April 13, 2026

Subject: BTI Comment on Proposed Rule; Fee Schedules; Fee Recovery for Fiscal Year 2026 [Docket ID NRC-2023-0212].

The Breakthrough Institute (BTI) appreciates the opportunity to comment on the Nuclear Regulatory Commission's proposed rule, *Fee Schedules; Fee Recovery for Fiscal Year 2026*.[1] BTI is an independent 501(c)(3) global research center that advocates for appropriate regulation and oversight of nuclear reactors to enable the new and continued use of safe and clean nuclear energy. BTI acts in the public interest and does not receive funding from industry.

BTI has previously commented on NRC fee policy, including implementation of the ADVANCE Act, and has consistently supported fee reforms that improve predictability while preserving a coherent relationship between the NRC's fee framework, the statutory distinction between beneficiary-specific services and broader regulatory functions, and the actual review work the agency performs. BTI's prior FY 2025 fee-rule comment highlighted issues and focused on implementing the letter of the ADVANCE Act, which were ultimately addressed in the final rule.[2]

The FY 2026 proposed fee rule does several things at once. Some aspects are routine annual fee updates; some implement recent statutory changes; some reflect broader NRC modernization efforts. BTI does not approach the rule as if every component raises the same level of concern. But the rule should be evaluated as a whole, because the various pieces must remain coherent with one another. That includes coherence between Part 170 service fees and Part 171 annual fees; coherence with the statutory changes made by the Nuclear Energy Innovation and Modernization Act (NEIMA) and the ADVANCE Act; coherence with the NRC's broader revision of requested-activity timelines and review management; and coherence in the treatment of applicant-caused delay, review uncertainty, and the costs of completing licensing work.

BTI's principal concern is the proposed fixed fee cap regime. The core problem is not simply that related implementation questions remain unresolved, though they are. It is that a project-level

[1] *Fee Schedules; Fee Recovery for Fiscal Year 2026*, 91 Fed. Reg. 12,084, proposed Mar. 12, 2026, https://www.federalregister.gov/documents/2026/03/12/2026-04823/fee-schedules-fee-recovery-for-fiscal-year-2026

[2] Spencer Toohill, The Breakthrough Institute, *Implementing the ADVANCE Act: Getting the FY25 Fee Rule Right*, March 30, 2025, https://thebreakthrough.org/issues/energy/implementing-the-advance-act-getting-the-fy25-fee-rule-right.

fee cap is a poor mechanism for NRC licensing reviews. Review burden is driven by scope, sequencing, staffing, contract support, application quality, and the need to bring a matter to lawful disposition. A fixed monetary ceiling does not govern those variables directly; it instead attempts to impose ex ante pricing discipline on a regulatory process whose burden is inherently contingent and application-specific. In BTI's view, that is a structural mismatch. The absence of key implementation guidance, the NRC's separate and still-unfinished deadline rulemaking, and the unresolved treatment of unrecovered costs do not merely make the proposal premature. They reinforce the more fundamental point that the cap mechanism itself has not been shown to be coherent, beneficial, or well-suited to the NRC's fee framework.

For the reasons explained below, BTI recommends that the NRC not finalize proposed § 170.33. The current record does not show that project-level fee caps are a sound mechanism for NRC licensing reviews or that they would produce benefits commensurate with the legal and administrative complications they introduce. If the NRC nevertheless decides to proceed, it should, at minimum, reject the tailored-cap model, avoid relying exclusively on applicant failure as the basis for adjustment, and address the unresolved guidance, deadline, and cost-disposition issues before adopting any binding cap regime.

EO 14300 and Cross-Rule Coordination

Many components of the FY 2026 proposed fee structure are being advanced in response to Executive Order 14300,[3] while the corresponding fixed review deadlines will be addressed in a separate rulemaking. The notice also recognizes that later rulemakings may change the assumptions underlying the proposed changes and may require future updates.[4] The problem is not simply that related reforms are pending. It is that this proposed rule was established before the broader framework governing requested activities, review timelines, and expected efficiencies with which this proposed rule interacts with have been fully settled. The limits in the regulatory analysis must either be based on the existing regulatory structure, or estimate fee limits from a future structure that is not yet available for the public to evaluate.

