exceed the following percentages of the total budget authority of the Commission requested in the annual budget justification:

- (A) 30 percent for each of fiscal years 2021 and 2022.
- (B) 29 percent for each of fiscal years 2023 and 2024.
- (C) 28 percent for fiscal year 2025 and each fiscal year thereafter.

(b) **FEES AND CHARGES.**—

(1) **ANNUAL ASSESSMENT.**—

(A) **IN GENERAL.**—Each fiscal year, the Commission shall assess and collect fees and charges in accordance with paragraphs (2) and (3) in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected is equal to an amount that approximates—

- (i) the total budget authority of the Commission for that fiscal year; less
- (ii) the budget authority of the Commission for the activities described in subparagraph (B).

(B) **EXCLUDED ACTIVITIES DESCRIBED.**—The activities referred to in subparagraph (A)(ii) are the following:

- (i) Any fee-relief activity, as identified by the Commission.
- (ii) Amounts appropriated for the fiscal year to the Commission—
 - (I) from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c));
 - (II) for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (50 U.S.C. 2601 note; Public Law 108 375);
 - (III) for the homeland security activities of the Commission (other than for the costs of fingerprinting and background checks required under section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections);
 - (IV) for the Inspector General services of the Commission provided to the Defense Nuclear Facilities Safety Board;
 - (V) for the partnership program with institutions of higher education established under section 244 of the Atomic Energy Act of 1954 (42 U.S.C. 2015c); and
 - (VI) for the scholarship and fellowship programs under section 243 of the Atomic Energy Act of 1954 (42 U.S.C. 2015b).
- (iii) Costs for activities related to the development of regulatory infrastructure for advanced nuclear reactor technologies.

(C) **EXCEPTION.**—The exclusion described in subparagraph (B)(iii) shall cease to be effective on January 1, 2032.

(D) **REPORT.**—Not later than December 31, 2030, the Commission shall submit to the Committee on Appropriations and the Committee on Environ-

ment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report describing the views of the Commission on the continued appropriateness and necessity of funding for the activities described in subparagraph (B)(iii).

(2) FEES FOR SERVICE OR THING OF VALUE.—In accordance with section 9701 of title 31, United States Code, the Commission shall assess and collect fees from any person who receives a service or thing of value from the Commission to cover the costs to the Commission of providing the service or thing of value.

(3) ANNUAL CHARGES.—

(A) IN GENERAL.—Subject to subparagraph (B) and except as provided in subparagraph (D), the Commission may charge to any licensee or certificate holder of the Commission an annual charge in addition to the fees set forth in paragraph (2).

(B) CAP ON ANNUAL CHARGES OF CERTAIN LICENSEES.—

(i) OPERATING REACTORS.—The annual charge under subparagraph

(A) charged to an operating reactor licensee, to the maximum extent practicable, shall not exceed the annual fee amount per operating reactor licensee established in the final rule of the Commission entitled “Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015” (80 Fed. Reg. 37432 (June 30, 2015)), as may be adjusted annually by the Commission to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(ii) FUEL FACILITIES.—

(I) IN GENERAL.—The total annual charges under subparagraph

(A) charged to fuel facility licensees, to the maximum extent practicable, shall not exceed an amount that is equal to the total annual fees collected from the fuel facilities class under the final rule of the Commission entitled “Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016” (81 Fed. Reg. 41171 (June 24, 2016)), which amount may be adjusted annually by the Commission to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(II) EXCEPTION.—Subclause (I) shall not apply if the number of licensed facilities classified by the Commission as fuel facilities exceeds seven.

(III) CHANGES TO ANNUAL CHARGES.—Any change in an annual charge under subparagraph (A) charged to a fuel facility licensee shall be based on—

(aa) a change in the regulatory services provided with respect to the fuel facility; or

(bb) an adjustment described in subclause (I).

(iii) WAIVER.—The Commission may waive, for a period of 1 year, the cap on annual charges described in clause (i) or (ii) if the Commission submits to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a written determination that the cap on annual charges may compromise the safety and security mission of the Commission.

(C) AMOUNT PER LICENSEE.—

(i) IN GENERAL.—The Commission shall establish by rule a schedule of annual charges fairly and equitably allocating the aggregate amount of charges described in clause (ii) among licensees and certificate holders.

(ii) AGGREGATE AMOUNT.—For purposes of this subparagraph, the aggregate amount of charges for a fiscal year shall equal an amount that approximates—

(I) the amount to be collected under paragraph (1)(A) for the fiscal year; less

(II) the amount of fees to be collected under paragraph (2) for the fiscal year.

(iii) REQUIREMENT.—The schedule of charges under clause (i)—

(I) to the maximum extent practicable, shall be reasonably related to the cost of providing regulatory services; and

(II) may be based on the allocation of the resources of the Commission among licensees or certificate holders or classes of licensees or certificate holders.

(D) EXEMPTION.—Subparagraph (A) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(c) PERFORMANCE AND REPORTING.—

(1) IN GENERAL.—The Commission shall develop for the requested activities of the Commission—

- (A) performance metrics; and
- (B) milestone schedules.

(2) DELAYS IN ISSUANCE OF FINAL SAFETY EVALUATION.—If the final safety evaluation for a requested activity of the Commission is not completed by the completion date required by the performance metrics or milestone schedule under paragraph (1), the Executive Director for Operations of the Commission shall, not later than 30 days after such required completion date, inform the Commission of the delay.

(3) DELAYS IN ISSUANCE OF FINAL SAFETY EVALUATION EXCEEDING 180 DAYS.—If a final safety evaluation described in paragraph (2) is not completed by the date that is 180 days after the completion date required by the performance metrics or milestone schedule under paragraph (1), the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a timely report describing the delay, including a detailed explanation accounting for the delay and a plan for timely completion of the final safety evaluation.

(d) ACCURATE INVOICING.—With respect to invoices for fees charged under subsection (b)(2), the Commission shall—

- (1) ensure appropriate review and approval prior to the issuance of invoices;
- (2) develop and implement processes to audit invoices to ensure accuracy, transparency, and fairness; and
- (3) modify regulations to ensure fair and appropriate processes to provide licenses and applicants an opportunity to efficiently dispute or otherwise seek review and correction of errors in invoices for such fees.

(e) REPORT.—Not later than September 30, 2022, the Commission shall submit to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report describing the implementation of this section, including any effects of such implementation and recommendations for improvement.

(f) DEFINITIONS.—In this section:

(1) ADVANCED NUCLEAR REACTOR.—The term “advanced nuclear reactor” means a nuclear fission or fusion reactor, including a prototype plant (as defined in sections 50.2 and 52.1 of title 10, Code of Federal Regulations), with significant improvements compared to commercial nuclear reactors under construction as of the date of enactment of this Act, including improvements such as—

- (A) additional inherent safety features;
- (B) significantly lower levelized cost of electricity;
- (C) lower waste yields;
- (D) greater fuel utilization;
- (E) enhanced reliability;
- (F) increased proliferation resistance;
- (G) increased thermal efficiency; or
- (H) ability to integrate into electric and nonelectric applications.

(2) COMMISSION.—The term “Commission” means the Nuclear Regulatory Commission.

(3) CORPORATE SUPPORT COSTS.—The term “corporate support costs” means expenditures for acquisitions, administrative services, financial management, human resource management, information management, information technology, policy support, outreach, and training.

(4) RESEARCH REACTOR.—The term “research reactor” means a nuclear reactor that—

(A) is licensed by the Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of not more than 10 megawatts; and

(B) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

- (i) a circulating loop through the core in which the licensee conducts fuel experiments;
- (ii) a liquid fuel loading; or
- (iii) an experimental facility in the core in excess of 16 square inches in cross-section.

(5) REQUESTED ACTIVITY OF THE COMMISSION.—The term “requested activity of the Commission” means—

- (A) the processing of applications for—
 - (i) design certifications or approvals;
 - (ii) licenses;
 - (iii) permits;
 - (iv) license amendments;
 - (v) license renewals;
 - (vi) certificates of compliance; and
 - (vii) power uprates; and
- (B) any other activity requested by a licensee or applicant.

(g) EFFECTIVE DATE.—This section takes effect on October 1, 2020.

SEC. 4. STUDY ON ELIMINATION OF FOREIGN LICENSING RESTRICTIONS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of a study on the feasibility and implications of repealing restrictions under sections 103 d. and 104 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(d); 2134(d)) on issuing licenses for certain nuclear facilities to an alien or an entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

SEC. 5. STUDY ON THE IMPACT OF THE ELIMINATION OF MANDATORY HEARING FOR UNCONTESTED LICENSING APPLICATIONS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of a study on the effects of eliminating the hearings required under section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) for an application under section 103 or section 104 b. of such Act for a construction permit for a facility in the absence of a request of any person whose interest may be affected by the proceeding.

SEC. 6. INFORMAL HEARING PROCEDURES.

Section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) is amended by adding at the end the following:

“(3) The Commission may use informal adjudicatory procedures for any hearing required under this section for which the Commission determines that adjudicatory procedures under section 554 of title 5, United States Code, are unnecessary.”.

SEC. 7. APPLICATION REVIEWS FOR NUCLEAR ENERGY PROJECTS.

Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by adding at the end the following:

c. APPLICATION REVIEWS FOR NUCLEAR ENERGY PROJECTS.—

“(1) STREAMLINING LICENSE APPLICATION REVIEW.—With respect to an application that is docketed seeking issuance of a construction permit, operating license, or combined construction permit and operating license for a production or utilization facility, the Commission shall include the following procedures:

“(A) Undertake an environmental review process and issue any draft environmental impact statement to the maximum extent practicable within 24 months after the application is accepted for docketing.

“(B) Complete the technical review process and issue any safety evaluation report and any final environmental impact statement to the maximum extent practicable within 42 months after the application is accepted for docketing.

“(2) EARLY SITE PERMIT.—

“(A) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—In a proceeding for a combined construction permit and operating license for a site for which an early site permit has been issued, any environmental impact statement prepared by the Commission and cooperating agencies shall be prepared as a supplement to the environmental impact statement prepared for the early site permit.

“(B) INCORPORATION BY REFERENCE.—The supplemental environmental impact statement shall—

“(i) incorporate by reference the analysis, findings, and conclusions from the environmental impact statement prepared for the early site permit; and

“(ii) include additional discussion, analyses, findings, and conclusions on matters resolved in the early site permit proceeding only to the extent necessary to address information that is new and significant in that the information would materially change the prior findings or conclusions.

“(3) PRODUCTION OR UTILIZATION FACILITY LOCATED AT AN EXISTING SITE.—In reviewing an application for an early site permit, construction permit, operating

license, or combined construction permit and operating license for a production or utilization facility located at the site of a licensed production or utilization facility, the Commission shall, to the extent practicable, use information that was part of the licensing basis of the licensed production or utilization facility.

“(4) REGULATIONS.—The Commission shall initiate a rulemaking, not later than 1 year after the date of enactment of the Nuclear Utilization of Keynote Energy Act, to amend the regulations of the Commission to implement this subsection.

“(5) ENVIRONMENTAL IMPACT STATEMENT DEFINED.—In this subsection, the term ‘environmental impact statement’ means a detailed statement required under section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)).

“(6) RELATIONSHIP TO OTHER LAW.—Nothing in this subsection exempts the Commission from any requirement for full compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).”.

SEC. 8. REPORT IDENTIFYING BEST PRACTICES FOR ESTABLISHMENT AND OPERATION OF LOCAL COMMUNITY ADVISORY BOARDS.

(a) BEST PRACTICES REPORT.—Not later than 18 months after the date of enactment of this Act, the Nuclear Regulatory Commission shall submit to Congress, and make publicly available, a report identifying best practices with respect to the establishment and operation of a local community advisory board to foster communication and information exchange between a licensee planning for and involved in decommissioning activities and members of the community that decommissioning activities may affect, including lessons learned from any such board in existence before the date of enactment of this Act.

