

NUCLEAR 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 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.

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ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678).

Comments may also be submitted 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 information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/Reading-Rm/ADAMS.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by email to pdr@nrc.gov.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may also be examined during the 30-day comment period at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

Currently, §171.15(a) provides that reactor licensees shall pay an annual fee "... for each unit for each license held ...". It is the agency's present practice to charge annual fees per license, and the NRC is proposing to revise §171.15(a) to clarify that the annual fees are assessed for each license, and not for each unit.

At this time, the NRC is not proposing a specific annual fee category or amount for Part 52 combined licenses because there are no existing combined licenses issued under Part 52. However, the NRC is proposing these changes so potential applicants for a Part 52 combined license are aware that such a license will be subject to annual fees in the future.

3. Fee Exemption for Reactors in 10 CFR 171.11

The NRC is modifying §171.11(c) to clarify that the annual fee exemption provision applies only to 'operating' reactors. This change is consistent with the statement of considerations in the 1986 final fee rule (51 FR 33224; September 18, 1986) which added this specific fee exemption to the regulation. Therein the Commission stated it had considered calculating the annual fee for power reactors with 'operating' licenses based on the thermal megawatt ratings of those reactors. However, the Commission decided against determining its fees based on the size of the reactor because the NRC found no necessary relationship between the thermal megawatt rating of a reactor and the agency's regulatory costs. Nevertheless, the NRC stated because it was not the Commission's intent to promulgate a fee schedule that would have the effect of forcing smaller, older reactors to shut down, it was adding an annual fee exemption provision in §171.11 which takes reactor size, age, and other relevant factors into consideration. In the section-by-section analysis for §171.11, the NRC stated that the added

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 NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States, Washington, Texas, Illinois, Nebraska, New York, and Utah, were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.