[3] Executive Order 14300, *Ordering the Reform of the Nuclear Regulatory Commission*, May 23, 2025.

[4] *Fee Schedules; Fee Recovery for Fiscal Year 2026*, 91 Fed. Reg. 12,084, proposed Mar. 12, 2026, paragraph 36, https://www.federalregister.gov/d/2026-04823/p-36

The NRC's current revision process is moving multiple related rulemakings on compressed and overlapping timelines. As a practical matter, comment periods for interrelated dockets may close sequentially, making it difficult for stakeholders to assess cross-rule interactions once an earlier docket has already closed. More importantly, the interaction here is not merely a question of whether another rule will make licensing somewhat faster or slower. Related rulemakings may change the underlying assumptions on which fee mechanisms depend: when review begins, what milestones control, what work falls within a requested activity, when an application is treated as sufficiently complete, and what level of agency effort is expected before final disposition. The proposed fee rule should therefore be understood as one component of a broader NRC effort to revise licensing process expectations under NEIMA, the ADVANCE Act, and Executive Order 14300. It should not be finalized as though the fee framework can be cleanly separated from those adjacent reforms.

If the fee caps take effect before the deadline framework and associated requested-activity revisions are resolved, the NRC may lock in a recoverability mechanism before it has finalized the procedural assumptions that are supposed to justify that mechanism. The cap may then reflect a provisional estimate tied to a review model that is itself still changing. That is not merely a timing problem. It creates a genuine risk that the final fee structure will rest on outdated or incomplete assumptions about review scope, duration, and staffing.

The NRC should treat cross-rule interaction as a substantive defect in the current proposal, not merely a sequencing issue to be managed later. The final rule should include specific coordination language recognizing that the fee framework should remain flexible while adjacent reforms are completed, and the NRC should remain open to revisiting the framework if the combined effect of those changes proves misaligned with its regulatory objectives.

Statutory Background and Alignment

The NRC's existing fee rules distinguish between service fees under Part 170 and annual fees under Part 171. Part 170 addresses fees for licensing, inspection, and related services, while Part 171 addresses annual fees that recover the remainder of the amount NRC must collect.[5,6] That

[5] 10 C.F.R. pt. 170
[6] 10 C.F.R. pt. 171

distinction matters because the legal and administrative logic of the fee framework depends on it. Part 170 has historically been tied to identifiable agency work performed for an identifiable beneficiary. Current § 170.12(b) reflects that structure by tying licensing fees to full costs for review work, preapplication consultations, and project management time based on staff time and contractual support services expended.[7]

Recent statutes have refined that framework in ways that favor more targeted and predictable fee treatment while preserving the connection between charges assessed and actual regulatory services performed. NEIMA sharpened the relationship between fees and a "service or thing of value," while also emphasizing milestone schedules, performance metrics, and delay reporting.[8] NEIMA also requires the NRC to recover, to the maximum extent practicable, approximately 100 percent of its appropriated budget through fee recovery, and to assess and collect fees for services or things of value provided to identifiable recipients. The ADVANCE Act then introduced targeted relief for advanced reactor applicants by limiting the hourly rate to mission-direct program salaries and benefits for qualifying applicants and preapplicants.[9,10] Current § 170.20 already reflects that rate-based statutory reform.[11] And IOAA provides the underlying authority for service-based fee collection.

The NRC presents the fee cap regime as implementing Section 5(a) of Executive Order 14300. But the NRC's fee authority derives from statute, and any new fee mechanism should preserve a coherent relationship between fees assessed, review work performed, and the identifiable beneficiary of that work. That is where the proposed cap regime is most problematic. Section 170.33 does not clarify the boundaries of the recoverable service or more closely align fees to discrete agency outputs. Instead, it imposes an ex ante upper bound on recovery even where review work may continue and the agency may still need to bring the matter to lawful disposition. In that respect, the proposal risks weakening, rather than clarifying, the relationship between Part 170 fees and the review work for which those fees are charged. BTI therefore does

[7] 10 C.F.R. § 170.12(b)

[8] Nuclear Energy Innovation and Modernization Act § 102, 132 Stat. at 5568—70.