(b) CONTENTS.—The report described in subsection (a) shall include—

(1) a description of—

(A) the topics that could be brought before a local community advisory board;

(B) how such a board’s input could be used to inform the decision-making processes of stakeholders for various decommissioning activities;

(C) what interaction such a board could have with the Nuclear Regulatory Commission and other Federal regulatory bodies to support the board members’ overall understanding of the decommissioning process and promote dialogue between the affected stakeholders and the licensee involved in decommissioning activities; and

(D) how such a board could offer opportunities for public engagement throughout all phases of the decommissioning process;

(2) a discussion of the composition of a local community advisory board; and

(3) best practices relating to the establishment and operation of a local community advisory board, including—

(A) the time of establishment of such a board;

(B) the frequency of meetings of such a board;

(C) the selection of board members;

(D) the term of board members;

(E) the responsibility for logistics required to support such a board’s meetings and other routine activities; and

(F) any other best practices relating to such a local community advisory board that are identified by the Commission.

(c) CONSULTATION.—In developing the report described in subsection (a), the Nuclear Regulatory Commission shall consult with any host State, any community within the emergency planning zone of an applicable nuclear facility, and any existing local community advisory board.

SEC. 9. REPORT ON STUDY RECOMMENDATIONS.

Not later than 90 days after the date of enactment of this Act, the Nuclear Regulatory Commission shall submit to Congress a report on the status of addressing and implementing the recommendations contained in the memorandum of the Executive Director of Operations of the Commission entitled “Tasking in Response to the Assessment of the Considerations Identified in a ‘Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the Nuclear Regulatory Commission’” and dated June 19, 2018 (ADAMS Accession No.: ML18165A296).

PURPOSE AND SUMMARY

H.R. 1320 was introduced on March 2, 2017, by Rep. Adam Kinzinger (R-IL) with Rep. Mike Doyle (D-PA). The legislation ad-

dresses the Nuclear Regulatory Commission's (NRC) budget development and fee recovery process, in addition to regulatory and licensing requirements for civil nuclear facilities.

BACKGROUND AND NEED FOR LEGISLATION

The Atomic Energy Act of 1954, as amended, (AEA) is the principal legislation governing the licensing, oversight, and regulation of civil nuclear technology. The AEA allows for peaceful, civilian use of atomic energy, specifically noting that "the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise."¹ The law's many broad provisions govern all aspects of nuclear technology, licensing, oversight, and regulation of domestic civil nuclear facilities. The "reasonable assurance" regulatory standard remains the foundation of the regulatory requirements on civilian nuclear licensees.

The AEA established and granted authority to the Atomic Energy Commission (AEC) to oversee the government's nuclear programs and was charged with both regulating government and commercial nuclear facilities, as well as fulfilling the U.S. policy goals to "develop, use, and control" atomic energy to "make the maximum contribution to the general welfare"² The regulatory framework established in the AEA remains the "fundamental U.S. law on both the civilian and military uses of nuclear materials."³

During the development and maturation of the commercial nuclear industry, Congress and the public developed concerns about the lack of AEC's role as an independent safety regulator. In response, Congress passed the Energy Reorganization Act in 1974 to establish the NRC, as well as the Energy Research and Development Administration, the Department of Energy's predecessor organization.

Today, the NRC continues to serve as an independent regulatory agency "to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment." The NRC's mission is to "licens[e] and regulat[e] the Nation's civilian use of radioactive materials to protect public health and safety, promote the common defense and security, and protect the environment."⁴

Nuclear Regulatory Commission user fees

Under authority granted to the NRC pursuant to the Independent Offices Appropriations Act of 1952, the Commission charged an hourly fee, known as the "Part 170" fee for the chapter of the fee description in Title 10 of the Code of Federal Regulations. The Part 170 fee was charged to NRC licensees or applicants for specific actions by Commission staff and varied with the relative workload. For example, the Part 170 fees provided 45 percent of the NRC's budget authority in fiscal years 1988 and 1989, but the total level of license specific work was trending down due to can-

¹ Atomic Energy Act of 1954, P.L. 83-703.

² 42 U.S.C. 2011.

³ <https://www.nrc.gov/about-nrc/governing-laws.html>.

⁴ U.S. Nuclear Regulatory Commission, "About the NRC," Updated January 26, 2018. Accessible at: <https://www.nrc.gov/about-nrc.html>.

celled reactor orders following the Three Mile Island incident coupled with increased reactor costs.

The budget resolution for fiscal year 1990 instructed the authorizing committees of jurisdiction to provide for deficit reduction through increased NRC user fees. H.R. 1549, the Nuclear Regulatory Commission Authorization Act for Years 1990 and 1991, and subsequently the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), required the NRC to fully recover its budget authority in a fiscal year through Part 170 fees and additional annual charges. The annual charges are known as “Part 171” fees, which include nuclear materials licensees, as well as operating reactors, decommissioned sites, fuel cycle facilities, and other miscellaneous licensee classes.

Congress amended the fee recovery in 2000 to reduce incrementally the fee recovery threshold from 100 percent to 90 percent and excluded certain fees not directly attributable to NRC applicants or licensees, such as appropriations made from the Nuclear Waste Fund or for generic homeland security activities. In 2005, 107 operating reactors provided about 75 percent of the NRC’s total budget authority and paid an annual fee of about \$3.1 million.

From 2005 through 2010, the NRC’s budget increased 59 percent in anticipation of increased workload, which did not materialize.

Due to a confluence of energy market and infrastructure challenges, nine reactors have ceased commercial operation since 2005 and 12 more reactors are expected to cease operation by 2025. As operating nuclear reactors enter the decommissioning phase, the NRC must recover budget authority from fewer reactors, thereby increasing financial strains on the commercial nuclear power industry.

Current status of NRC fee and budget process

Due to the statutory requirement to recover what is essentially an arbitrary percentage of 90 percent of total budget authority, when Part 171 annual charges decrease, the Commission must increase the hourly charge for the Part 170 fees. For example, the fiscal year 2018 NRC fee schedule resulted in an increase of the professional hourly rate from \$263 to \$275 due “primarily to the 7.3 percent decline” in staff.⁵ Therefore, because fewer staff have to recover the same level of budget authority as a result of certain fixed costs, the NRC increased the total rate. The sole uranium conversion fuel cycle facility was in standby operation during fiscal year 2018; however, NRC’s Part 171 annual charge for that facility increased by \$20,000 because the NRC did not charge the same level of Part 170 fees due to the status of the facility. The Committee heard testimony that this structure has placed an increasing financial strain on the industry.

