




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.

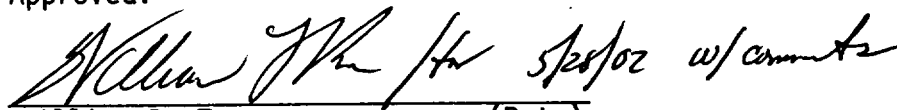
Please note that in order to meet the expedited schedule for this final rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than Noon, Tuesday, May 28, 2002.

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

Approved:


William D. Travers (Date)

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.

Replace with insert "A"

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.

Insert A: Replace the first two paragraphs of the response on pages 5 and 6 with the following text.

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 purpose of this rulemaking is to establish the fees necessary to recover the 96 percent, less the amounts appropriated from the NWF and the General Fund, as required by OBRA-90, as amended. 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 since the NRC's budget and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. 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. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to Parts 170 and 171.

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

alternatives involving caps or thresholds, and combining fee categories, raise fairness and equity concerns. As such, the Commission has not adopted any of these approaches. Also, the NRC notes that commenters opposed a similarly postulated 50 percent cap on annual fee increases in response to this issue in the FY 1999 proposed fee rule. Thus, the NRC concluded that the most equitable option under the agency's current fee collection mandate was to maintain its existing fee policy, but continue to seek cost efficiencies through its annual **programmatic** reviews conducted as part of the budget process.

The issue of charging licensees in standby status has repeatedly been discussed in many previous fee rules. In summary, the Commission has stated that the existing policy of assessing annual fees based on whether a licensee holds a valid NRC license authorizing possession and use of source material, irrespective of the licensee's intent to operate its facility or remain in standby, represents the fairest option available under current legislation. This policy is based on the premise that the benefit the NRC provides a licensee is the authority to use licensed source material. Whether or not a licensee decides to exercise this authority is a business decision outside the realm of NRC jurisdiction. Furthermore, based on fee recovery requirements of OBRA-90, reducing the number of licensees paying annual fees by granting relief for licensees in a standby status would ultimately increase the annual fees assessed to the remaining licensees. In effect, providing such fee relief would exacerbate the existing condition of decreasing numbers of licensees, which is an ongoing concern of the commenters. Additionally, licensees in a standby status continue to benefit from NRC's generic guidance and rules applicable to the uranium recovery class of licensees, and therefore should continue to pay annual fees.