[9] ADVANCE Act, Pub. L. No. 118-67, § 201, 138 Stat. 1462, 1471—72 (2024)

[10] *The ADVANCE Act's reduced-hourly-rate provision does not attempt to solve predictability through a hard project-level ceiling. It adjusts the rate basis for qualifying advanced reactor applicants as a targeted reform that preserves the relationship between fees and review work. Similarly, efforts to narrow what qualifies as the recoverable service or thing of value are more faithful to the statutory structure than shifting aggregate recovery obligations.*

[11] 10 C.F.R. § 170.20

not view the proposed cap as a modest administrative refinement. It is a more basic change in fee design that the current record has not shown to be well aligned with the statutory fee framework.

The Fee Cap is the Most Serious Flaw in the Proposed Rule

The proposed fixed-fee cap in § 170.33 is the most serious flaw in the FY 2026 proposed rule because it attempts to create predictability through a pricing mechanism that is poorly matched to the work the NRC actually performs. Licensing review effort is driven by scope, hours, sequencing, staffing, contract support, application quality, and the emergence of technical issues during review. A project-level cost cap does not directly regulate any of those variables. It is only a monetary proxy for them. The proposal therefore does not solve uncertainty at its source. It attempts to manage that uncertainty indirectly by fixing an upper bound on recovery at the outset of a process whose burden is often contingent and only partially knowable ex ante. In BTI's view, that is not merely an incomplete implementation choice. It is the wrong mechanism for the problem the NRC is trying to address.

The associated FY 2026 work papers reinforce that concern. The professional hourly rate is derived from a transparent and auditable formula: mission-direct salaries and benefits plus mission-indirect costs plus agency support costs, divided by mission-direct FTE multiplied by productive hours per year. By contrast, the proposed cap values are supported at a higher level of generality. The work papers identify the broad design of the cap methodology, but they do not provide commenters with a record sufficient to evaluate the historical performance data underlying the estimates, the inflation-adjustment methodology applied to that data, the assumed efficiency improvements, or the treatment of categories with limited historical experience.[12] That gap matters because the case for caps depends almost entirely on the proposition that the agency can estimate review burden with enough reliability to convert those estimates into binding cost ceilings. On the present record, the NRC has not made that showing.

The proposed tailored-cap model is especially difficult to justify. A tailored cap may appear more precise than a categorical maximum, but that precision is largely illusory. In practice, a tailored cap functions as a binding case-specific recoverability constraint. At the point an application is accepted for review, the NRC can *estimate* the likely effort required. It cannot know it with

[12] U.S. Nuclear Regulatory Commission, *FY 2026 Proposed Fee Rule Work Papers*.

confidence. The notice itself acknowledges that resources required for review depend on the specific application, including its complexity, completeness, and quality. An applicant seeking to challenge an improperly set cap, or the NRC seeking to defend one, would need access to the underlying data.

The proposed categorical cap table in the associated work papers also produces several results that are not self-evidently intuitive, including cases in which a standard design approval is capped above a combined license with no prior approvals, and restart activities are capped materially above a generic single LAR.[13] Those outcomes reinforce the core problem: the NRC has attempted to impose a rigid pricing structure on review activities whose actual burden depends on context, sequencing, scope, and execution. The fact that the agency had reasons for drawing these distinctions does not make the distinctions defensible. It illustrates how quickly the effort to formalize ex ante caps can produce categories that are internally inconsistent and analytically difficult to justify.

The NuScale SDA (completed as design certification for the VOYGR-6 in 2023) required Commission-level action and was the first-ever SMR design certification, involving multiple rounds of staff review, Commission briefings, and a formal vote; a process significantly longer and more resource-intensive than any standard SDA review. The work papers acknowledge that for categories with "limited historical data," the caps were derived from "recent comparable data, such as execution data from recent activities." NuScale is effectively one of those data points for advanced reactor reviews. But the NuScale experience is not an extreme outlier to be excluded, it is representative of what a novel advanced reactor application looks like.

