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Jim Turdici  
Comments  
4:00

[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 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 \_\_\_\_\_  
????????? \_\_\_\_\_  
\_\_\_\_\_

470  
- 19.15  
- 3.85  
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447.00

470  
- 23  
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447 OK

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.

*Problem*

*million* ✓ *million* ✓ *2.5* ✓

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.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE I - FY 2000 Budget Authority to be Included in Hourly Rates

	Reactor	Materials
	<u>Program</u>	<u>Program</u>
Direct Program Salaries & Benefits	\$103.3m	\$29.0m <i>M?</i>
Overhead Salaries & Benefits,	\$ 53.2m	\$15.3m
Program Travel and Other Support		
Allocated Agency Management and Support	<u>\$ 98.8m</u>	<u>\$27.9m</u>
Subtotal	\$255.3m	\$72.2m
Less offsetting receipts	<u>- .1m</u>	<u>-----</u>
Total Budget Included in Hourly Rate	\$255.2m	\$72.2m
Program Direct FTEs	997.6	285.0
Rate per Direct FTE	\$255,844	\$253,450
Professional Hourly Rate (Rate per direct	\$144	\$143
FTE divided by 1,776 hours)		

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS PROPOSED RULE --  
DRAFT REGULATORY FLEXIBILITY ANALYSIS FOR THE  
AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND  
10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this proposed rule are based on the NRC's size standards. ✓

The Omnibus Budget Reconciliation Act (OBRA-90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

### III. Maximum Fee.

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York and Utah, were used as benchmarks in the establishment of the maximum <sup>Small entity</sup> annual fee in 1991. Since small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees would be a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of \$3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed \$3,800. Given the 1991 fee structure for inspections, amendments and renewals, a small entity annual fee of \$1,800 <sup>established at</sup> allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the \$3,800 ceiling. ✓

In 1992 the NRC introduced a second <sup>lower</sup> tier to the small entity fee in response to concerns ✓ that the \$1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of \$1,800 while those in the lower tier paid an annual fee of \$400.

*The upper and lower tier annual amounts did not change in those years. ✓*

Between 1991 and 1999 changes in both the external and internal environment have impacted on NRC's cost and those of its licensees. Increases in the NRC materials license fees, Agreement States' materials license fees and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition to these increases, the structure of the fees that NRC charges to its materials licensees changed during the 1991-1999 period. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees.

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. The amount of the small entity subsidy paid by other licensees for these regulatory costs was \$4.3 million in FY 1991. With the addition of the lower tier small entity fee in FY 1992, the small entity subsidy increased to \$5.4 million, or about \$2,700 for each of the 2000 small entities in FY 1992. Although the number of small entities had declined to approximately 1200 by 1999, the FY 1999 small entity subsidy was \$5.3 million, or about \$4,400 for each small entity.

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 below.

#### **A. Analysis of Maximum Small Entity Annual Fee**

The analysis included a review of the fee structures in Agreement States to determine what fees they currently assess to small entities. To maintain consistency and to facilitate direct comparisons between 1991 and 1999, the analysis focused on the fee categories used in 1991 and included fees imposed by the six benchmark Agreement States used in 1991 as well as five other Agreement States with the highest number of licenses.

The eleven states selected were: California, Texas, New York, Florida, Illinois, Tennessee, Maryland, Georgia, Washington, Utah and Nebraska. Seven NRC fee categories were selected for review based on the number of small entities present in the category and presence of the category in the 1991 review. The fee categories selected were: 3M-Research and Development; 3N-Services, 3O-Industrial Radiography; 3P-Gauges and Other Industrial Uses; 5A-Well Logging; 7A-Teletherapy and 7C-Nuclear Medicine. Together these categories contain 80 percent of NRC's small entity licensees for FY 1999.

} Sp. Acct. ✓

Comprise ✓

Among the eleven Agreement States reviewed, the fee structures varied both in terms of the fee amounts and the services included in the fees. Of the eleven states, only Georgia and Washington provide a separate small entity fee for qualified licensees. The remaining nine states do not identify small entities in their fee structure and assess the same fee to all licensees.

therefore ✓

regardless of size ✓

Increases in the materials license fees since 1991 for the eleven Agreement States selected ranged from 10 percent in New York to 218 percent in Utah. Of particular note are the increases in the States of Washington, Georgia and Utah. Washington and Utah are two of the original states benchmarked in 1991. Georgia and Washington are the two Agreement States reviewed that have a separate annual fee for small entities.

