

*Cathy Hillyer
5/30/02*

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Comments by
noon, 5/30/02.
Thank.*

[7590-01-P]

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 \$479.4 million.

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

framework. Not every submittal results in a safety improvement, burden re-
process. The NRC encourages any special project applicant who believes
help improve NRC's regulatory process to discuss their proposal with the cc
program office staff prior to requesting a fee waiver from the Chief Financia

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With regard to fee waivers for "ground breaking" licensing actions, the fe
provision for special projects does not apply to licensing actions. As defined
projects are those requests submitted to the NRC for review for which fees a
specified in part 170. Part 170 specifies fees for licensing actions, therefore,
licensing actions are not special projects for purposes of part 170. The waive
previously in footnote 4 of §170.21 and footnote 5 of §170.31, which in this fir
moving to §170.11, have always specifically referred to special projects (see

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 the modifications to the fee waiver criteria language have 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. The NRC believes these
clarifications will better inform the industry , so they will not request fee waivers for those types
of special projects which do not meet the waiver criteria. Further, it is unclear how relocating the
fee waiver criteria to the exemption section of part 170 adds any formality to the process or how
such purported formality will cost the industry or NRC resources and time as some commenters
contend. Moving the criteria neither changes the process nor enhances its legal status. The

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. A 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 disparity in the industry. Another commenter indicated only a small fraction of the company revenues was generated from NRC licensed activities, but that it was essential to maintain a segment of business in order to retain other contracts not related to their NRC license. Therefore, the commenter contended that only income generated from NRC licensed activities should be considered when establishing fees. With respect to the NRC's upper fee level for small entities, the third commenter stated that the broad revenue range encompassing \$100,000 to \$5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities.

Response. The NRC has responded to similar comments in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the annual fees for each class of license, including materials users, reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determined the budgeted costs to be allocated to each class of licensee

each license. Furthermore, the NRC is not proposing a specific annual fee category or amount for part 52 combined licenses because there are no such existing licenses at this time. The NRC's intent when proposing these revisions was to make potential applicants for part 52 combined licenses aware that they would be subject to annual fees. At this time, the NRC does not have the information required to make a decision with respect to assessing annual fees for part 52 combined licenses for multi-unit modular reactors. In the future, when the NRC determines its fee structure for part 52 combined licenses, the fees will be assessed in a fair and equitable manner, and to the maximum extent practicable, will reflect a reasonable relationship to the cost of the regulatory services provided.

The part 171 power reactor annual fees are established to recover the costs for general activities related to power reactors such as rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., allegations, contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders, etc.). The annual fees for each class also include a share of the total surcharge costs to be recovered through annual fees assessed to NRC licensees. The surcharge is established to recover the costs for NRC activities that are attributable to an existing NRC licensee or class of licensee, activities that are exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operations for licensees and others. The surcharge is required in order for NRC to meet the statutory requirement of OBRA-90, as amended, that almost all of NRC's budget be recovered through IOAA and annual fees. To address fairness and equity concerns raised by NRC related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001

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