In testimony before the Subcommittee on Energy, NRC Chairman Svinicki noted, based on her ten-year service with the Commission, “that the potential wave of retirements is noticeable and appreciable, and although I don’t know at what point the number of operating reactors has diminished so far that the 90 percent fee recovery is not sustainable. I think that the predicted number of

⁵Nuclear Regulatory Commission, “Revision of Fee Schedules: Fee Recovery for Fiscal Year 2018.”

potential shutdowns does make this a timely issue for the Commission and the Congress to engage on a dialogue on this—on this matter.”⁶ In the same hearing, Commissioner Baran also noted that the Commission would be challenged if a large number of plants were to shut down.

NRC’s documented lack of data, processes, and transparency limits the Commission’s ability to efficiently manage the organization’s finances. At the request of the Committee, the Government Accountability Office consistently identified a need to improve the Commission’s budget process and made recommendations to address those findings. GAO found NRC lacked transparency in its annual fee rule and recommended the establishment of performance goals.⁷ Another GAO review found licensees did not have adequate information in NRC billing and invoicing process and recommended NRC advance an electronic billing system.⁸ In 2017, GAO also found that NRC’s workforce was not properly managed, leading to unknown workforce costs and projections.⁹

H.R. 1320 provisions

The Nuclear Utilization of Keynote Energy Act replaces the existing statutory fee recovery requirements with a more robust and transparent process, which will result in a more efficient, predictable, and accountable regulator. Specifically, section 3 sets a defined process relating to all stages of NRC’s financial management system. These stages include a clear identification of priority activities that directly support NRC’s regulation of licensees, predictability in annual charges for operating reactors and fuel cycle facilities, transparency and a dispute resolution process for NRC’s billing and invoicing process, and elimination of the 90 percent recovery requirement to exclude costs not directly attributable to a licensee.

The AEA was enacted when very few countries maintained a civil nuclear energy program and the United States’ commercial industry lacked significant operating experience. Legacy provisions in the AEA are not reflective of the existing markets and technology. Due to the international markets and proliferation risks, Congress prohibited any foreign entity from holding an ownership, controlling, or dominating position of a civil nuclear facility. Since the AEA became law, additional reviews of foreign investment have been established, such as the Committee to Review Foreign Investment in the United States. Section 4 of H.R. 1320 requires GAO to determine what the potential implications are of removing this Cold War-era provision.

Similarly, section 5 requires a GAO study on eliminating the AEA provision that requires a public hearing even when there is not a request for such a hearing. This process was necessary for the AEC while the civilian nuclear industry matured through the 1960s and 1970s.

⁶ Committee on Energy and Commerce, Subcommittee on Energy and Subcommittee on Environment, “Fiscal Year 2019 Nuclear Regulatory Commission Budget,” March 20, 2018.

⁷ Government Accountability Office, “Nuclear Regulatory Commission: Regulatory Fee-Setting Calculations Need Greater Transparency,” GAO-17-232. February 2017.

⁸ Government Accountability Office, “Nuclear Regulatory Commission: Additional Action Needed to Improve Process for Billing Licensees,” GAO-18-318. March 2018.

⁹ Government Accountability Office, “Strategic Human Capital Management: NRC Could Better Manage the Size and Composition of its Workforce by Further Incorporating Leading Practices,” GAO-17-233. April 2017.

The current NRC license application and review process for operating nuclear power reactors requires extensive scientific and technical analysis. The analysis for various licensing stages, including an early site permit, a combined construction and operating license, and design certification for reactors, result in major costs and often take multiple years to process by NRC staff. Section 7 makes targeted changes to NRC's license review process, which should result in significant efficiency improvements. The bill sets timelines for action on draft environmental impact statements (EIS), the technical review process and safety evaluation reports, and final EIS. The Committee expects the NRC to be able to meet the 24 and 42-month deadlines, unless unexpected action requires additional time. NRC's recent revision to require additional information included for permits and licenses prior to accepting and docketing such permit or license allow these respective timelines to be easily achieved.

The Committee acknowledges the hardships that may be imposed on local communities hosting a nuclear power plant that ceases commercial operation. School districts, local economic development, and village support services are all affected by the loss of tax revenue and jobs. The report required in section 8 is intended to provide a "lessons learned" report to include best practices for how to mitigate those adverse impacts through the establishment of local community advisory boards.

COMMITTEE ACTION

On May 22, 2018, the Subcommittee on Energy held a hearing on H.R. 1320. The Subcommittee received testimony from:

- Brent Park, Deputy Administrator for Defense Nuclear Nonproliferation, National Nuclear Security Administration, Department of Energy;
- Ed McGinnis, Principal Deputy Assistant Secretary, Office of Nuclear Energy, Department of Energy;
- Jeffrey S. Merrifield, Partner, Pillsbury Winthrop Shaw Pittman LLP; Advisor, ClearPath Foundation;
- Melissa Mann, President, URENCO USA, Inc.; Member, U.S. Nuclear Industry Council;
- Nick Irvin, Director, Research and Development for Strategy and Advanced Nuclear Technology, Southern Company; Member, Advanced Reactor Working Group, Nuclear Energy Institute; and,
- Edwin Lyman, Senior Scientist, Global Security Program, Union of Concerned Scientists.

On June 21, 2018 the Subcommittee on Energy met in open markup session and forwarded H.R. 1320, as amended, to the full Committee by a voice vote. On July 12, 2018, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1320, as amended, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

There were no record votes taken in connection with ordering H.R. 1320 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1320 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 30, 2018.

Hon. GREG WALDEN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1320, the Nuclear Utilization of Keynote Energy Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1320—Nuclear Utilization of Keynote Energy Act

Summary: The Nuclear Regulatory Commission (NRC) licenses and regulates commercial nuclear power plants and other facilities that use radioactive materials. Under current law, the agency is required to recover most of its funding through fees charged to entities it regulates. H.R. 1320 would modify the formula used to determine the amount of those fees. The bill also would modify procedures related to NRC's review of applications for certain permits and licenses and allow the agency to conduct, on an informal basis, any type of hearing requested to review the agency's actions or decisions. H.R. 1320 also would require the NRC and the Government Accountability Office (GAO) to complete a variety of studies and reports on nuclear-related issues.

Using information from the NRC, CBO estimates that implementing H.R. 1320 would cost \$28 million over the 2019–2023 period, subject to the availability of appropriated funds.

Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1320 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 1320 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1320 is shown in the following table. The costs of the legislation fall within budget function 270 (energy).

	By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2023	2019–2023
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	0	0	10	11	11	32
Estimated Outlays	0	0	0	7	10	11	28

Basis of estimate: The NRC is statutorily required to offset most of its funding, which is provided in annual appropriation acts, through fees charged to the entities it regulates. Under permanent law, some funding is excluded (or exempt) from that cost-recovery requirement—primarily, funding for certain activities related to defense or homeland security and appropriations from the Nuclear Waste Fund to support activities related to nuclear waste disposal. Ninety percent of the remaining appropriation is offset by two types of fees:

- Cost recovery fees charged to individual applicants and licensees to cover NRC’s costs of providing services or things of value, and
- Annual fees assessed on all licensees at rates necessary to ensure that the aggregate amount of fees collected for a given year meets that year’s target.

The remaining 10 percent of nonexempt funding is not offset by fees. The NRC refers to the activities funded with that portion of funding as “fee relief” activities that are not directly attributable to existing licensees or that involve costs that are not recoverable under NRC policies.¹⁰

Starting in 2021, H.R. 1320 would specify a new formula for the NRC to follow in setting fees. The bill would expand the scope of funding that is exempt from the cost-recovery requirement to include appropriations for activities related to developing a regulatory infrastructure for advanced nuclear reactor technologies. The bill also would exempt funding for any activities that the NRC identifies as eligible for fee relief. Under the bill, after backing out funding for excluded activities, the NRC would be required to offset approximately 100 percent of the remaining funding through fees.

Permanently exempting funding related to developing a regulatory infrastructure for advanced nuclear technologies from the NRC’s cost-recovery requirement would effectively authorize appropriations from the general fund for that purpose starting in 2021. (The Consolidated Appropriations Act, 2018, provided \$10 million for such activities and exempted that amount from the NRC’s cost-recovery requirement for 2018; however, that exemption is only in

¹⁰ For details on fee-relief activities in 2018, see Revision of Fee Schedules, Fee Recovery for Fiscal Year 2018, 83 Fed Reg 122 (final rule, June 25, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-06-25/pdf/2018-13320.pdf>.

effect for that year.) Assuming that future appropriations to develop that regulatory framework remain in line with current amounts, CBO estimates that outlays stemming from such funding would total \$28 million over the 2021–2023 period.

In contrast, CBO does not expect that permanently excluding funding for activities that the NRC identifies as eligible for fee relief from the cost-recovery requirement, in conjunction with the requirement that the NRC offset approximately 100 percent of all nonexempt funding, would materially affect spending for fee-relief activities, the aggregate amount of fees collected for a given year, or the proportion of overall funding that is not offset by those fees. Historically, the amount of funding that the NRC allocates for activities designated as fee relief has been close to, but not necessarily equal to, the 10 percent of nonexempt funding that is not currently offset by fees. Any difference between those amounts results in an adjustment (either an increase or decrease) to all licensees' annual fees to ensure compliance with the NRC's collection target. Under H.R. 1320, CBO expects that overall results would be similar—that is, annual fees could be higher or lower based on the amount of funding allocated for fee relief activities. Assuming that such funding remains in line with historical levels, CBO expects that the results of the proposed formula for collecting fees under H.R. 1320 would not differ markedly from the existing formula.

More broadly, under current law or H.R. 1320, the amount of fees collected in future years will depend on the level of funding provided for a range of specific NRC activities. Because CBO has no basis for predicting how much funding will be provided for such activities in future years, CBO cannot determine whether the resulting fees, in aggregate, would be higher or lower under H.R. 1320 than under current law.

Finally, CBO estimates that any increase in NRC's or GAO's costs to meet new reporting requirements under H.R. 1320—which would be subject to appropriation—would not exceed \$500,000 annually.

Pay-As-You-Go considerations: None.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 1320 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 1320 contains no intergovernmental or private-sector mandates as defined in UMRA.

Previous CBO estimate: On June 20, 2017, CBO transmitted a cost estimate for S. 512, the Nuclear Energy Innovation and Modernization Act, as reported by the Senate Committee on Environment and Public Works on May 25, 2017. Both S. 512 and H.R. 1320 would make similar modifications to the NRC's cost-recovery formula, and both cost estimates reflect an increase in spending subject to appropriation for activities related to developing a regulatory infrastructure for advanced nuclear reactors. Differences in our estimates of budgetary effects attributable to proposed changes in the cost-recovery formula reflect differences in when that formula would take effect.

Estimate prepared by: Federal costs: Megan Carroll; Mandates: Jon Sperl.

Estimate reviewed by: Kim P. Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to increase transparency, predictability, efficiency of the regulation of commercial nuclear industry.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1320 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

earmark, limited tax benefits, and limited tariff benefits

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1320 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the following directed rule makings are contained in H.R. 1320:

- The Commission must amend the regulations to implement section 7 of H.R. 1320 with respect to application reviews for nuclear energy projects.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides a short title of “Nuclear Utilization of Key-note Energy Act.”

Section 2. Nuclear Regulatory Commission User Fees and Annual Charges Through Fiscal Year 2020.

This section amends section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 to exempt funds made available for the NRC for the development of a regulatory infrastructure for advanced nuclear reactors from the statutory fee recovery requirements. The section is repealed on October 1, 2020.