(see Table I) ✓

The structure of the total fees per year in Georgia is similar to that used to determine the total fees paid by NRC small entity licensees in 1991. In Georgia this fee increased by 64 percent from 1991 to 1999. The increase in Georgia is directly comparable to the NRC context since Georgia uses the same two-tier structure for its small entity annual fees.

Washington's maximum fee assessed to small entities increased by 25 percent, from \$3,800 in 1991 to \$4,700 in 1999. The \$4,700 fee is charged for an Industrial Radiography license. Washington had the highest maximum fee in 1991 and it was this fee that provided the basis for the maximum fees assessed to NRC small entity licensees.

In 1991 Utah had the lowest maximum fee of the six benchmark states. By 1999 Utah's maximum fee had increased by 218 percent, from \$440 to \$1,400. As in Washington, the maximum fee is charged for an Industrial Radiography license.

Table 1 shows the increases in the maximum total fees paid by small entities in the selected Agreement States from 1991 to 1999. The change in the maximum fee paid by NRC small entity licensees over the same period is included for purposes of comparison. This fee decreased by 47 percent while fees in the Agreement States were increasing. The reason for this decrease is discussed in B. below.

Table 1

Percentage Change in the Maximum Total Fee			
Assessed to Small Entities Annually			
State	Maximum Fee 1991	Maximum Fee 1999	Percent Change
California	N/A	N/A	N/A
Texas	\$2,100	\$4,230	101%
New York	\$1,000	\$1,100	10%
Florida	\$1,925	\$2,657	38%
Illinois	\$2,000	\$2,733	37%
Tennessee	\$2,000	\$4,000	100%

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Maryland	N/A	\$1,350	N/A
Georgia	\$1,650	\$2,700	64%
Washington	\$3,760	\$4,699	25%
Utah	\$ 440	\$1,400	218%
Nebraska	\$1,456	\$2,925	101%
NRC Small Entity	\$3,400	\$1,800	(-47%)

The increases in the fees assessed to small entities in Agreement States between 1991 and 1999 suggest that over time the cost to support radioactive materials licensees <sup>has</sup> increased. Since small entities in Agreement States are currently paying the increased fees, it can be inferred that the fees do not have a significant impact on them.

**B. Analysis of Changes in the NRC Small Entity Fee Structure**

When NRC established its small entity annual fee in 1991 the fee was viewed as one component of the total annual costs that would be assessed to small entities. Table 2 presents the composition of the 1991 total annual cost for small entities.

**Table 2**

Total Fees Assessed to NRC Small Entities in 1991							
Fees	Selected Fee Categories						
	7A	7C	3M	3N	3O	3P	5A
	Teletherapy	Nuclear Medicine	Research & Development	Services	Industrial Radiography	Gauges	Well Logging

fees paid by small entities since FY 1991 and does not incorporate changes in the composition of the total fees assessed to small entities per year by Agreement States. However, it does rely on the increases to the total fees paid by other NRC materials licensees since FY 1991. This method could also provide a sustainable and simple means of determining whether NRC's small entity fees should be revised in the future.

**3. Add the 1991 amendment, renewal and inspection costs to the existing small entity fee and increase the sum by the average increase in NRC materials license fees from 1991 to 1999.**

The small entity fee could be increased by loading the existing small entity annual fee of \$1,800 with the amendment, renewal and inspection costs used in 1991 and increasing the total by 25 percent. This method not only incorporates the average increase in NRC fees but it bases the increase on the total annual costs that were assessed to small entities in 1991.

To revise the small entity fee using this method, a category must be selected as the 1991 base. The total annual cost for this category, as presented in Table 3, will then be increased by the NRC average of 25 percent. Five possible approaches to selecting the 1991 base will be explored.

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OK

**Method 3A - Maximum Fee Category in the Benchmark States**

Method 3A uses the Industrial Radiography category as the base. This category had the maximum fee in the Agreement States benchmarked in 1991. The total NRC fee assessed to the

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.

*Conclusion*

*Summary*

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