

OQC comments
3-7-02

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AG95

Revision of Fee Schedules; Fee Recovery for FY 2002

Mr. [unclear]
Executive
10/10/02
? *#*

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

expenses that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount is 90 percent by FY 2005. As a 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 for FY 2002 is approximately \$479.5 million.

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in fees
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offsetting

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 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.

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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

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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 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.

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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 of 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:

1. Hourly Rates

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion 3 of Footnote 4 to §170.21 and criterion (c) of ~~§170.21 to~~ 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.

~~To further clarify the intent of the fee waiver provision, the NRC is modifying the current criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the fee waiver criterion apply only when it has been demonstrated that the topical report or request has been submitted to the NRC for the specific purpose of supporting NRC's generic regulatory improvements. The proposed modification would also clarify that the waiver provisions do not apply to topical reports or documents submitted for NRC's review that will provide a special benefit to identifiable recipients, such as the industry, vendors, or specific licensees. To further assist applicants in determining in advance whether their submittals meet the fee waiver criteria, specific examples would be provided in criterion 3 of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 of the types of submissions that meet the fee waiver criteria and those that do not.~~

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

1. Revise the material and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;

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To further clarify the intent of the fee waiver provision, the NRC is modifying the current criterion (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the fee waiver ~~criteria~~ criteria apply only when it has been demonstrated that the topical report or request has been submitted to the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts of the NRC, rather than the industry, and that the NRC, at the 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 topical 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 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. Waiver 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 criterion (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 ~~of the types of submissions that meet the fee waiver criteria and those that do not.~~

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 the non-power reactor and spent fuel storage/reactor decommissioning classes, which would have annual fee decreases.

*NO
class*

The annual fees in §§171.15 and 171.16 would be revised for FY 2002 to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the estimated amount to be recovered through part 170 fees and the amounts appropriated from the NWF and the General Fund. The total amount to be recovered through annual fees for FY 2002 is \$348.9 million, compared to \$331.6 million for FY 2001.

The proposed FY 2002 annual fees would increase for most categories of licensees and decrease for others from the previous year. The increases in annual fees range from approximately 5.1 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from

*as we appear below
However (some of these classes)
increases annual fees
are offset by reductions
in Part 170 fees by for
these same classes.*

| | |
|--|---------------------|
| UMTRCA Title I budgeted costs | \$ 377,232 |
| 50% of generic/other uranium recovery budgeted costs | 489,259 |
| 50% of uranium recovery surcharge | <u>189,509</u> |
| Total Annual Fee Amount for DOE | \$ 1,056,000 |
| Annual Fee Amount for UMTRCA Title II specific licenses: | |
| <i>UMTRCA Title II budgeted costs</i> | |
| 50% of generic/other uranium recovery budgeted costs | \$ 489,259 |
| 50% of uranium recovery surcharge | <u>189,509</u> |
| <i>Sub</i> Total Annual Fee Amount for Title II specific licenses | \$ 678,768 |

UMTRCA Title II budgeted costs
50% of generic/other uranium recovery budgeted costs
50% of uranium recovery surcharge
Sub
UMTRCA Title II
NO

The costs allocated to the various categories of Title II specific licensees are based on the uranium recovery matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). The methodology for establishing Part 171 annual fees for Title II uranium recovery licensees has not changed and is as follows:

(1) The methodology identifies three categories of licensees: conventional uranium mills (Class I facilities), solution mining uranium mills (Class II facilities), and mill tailings disposal facilities (11e(2) disposal facilities). Each of these categories benefits from the generic uranium recovery program efforts (e.g., rulemakings, staff guidance documents, etc.);

(2) The matrix relates the category and the level of benefit by program element and subelement;

(3) The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure;

2. Part 52 Combined Licenses

The NRC proposes revising Part 171 to: authorize assessment of annual fees for holders of combined licenses issued under Part 52; clarify that the annual fees would be assessed for each license, and not for each unit; and establish when assessment of annual fees would begin.

Part 171 currently covers annual fees for Part 50 licenses, but does not specifically cover annual fees for combined licenses issued under Part 52. Additionally, neither Part 52 nor Part 171 address when NRC would begin to assess an annual fee to a Part 52 license holder. The NRC proposes to revise §171.3 'Scope' to specify that the annual fee regulations also apply to any person holding a combined license issued under Part 52.

The annual fees for a Part 52 combined license would be assessed only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s). This approach is consistent with the Commission's policy of not imposing annual fees on those entities only holding a power reactor construction permit.

Currently, §171.15(a) provides that reactor licensees shall pay an annual fee "... for each unit for each license held ...". ~~The NRC issues a separate license for each reactor unit and, accordingly, the annual fees are assessed for each license. Because it was the NRC's intent, and is the agency's present practice to charge annual fees per license,~~ 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.

⁴ Fees will not be assessed for requests/reports submitted to the NRC --

(a) 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;

(b) 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

(c) 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.

(i) This fee waiver 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 plans to use the document for ~~the~~ one of the purposes given in (1), **even if ultimately the NRC does not use the document as planned.**

*see PG 67
will be same*
An example of the type of document that meets the fee waiver criteria is a topical report submitted to the NRC for the specific purpose of supporting NRC's development of a Regulatory Guide, and the NRC plans to use the topical report in the development of that Regulatory Guide.

(ii) This fee waiver provision does not apply to reports/requests submitted for NRC review that will provide a special benefit to identifiable recipients, **such as the industry, vendors, or others regulated by the NRC.** Fees will not be waived for reports/requests that are submitted for purposes other than to **specifically support** NRC's generic regulatory improvements or efforts, even though NRC may realize some benefits from

(b) 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 the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) 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.

at the time the document is submitted,
(i) This fee waiver 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 plans to use ^{it} the document for the one of the purposes given in (1). Even if ultimately the NRC does not use the document as planned.

in this case, the waiver applies

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for the sole purpose of providing
(ii) This fee waiver provision does not apply to reports/requests submitted for NRC review that will provide a special benefit to identifiable recipients, **such as the industry,**

vendors, or others regulated by the NRC. Fees will not be waived for reports/requests that are submitted for purposes other than to ^{not} specifically support NRC's generic regulatory improvements or efforts, ^{the} even though NRC may realize some benefits from its review and approval of the document, because the primary beneficiary of NRC's review and approval of such documents is the requesting organization. ^{only intended the} *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.

safety
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.