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[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 2000, less amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2000 is approximately \$447.0 million.

DATES: The comment period expires (30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90 requires that

issuance of new licenses, approvals or renewals, and amendments to licenses or approvals.

Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 2000 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 2000, the NRC's budget authority is \$470.0 million, of which \$19.15 million has been appropriated from the NWF. In addition, \$3.85 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 2000 Appropriations Act states that this \$3.85 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately \$447.0 million in FY 2000 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 2000 is \$2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule.

The reduced budgeted costs to be recovered through fees for FY 2000
reflect _____

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The NRC estimates that approximately \$106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts, compared to \$107.7 million in FY 1999, a \$1.7 million decrease. The estimate for FY 2000 reflects an anticipated \$2.4 million increase in collections for Part 170 fees, from \$103.5 in FY 1999 to \$105.9 in FY 2000. The increase in Part 170 estimates is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for project managers, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval. However, there was a \$4.1 million carryover from additional collections in FY 1998 which reduced the total fee recovery amount for FY 1999; there are no additional collections from FY 1999 to reduce the FY 2000 fee recovery amount. The \$1.7 net decrease for FY 2000 is the difference between the \$4.1 million reduction available in FY 1999 from FY 1998 collections and the \$2.4 million additional Part 170 collections estimated for FY 2000.

In addition to the estimated Part 170 collections and other receipts, the NRC estimates a net adjustment of approximately \$5.7 million for FY 2000 bills that will not be paid in FY 2000, for the small entity subsidy, and for payments received in FY 2000 for FY 1999 invoices. The billing adjustment, which is necessary to assure that the "billed" amount results in the required collections, is \$2.6 million more than in FY 1999.

As a result of reducing the \$447 million total amount to be recovered for FY 2000 by the \$106.0 million estimated collections for Part 170 fees and other receipts, and adding the \$5.7 million billing adjustment for FY 2000, the amount to be recovered in FY 2000 through the 10 CFR Part 171 annual fees is approximately \$346.7 million. This is approximately \$1.6 million more than in FY 1999.

Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

Because the final FY 2000 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2000 would become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee upon publication of the FY 2000 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2000 rule. Those materials licensees whose license anniversary date during FY 2000 falls before the effective date of the final FY 2000 ~~final~~ rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2000 ~~final~~ rule would be billed at the FY 2000 revised rates during the anniversary month of the license and payment would be due on the date of the invoice. ✓

The NRC announced in FY 1998 that as a cost-saving measure it planned to discontinue mailing the final rule to all licensees. The NRC made a one-time exception to this practice in FY 1999 because the FY 1999 proposed rule requested comments on two potential annual fee schedules—one with full rebaselined annual fees, and the second with a 50 percent cap on rebaselined annual fees. Because the NRC is seeking comment on a single proposed annual fee schedule for FY 2000, the agency does not plan to mail the FY 2000 final rule, or future final rules, to all licensees, but will send the final rule to any licensee or other person upon request. ✓

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described in the Regulatory Flexibility Analysis, which is Appendix A to this proposed rule.

3. Administrative Amendments.

a. The NRC is proposing to revise § 171.5, Definitions, to specifically include Certificates of Compliance (Certificates) issued pursuant to Part 76. The NRC issued two Certificates of Compliance pursuant to Part 76 to the United States Enrichment Corporation for operation of the two gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. This proposal would add Part 76 Certificates to the definition of Materials License in §171.5. This proposed change is an administrative change to clarify the application of Part 171 annual fees to these Certificates. ✓✓

b. Section 171.15 would be revised as follows:

licensee; or licenses authorizing
contingency storage of low-level
radioactive waste at the site of nuclear
power reactors; or licenses for receipt of
waste from other persons for incineration
or other treatment, packaging of resulting
waste and residues, and transfer of packages
to another person authorized to receive or
dispose of waste material..... N/A⁵

✓

B. Licenses specifically authorizing the
receipt of waste byproduct material,
source material, or special nuclear
material from other persons for the
purpose of packaging or repackaging
the material. The licensee will dispose
of the material by transfer to another
person authorized to receive or dispose
of the material.....\$11,500

C. Licenses specifically authorizing the
receipt of prepackaged waste byproduct
material, source material, or special
nuclear material from other persons.
The licensee will dispose of the material
by transfer to another person authorized
to receive or dispose of the material.....\$8,500

licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an competitive extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee and for a large firm with thousands of employees. ✓✓

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than \$500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the unmitigated cost of the rule would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

