

OIP Comments
5/23

[7590-01-P]

5/22/00 Final Fee Rule

**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: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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). The amount to be recovered for FY 2000 is approximately \$447.0 million.

EFFECTIVE DATE: (Insert 60 days after publication in the Federal Register).

ADDRESSES: Copies of comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555. Comments received may also be viewed via the NRC's interactive rulemaking website <http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

Commenters on the FY 2000 proposed fee rule (65 FR 16250; March 27, 2000), indicated that the same impacts, or variants of these impacts, would occur as a result of the proposed rule, especially in relation to the NRC's proposed 25 percent increase in small entity fees. Commenters also suggested the same alternatives, or variants of these alternatives, to basing fees on the NRC size standards for small entities that have been previously suggested and considered by the NRC. For a complete discussion of the impacts and alternatives suggested by commenters in response to the FY 2000 proposed fee rule, please see Section III, C, 2 of the Supplementary Information section of this final rule. ✓

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

that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

¹These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 2000.

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

Comment. One commenter complained that, in deriving the FY 2000 annual fees by simply escalating last year's fee by 1.4 percent, the NRC has not given "any consideration" to whether underlying costs have any rational connection to reactor regulation or any consideration of whether the total assessment is as fair and equitable as is feasible. The commenter also claims that the proposed rule fails to provide "any explanation and accounting of the expenses that are covered by this charge," and thus "denies the companies a meaningful opportunity to comment."

Another commenter indicated that, under the provisions of the Administrative Procedures Act, the NRC should provide detailed cost information associated with each component of reactor regulation and other generic costs. The commenter believes this would provide for more effective feedback and comment and would promote increased Commission efficiency because the costs of services and other agency expenses, such as overhead, would be more visible to stakeholders. The commenter also requested that NRC provide a more detailed account of major research contracts, their purpose, and their costs.

Response. The NRC believes there is nothing obscure about the 1.4 percent increase in annual fees^o or its relation to reactor regulation. The FY 2000 proposed rule clearly describes the calculation that leads to the 1.4 percent increase (65 FR 16251, 16253-4). This calculation is also repeated in this final rule. In addition, the proposed rule announced the availability of the agency's work papers that support these calculations. Furthermore, the NRC has made available in the Public Document Room NUREG-1100, Volume-15, "Budget Estimates and Performance Plan, Fiscal Year 2000 (February 1999)." This document discusses the NRC's

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