These structural problems are compounded by the asymmetric consequences of estimation error. If a tailored cap is too high, the principal consequence is overestimation. If it is too low, the NRC risks painting itself into a corner of its own making: review work may remain through no fault of the applicant, yet the proposed rule would bar additional fee recovery except in cases of applicant failure. The notice is explicit that exceedances not attributable to applicant failure would not be borne by applicants or licensees as either service fees or annual fees. NRC staff acknowledged that the agency has not yet worked out how those costs would be handled.[14]

[13] See, FY 2026 Proposed Fee Rule Work Papers, Table for Proposed 10 C.F.R. § 170.33 categorical caps.

[14] U.S. Nuclear Regulatory Commission, *Fiscal Year 2026 Proposed Fee Rule Public Meeting*, March 27, 2026, https://www.nrc.gov/pmns/mtg?do=details&Code=20260245

The NRC's own characterization of the proposed caps compounds this concern. At the March 27, 2026, public meeting on the proposed rule, NRC staff indicated confidence that fee cap exceedances are unlikely. When pressed, staff did not dispute the characterization that the caps are set at the expected maximum of estimated hourly values rather than at a reasonable 50th-percentile estimate tied to expected performance. If that is accurate, the proposed caps are not predictive benchmarks of likely review cost, they are conservative outer bounds. A cap structured as an upper-bound constraint and held out as unlikely to bind does not provide meaningful predictability or efficiency pressure.

The mechanism at the heart of the proposed cap regime depends entirely on guidance that has not yet been issued and will not be available before the close of the public comment period on April 13, 2026. At the March 27, 2026, public meeting on the proposed rule, a commenter asked directly whether the NRC planned to issue guidance on how tailored fee caps would be established and managed.[15] NRC staff confirmed that such guidance is being developed but is not finalized. When asked for a timeline, staff indicated none was available. Without the guidance, commenters cannot evaluate how the NRC will define a "reasonably diligent applicant," how that standard will be applied to specific applications at acceptance, how the boundary between ordinary review uncertainty and applicant failure will be drawn, or how disputes over cap-setting will be resolved. That is significant not only because it limits public evaluation of the proposal, but because it underscores how much of the regime's practical operation remains undefined. A fee mechanism that depends so heavily on later guidance to explain its core operation has not been shown to be a sound basis for a binding regulatory requirement.

Applicant Failure Provisions

BTI understands why the NRC staff included an applicant-failure concept. The agency should not be forced to absorb costs associated with applicant-caused delay. The problem is that the current proposal places too much structural weight on that concept. Under the notice, applicant failure is the *sole* basis for *increasing* a cap, and thus the only basis for continuing a review.[16] That is a serious weakness in the proposed rule.

[15] U.S. Nuclear Regulatory Commission, *Fiscal Year 2026 Proposed Fee Rule Public Meeting*, March 27, 2026, https://www.nrc.gov/pmns/mtg?do=details&Code=20260245

[16] *Fee Schedules; Fee Recovery for Fiscal Year 2026*, 91 Fed. Reg. 12,084, proposed Mar. 12, 2026, paragraph 168, https://www.federalregister.gov/d/2026-04823/p-168

Even diligent applicants may be involved in reviews that prove more resource-intensive than expected. Novel technical issues may arise. Staff sequencing decisions may change the pattern of review effort. Management choices may alter the use of contract support or the timing of key outputs. These circumstances do not necessarily constitute applicant failure. But they can still render the original cap materially inaccurate. These potential circumstances would also impact the fixed deadlines. In those cases, the proposal would leave the NRC with an increasingly consequential choice: either continue work without a coherent fee basis, or treat a structural estimation problem as if it were an applicant-fault problem. Neither is sound.

For that reason, BTI recommends that the final rule not rely on applicant failure as the sole mechanism for addressing divergence between ex ante projections, actual review effort, and actually continuing a review. The difficulty of separating applicant fault from ordinary review uncertainty is itself one reason project-level caps are a poor fit for NRC licensing reviews. If the NRC nevertheless proceeds with any cap framework, it should at minimum refine the applicant-failure standard, provide clearer examples, and explain how that concept would interact with ordinary review uncertainty in practice.

Structural Failure Modes

The mismatch between the cap mechanism and the work it is supposed to govern becomes even clearer when applied to foreseeable operating scenarios. A distinct set of concerns arises from specific structural failure modes: identifiable scenarios in which the proposed mechanism produces legally or administratively incoherent outcomes without any party acting improperly. These are not speculative or remote risks. They are foreseeable consequences of the proposed design that follow directly from its terms, and the NRC has not explained how it would address any of them.

