

OE 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

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 ^{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

staffing levels are their lowest in 20 years. This has all been achieved while the NRC has expended large resources in extraordinary reform efforts, particularly in enforcement and power reactor oversight.

B. Specific Part 170 Issues.

1. Project Manager Billings Issues.

Comment. Uranium recovery industry commenters strongly opposed the NRC's current billing method for Project Managers (PMs). Many comments were directed towards the unfairness of certain types of PM activities being charged to licensees that had little or no apparent connection to the sites the PMs were managing. One commenter stated that indirect PM charges should be captured under Part 171 annual fees versus Part 170 fees due to the inequities of the NRC's current billing system, thereby allowing indirect PM charges to be evenly distributed to all uranium recovery licensees paying annual fees. Another concern was the unequal distribution of PMs to licensee sites, thereby subjecting certain licensees to a disproportionate share of indirect (e.g., administrative) PM costs.

Response. In FYs 1998 and 1999, the NRC shifted cost recovery for certain activities from Part 171 annual fees to Part 170 fees. As part of this effort, in FY 1999 the NRC made a ^{conscious} ~~conscientious~~ decision to recover the full costs for PMs, with the exception of PM activities that are generic in nature (e.g., rulemaking and preparation of generic guidance documents, etc.) and leave time, through Part 170 fees. This decision is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and previous Commission guidance. In

goals of OBRA-90 and the RFA, the Commission determined that the impact on small entities should be reduced by establishing a maximum annual fee for licensees who qualify as small entities.

In order to recover approximately 100 percent of the budget as required by law, other licensees must pay for costs not recovered from small entities. With the 25 percent increase to the small entity annual fees, the FY 2000 small entity subsidy to be recovered from other licensees is approximately \$5.6 million; without the increase the subsidy would be approximately \$6.0 million. This increase means that small entities will pay more of the costs attributable to them, but still benefit from reduced annual fees. For most fees categories, the \$2,300 annual fee per license category for small entities is approximately 26 percent less than the \$3,400 in average total fees paid by small entities in FY 1991.

In order to put this increase in perspective, it must be recognized that the small entity fee policy represents a subsidy program, for which ^{the fee is} the small entity is paying only a small percentage of the costs attributable to them. The small entity annual fee levels have remained constant since they were established in FY 1991 and FY 1992, despite the fact that some types of NRC activities previously billed separately under Part 170 have been absorbed into the annual fee. Therefore, small entities have benefitted from the additional activities covered by the annual fees, but without the associated expense. ✓

The 25 percent increase in the small entity annual fee is not due to a decrease in the number of licensees as one commenter believes. A decrease in the number of licensees is a contributing factor in the overall 1.4 percent increase in FY 2000 annual fees. However,

The NRC has considered comments that the fees for small businesses be based on such factors as the number of gauges used, the volume of patients administered to, or receipts from the use of regulated activities in each fiscal year fee rulemaking, beginning in FY 1991 (56 FR 31511, 31512, et al). The NRC has consistently rejected these alternatives because they would not necessarily meet the goal of the RFA to minimize the impact of agency actions on small entities. For example, if the NRC based the reduced annual fee on the number of gauges owned, a large firm with only one gauge would get a reduced fee, while a small business with more than one gauge would pay a larger fee. Similarly, a large medical establishment would pay a reduced fee if only a small part of its business involved nuclear procedures, whereas a small medical facility whose entire business involves nuclear procedures would pay a larger fee. Basing the fees on the small entity size standards ensures that benefits of the reduced fees apply only to small entities.

In FY 1999, approximately 43 percent of the licensees qualifying as small entities for purposes of reduced annual fees qualified for the lower-tier small entity fee. Therefore, because the current lower tier fee significantly reduces the impact of the annual fee for licensees with relatively low gross annual receipts or supporting populations, the NRC does not believe any additional tiers are appropriate.

