

Charlotte 3/13/02
3/14/02

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of §170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of §170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

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4. Fee Waivers

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to clarify that fees will not be assessed for requests or reports submitted to the NRC as a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts. However, the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions. In addition, Footnote 4 to §170.21, Footnote 5 to §170.31, and material in the definition of *Special Projects* in §170.3 concerning these types of requests and reports provide information that is more suitable for inclusion in §170.11, Exemptions.

Therefore, the NRC is proposing to delete Footnote 4 to §170.21 and Footnote 5 to §170.31, to modify the language that is currently in those footnotes and add the revised fee waiver provisions to the Exemption section as §170.11(a)(1). The NRC also proposes to remove the language relating to certain reports and requests submitted to the NRC for review from the definition of *Special Projects* in §170.3. The fee waiver provisions will be revised to specifically state that the fee waiver criteria apply only when it has been demonstrated that the report or request has been submitted to the NRC for the specific purpose of supporting the generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the

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time of the submission, plans to use the submission for that purpose. The proposed modification would also clarify that the waiver provisions do not apply to reports or documents submitted for the NRC's review that the NRC, at the time of the submission, does not plan to use to improve its regulatory program, and that therefore will primarily provide only a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. These criteria will allow the NRC to make waiver determinations soon after the documents are submitted. As provided in §170.5, fee exemption requests should be made to the NRC's Chief Financial Officer, who will make the determinations in consultation with the appropriate program office. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples of the types of submissions that meet the fee waiver criteria and those that do not would be provided in §170.11(a)(1).

In summary, the NRC is proposing to amend 10 CFR Part 170 to--

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;
3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees would be assessed for amendments and inspections related to the storage of GTCC Waste under part 72.
4. Add to §170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to §170.21 and Footnote 5 to §170.31 and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These footnotes, as well as

material in the definition of *Special Projects* in §170.3 related to certain special requests and reports submitted to NRC for review, would be deleted.

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 proposes to revise the annual fees for FY 2002, to amend part 171 to specifically cover combined licenses issued under part 52, to clarify the annual fee exemption provision for reactors, and to modify the methodology for allocating the uranium recovery annual fee amount among the types of uranium recovery licenses. The proposed amendments are as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2002. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 2001. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees for all classes of licensees, except for

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Special Projects means those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter. Examples of special projects include, but are not limited to, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports.

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Regulation

3. In §170.11, paragraph (a)(1) is added to read as follows:

§170.11 Exemptions

(a) ***

(1) A special project that is a request/report submitted to the NRC --

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts.

(A) This fee exemption applies only when:

(1) it has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements); and

(2) the NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(1) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

(B) An example of the type of document that meets the fee exemption criteria is a topical report that is submitted to the NRC for the specific purpose of supporting the NRC's development of a Regulatory Guide, and which the NRC plans to use in the development of that Regulatory Guide.

(C) Fees will not be waived for reports/requests that are not submitted specifically for the purpose of supporting the NRC's generic regulatory improvements or efforts, because the primary beneficiary of the NRC's review and approval of such documents is the requesting organization. In this case, the waiver provision does not apply even though the NRC may realize some benefits from its review and approval of the document.

(D) An example of the type of document that does not meet the fee waiver criteria is a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues.

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