



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

MAY 22 2002

MEMORANDUM TO: Multiple Addressees  
(See Attached List)

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

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

Attached for your concurrence is a final rule for the FY 2002 fees to be assessed to recover 96 percent of the NRC's FY 2002 budget authority. In order to meet the requirements to assess and collect the fees by September 30, 2002, this final rule must be published by June 14, 2002.

Please note that in order to meet the expedited schedule for this final rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than Noon, Tuesday, May 28, 2002.

If you cannot meet this schedule or have any questions, please contact Glenda Jackson on 415-6057 or Robert Carlson on 415-8165. Thank you for your assistance in this matter.

Attachment: As stated

cc: D. Lee, OIG  
H. Bell, OIG  
S. Reiter, OCIO  
B. Hayden, OPA  
M. Virgilio, NMSS  
S. Collins, NRR

5/23/02

Bob -  
①

Need search + replace on Part!

② Great writing on comments!

Please return to me when done.  
Char

Addressees - Memorandum dated MAY 2 2 2002

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

Mail Stop:

William D. Travers, Executive Director for Operations	O-16	E15
Janice D. Lee, Director, Office of International Programs	O-4	E5
Paul Lohaus, Director, State and Tribal Programs	O-3	C10
Michael L. Springer, Director, Office of Administration	T-7	D57
Trip Rothschild, Deputy Assistant General Counsel/ Legislative Counsel, Office of the General Counsel	O-15	D21

**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).

- II. Response to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Small Business Regulatory Enforcement Fairness Act

I. Background

*spell out  
for time  
no*

For FYs 1991 through 2000, OBRA-90, as amended, required that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the U.S. Department of Energy (DOE) administered NWF, by assessing fees. To address fairness and equity concerns raised by the NRC related to charging NRC license holders for agency 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 in 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 NWF, 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

A. Legal Issues.

1. Information Provided by NRC in Support of Proposed Rule.

*Comment.* One commenter urged the NRC to provide licensees and the public with a more detailed explanation of the specific activities and associated costs that form the basis for the Part 171 annual fees, including detailed information on the outstanding major contracts, their purpose, and their costs. The commenter indicated that more detailed information would allow stakeholders to provide more effective feedback on the efficiency of NRC's regulatory activities and would propel the Commission to exercise its authority to promote increased fiscal responsibility. The commenter acknowledged the ability to access the agency work papers through the NRC's Public Document Room or by using the Agencywide Documents Access and Management System (ADAMS), but finds this supporting material to be indecipherable.

*Response.* The NRC believes that commenters were provided ample information on which to base constructive comments on NRC's proposed revisions to Parts 170 and 171. Consistent with the requirements of OBRA-90, the proposed fees were developed to recover approximately 96 percent of the NRC's FY 2002 budget authority from the various classes of licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities.

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 96 percent of the NRC's FY 2002 budget authority, less the amounts

appropriated from the NWF and the General Fund, as required by OBRA-90, as amended.

Therefore the commenter's suggestion that more detailed information would allow the public to provide more effective comments concerning the efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule.

The NRC acknowledges that the work papers supporting the proposed fee rule contain very detailed information. The work papers reflect the complexity of the fee calculation process that is necessary to ensure that the fees are fair and equitable to all licensees. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes.

In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003 (February 2002)," which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule. If there are outstanding concerns after reviewing the fee information in the proposed rule and the agency work papers, questions or comments should be referred to the fee information contact listed in this fee rule.

**B. Specific Part 170 Issues.**

*Give Web Site  
→  
This should also  
be on our  
web page*

1. Hourly Rates.

*Comment.* Several commenters opposed the \$152 proposed hourly rate for the materials program. The commenters stated that the hourly rate is excessive, is more than the professional hourly rates charged by national consulting firms, and is counterproductive to NRC's apparent efforts to reduce the total fee burden to uranium recovery licensees.

*Response.* The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support and information technology. . . . overhead costs, as well as general and administrative costs, such as rent, utilities, supplies, and payroll and human resources staffs.

The increase in the hourly rates is primarily due to the Government-wide pay increase in FY 2002. The revised hourly rates, coupled with the direct contract costs, recover through Part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA. The revised hourly rates plus direct contract costs recover through Part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through Part 170 fees, as required by OBRA-90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is \$156 compared to \$150 in FY 2001, and the professional hourly rate for the materials program is \$152 compared to \$144 in FY 2001. For

? or hourly

no one word information technology

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 such a requirement would be an impediment to effective communications. With regard to the proposed language that the waiver applies only when, at the time of the submission, NRC plans to use the submission for

generic regulatory improvements. 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

improvements submitted by industry organizations representing all licensees, including those which are unsolicited and need NRC review, and are supported by the membership as a generic submittal. The commenter states they would ensure their fee waiver requests are reviewed and supported by their members, and that their members concur to cost recovery for these reviews through Part 171 annual fees.

