

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 171

[NRC-2008-0664]

RIN 3150-A154

### Variable Annual Fee Structure for Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of proposed rulemaking (ANPR).

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is considering whether to propose to amend its rule governing annual fees to establish a variable annual fee structure for power reactors based on licensed power limits. Current regulations governing annual fees require that each operating power reactor pay the same annual fee, regardless of the size of the reactor. The NRC has determined that the current single annual fee structure for power reactors should be reviewed in light of the potential for future licensing of small and medium sized nuclear reactors, some of which may not be used to generate electric power, and some of which may be used and licensed in configurations of up to twenty (20) reactors (modules). Although issuance of a license for a small or medium sized reactor which triggers imposition of fees may be several years in the future, this ANPR invites early input from interested stakeholders and the public on the issues relevant to the establishment of a variable annual fee structure for power reactors.

**DATES:** Submit comments by June 8, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your

comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e-Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2008-0664. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

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

*E-mail comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.

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

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

You can access publicly available documents related to this document using the following methods:

*NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Rebecca I. Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone 301-415-7126; e-mail [Rebecca.Erickson@nrc.gov](mailto:Rebecca.Erickson@nrc.gov).

## SUPPLEMENTARY INFORMATION:

### Background

The NRC is required each year, under the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) (42 U.S.C. 2214), as amended, to recover through fees to NRC licensees and applicants approximately 90 percent of its budget authority after subtracting the amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR) activities, and amounts appropriated for generic homeland security activities. The 10 percent not recovered by fees in the NRC's annual appropriation covers the costs of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities.

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses and the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under the authority of OBRA-90, as amended, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

The assessment of annual fees by the NRC began in fiscal year (FY) 1987 to meet the requirements of Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA<sup>1</sup>), which required the NRC to recover 33 percent of its budget authority. In the FY 1987 fee rule, the NRC established a uniform annual fee for each licensed nuclear power reactor under the new part 171 (51 FR 33224; September 18, 1986). The NRC also considered calculating the annual fee on power reactors based on the thermal megawatt ratings of those reactors in the FY 1987 proposed fee rule (51 FR

<sup>1</sup> COBRA was replaced in December 1987, when Congress passed OBRA 87. The NRC is currently under the requirements of OBRA 90, as amended.

24078, 24082–3; July 1, 1986). In its consideration, the NRC analyzed the amendment, operator licensing, and inspection costs as billed to licensees for the period of June 1984 to June 1985. At that time, the NRC analysis found no necessary relationship or predictive trend between the thermal megawatt rating of a reactor and NRC regulatory costs.

In recognition of the problem that some licensees of smaller reactors may have in paying substantially increased fees due to the requirements of the new part 171, the NRC provided for fee exemptions under § 171.11 Exemption (51 FR 33230; September 18, 1986):

The Commission may, upon application, grant an exemption, in part, from the annual fee required pursuant to this part. An exemption under this provision may be granted by the Commission taking into consideration the following factors:

- (a) Age of the reactor;
- (b) Size of the reactor;
- (c) Number of customers in rate base;
- (d) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
- (e) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

In an effort to provide a more equitable distribution among the licensed nuclear power reactors of the amount required to be collected, the NRC re-evaluated the uniform annual fee for power reactors. As a result, under the FY 1989 Fee Rule (53 FR 52632; December 29, 1988), each reactor was assessed fees based on those NRC activities from which it benefited as a type or within a class of reactors. The new methodology took into account the kind of reactor, its location and other considerations in relation to the generic research and other costs associated with power reactor regulation.

In FY 1995, the NRC re-examined this very detailed and labor intensive approach to determine reactor annual fees in an attempt to streamline the fee program. The NRC's analysis determined that the complex fee assessment was implemented when there were significant differences in the NRC research funding for the various types of reactors, which was no longer the case. Further, the NRC determined that establishing a single uniform annual fee for each operating power reactor would not cause an unfair burden and would simplify the fee process. As a result, the NRC amended § 171.15 to implement a uniform annual fee assessed to all licensed operating power reactors (60 FR 32218; June 20, 1995).

In the FY 2005 fee rule (70 FR 30526; May 26, 2005), the NRC amended the

fee exemption under § 171.11 that was implemented in 1986 by eliminating the "size of the reactor" factor. Because none of the smaller reactors were still licensed to operate, the NRC had not issued waivers on the basis of size for several years. Moreover, no other class of licensee contained an exemption provision based on size. Therefore, the reference to size of the reactor as a consideration in evaluating annual fee exemption requests was no longer needed.