Section 3. Nuclear Regulatory Commission user fees and annual charges for fiscal year 2021 and each fiscal year thereafter

This section establishes requirements relating to the NRC’s annual Congressional budget justification, assessments for fees and charges, and performance and reporting of licensing actions. Section 3(a) requires the Commission to identify funding necessary for completion of requested activities of the Commission during the applicable fiscal year. Funding made available for those activities in the applicable fiscal year should be used for the anticipated expenditures. In the Commission’s budget justification, corporate support costs shall not exceed, as a percentage of total budget authority requested, 30 percent for each of the fiscal years 2021 and 2022, 29 percent for each of the fiscal years 2023 and 2024, and 28 percent for fiscal year 2025 and each year thereafter.

Section 3(b) requires the Commission to assess and collect fees and charges equal to the total budget authority of the Commission in each fiscal year, minus the costs of certain excluded activities. The excluded activities are (1) any fee-relief activity, as identified by the Commission; (2) amounts appropriated from the Nuclear Waste Fund; (3) for implementation of section 3116 of the Ronald Reagan National Defense Authorization Act of 2005; (4) for homeland security activities of the Commission; (5) for the Inspector General provided to the Defense Nuclear Facilities Safety Board; (6) for partnership programs with institutions of higher education; (7) for scholarship and fellowship programs; and (8) costs for activities related to the development of regulatory infrastructure for advanced nuclear reactor technologies. The Commission shall assess and collect fees from any person who receives a service or thing of value to cover the costs of the Commission. The Commission shall establish a schedule of annual charges among licensees and certificate holders of the Commission. The annual charge for operating reactors shall not exceed the annual fee established for fiscal year 2015, unless the Commission issues a written determination that the cap may compromise the safety and security mission of the Commission. The aggregate annual charges for fuel facilities may not exceed the level established for fiscal year 2016 and charges to fuel cycle facility licensees must be commensurate with a change in Commission activity for such facility. The schedule of charges shall be based on the cost of providing regulatory services and may be based on the allocation of the resources of the Commission

among licensees or certificate holders or classes of licensees or certificate holders.

Section 3(c) directs the Commission to develop performance metrics and milestone schedules for requested activities of the Commission. If the milestone schedule is not met for a final safety evaluation, the NRC Executive Director of Operations shall notify the Commission within 30 days. If the milestone schedule for the final safety evaluation is not completed by 180 days from the schedule, the Commission shall notify Congress describing the delay, a detailed explanation accounting for the delay, and a plan for timely completion for the final safety evaluation.

Section 3(d) requires the Commission to ensure fees charged have processes established for an appropriate review and approval of invoices; to audit invoices to ensure accuracy, transparency, and fairness; and to provide licensees and applicants to dispute or otherwise seek review and correction of errors in invoices for such fees.

Section 3(e) directs the Commission to submit a report to the Committee on Appropriations and Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives describing the implementation of this section, including any effects of such implementation and recommendations for improvement.

Section 3(f) defines the terms “advanced nuclear reactor”; “Commission”; “corporate support costs”; “research reactor”; and “requested activity of the Commission.”

Section 3(g) sets the effective date for the section on October 1, 2020.

Section 4. Study on elimination of foreign licensing restrictions

Section 4 requires the Comptroller General to transmit a report to Congress on the feasibility and implications of repealing restrictions under sections 103d and 104d of the Atomic Energy Act of 1954 on issuing licenses for certain nuclear facilities to an alien or an entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.

Section 5. Study on the impact of the elimination of mandatory hearing for uncontested licensing applications

Section 5 requires the Comptroller General to transmit a report to Congress on the effects of eliminating hearings required under section 189a of the Atomic Energy Act of 1954 for an application under section 103 or section 104b for a construction permit for a facility in the absence of a request of any person whose interest may be affected by the proceeding.

Section 6. Informal hearing procedures

Section 6 amends section 189a of the Atomic Energy Act of 1954 to allow the Commission to use informal adjudicatory procedures for any hearing for which the Commission determines that adjudicatory procedures under section 554 of title 5 of the United States Code are unnecessary.

Section 7. Application reviews for nuclear energy projects

Section 7 amends section 185 of the Atomic Energy Act of 1954 to direct the Commission to establish procedures that a draft environmental impact statement is issued within 24 months after the application is accepted for docketing and the technical review process, final safety evaluation report, and final environmental impact statement are completed within 42 months of the application being accepted for docketing. Proceedings for a combined construction permit and operating license for a site in which an early site permit has been issued shall be prepared as a supplement to the early site permit environmental impact statement. A supplemental environmental impact statement shall incorporate by reference information prepared from the early site permit and include additional discussion, analyses, findings, and conclusions on matters resolved in the early site permit only to the extent necessary to address information that is new and significant in that information would materially change the prior findings or conclusions.

The procedures established under the Atomic Energy Act shall require that an application for an early site permit, construction permit, operating license, or combined construction permit and operating license at a site of a licensed facility shall use the part of the licensing basis of the existed production or utilization facility.

The Commission shall initiate not later than 1 year after the date of enactment of the Nuclear Utilization of Keynote Energy Act to implement the procedures in this section. For the purposes of this section, the term “environmental impact statement” means a detailed statement required under section 103(C) of the National Environmental Policy Act of 1969. Nothing contained in this subsection exempts the Commission from the requirements of the National Environmental Policy Act of 1969.

Section 8. Report identifying best practices for establishment and operation of local community advisory boards

Section 8 requires the Commission to submit to Congress, not later than 18 months after the date of enactment, a report identifying best practices with respect to the establishment and operation of a local community advisory board for communities that may be affected by a decommissioning nuclear power plant.

Section 9. Report on study recommendations

Section 9 requires the Commission to submit a report not later than 90 days after enactment to Congress on the status of addressing and implementing recommendations contained in the memorandum dated June 19, 2018 on effects of reprisal and raising differing views.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

OMNIBUS BUDGET RECONCILIATION ACT OF 1990

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**TITLE VI—ENERGY AND
ENVIRONMENTAL PROGRAMS**

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SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.

(a) **ANNUAL ASSESSMENT.**—

(1) **IN GENERAL.**—The Nuclear Regulatory Commission (in this section referred to as the “Commission”) shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

(2) **FIRST ASSESSMENT.**—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

(b) **FEES FOR SERVICE OR THING OF VALUE.**—Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission’s costs in providing any such service or thing of value.