*Response.* As previously stated in the proposed fee rule, the modifications to the fee waiver criteria do not represent a change in policy. Rather, the changes are clarifications intended to assist applicants in determining in advance whether their submittals meet the fee waiver criteria.

The NRC has consistently applied its policy of waiving the fees for a special project submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements, <sup>and</sup> however, assessing Part 170 fees for the review of a special project that is submitted for other purposes, including those that support industry generic improvements. Part 170 fees are based on the provisions of the Independent Offices Appropriations Act of 1952 (IOAA). This statute allows federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. While the NRC has the authority to grant waivers from the Part 170 fee requirements, in order to meet the requirements of OBRA-90 that almost all of the agency's budget authority be recovered through IOAA and annual fees, fee exemptions are granted very sparingly.

The NRC finds no justification for granting a Part 170 fee waiver to an industry organization seeking an NRC approval of an industry initiative, unless the NRC is going to use the initiative

NOT a complete thought



Are we sure we want to say this?

for generic regulatory improvements, and the initiative was submitted specifically for that purpose. In the latter case, the NRC's review and approval is part of the process of developing the NRC's generic regulatory program, and therefore the review activities are similar to other NRC generic regulatory activities whose costs are recovered through Part 171 annual fees. Conversely, reviews of submittals that are for the industry's generic improvements or use, are considered services provided to identifiable recipients, which are subject to IOAA fees. The Courts have ruled that an IOAA fee presupposes an application, and therefore the recipient of the benefit of NRC's review of a document is the organization that submitted it, and thereby more appropriate to recover the costs through the IOAA (Part 170) fees.

The NRC has consistently declined to base its fees on the financial status of NRC licensees and applicants, except the impacts of the fees on small entities the NRC is required to consider under the provisions of the Regulatory Flexibility Act. Therefore, the NRC does not base fee waivers on the budget constraints of the applicants for NRC services. Further, the NRC does not decide to grant a Part 170 fee waiver on the basis of the willingness of the end user to pay the costs through Part 171 fees. There are many NRC applicants and licensees who provide services to other NRC licensees. However, it would not be within the IOAA guidelines to assess the NRC's costs to these end users of the applicant's or licensee's services, nor would it be practical to do so. If the end user is willing to pay the costs of NRC's fees, then the applicant is free to seek reimbursement from the end user. The NRC's fees are established to recover NRC's costs, not to provide a billing service for its applicants.

NRC's fees are not established as incentives or disincentives. Rather, they are established to recover the NRC's costs, as required by law. Further, the assessment of Part 170 fees for

special projects is not inconsistent with the NRC's policies on industry initiatives. In SECY 97-303, <sup>2/11</sup> "The Role of Industry (DSI-13) and Use of Industry Initiatives," the 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). 2/11

NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From HRMS, the fee billing system captures the NRC staff hours for activities billable under Part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the Part 170 invoices. Additionally, the inspection report number is provided on inspection fee bills. The work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in HRMS. However, the NRC believes that the summary work descriptions shown on the invoices are sufficient to allow licensees to identify the subject of the NRC's efforts.

For contractor costs billed to uranium recovery licensees under part 170, the NRC includes copies of the contractors' summary cost reports with the invoices. Upon specific request, the NRC will send all available information in support of the bill to any licensee or applicant who does not understand the charges or needs more information in order to understand the bill. This has always been an option available to licensees and applicants who feel they need more information on the costs billed.

The NRC does not plan to develop new systems solely to provide additional information on its fee invoices. Office of Management and Budget Circular A-25, which provides guidelines for Federal agencies to assess fees for Government services, provides that new cost accounting systems do not need to be established solely for the purpose of determining or estimating full cost.

have the data available, nor the financial expertise to evaluate each licensee's business records and determine the source of its revenues. Instead, the NRC assesses its fees based on the license authorization.

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid ~~for~~ by other NRC licensees in order to comply with the OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities.

## 2. Annual Fees for Uranium Recovery Licensees

*Comment.* Two uranium recovery industry groups and one licensee commented on the FY 2002 proposed fee rule. All unanimously supported the NRC's revised methodology for allocating uranium recovery budgeted costs and the revised Project Manager (PM) assignment policy, which results in reduced annual fees for the commercial uranium recovery licensees. However, despite the proposed reductions, these commenters felt that the NRC's annual fees are excessive and represent a tremendous burden to the uranium recovery industry, which is

grant fee relief to the uranium recovery industry on the basis of its economic conditions or business practices (e.g., a licensee's decision whether to remain operational or go into a standby status) could set an untenable precedent for the NRC with the potential to unravel the stability and viability of the entire fee system. Not only would other classes of licensees be required to subsidize the uranium recovery industry through increased fees, but other categories of licensees may also request similar treatment based on analogous economic considerations. Thus, it would be difficult to develop a rationale for waiving the fees for uranium recovery licensees while denying similar requests from other NRC licensees, such as well loggers or licensed medical facilities whose industries may also be experiencing economic downturns.

The NRC has conducted numerous analyses concerning the issue of decreasing numbers of licensees, and the effect this has on annual fees. Although a decreasing licensee base is only one of several factors affecting annual fees, it presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates. In the wide range of scenarios the NRC evaluated during its analyses, most potential remedies to this problem involved establishing arbitrary fee caps or thresholds for certain classes of licensees. Other potential solutions involved combining fee categories. As noted previously, given the requirements of OBRA-90 to collect approximately 100 percent of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. Combining fee categories would also have the potential to increase the annual fees for certain licensees in the new combined category to cover part of the cost for the licensees whose fees were reduced by this action. The NRC ~~also~~ considers that

7  
Don't use "staff" ✓  
because it sends  
the message that  
the Commission  
may think  
differently

*Comment.* One comment was received opposing the NRC's proposed annual fee increase for the fuel facilities class, stating that these fees should remain the same as the previous year. The commenter maintained that its fuel conversion facility has been unprofitable for the last three years, asserting in part due to the U.S. government's uranium policies, and because of a depressed worldwide market for uranium. Additionally, the commenter contended that the NRC required additional security upgrades for its facility since the September 11, 2001, terrorist attacks, placing additional financial strains on the company. Finally, the commenter indicated that the costs incurred by the company as a result of NRC fees and security requirements jeopardize the viability of the facility.

*Response.* The NRC has addressed similar issues from other commenters regarding the impact of fees on industry, both in this fee rule and in previous years' fee rules. As earlier stated, consistent with the requirements of OBRA-90 the NRC must collect most of its budgeted costs through assessment of fees. These budgeted costs are the resources necessary for the NRC to execute its regulatory oversight of the various licensee classes. The NRC determined the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. As such, the budgeted costs for the fuel facilities class has increased since FY 2001, and these additional costs must be recovered through assessment of fees. Although this may create a financial hardship for some licensees, there is no provision for the NRC to reduce or waive these fees unless specified by regulation. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes.

compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

### III. Final Action

The NRC is amending 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 Fund. The NRC's total budget authority for FY 2002 is \$559.1 million, of which approximately \$23.7 million has been appropriated from the NWF. In addition, \$36.0 million has been appropriated from the General Fund for activities related to homeland security. Based on the 96 percent fee recovery requirement, the NRC must collect approximately \$479.5 million in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2002 is \$26.2 million more than the amount estimated for recovery in FY 2001.

The FY 2002 fee recovery amount is reduced by a \$1.7 million carryover from additional collections in FY 2001 that were unanticipated at the time the final FY 2001 fee rule was published. This leaves approximately \$477.8 million to be recovered in FY 2002 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$123.6 million will be recovered in FY 2002 from part 170 fees and other offsetting receipts. For FY 2002, the NRC also estimates a net adjustment of approximately \$8.2 million for FY 2002 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2002 for FY 2001 invoices. The remaining

\$346.0 million will be recovered through the part 171 annual fees, compared to \$331.6 million for FY 2001.

Table I summarizes the budget and fee recovery amounts for FY 2002. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

**TABLE I - BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2002**

[Dollars in Millions]

<b>Total Budget Authority</b>	<b>\$559.1</b>
<b>Less NWF</b>	<b>- 23.7</b>
<b>Less General Fund</b>	<b>- <u>36.0</u></b>
<b>Balance</b>	<b>\$499.5</b>
<b>Fee Recovery Rate for FY 2002</b>	<b><u>x 96.0%</u></b>
<b>Total Amount to be Recovered For FY 2002</b>	<b>\$479.5</b>
<b>Less Carryover from FY 2001</b>	<b>- <u>1.7</u></b>
<b>Amount to be Recovered Through Fees and Other Receipts</b>	<b>\$477.8</b>
<b>Less Estimated Part 170 Fees and Other Receipts</b>	<b>- <u>123.6</u></b>
<b>Part 171 Fee Collections Required</b>	<b>\$354.2</b>
<b>Part 171 Billing Adjustments</b>	
<b>Unpaid FY 2002 Invoices (estimated)</b>	<b>2.9</b>
<b>Less Payments Received in FY 2002 for Prior Year Invoices (estimated)</b>	<b>- <u>11.1</u></b>
<b>Subtotal</b>	<b>- <u>8.2</u></b>
<b>Adjusted Part 171 Collections Required</b>	<b>\$346.0</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 comments 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.

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](mailto:fees@nrc.gov). In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov> for at least 90 days after the effective date of the final rule.

The NRC is amending 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 revising the hourly rates used to calculate fees and is adjusting the part 170 fees based on the revised hourly rates. Additionally, the NRC is revising 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. *no*

The amendments are as follows:

1. **Hourly Rates**

The NRC is revising the two professional hourly rates for NRC staff time established in §170.20. These rates are based on the number of FY 2002 direct program full time equivalents (FTEs) and the FY 2002 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the part 170 fees. The hourly rate for the reactor program is \$156 per hour (\$276,345 per direct FTE). This rate is applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The hourly rate for the materials program (nuclear materials and nuclear waste programs) is \$152 per hour (\$269,451 per direct FTE). This rate is applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2001 final fee rule, the reactor and materials program rates were \$150 and \$144, respectively. The increases are primarily due to the Government-wide pay increase in FY 2002.

*one word*

The method used to determine the two professional hourly rates is as follows:

- a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).
  
- b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

As shown in Table II, dividing the \$283.0 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1024.0) results in a rate for the reactor program of \$276,345 per FTE for FY 2002. The Direct FTE Hourly Rate for the reactor program is \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,345) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Similarly, dividing the \$76.8 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (285.1) results in a rate of \$269,451 per FTE for FY 2002. The Direct FTE Hourly Rate for the materials program is \$152 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$269,451) by the number of productive hours in one year (1,776 hours).

## 2. Fees for Storage of Greater than Class C Waste Under Part 72

On October 11, 2001 (66 FR 51823), the NRC published a final rule revising part 72 to allow licensing for the interim storage of reactor-related Greater than Class C (GTCC) waste in a manner that is consistent with current licensing for the interim storage of spent fuel. As provided in §72.6, reactor-related GTCC waste can only be stored under the provisions of a specific license. The NRC stated in the statement of considerations for the final rule that subsequent to issuing the final revision of part 72, part 170 would be amended to clarify that full cost fees will be assessed for amendments and inspections related to the storage of reactor-related GTCC waste under part 72. Therefore, the NRC is revising Category 1.B. of §170.31 to specifically include storage of reactor-related GTCC waste licensed under part 72. Category 1.B. of §170.31 previously referred only to specific licenses for receipt and storage of spent fuel at an independent storage installation.

### **3. Fee Adjustments**

The NRC is adjusting the current part 170 fees in §§170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§170.21 and 170.31 are based on the professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2002 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the increase in the professional hourly rates from FY 2001. The amounts of the materials licensing "flat" fees are rounded as follows: fees under \$1,000 are rounded to the nearest \$10; fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100; and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The licensing "flat" fees are applicable to fee categories K.1 through K.5 of §170.21, and fee categories 1C, 1D, 2B, 2C, 3A through 3P, 4B through 9D, 10B, 15A through 15E, and 16 of §170.31. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

### **4. Fee Waivers**

In the FY 2001 final fee rule (66 FR 32452; June 14, 2001), the NRC revised criterion (c) of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to clarify that fees will not be

specific examples of the types of submissions that meet the fee waiver criteria and those that do not are provided in §170.11(a)(1).

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

1. Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates;
3. Revise fee category 1.B. of § 170.31 to clarify that full cost fees will be assessed for amendments and inspections related to the storage of GTCC Waste under part 72; and
4. Add to §170.11, Exemptions, the fee waiver provisions that are currently in Footnote 4 to §170.21 and Footnote 5 to §170.31, and clarify the fee waiver provisions currently in criterion (c) of these Footnotes. These footnotes, as well as material in the definition of *Special Projects* in §170.3 related to certain special requests and reports submitted to NRC for review, have been deleted.

**B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.**

The NRC is revising the annual fees for FY 2002, amending part 171 to specifically cover combined licenses issued under part 52, clarifying the annual fee exemption provision for