3. Effects of Shifting Cost Recovery from Part 171 to Part 170.

Comment. Some commenters indicated that the NRC's attempt to shift fees from Part 171 category to Part 170 category is ^{illusory} ~~illusory~~ at best and represents no real savings ✓ to the licensee. They further expounded that shifting these costs to Part 170 fees has not

budget authority. As stated in response to similar comments on this issue in the FY 1993 fee rule (58 FR 38667, dated July 20, 1993), the Commission lacks the expertise or information needed to determine whether, in a market economy, particular licensees can or cannot recapture the costs of annual fees from their customers. The Commission is not a financial regulatory agency and does not have the resources necessary to continuously evaluate purely business factors. The annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services in order to meet the requirements of OBRA-90. Therefore, the Commission is not changing its previous decisions against basing fees on licensees' economic status or market conditions, and has only considered the fee impacts it is obligated by law to consider. In the FY 1993 final fee rule, after full consideration of the question, the NRC determined not to establish fees or base any fee exemptions on the alleged inability of a licensee to pass through the costs to its customers (58 FR 38667, 38668; July 20, 1993).

The Commission established its policy regarding rebaselining frequency in the FY 1999 final fee rule (64 FR 31448, dated June 10, 1999). The Commission determined that future annual fees should be rebaselined every three years or earlier, if warranted. This decision was based on the experience gained as a result of applying the criteria from rebaselining over the previous four years. The Commission's decision on the appropriate method for establishing annual fees (e.g., rebaselining vs percentage change) is made each year after considering all relevant factors. Rebaselining on a periodic basis or when there has been a substantial change in the total NRC budget or the magnitude of the budget allocated to a class of licensees is necessary to meet the statutory criteria that the annual fees be fairly and equitably allocated among licensees

The NRC's fee-based budget for FY 2000 did, in fact, decrease by \$2.6 million from FY 1999, as shown in Table II of the proposed rule and this final rule. However, the need for generic efforts and other activities of the agency may not necessarily decrease at the same rate as the decrease in the number of licensees. For example, the NRC's cost to establish a risk-informed, performance-based regulatory framework is not affected by a decrease in the number of licensees. Similarly, the costs to maintain the Emergency Response Center are not affected by the number of licensees. The NRC continually evaluates options to reduce costs without sacrificing its health and safety mission, including costs in those areas where the licensee base is diminishing.

In the years that annual fees have been based on the percent change method (FYs 1996, 1997, 1998, and 2000), there have been decreases in both materials licenses and reactor licenses. For example, in FY 1998, the equivalent of 2.3 fewer reactor licensees were available to pay the annual fees compared to FY 1997. This represented a reduction of approximately 20 percent of the total operating reactors. In FY 2000, there are approximately 530 fewer materials licensees compared to FY 1999, a reduction of approximately 10 percent.

?? ✓
It's
more
like 20%!

Under the percent change method, which has been endorsed by most of those commenting on the methodology since it was introduced in FY 1995, the number of licensees is only one factor in the determination of the percentage change to the annual fees needed to assure 100 percent fee recovery. This does not mean that the percentage change to the previous year's annual fees is related to a change in the costs of regulating the class of licensees that experienced the decrease in licensees. Rather,

These programmatic efficiencies are intended to reduce the amount of resources expended on licensing and inspection activities. However, there are other activities that have required increased resources. For example, three uranium recovery licensees were involved in Atomic Safety Licensing Board administrative hearings over the last several years. These contested hearings have consumed substantial NRC staff resources. The budgeted resources devoted to contested hearings affect the Part 171 fee base because, for policy and legal reasons, the Commission does not charge Part 170 fees for contested hearings. Commenters, including those in the uranium recovery industry, have opposed cost recovery under Part 170 for contested hearings.

Comment. Many commenters voiced their displeasure with the inequities of OBRA-90 and encouraged the NRC to continue its efforts in pursuing legislative action to obtain fee relief for the uranium recovery industry.

Response. The FY 1999 fee rule outlines the actions the NRC has ~~is~~ taken to address the inequities of the annual fees. As noted previously, the NRC supports legislation that would reduce the NRC's fee recovery amount in order to address the fairness and equity concerns. The Senate has passed such legislation.

D. Other Issues.

1. NRC'S Budget.

High Enriched Uranium Fuel Facility	3,281,000	3,327,000
Low Enriched Uranium Fuel Facility	1,100,000	1,116,000
UF ₆ Conversion Facility	472,000	478,000
Uranium Mills	131,000	132,000
<u>Typical Materials Licenses</u>		
Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

The final FY 2000 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2000 will 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 to reactors and major fuel cycle facilities upon publication of the FY 2000 final rule. For these licensees, payment will 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 rule will 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 rule will 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.

is that the date its issued/mailed? Don't you get any time, e.g. 30 days to pay?

