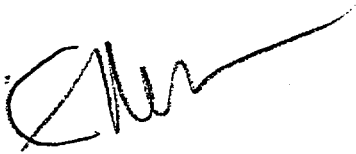


Any Comments need
to be given
by COB 3/13/02.

3/13
made
changes

Ellen

[7590-01-P]



AR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

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 requires that the NRC recover approximately 96 percent of its budget authority in fiscal year (FY) 2002, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2002 is approximately \$479.5 million.

DATES: The comment period expires (Insert date 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 ~~that~~ only ~~that~~ comments received on or before this date will be considered. Because OBRA-90 requires that the NRC collect the FY 2002 fees by September 30, 2002, requests for extensions of the comment period will not be granted.

result, the NRC is required to recover approximately 96 percent of its FY 2002 budget authority, less the amounts appropriated from the Nuclear Waste Fund, through fees and other offsetting receipts. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. The FY 2002 Defense Appropriations Act states that this \$36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fee and other offsetting receipts for FY 2002 is approximately \$479.5 million.

NWF

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The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 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 specific 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, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. 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.

No
IOAA is
specific

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 96 percent of its FY 2002 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 2002 is \$559.1 million, of which approximately \$23.7 million has been appropriated from the NWF. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96

rule would be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

The NRC, in proposing FY 2002 fees for uranium recovery licensees, is cognizant that the National Mining Association (NMA) has filed a petition requesting the commencement of a rulemaking proceeding which would result in a modification of the fee schedules to waive all fees for uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium recovery facilities. The NRC not only published the petition in the Federal Register for comment (66 FR 55604; November 2, 2001), but also mailed the Federal Register noticing the petition and inviting public comment to each of the NRC's more than 5000 licensees. The comment period expired on January 16, 2002. The NRC is now evaluating the comments it has received in response to this action.

The Commission anticipates issuing its decision on the rulemaking petition before the projected promulgation of the final FY 2002 fee rule in June. Should the Commission decide to grant the rulemaking petition and provide immediate fee relief to the uranium recovery industry, this could result in higher fees for other NRC licensees. The additional fees to be distributed among other licensees could be between \$3.0 and \$4.0 million in FY 2002. In such a case, more than 85 percent of this sum would be allocated to power reactors based on the NRC's established method for allocating costs (not attributable to those licensees paying annual fees). Thus, the NRC is inviting those who have arguments to place before the Commission that were not submitted in response to the November 2, 2001, Federal Register document requesting public comment on the petition to do so now.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2002 final rule or future final fee rules to licensees. However, the NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in June 2002. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov>.

The NRC is proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended.

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the part 170 fees based on the revised hourly rates. Additionally, the NRC is proposing to revise part 170 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related Greater than Class C (GTCC) waste under part 72, and to clarify the fee waiver provisions for special projects, including topical reports.

The proposed amendments are as follows:

As shown in Table II, dividing the \$283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of \$276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program would be \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,345) 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 \$76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of \$269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program would be \$152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$269,451) by the number of productive hours in one year (1,776 hours).

2. Fees for Storage of Greater than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in §72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, [↑] part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under [↑] part 72. Therefore, the NRC is revising Category 1.B. of §170.31 to specifically include storage of reactor-related GTCC waste licensed under [↑] part 72. Category 1.B. of §170.31

NO
N
H

currently refers only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

3. Fee Adjustments

The NRC is proposing to adjust 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 would be based on the proposed 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 2002 hourly rates. 7
11
No

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rates from FY 2001. 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.

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.

4. Fee Waivers

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). *no*
meet the fee waiver criteria ?

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. The subject 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 budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address <http://www.gov/Reading-Rm/ADAMS.html>. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

Because the FY 2002 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC's fees for FY 2002 would 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 upon publication of the FY 2002 final rule to reactors and major fuel cycle facilities. For these licensees, payment would be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the FY 2002 final rule would be billed for the annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2001 rate in FY 2002. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2002 final rule would be billed for the annual fee at the FY 2002 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

A. Fuel Facilities

Note:
Only 103 are operating
Browns Ferry, Unit 1
has no fuel loaded and
requires Commission
approval to
restart
Ethen

C. Power Reactors

The approximately \$273.6 million in budgeted costs to be recovered through FY 2002 annual fees ~~assessed to operating power reactors~~ ^{assessed to the power reactor class} would be divided equally among the 104 ~~operating power reactors~~ ^{licensed to operate}.

This results in a proposed FY 2002 annual fee of \$2,630,000 per reactor. Additionally, each ~~operating~~ ^{power} reactor ~~would be assessed~~ ^{licensed to operate} the proposed ~~spent fuel~~ ^{FY 2002}

storage/reactor decommissioning annual fee, ~~which for FY 2002 is \$239,000~~. This would result

in a total FY 2002 annual fee of \$2,869,000 for each ~~operating power reactor~~ ^{licensed to operate}.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2002, budgeted costs of approximately \$28.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to Part 50 power reactors,

except those reactors in decommissioning who do not have spent fuel on site, and Part 72

licensees who do not hold a Part 50 license. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2002 annual fee of \$239,000 per licensee.

E. Non-power Reactors

Approximately \$285,200 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licensees for FY 2002. This amount would be divided equally among the four non-power reactors subject to annual fees. This results in a proposed FY 2002 annual fee of \$71,300 for each licensee.