1. **Government shutdown.**

Government shutdowns have not been isolated or even rare events. At the March 27, 2026 public meeting, the NRC's CFO confirmed on the record that the fee cap holds through a government shutdown, and that only applicant failure can adjust it. A government shutdown is not an applicant failure by any reasonable definition, nor is it a failure of the NRC staff to meet initial fee and timeline estimates. If the NRC is forced to stop work for weeks during a review—an event

that has occurred multiple times in recent history and that is entirely outside the applicant's control—the review timeline continues to run while no review work is performed. When the agency returns, the remaining cap budget is smaller, the review is behind schedule, and the only legal mechanism for adjusting the cap does not apply. The proposed rule provides no answer to what happens in this scenario. The NRC should be required to answer it before finalizing the rule: does the cap reset? Does the government shutdown period toll the cap? Does the review pause? On the present record, the NRC has not said.

2. **Cap exhaustion without applicant failure.**

The proposed rule bars additional fee recovery once the cap is reached, except in cases of applicant failure. But reviews may exceed their caps for reasons entirely outside applicant control—novel technical issues, evolving regulatory guidance, staff sequencing decisions, or imprecise initial estimation. In those cases, the NRC faces a choice the rule does not resolve: continue performing review work without a fee basis, stop the review, or narrow the scope of inquiry to fit within the remaining cap. Each option creates its own problems. Continuing work without a fee basis conflicts with NEIMA's assessment mandate and the Antideficiency Act.[17] Stopping the review may not be legally available for applications to which the NRC has committed, and may create due process concerns. Narrowing the scope of inquiry may compromise the legal sufficiency of the final decision. This is not a hypothetical edge case. It is a foreseeable scenario that will arise whenever a review is genuinely more complex than the initial estimate, which is a routine feature of novel technology licensing. A sound fee mechanism should be able to account for this foreseeable scenario without forcing the agency into a choice among legally or administratively problematic outcomes. The NRC has not shown that the proposed cap regime can do so.

3. **Sequencing incoherence: caps vs deadlines.**

The caps are, by the NRC's own methodology, derived from staff-hour projections calibrated to expected review durations. But the relevant review durations—the fixed deadlines the EO specifies—have not yet been established. The proposed caps therefore rest on assumed durations that a subsequent rulemaking may change. If the later deadline rulemaking establishes

[17] 31 U.S.C. §§1341-1342, 1511-1519

timelines different from those used to set the caps, the caps will need to be revised. The NRC will have finalized a binding regulatory cost structure based on assumptions that the very rulemaking it is deferring may invalidate. That is not a timing inconvenience; it is a structural defect in the sequencing of these reforms.

A related problem, which the notice raises but does not resolve, is how the proposed framework operates once fixed deadlines are implemented. The notice states that, after fixed deadlines are established, the NRC would not assess Part 170 fees beyond the deadline—even if the fixed fee cap has not been reached—absent applicant failure.[18] That is a consequential design choice. It means the constraint is not simply a capped-fee regime. It is a regime in which the fee meter may stop based on time alone, even where review work remains and even where the applicant has not caused the delay.

4. **Cost disposition on the record is unresolved.**

The unresolved treatment of unrecovered costs is among the clearest indications that the proposal is not ready and may not be coherent as designed. At the March 27 public meeting, the NRC's CFO acknowledged that the agency had not yet worked out who would bear costs that exceed the cap absent applicant failure, while also indicating that those costs would not be charged to applicants or shifted into Part 171 annual fees. At minimum, the remaining possibilities appear to be that review work is curtailed or left incomplete, or that the costs are absorbed elsewhere outside the ordinary Part 170/Part 171 structure. If the latter, the public bears the cost of regulatory review that NEIMA requires to be recovered from the identifiable beneficiary of that review. That is not a minor implementation detail to be worked out later. It is a question of basic statutory compliance, and it should have been resolved before the rule was proposed. The absence of a settled answer here strongly reinforces BTI's view that the fee-cap model should not be adopted.