This is explained at top p. 53 - read something similar here.

calculated by dividing the cost per direct FTE (\$255,844) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Dividing the \$72.2 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (284.9) results in a rate of \$253,450 per FTE for FY 2000. The Direct FTE Hourly Rate for the materials program is \$143 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$253,450) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments.

The NRC is adjusting the current Part 170 fees in §§170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2000 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the increase in the professional hourly rates from FY 1999. The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under \$1,000 are rounded to the nearest \$10. Fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100. Fees that are greater than \$100,000 are rounded to the nearest \$1,000.

is the fee de minimis or the change?

six figure fees are not de minimis

3. Make an administrative amendment to §170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.

The NRC is revising the annual fees for FY 2000, increasing the maximum annual fees assessed to those licensees who qualify as small entities, ~~is increased~~ and making several administrative amendments. The amendments are as follows:

1. **Annual Fees.**

The NRC is amending §§171.15 and 171.16 to establish the annual fees for FY 2000 to recover approximately 100 percent of the FY 2000 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case should occur, the annual fee base would be recalculated (June 20, 1995, 60 FR 32225). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. In addition,

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the writer*

The \$447.0 million to be recovered through Part 170 and Part 171 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 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. As the NRC explained in the FY 1999 proposed and final fee rules (April 1, 1999, 64 FR 15876 and June 10, 1999, 64 FR 31458), the amount for FY 1999 included a \$4.1 million carryover from additional FY 1998 collections which reduced the total fee recovery amount for FY 1999. This circumstance does not exist for FY 2000. The \$1.7 million decrease for FY 2000 is the difference between the \$4.1 million reduction available in FY 1999 from FY 1998 collections and an estimated \$2.4 million increase in Part 170 collections FY 2000 compared to FY 1999. The increase in estimated Part 170 collections, from \$103.5 in FY 1999 to \$105.9 for FY 2000, 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.

The remaining \$341.0 million (\$447.0 million total FY 2000 fee recovery amount less \$106.0 million for estimated Part 170 collections and other receipts) is to be recovered through the Part 171 annual fees. The \$341.0 million annual fee recovery amount for FY 2000 is approximately \$1.0 million less than in FY 1999.

In addition to the slight reduction in the total amount to be recovered through annual fees, the NRC estimates a net annual fee billing adjustment of approximately \$5.7 million for FY 2000 resulting from: (1) bills that will not be paid in FY 2000; (2) the small entity subsidy; and (3)

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

considered by the NRC for revising the small entity annual fees are described in the Regulatory Flexibility Analysis, which is Appendix A to this final rule.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined.

3. Administrative Amendments.

a. The NRC is revising § 171.5, Definitions, to include Certificates of Compliance (Certificates) issued under Part 76. The NRC issued two Certificates of Compliance under Part 76 to the United States Enrichment Corporation (USEC) for the operation of the gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. "Part 76" and ✓
"Certificates" is added to the definition of Materials License in §171.5. This change is an administrative change to codify agency practice in the definitions for 10 CFR Part 171. Section 171.16(a)(1) already provides that annual fees covered by the section apply to person(s) authorized to conduct activities under 10 CFR Part 76 for uranium enrichment. USEC has been subject to annual fees since FY 1997.

b. Section 171.15 is revised as follows:

(1) Paragraphs (b) and (c) of §171.15 are revised in their entirety to establish the FY 2000 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. The fees have been established by increasing the FY 1999 actual (prior to rounding) annual fees by

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license or certificate that authorizes possession and use of radioactive material.

In summary, the NRC is revising 10 CFR Part 171 as follows:

1. The percent change method has been used to determine the annual fees for FY 2000. The FY 2000 annual fee for each license fee category have been established by increasing the FY 1999 actual annual fee by approximately 1.4 percent;

2.  Increase the maximum small entity annual fee for each fee category is increased from \$1,800 to \$2,300, and the lower tier small entity fee is increased from \$400 to \$500; and 

3. Certificates of Compliance issued under Part 76 have been added to the definition of *Materials License* in §171.5

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending the licensing,

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2000. The final rule will result in increases in the annual fees charged to licensees and holders of certificates, registrations, and approvals, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2000.

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IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or

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