(c) **ANNUAL CHARGES.**—

(1) **PERSONS SUBJECT TO CHARGE.**—Except as provided in paragraph (4), any licensee or certificate holder of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

(2) **AGGREGATE AMOUNT OF CHARGES.**—

(A) **IN GENERAL.**—The aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph (B), less—

(i) amounts collected under subsection (b) during the fiscal year;

(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year;

(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005; **[and]**

(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections~~...~~; *and*

(v) *amounts appropriated to the Commission for the fiscal year for activities related to the development of a regulatory infrastructure for advanced nuclear reactor technologies.*

(B) **PERCENTAGES.**—The percentages referred to in subparagraph (A) are—

(i) 98 percent for fiscal year 2001;

- (ii) 96 percent for fiscal year 2002;
- (iii) 94 percent for fiscal year 2003;
- (iv) 92 percent for fiscal year 2004; and
- (v) 90 percent for fiscal year 2005 and each fiscal year thereafter and fiscal year 2006.

(3) AMOUNT PER LICENSEE.—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To 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.

(4) EXEMPTION.—

(A) IN GENERAL.—Paragraph (1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(B) RESEARCH REACTOR.—For purposes of subparagraph (A), the term “research reactor” means a nuclear reactor that—

- (i) is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and
- (ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—
 - (I) a circulating loop through the core in which the licensee conducts fuel experiments;
 - (II) a liquid fuel loading; or
 - (III) an experimental facility in the core in excess of 16 square inches in cross-section.

(d) DEFINITION.—As used in this section, the term “Nuclear Waste Fund” means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

(e) CONFORMING AMENDMENT TO COBRA.—[Omitted—Amends other law]

[Effective October 1, 2020, section 2(b) of H.R. 1320 (as reported) provides for an amendment to repeal section 6101 of the Omnibus Budget Reconciliation Act of 1990. Upon such date, section 6101 of such Act, as amended by section 2(a) of H.R. 1320 (as reported), is repealed as follows.]

[SEC. 6101. NRC USER FEES AND ANNUAL CHARGES.]

[(a) ANNUAL ASSESSMENT.—

[(1) IN GENERAL.—The Nuclear Regulatory Commission (in this section referred to as the “Commission”) shall annually assess and collect such fees and charges as are described in subsections (b) and (c).

[(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) and annual charges under subsection (c) shall be made not later than September 30, 1991.

[(b) FEES FOR SERVICE OR THING OF VALUE.—Pursuant to section 9701 of title 31, United States Code, any person who receives a service or thing of value from the Commission shall pay fees to

cover the Commission's costs in providing any such service or thing of value.

[(c) ANNUAL CHARGES.—

[(1) PERSONS SUBJECT TO CHARGE.—Except as provided in paragraph (4), any licensee or certificate holder of the Commission may be required to pay, in addition to the fees set forth in subsection (b), an annual charge.

[(2) AGGREGATE AMOUNT OF CHARGES.—

[(A) IN GENERAL.—The aggregate amount of the annual charges collected from all licensees and certificate holders in a fiscal year shall equal an amount that approximates the percentages of the budget authority of the Commission for the fiscal year stated in subparagraph (B), less—

[(i) amounts collected under subsection (b) during the fiscal year;

[(ii) amounts appropriated to the Commission from the Nuclear Waste Fund for the fiscal year;

[(iii) amounts appropriated to the Commission for the fiscal year for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005;

[(iv) amounts appropriated to the Commission for homeland security activities of the Commission for the fiscal year, except for the costs of fingerprinting and background checks required by section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections; and

[(v) amounts appropriated to the Commission for the fiscal year for activities related to the development of a regulatory infrastructure for advanced nuclear reactor technologies.

[(B) PERCENTAGES.—The percentages referred to in subparagraph (A) are—

[(i) 98 percent for fiscal year 2001;

[(ii) 96 percent for fiscal year 2002;

[(iii) 94 percent for fiscal year 2003;

[(iv) 92 percent for fiscal year 2004; and

[(v) 90 percent for fiscal year 2005 and each fiscal year thereafter and fiscal year 2006.

[(3) AMOUNT PER LICENSEE.—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To 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.

[(4) EXEMPTION.—

[(A) IN GENERAL.—Paragraph (1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

[(B) RESEARCH REACTOR.—For purposes of subparagraph (A), the term "research reactor" means a nuclear reactor that—

[(i) is licensed by the Nuclear Regulatory Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and

[(ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

[(I) a circulating loop through the core in which the licensee conducts fuel experiments;

[(II) a liquid fuel loading; or

[(III) an experimental facility in the core in excess of 16 square inches in cross-section.

[(d) DEFINITION.—As used in this section, the term “Nuclear Waste Fund” means the fund established pursuant to section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)).

[(e) CONFORMING AMENDMENT TO COBRA.—[Omitted—Amends other law]]

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ATOMIC ENERGY ACT OF 1954

TITLE I—ATOMIC ENERGY

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CHAPTER 16. JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

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SEC. 185. CONSTRUCTION PERMITS AND OPERATING LICENSES.—a. All applicants for licenses to construct or modify production or utilization facilities shall, if the application is otherwise acceptable to the Commission, be initially granted a construction permit. The construction permit shall state the earliest and latest dates for the completion of the construction or modification. Unless the construction or modification of the facility is completed by the completion date, the construction permit shall expire, and all rights thereunder be forfeited, unless upon good cause shown, the Commission extends the completion date. Upon the completion of the construction or modification of the facility, upon the filing of any additional information needed to bring the original application up to date, and upon finding that the facility authorized has been constructed and will operate in conformity with the application as amended and in conformity with the provisions of this Act and of the rules and regulations of the Commission, and in the absence of any good cause being shown to the Commission why the granting of a license would not be in accordance with the provisions of this Act, the Commission shall thereupon issue a license to the applicant. For all other purposes of this Act, a construction permit is deemed to be a “license.”

