

5/17 change wide

16 May 2002

**DRAFT**

Y-Jane

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[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

10 CFR Parts 170 and 171

RIN: 3150-AG95

Please provide  
Comments to  
OCFO/Fees Group  
by COB, Monday,  
5/20/02.  
Thanks!

**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).

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Part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

## 2. Fee Exemptions for Special Projects

*Comment.* Five comments were received opposing the <sup>NRC's</sup> nrc's proposed modifications to the fee waiver provisions for special projects. One commenter stated that the proposed revisions would discourage cooperative efforts between NRC and industry to address safety issues and opportunities for generic regulatory improvement. Some commenters assert that the changes are inconsistent with the NRC's goals to improve regulatory efficiency, effectiveness, to reduce unnecessary burden on stakeholders, and to promote increased realism in regulatory decision-making. They believe that the changes provide disincentives by imposing unwarranted obstacles discouraging industry initiative and mutual cooperation. Several commenters stated that the NRC's proposed action would not support "ground breaking" licensing actions and without some relief from fees, there is no incentive for a licensee to pilot an initiative that may contribute to generic regulatory activity and which may serve as a significant precedence for other licensees. Two of the commenters stated that relocating the fee waiver requirements adds a degree of formality to the process and such formality costs the industry and the NRC resources and time. The commenters urged the NRC to revise the provisions to encourage industry to work cooperatively with the NRC on generic regulatory improvements or efforts.

**(Ann: we need to add here the remaining items from my handout in Jesse's office, and then try to address those)**

*Response.* As stated in the proposed fee rule, the NRC believes that the clarifications to the fee waiver for special projects are necessary because the NRC has continued to receive requests for fee exemptions that do not meet the intent of the waiver provisions.

The NRC's original interpretation of the fee waiver provisions has not changed, and has been consistently applied in granting or denying fee waiver requests. The NRC thoroughly evaluates all exemption requests and bases its decision whether a special project meets the fee waiver criteria. Not every submittal results in a safety improvement, burden reduction, or improved process. The NRC staff must agree that the submittal will assist the NRC in developing or improving its regulatory framework. If an applicant or licensee believes that their proposal will improve an NRC regulatory process, the NRC encourages industry to discuss their proposal with the NRC staff prior to requesting a fee waiver.

With regard to fee waivers for "ground breaking" licensing actions, the fee exemption provision for special projects does not apply to licensing actions. As defined in §170.3, special projects are those requests submitted to the NRC for review for which fees are not otherwise specified in part 170. Part 170 specifies fees for licensing actions, therefore, first-of-a-kind licensing actions are not special projects for purposes of part 170. The waiver criteria that was previously in footnote 4 of §170.21 and footnote 5 of §170.31, which in this final rule the NRC is moving to §170.11, has always specifically <sup>referred</sup> ~~referred~~ to special projects (see §170.11(a)(1)). The NRC will continue to address exemption requests for first-of-a-kind licensing actions on a case-by-case basis under §170.11(b).

The NRC believes that the modifications to the criteria language has the potential to save both NRC and industry resources because the industry will have more definitive guidelines on the types of submission that will be granted a fee waiver and therefore will not request fee waivers for those special projects that do not meet the waiver criteria. Further, moving the fee waiver criteria to the exemption section of Part 170 does not change the process. The NRC believes that it is more appropriate to have the fee exemption provisions for special projects with the other Part 170 fee exemption provisions.

The NRC, in this final rule, is revising the fee waiver criteria to clarify the fee exemption provisions. In addition, the exemption section of §170.11 is being revised to include the language that was previously located in footnote 4 to §170.21 and footnote 5 to §170.31.

### 3. Invoice Information.

*Comment.* One commenter asserted that NRC's invoices lack adequate explanations of the work done by NRC staff and NRC ~~C~~Contractors. The commenter urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, the commenter contended that the change would serve the NRC, its licensees, and the public well. ✓

*Response.* As the NRC has stated in the past, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under Part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in the Human Resources Management System (HRMS), which is the