Annualized Inspection Fee ¹	\$ 920	\$ 420	\$ 200	\$140	\$ 20	\$180	\$ 210
Amendment Fee ²	\$ 340	\$ 340	\$ 630	\$320	\$ 390	\$300	\$ 430
Annualized Renewal Fee ³	\$ 130	\$ 170	\$ 40	\$130	\$ 280	\$ 80	\$ 320
Subtotal	\$ 1,390	\$ 920	\$ 870	\$590	\$ 1,590	\$560	\$ 960
Annual Fee for Small Entity	\$ 1,800	1,800	\$ 1,800	\$1,800	\$ 1,800	\$1,500 ⁴	
Total Fees	\$ 3,200	\$2,700	\$ 2,700	\$2,400	\$ 3,400	\$2,100	\$ 2,800

¹ NRC charged a separate fee for inspections under Part 170. The inspection frequency, defined as years between inspections, varies with each category of license. To annualize the inspection fee, the fee charged per inspection was divided by the inspection frequency.

² NRC charged a fee for each amendment to a license. In determining the total annual cost, one amendment per year was assumed.

³ In 1991 NRC issued materials licenses for a five-year period. At the end of this period each licensee paid a fee under Part 170 to renew the license. Since the licensee paid this fee once every five years, in calculating the total annual cost, the renewal fee was annualized by dividing by five.

⁴ The FY 1991 annual fee of \$1,500 for category 3 was less than the \$1,800 small entity annual fee. Therefore, small entities in this category paid the \$1,500 annual fee, not \$1,800.

Since 1991, NRC's Part 170 inspection, renewal and amendment fees for materials licenses have been eliminated and the costs of those services included in the annual fee. Although the annual fee now covers the costs for inspections, renewals and amendments, the

small entity fee itself remained unchanged. As a result the maximum NRC fees paid by small entities has declined by 47 percent, from \$3,400 in 1991 to \$1,800 in 1999. This decrease occurred while the average total non-small entity annual fee for other NRC materials licenses increased by 25 percent and the average maximum annual fee for small entity licensees in Agreement States increased by 54 percent.

Table 3 compares the total fees (annual, inspection, renewal, and amendment) assessed to NRC materials licensees in 1991 with the total fees (annual) assessed to these licensees in 1999. In five of the seven categories the fee increases were over 20 percent. Of particular note are the increases in categories 7C-Nuclear Medicine, 3O-Industrial Radiography and 3P-Gauges. These categories contain 67 percent of the small entity licenses invoiced for FY1999. The average fee increase for these three categories is 31 percent, five percent above the average for the seven categories reviewed.

Table 3

Comparison between Total NRC Annual Fees for Selected Categories for 1991 and 1999								
NRC Fees	7A Tetherapy	7C Nuclear Medicine	3M Research & Development	3N Services	3O Industrial Radiography	3P Gauges	5A Well Logging	Average
Annual Fee	\$9,700	\$ 3,500	\$ 4,000	\$ 4,400	\$ 9,300	\$1,500	\$7,000	\$ 5,600
Other Fees:								
Annualized Inspection Fee	\$ 920	\$ 420	\$ 200	\$ 140	\$ 920	\$ 180	\$ 200	
Amendment Fee	\$ 340	\$ 340	\$ 630	\$ 320	\$ 390	\$ 300	\$ 430	
Annualized Renewal Fee	\$ 130	\$ 170	\$ 40	\$ 130	\$ 280	\$ 80	\$ 320	
Total Other Fees:	\$ 1,390	\$ 930	\$ 870	\$ 590	\$ 1,590	\$ 560	\$ 950	
Total Fee in 1991	\$11,100	\$ 4,400	\$ 4,900	\$ 5,000	\$ 10,900	\$2,100	\$ 8,000	\$6,700
Total (Annual) Fee in 1999	\$15,300	\$ 5,800	\$ 5,000	\$ 5,200	\$ 14,700	\$2,600	\$9,900	\$8,400
Fee Increase	38%	32%	2%	4%	35%	24%	24%	25%

Since Method 3D uses a weighted average, the number of small entities in each of the seven categories are factored into the selection process while smoothing the impact of the highest and lowest fee categories.

While Methods 3D and 3E would consider the total fees paid by small entities in FY 1991 and would increase the amounts recovered from small entities thereby reducing the small entity subsidy paid by other licensees, the percentage increase percentage increases under either of these methods would be larger than the average percentage increase in the total fees assessed to other NRC materials licensees since FY 1991. ✓

Based on the results of the reanalysis, the NRC is proposing to increase the maximum small entity annual fee by 25 percent, based on the percentage increase since FY 1991 in the average total fees paid per year by other NRC materials licensees. As a result, the maximum small entity annual fee would increase from \$1,800 to \$2,300. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the proposed maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the NRC is continuing to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts. The lower-tier small entity fee also applies to manufacturing concerns, and educational institutions not