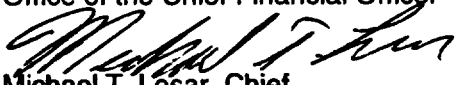




UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 24, 2002

MEMORANDUM TO: Diane B. Dandois, Chief
License Fee and Accounts Receivable Branch
Division of Accounting and Finance
Office of the Chief Financial Officer

FROM: 
Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON THE FINAL NOTICE OF RULEMAKING --
10 CFR PARTS 170 AND 171 -- FEE RECOVERY FOR FY 2002

The Office of Administration concurs, subject to the comments provided, on the final rule that would establish the licensing, inspection, and annual fees necessary to recover approximately 96 percent of the NRC's operating budget for FY 2002. We have attached a marked copy of the package that presents additional comments.

If you have any questions concerning this matter, please have a member of your staff contact me at 415-7163 (MTL) or Cindy Bladey, ADM, at 415-6026 (CXB6).

Attachment: As stated

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).

\$36.0 million shall be excluded from license fee revenues. The total amount to be recovered in fees and other offsetting receipts for FY 2002 is approximately \$479.5 million.

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.

II. Response to Comments

The NRC published the FY 2002 proposed fee rule on March 27, 2002 (67 FR 14818), to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 11 comments before the comment period ended on April 26, 2002, and two additional comments by May 13, 2002, for a total of 13 comments, that were considered in this fee rulemaking. Many of the commenters raised similar issues. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

The comments and NRC's responses are as follows:

reviewed, and approved for the purpose of NRC's generic regulatory improvements, and that the proposed change for the FY 2002 fee rule goes further in establishing barriers to unsolicited industry proposals for generic regulatory improvements. The commenter claims that these interpretations are inconsistent with the history of the fee rule and many industry initiatives submitted to NRC for review without a fee, prior to 1999.

This commenter also states that the proposed change will discourage industry initiatives and penalize self-generated industry-wide generic initiatives, which the commenter claims is inconsistent with Commission and NRC management encouragement of industry initiatives. The commenter points to two papers the staff submitted to the Commission on the role of industry. The commenter states that in SECY-97-303, "The Role of Industry and Use of Industry Initiatives," the staff noted that the fee waiver criteria would need to be met to preclude the assessment of fees to recover the full cost of the review. The commenter also stated that in SECY-00-0016, "Industry Initiatives in the Regulatory Process," the staff discussed how industry initiatives would save resources and improve timeliness of actions. The commenter also referred to the Commission's direction to the staff, in response to SECY-96-062, to proceed to evaluate, on a case-by-case basis, initiatives proposing further NRC reliance on industry activities as an alternative to NRC activities.

One commenter states that it is difficult to determine if an industry report will be used for generic regulatory improvement before the NRC reviews it, and that ^{the} ~~such a~~ requirement would be an impediment to effective communications. With regard to the proposed language that the

that waiver applies only when, at the time of the submission, NRC plans to use the submission for

generic regulatory improvements. ^{reports that} The Commenter ~~goes on to say~~ in their experience the stated purpose of the document has been rejected, and that the NRC staff is reluctant to discuss fee or usage matters with the commenter, although these discussions are needed to assist the staff in making a recommendation on the fee waiver. ✓

The commenter also disagrees with basing the fee waiver on which organization ^{the} NRC or industry ^{is} the primary beneficiary. The commenter states that waiving the fees for generic industry proposals that facilitate regulatory improvement will encourage initiatives which benefit both industry and NRC, pointing to the NRC's Strategic Performance Goals of reducing unnecessary regulatory burden and achieving greater realism in regulatory decisions. The commenter argues that the NRC should not impose a policy that encourages industry to ignore the best science and instead tell the NRC staff what it wants to hear in order to obtain a waiver of review fees. ✓

The commenter further states that imposing Part 170 fees for these types of submittals does not increase NRC's budget because it reduces the amount to be recovered through Part 171 annual fees by an equivalent amount. However, the commenter claims that imposing the fees is a major budget problem for industry organizations, whose budgets do not normally cover NRC review fees. Imposition of these fees reduces the amount of research work the commenter's organization can do to support the membership, and slows down efforts on risk informed initiatives.

To address these concerns, the commenter recommends the waiver be revised so it applies to those submittals requested by the NRC and those proposals for generic regulatory

special projects is not inconsistent with the NRC's policies on industry initiatives. In SECY 97-303, "The Role of Industry (DSI-13) and Use of Industry Initiatives," the ^{NRC} staff stated that fees will be assessed unless the fee waiver criteria is met, and that proposed initiatives will be rejected if the sponsor or industry does not make a firm commitment to devote the necessary resources, including any NRC fees, to support the agreed-upon schedule and milestones for the initiative. However, as provided in the fee waiver criteria, NRC will waive the review fees for special projects submitted for the purpose of supporting NRC's regulatory improvements as long as the NRC staff agrees that it will help NRC in developing or improving its regulatory framework. Not every submittal results in a safety improvement, burden reduction, or improved process. The NRC encourages any special project applicant who believes that their proposal will help improve NRC's regulatory process to discuss their proposal with the cognizant NRC program office staff prior to requesting a fee waiver from the Chief Financial Officer.

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 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).

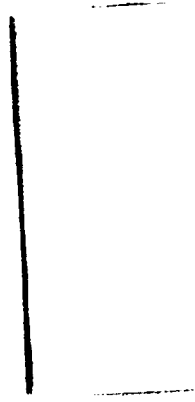
The FY 2002 final fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2002 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2002 final rule. For these licensees, payment will be due on the effective date of the FY 2002 rule. Those materials licensees whose license anniversary date during FY 2002 falls before the effective date of the final FY 2002 rule will be billed for the annual fee during the anniversary month of the license at the FY 2001 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2002 rule will be billed for the annual fee at the FY 2002 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As noted in the FY 2002 proposed fee rule, the NMA filed a petition before the Commission requesting the commencement of a rulemaking proceeding which would result in a modification of the existing fee schedules to waive all fees for commercial uranium recovery licensees. Alternatively, the NMA requested the waiver of fees associated with a contemplated rulemaking that would establish requirements for licensing uranium and thorium facilities. In response, the NRC solicited public comment by publishing the NMA's petition in the Federal Register (66 FR 55604; November 2, 2001), and allowing for additional comment during the FY 2002 proposed fee rule comment period. The NRC received a total of 14 comments on this issue. After careful evaluation of NMA's request and all comments received, the Commission has decided to deny the NMA petition. Additional detail on this petition and the Commission's denial will be published in a forthcoming Federal Register.

(issue of the

Less than 20,000 \$500

Educational Institutions that
are not State or Publicly
Supported, and have 500 Employees
or Less



35 to 500 employees \$2,300

Less than 35 employees \$500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's external web site at <http://www.nrc.gov>. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at <fees@nrc.gov.>



(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

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 in FY 2005. In addition, for FY 2002 \$36 million has been appropriated from the General Fund, and therefore not subject to fee recovery, for activities related to homeland security. The amount to be recovered for FY 2002 is approximately \$479.5 million.

OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licenses, the annual fee base would be recalculated.

In FY 2001, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licenses and established rebaselined annual fees for FY 2001.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licenses; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

Dated at Rockville, Maryland, this _____ day of _____, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

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