

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: 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 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.

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

6/13/02 OGCD
Comments

Response. OBRA-90 mandates that the NRC collect IOAA (part 170) and annual fees (part 171) to recover almost all of its budgeted costs, less the amounts appropriated from the NWF. Therefore, the NRC must recover hearing costs through part 170 fees for services or through part 171 annual fees. OBRA-90 also requires that, to the maximum extent practicable, the annual charges shall have a reasonable relationship to the cost of providing regulatory services. The NRC has a longstanding policy of charging the affected applicant or licensee part 170 fees for uncontested hearings (i.e., those required as part of the licensing process), and not charging part 170 fees for contested hearings. As a result, the costs for contested hearings are recovered through part 171 annual fees assessed to the affected class of licensee. This policy has been reconfirmed in the statement of considerations and in responses to comments received from the public during many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

The Commission believes there is merit to the comment regarding assessing annual fees for the MOX contested hearing since the hearing is related to a U.S. Government national security initiative. Thus, as a change to the proposed rule, the Commission will not impose the entire budget of the MOX contested license proceeding for FY 2002 on the fuel facility licensee class. This proceeding pertains to the license application for MOX fuel fabrication facility, a U.S. Government national security initiative to dispose of plutonium stockpiles. Since a rulemaking to propose recovery of MOX and other U.S. Government national security initiative contested hearing costs through part 170 fees could not be promulgated and made effective before FY 2003, the Commission is making an interim change for FY 2002 only. This change will recover the \$433,000 budgeted for MOX contested hearing activities through part 171 annual fees assessed to all classes of licensees, based on their respective percentages of the NRC's budget. As a result, the amount assessed to the fuel facility class has decreased by

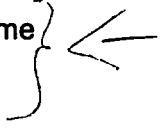


approximately \$408,000, while the total amount assessed to most of the other classes of licensees has increased correspondingly. Thus, the amounts assessed to each of the affected classes for the FY 2002 MOX contested hearing costs are as follows: operating reactors - \$345,000; spent fuel storage/reactor decommissioning - \$33,000; non-power reactors - \$400; fuel facility - \$25,000; materials users - \$19,000; transportation - \$5000; rare earth facilities - \$1000; and uranium recovery - \$4000. For example, this equates to approximately \$4,000 per licensee in the power reactor class, which is obtained by dividing the \$345,000 by the 104 licensees (due to rounding, dollar amounts are not exact). For the other affected classes of licensees and their respective fee categories, the increases or decreases in annual fee amounts for individual licensees, due to assessment of MOX contested hearing costs, are set forth in the agency work papers. Due to rounding, the annual fees for certain individual licensees in some of the affected classes did not change.

The Commission intends, in the near future, to issue a proposed rule for public comment that would recover the cost for contested hearings involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC plans to conduct this rulemaking so that any proposed change, if adopted in a final rule, would be effective in early FY 2003.

With regard to the commenter's recommendation for the NRC to obtain separate appropriations from the General Fund to cover the MOX contested hearing costs, this is not practicable for FY 2002. The Congress has already passed the FY 2002 Energy and Water Development Appropriations Act, and the NRC is well into implementing its budget under this authority. Furthermore, the commenter is incorrect about how NRC hearing fees are assessed to licensees. As discussed above, the NRC assesses the specific applicant or licensee part

170 fees for the costs of uncontested hearings that are part of the required license application process. However, for contested hearings, the NRC assesses the affected class of licensees the associated costs of the hearing through part 171 annual fees. Similarly, the commenter's point about one licensee conceivably subsidizing the costs of a competitor's licensing hearing is incorrect for the aforementioned reason. Costs associated with a contested hearing are not assessed to a specific category of licensee as mentioned by the commenter, but instead are assessed to the entire affected class of licensees. As stated in the NRC fee schedules, some classes of licensees consist of multiple fee categories.



2. Annual Fees for Materials Users, Including Small Entities

Comment. Two nuclear density gauge users and one manufacturer commented that their fees are too high, and create a significant financial burden on small business owners. One commenter stated that the combined license application fee and annual fee for this category equals 80 percent of the cost of the gauge device. The commenter further asserted that Agreement States' fees average about one-fourth of NRC's proposed fees, causing an unfair disparity in the industry. Another commenter indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that it was essential to maintain this segment of business in order to retain other contracts not related to its NRC license. Therefore, the commenter contended that only income generated from NRC licensed activities should be

For power reactors, this means that each of the 104 increases will be assessed \$3 ~~per~~ ~~for the effect of~~ ~~increase in demand~~ ~~for this effect.~~ The ~~power reactors~~ ~~of power~~ ~~are~~ closed and fee categories ^{are} set forth in the agency workpapers accompanying the final rule.

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