In FY 2008, approximately 90 percent of NRC's fee recoverable budget was allocated to the operating power reactors fee class, of which approximately 60 percent or \$419.3 million was recovered through part 171 annual fees. The \$419.3 million in budgeted costs was divided equally among the 104 power reactors licensed to operate, which resulted in an FY 2008 annual fee of \$4,032,000 per reactor under § 171.15(b)(1). Additionally, under § 171.15(c)(1) each power reactor licensed to operate was assessed a spent fuel storage/reactor decommissioning annual fee of \$135,000 in FY 2008. Thus, the total FY 2008 annual fee of \$4,167,000 was assessed to each power reactor.

The 104 power reactors currently licensed to operate have licensed power limits ranging from 1500 to 3990 megawatts thermal (MWt). However, the NRC anticipates receiving applications to license small and medium sized commercial nuclear reactors with capacities ranging from 30 to 1000 MWt. The small and medium sized reactors could be any of the advanced reactor designs, including high-temperature gas-cooled reactors, sodium-cooled fast reactor, and small light-water reactors. Some of these small and medium sized reactors may not generate electric power, but instead be used to generate process heat for industrial applications such as the production of hydrogen. Current regulations governing annual fees for power reactors require the same fees from a nuclear reactor designed to produce electrical or heat energy.

#### Specific Proposal

The Commission is considering whether to propose to amend § 171.15 to establish a variable annual fee structure for power reactors based on the reactor's licensed power limit contained in the operating license (including a combined license).

#### Specific Considerations

Before it considers a proposed rule on the subject, the NRC is seeking advice and recommendations on this matter from all interested persons. The NRC

invites advice and recommendations on an amendment to annual fees for power reactor licensees reflecting these and any other pertinent points from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

#### *Power Reactors Variable Fees*

Q.1. Should the NRC establish a variable annual fee structure based on either the licensed thermal or electric power limits of the power reactor? What variables should be considered in establishing such a fee structure? In particular, should reactors producing process heat be treated the same as reactors producing heat for the generation of electricity? What are the considerations associated with establishing a variable annual fee structure based upon thermal, as opposed to electric power?

Q.2. If the NRC establishes a variable annual fee structure, what should the ranges be for each group or category of reactors? What criteria should be used to determine the fees for the different groups or categories of reactors (e.g., power level, reactor technology, associated NRC resources)?

Q.3. Current nuclear power plants use a configuration in which a single large reactor provides the heat to produce electric power. However, future plant concepts may include two or more small to medium sized reactors to provide the heat to power one or more turbines connected to an electric generator. Should a variable annual fee structure account for the potential configurations?

Q.4. Current nuclear power plants have one, two or three large reactors located at the same site. Current applications for new reactors could result in up to four large reactors at a single site. However, future plant concepts may have up to twenty (20) reactors (modules) operating at the same site. Should the variable annual fee structure account for this configuration? If so, what are the considerations in establishing such a fee structure?

Q.5. Currently, each licensed reactor located at the same site is treated as a separate unit for purposes of calculating and assessing the annual fee. However, external stakeholders in the past have suggested that a single comprehensive license be issued for a set of modular reactors located at a single site. The licensee would have substantial flexibility in determining whether and when to construct and operate each reactor module in such a plant. Should the variable annual fee structure account for this reactor licensing concept? If so, what are the

considerations in establishing such a fee structure?

Q.6. Are there other factors that should be considered in determining the annual fee for power reactors?

There will be another opportunity for additional public comment in connection with any proposed rule that may be developed by the Commission.

#### List of Subjects in 10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

The authority citation for this document is: 42 U.S.C. 2201; 42 U.S.C. 5841.

Dated at Rockville, Maryland, this 11th day of March, 2009.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

[FR Doc. E9-6554 Filed 3-24-09; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-0261; Directorate Identifier 2009-CE-017-AD]

RIN 2120-AA64

#### Airworthiness Directives; Dornier Luftfahrt GmbH Models Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, Dornier 228-202, and Dornier 228-212 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by April 24, 2009.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329-4130; *fax:* (816) 329-4090.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2009-0261; Directorate Identifier 2009-CE-017-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2009-0031, dated February 18, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

For the reasons described above, this new EASA Airworthiness Directive (AD) introduces a repetitive detailed inspection of the guide pins of the power and condition levers and requires the replacement of the pins that exceed the allowable wear-limits.

You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

RUAG Aerospace Defence Technology has issued Dornier 228 Alert Service Bulletin ASB-228-279, dated December 19, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

#### Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA