

Jim Turdick's Comment
5/29/01

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RAN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

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 requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately \$453.3 million.

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

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic

In addition to the 2 percent reduction to the fee recovery amount for FY 2001, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. The FY 2001 Energy and Water Development Appropriations Act states that this \$3.2 million shall be excluded from license fee revenues. The total amount thus to be recovered for FY 2001 is approximately \$453.3 million. ✓

The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, the review of applications for renewal of existing licenses, and the review of requests for license amendments. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees.

II. Responses to Comments

The NRC published a proposed rule that presented the amendments necessary to revise the licensing, inspection, and annual fees charged to its licensees and applicants for FY 2001 on March 28, 2001 (66 FR 16982). Although the comment period ended on April 27, 2001, the NRC evaluated the 13 comments which were received by the close of business on May 7, 2001. Many

the recipient of that service, rather than through annual fees assessed to the licensees in the class subject to annual fees.

Contrary to the commenter's claim, generic activities conducted by PMs are not recovered through Part 170 fees. The fact that rulemaking activities are assigned a code in RITS does not mean that costs for these generic activities are included in PM costs assessed under Part 170. RITS is the system used by the NRC's major program offices for recording staff hours, and the data is used for many purposes. Although the NRC's Part 170 billing system uses data from RITS, it is programmed to exclude RITS data related to activities that are not subject to Part 170 fees. Rulemaking activities are one example of the types of activities that are excluded from Part 170 fee billing. Other examples of the types of activities that are coded in RITS but not billed under Part 170 are allegation followup activities, escalated enforcement activities, and Combined Federal Campaign activities.

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Generic activities are those NRC activities that broadly benefit classes or subclasses of licensees. Examples of generic activities, as stated in the FY 1999 final rule and reiterated in the FY 2000 final rule (64 FR 31451; June 10, 1999, and 65 FR 36947; June 12, 2000, respectively), include rulemaking and development of generic guidance documents. General activities such as training, general correspondence, attending staff meetings, coordination with and support to other offices, and processing documents into the Agencywide Documents Access and Management System (ADAMS) are not generic activities. In responding to uranium recovery industry comments in the FY 2000 final rule, the NRC listed these examples of the types of PM activities that are recovered through PM Part 170 fees. The examples provided by the NRC in the FY 1999 and FY 2000 fee rules of PM activities to be billed under Part 170 and those

uranium recovery ✓

recovery licensees subject to annual fees would pay more in total costs because those licensees in decommissioning, and therefore are not subject to annual fees, would no longer pay for the PMs assigned to their site. Instead, the licensees authorized to operate or in a standby status would pay those PM costs through annual fees. To illustrate this point, the estimated average total PM Part 170 fees paid per year by uranium recovery licensees in decommissioning or possession only status is \$322,000. If the NRC eliminated PM activities from Part 170 fees for the uranium recovery class for a full fiscal year, the 11 licensees authorized to operate or in a standby status would be assessed an additional \$322,000 in annual fees for that fiscal year in order to recover those costs.

The NRC finds no basis to change its policy at this time of recovering the costs for PMs through Part 170 fees, to change the manner in which the costs are spread among those licensees assigned to one PM, or to change the policy with regard to assessing one licensee for all of the PM's activities when the PM is assigned to that one site only. The NRC believes this is a fair and equitable method of recovering these costs.

C. Clarification of Fee Waiver Provisions in §170.21, Footnote 4 and §170.31, Footnote 5.

Comment. Two comments were received on the NRC's clarification of the fee waivers provided in 10 CFR 170.21, Footnote 4, criterion 3, and 10 CFR 170.31, Footnote 5, criterion (c) for certain documents submitted to the NRC. One commenter expressed concern that the NRC is shifting cost recovery for generic activities from Part 171 to Part 170. Both commenters contend that the clarification will discourage generic actions and is inconsistent with the

Commission's policies aimed at encouraging industry organizations to work cooperatively with the NRC and recognizing the efficiencies and effectiveness to be gained from these efforts. The commenters assert that the clarification represents a change in policy and will discourage industry initiatives, which serve to reduce NRC resource demands and expedite resolution of issues on a generic basis. One commenter further contends that the clarification is inconsistent with the NRC's strategic goal of making its activities and decisions more effective, efficient, and realistic, and recommends that NRC retain "the original interpretation" of the fee waiver.

Response. The NRC's original interpretation of the subject fee waiver provisions has not changed, and has been consistently applied in granting or denying fee waiver requests. However, the NRC has experienced an increase in the number of fee waiver requests that do not meet the criteria. The NRC believes that this increase may be due, at least in part, to the fact that the statements of consideration in the FY 1994 fee rule concerning the waivers (59 FR 36895; July 20, 1994) were not repeated in subsequent fee rulemakings and are not codified in the regulations. Therefore, licensees may be submitting fee exemption requests that do not meet the criteria because they may not be familiar with the intent of the fee waiver provisions.

✓ ↙
As the statement of considerations for the 1994 fee rule ~~clearly~~ indicates, the fee waiver provisions of criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 apply to reports submitted for the purpose of supporting NRC's generic regulatory improvements, such as development of generic guidance and regulations and resolution of safety issues applicable to a class of licensees. The NRC has denied fee waiver requests for reports/requests that were not submitted for the purpose of NRC's regulatory improvements, such as those submitted for the purpose of furthering the industry's generic actions. Although the NRC may realize some

resources oriented to minimally safety-significant areas, and that the NRC consider consolidating the regional offices in the near-term and eliminating them in the longer term.

Response. As stated in the response to the comment concerning information the NRC provided in support of the proposed and in response to similar comments on previous fee rules, the NRC's budgets and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenter's suggestions concerning NRC's budget and the use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

487.3
- 21.6

465.7
3.2

468.9
9.3

478.2

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2001 is \$487.3 million, of which \$21.6 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. In the proposed rule, the total budget was shown as \$487.4 million. However, a rescission reduced the total budget authority by approximately \$75.0 thousand. This rescission did not affect the fee recovery portion of the budget and, therefore, the fee recovery

Balance	\$462.5
Fee Recovery Rate for FY 2001	<u>x 98.0%</u>
Total Amount to be Recovered For FY 2001	\$453.3
Less Carryover from FY 2000	<u>- 3.1</u>
Amount to be Recovered Through Fees and Other Receipts	\$450.2
Less Estimated Part 170 Fees and Other Receipts	<u>-118.2</u>
Part 171 Fee Collections Required	\$332.0
Part 171 Billing Adjustments	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	<u>- 3.6</u>
Subtotal	- 0.4
Adjusted Part 171 Collections Required	\$331.6

Alignment

The final FY 2001 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 2001 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 2001 final rule. For these licensees, payment will be due on the effective date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule will be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

Program Direct FTEs	991.0	292.7
Rate per Direct FTE	\$266,997	\$255,563
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	\$150	\$144

As shown in Table II, dividing the \$264.6 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (991.0) results in a rate for the reactor program of \$266,997 per FTE for FY 2001. The Direct FTE Hourly Rate for the reactor program is \$150 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$266,997) 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." Similarly, dividing the \$74.8 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (292.7) results in a rate of \$255,563 per FTE for FY 2001. The Direct FTE Hourly Rate for the materials program is \$144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$255,563) 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 both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those

clean-up. Weighted values were assigned to each program element and subelement considering health and safety implications and the associated effort to regulate these activities. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The relative weighted factors per facility type for the various subclasses of uranium recovery licensees are as follows.

TABLE VIII - Weighted Factors for Uranium Recovery Licenses

<u>Facility Type</u>	<u>Number of Facilities</u>	<u>Level of Benefit</u>		
		<u>Category</u> <u>Weight</u>	<u>Total Weight</u>	
			<u>Value</u>	<u>Percent</u>
Class I (conventional mills)	3	770	2310	33
Class II (in-situ mills)	6.5 ¹	645	4193	59
11e(2) disposal	1	475	475	7
11e(2) disposal incident to existing tailings sites	1	75	75	1

¹The FY 2001 annual fee will be prorated 50 percent for Cogema Mining's License SUA-1341 based on its November 10, 2000, request that the license be amended for possession only.

Applying these factors to the \$864,000 in budgeted costs to be recovered results in the following annual fees:

TABLE IX - Annual Fees for Uranium Recovery Licenses

licenses not included in Category 1A(1)
which are licensed for fuel cycle activities.

(a) Facilities with limited operations:

Framatome Cogema SNM-1168.....\$467,000

(b) All Others:

General Electric SNM-960.....\$340,000

B. Licenses for receipt and storage of spent
fuel at an independent spent fuel storage
installation (ISFSI).....

N/A¹¹

C. Licenses for possession and use of
special nuclear material in sealed sources
contained in devices used in
industrial measuring systems, including
x-ray fluorescence analyzers.....\$1,400

D. All other special nuclear material
licenses, except licenses authorizing
special nuclear material in unsealed
form in combination that would constitute
a critical quantity, as defined in §150.11
of this chapter, for which the licensee
shall pay the same fees as those for

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous proposed fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees for FY 2000) have requested small entity certification in the past. A 1993 NRC survey of its materials 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 extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

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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 increased fees 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.

Did it happen?

3. Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business, or, at the very least, make it hard to survive.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were first established in 1991, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.