Unintended Consequences

A further concern is that the proposed cap structure risks importing the wrong kind of pricing logic into NRC review. In some contexts, ex ante price commitments can appear attractive because

[18] *Fee Schedules; Fee Recovery for Fiscal Year 2026*, 91 Fed. Reg. 12,084, proposed Mar. 12, 2026, paragraph 119, https://www.federalregister.gov/d/2026-04823/p-119

they promise predictability and force internal discipline. But where the underlying work remains uncertain, contingent, and highly application-specific, a rigid price constraint can create its own pathologies. It does not eliminate uncertainty. It reallocates the consequences of uncertainty into later-stage execution and decision-making.

The proposal also creates several identifiable risks that underscore the instability of the cap model.

1. **Inconsistent tailored caps raise comparability and fairness concerns.**

The proposed tailored-cap logic depends on early judgments about complexity, completeness, and expected effort. But if two applicants present designs or licensing actions that are similar in kind and one receives a materially higher cap than the other, the NRC risks creating questions about consistency, comparability, and fairness. That may be especially difficult where later developments show that the lower-capped review was not in fact simpler, but merely underestimated at the outset.

2. **The proposal may distort agency behavior at the margin.**

A hard cap may create pressure to defer work, narrow staff inquiries, compress issue resolution, or shift effort in ways that are driven less by sound regulatory administration than by the need to stay within an ex ante ceiling. Fee caps could negatively incentivize the staff to proactively engage with applicants to address questions about the regulatory framework, since those resources would count against the fee cap even if they would make future interactions more productive. Most significantly, this hesitation could also occur during the acceptance review where the staff would have to weigh accepting an application with minimal gaps that could be addressed during the review or simply reject the application.

BTI is not suggesting that the NRC would knowingly compromise safety or legal sufficiency. The fee caps create tradeoffs that can dissuade positive staff applicant engagement. A poorly designed pricing mechanism can still distort institutional incentives even when the underlying decisionmakers are acting in good faith.

3. **Comparability across categories and over time is unstable.**

The work papers show that the cap framework is built from projected staff hours and contract costs across categories aligned to requested activities and milestone assumptions. If those assumptions change through adjacent rulemakings, implementation experience, or shifts in application quality, then the cap values themselves may quickly stop reflecting the review model on which they were based. That is one reason a cap structure adopted too early can harden provisional assumptions into binding fee constraints.

Those questions underscore that the proposed cap should not be viewed simply as a cost-control mechanism. It is a structural design choice with significant unintended consequences. In BTI's view, the NRC has not considered such consequences nor shown that the benefits of this design outweigh the legal, administrative, and institutional complications it is likely to create.

Commensurate Public Benefit

The proposed fee cap should be evaluated against the NRC's broader regulatory mission: whether it can advance the safe and secure use and deployment of civilian nuclear energy technologies through efficient and reliable licensing, oversight, and regulation for the benefit of society and the environment.[19]

On the present record, the NRC has not made that showing. The proposal may increase front-end budgeting certainty for some applicants, but it may also introduce legal ambiguity about unrecovered work, make the fee structure more brittle, elevate disputes over cap-setting and applicant failure, and create pressure points where the NRC's review obligations do not align cleanly with the fee mechanism it has chosen. Those tradeoffs speak directly to whether the rule is consistent with the NRC's own commitment to efficient and reliable regulation and to the Principles of Good Regulation, which emphasize efficiency, clarity, and reliability alongside independence and openness.

The proposed regime limits benefits to society in at least two identifiable ways. First, by making unrecovered costs the responsibility of taxpayers rather than applicants when caps are exceeded without applicant failure—a cost disposition the CFO confirmed on the record at the March 27

[19] *"The NRC protects public health and safety and advances the nation's common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies and radioactive materials through efficient and reliable licensing, oversight, and regulation for the benefit of society and the environment."*

public meeting has not been resolved—the rule transfers a cost that statute requires to be borne by identifiable beneficiaries to the general public. That is a direct limitation on the public interest that the fee recovery structure is designed to protect. Second, by introducing structural distortions into the review process—institutional pressure to narrow staff inquiries, defer work, or compress issue resolution to stay within an ex ante financial ceiling—the rule may impair the quality and defensibility of licensing decisions, which harms the broader public interest in safe, efficient, and legally durable nuclear deployment.