b. After holding a public hearing under section 189 a. (1)(A), the Commission shall issue to the applicant a combined construction and operating license if the application contains sufficient information to support the issuance of a combined license and the Commission determines that there is reasonable assurance that the facility

will be constructed and will operate in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. The Commission shall identify within the combined license the inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria that, if met, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of this Act, and the Commission's rules and regulations. Following issuance of the combined license, the Commission shall ensure that the prescribed inspections, tests, and analyses are performed and, prior to operation of the facility, shall find that the prescribed acceptance criteria are met. Any finding made under this subsection shall not require a hearing except as provided in section 189 a. (1)(B).

c. APPLICATION REVIEWS FOR NUCLEAR ENERGY PROJECTS.—

(1) STREAMLINING LICENSE APPLICATION REVIEW.—With respect to an application that is docketed seeking issuance of a construction permit, operating license, or combined construction permit and operating license for a production or utilization facility, the Commission shall include the following procedures:

(A) Undertake an environmental review process and issue any draft environmental impact statement to the maximum extent practicable within 24 months after the application is accepted for docketing.

(B) Complete the technical review process and issue any safety evaluation report and any final environmental impact statement to the maximum extent practicable within 42 months after the application is accepted for docketing.

(2) EARLY SITE PERMIT.—

(A) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—In a proceeding for a combined construction permit and operating license for a site for which an early site permit has been issued, any environmental impact statement prepared by the Commission and cooperating agencies shall be prepared as a supplement to the environmental impact statement prepared for the early site permit.

(B) INCORPORATION BY REFERENCE.—The supplemental environmental impact statement shall—

(i) incorporate by reference the analysis, findings, and conclusions from the environmental impact statement prepared for the early site permit; and

(ii) include additional discussion, analyses, findings, and conclusions on matters resolved in the early site permit proceeding only to the extent necessary to address information that is new and significant in that the information would materially change the prior findings or conclusions.

(3) PRODUCTION OR UTILIZATION FACILITY LOCATED AT AN EXISTING SITE.—In reviewing an application for an early site permit, construction permit, operating license, or combined construction permit and operating license for a production or utilization facility located at the site of a licensed production or utilization facility, the Commission shall, to the extent practicable,

use information that was part of the licensing basis of the licensed production or utilization facility.

(4) *REGULATIONS.*—*The Commission shall initiate a rule-making, not later than 1 year after the date of enactment of the Nuclear Utilization of Keynote Energy Act, to amend the regulations of the Commission to implement this subsection.*

(5) *ENVIRONMENTAL IMPACT STATEMENT DEFINED.*—*In this subsection, the term “environmental impact statement” means a detailed statement required under section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)).*

(6) *RELATIONSHIP TO OTHER LAW.*—*Nothing in this subsection exempts the Commission from any requirement for full compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).*

* * * * *

SEC. 189. HEARINGS AND JUDICIAL REVIEW.—

a.(1)(A) In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, and in any proceeding for the issuance or modification of rules and regulations dealing with the activities of licenses, and in any proceeding for the payment of compensation, an award or royalties under sections 153, 157, 186 c., or 188, the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding. The Commission shall hold a hearing after thirty days' notice and publication once in the Federal Register, on each application under section 103 or 104 b. for a construction permit for a facility, and on any application under section 104 c. for a construction permit for a testing facility. In cases where such a construction permit has been issued following the holding of such a hearing, the Commission may, in the absence of a request therefor by any person whose interest may be affected, issue an operating license or an amendment to a construction permit or an amendment to an operating license without a hearing, but upon thirty days' notice and publication once in the Federal Register of its intent to do so. The Commission may dispense with such thirty days' notice and publication with respect to any application for an amendment to a construction permit or an amendment to an operating license upon a determination by the Commission that the amendment involves no significant hazards consideration.

(B)(i) Not less than 180 days before the date scheduled for initial loading of fuel into a plant by a licensee that has been issued a combined construction permit and operating license under section 185 b., the Commission shall publish in the Federal Register notice of intended operation. That notice shall provide that any person whose interest may be affected by operation of the plant, may within 60 days request the Commission to hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria of the license.

(ii) A request for hearing under clause (i) shall show, *prima facie*, that one or more of the acceptance criteria in the combined license have not been, or will not be met, and the specific operational consequences of nonconformance that would be contrary to providing

reasonable assurance of adequate protection of the public health and safety.

(iii) After receiving a request for a hearing under clause (i), the Commission expeditiously shall either deny or grant the request. If the request is granted, the Commission shall determine, after considering petitioners' prima facie showing and any answers thereto, whether during a period of interim operation, there will be reasonable assurance of adequate protection of the public health and safety. If the Commission determines that there is such reasonable assurance, it shall allow operation during an interim period under the combined license.

(iv) The Commission, in its discretion, shall determine appropriate hearing procedures, whether informal or formal adjudicatory, for any hearing under clause (i), and shall state its reasons therefor.

(v) The Commission shall, to the maximum possible extent, render a decision on issues raised by the hearing request within 180 days of the publication of the notice provided by clause (i) or the anticipated date for initial loading of fuel into the reactor, whichever is later. Commencement of operation under a combined license is not subject to subparagraph (A).

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license or any amendment to a combined construction and operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license or any amendment to a combined construction and operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

(3) *The Commission may use informal adjudicatory procedures for any hearing required under this section for which the Commis-*

sion determines that adjudicatory procedures under section 554 of title 5, United States Code, are unnecessary.

b. The following Commission actions shall be subject to judicial review in the manner prescribed in chapter 158 of title 28, United States Code, and chapter 7 of title 5, United States Code:

(1) Any final order entered in any proceeding of the kind specified in subsection (a).

(2) Any final order allowing or prohibiting a facility to begin operating under a combined construction and operating license.

(3) Any final order establishing by regulation standards to govern the Department of Energy's gaseous diffusion uranium enrichment plants, including any such facilities leased to a corporation established under the USEC Privatization Act.

(4) Any final determination under section 1701(c) relating to whether the gaseous diffusion plants, including any such facilities leased to a corporation established under the USEC Privatization Act, are in compliance with the Commission's standards governing the gaseous diffusion plants and all applicable laws.

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