The work papers also show that the rule already implements substantial targeted relief through exclusions and reduced-rate treatment.[20] The proposal excludes approximately $152.1 million from fee recovery overall, including approximately $20.6 million associated with ADVANCE Act section 101 activities and approximately $19.6 million in ADVANCE Act section 201 mission-indirect and agency-support activities associated with the Reduced Hourly Rate. The work papers also reflect a proposed general professional hourly rate of $336 and a reduced hourly rate of $154 for qualifying advanced reactor applicants and preapplicants. In other words, the NRC is already pursuing more targeted tools to improve affordability and predictability without severing the relationship between fees and actual review work. That weakens the case for layering on a further project-total cap as if predictability had otherwise gone entirely unaddressed.

Recommendations

BTI's primary recommendation is straightforward: **the NRC should not finalize proposed § 170.33.** The current record does not show that project-level fee caps are a sound or beneficial mechanism for NRC licensing reviews. More direct reforms to review management, application completeness expectations, milestone performance, and scope discipline are better targeted to the actual drivers of cost predictability. NEIMA's schedule and performance provisions already point in that direction. That is the more durable way to improve predictability without compromising the coherence of the fee framework.

If the NRC nevertheless concludes that some form of cap structure must be pursued, BTI offers the following alternatives without endorsing adoption of fee caps in this rulemaking:

[20] U.S. Nuclear Regulatory Commission, *FY 2026 Proposed Fee Rule Work Papers*, pg 6-9, 11-16.

1. A broad categorical maximum is more administrable than a project-specific tailored cap. A categorical maximum at least acknowledges that the agency is working with imperfect information and seeks to provide a general outer bound, rather than converting an uncertain case-specific estimate into a binding constraint. The notice already contemplates categorical caps in Table 1. A tailored cap converts an uncertain, case-specific estimate into a binding recoverability constraint. That approach invites inconsistency, dispute, and underestimation risk. If the NRC proceeds, it should prefer that more general approach over the tailored-cap model.

2. If the NRC believes a more fundamental fee-model change is warranted, it should examine flat-fee structures only in narrow and genuinely standardized contexts where review scope is sufficiently predictable, similar to materials licenses. BTI does not affirmatively recommend a flat-fee transition in this rulemaking. A flat-fee structure has its own difficulties and depends on a more stable set of assumptions about the number and nature of applications than the current record appears to support. But as a conceptual matter, a flat-fee model can be more coherent than a project-specific tailored cap because it openly reflects administrative simplification rather than treating an uncertain estimate as if it were a precise case-specific limit. Any such approach should therefore be considered, if at all, only for narrow categories of mature and standardized reviews.

With both alternatives, the NRC should not rely on applicant failure as the sole mechanism for addressing divergence between ex ante projections and actual review effort. At minimum, the final rule should provide a more precise standard, clearer examples, and a fuller explanation of how applicant failure will be distinguished from ordinary review uncertainty.

Conclusion

BTI appreciates the NRC's effort to improve predictability in fee policy and to implement recent statutory reforms. But the FY 2026 fee rule should be judged not only by whether individual provisions are understandable in isolation, but by whether the resulting framework remains coherent across service fees, annual fees, statutory fee directives, applicant-failure provisions, and related licensing-process rulemakings.

On that measure, the proposed fixed fee cap is not a minor adjustment. It is a structural change to the fee framework, and the NRC has not yet shown that it fits cleanly within the broader system it is simultaneously revising. The proposal attempts to address uncertainty in licensing reviews through an ex ante project-level cost ceiling, even though the underlying drivers of review burden are time, scope, execution, and application quality. It also places too much weight on applicant failure as the principal mechanism for correcting inaccurate projections and leaves unresolved how the NRC is expected to proceed when review work remains but fee recovery has stopped.

BTI therefore urges the NRC not to finalize proposed § 170.33. If the NRC wants a fee framework that is more predictable, more durable, and more consistent with its updated mission, it should favor reforms that improve actual review performance and preserve statutory coherence, rather than adopting a pricing mechanism that risks creating new legal and administrative complications without a commensurate public benefit.

BTI appreciates the opportunity to submit these comments and would welcome further engagement with the staff on the issues raised in this letter.

Sincerely,

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