

16 May 2002

**DRAFT**

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[7590-01-P]

NUCLEAR REGULATORY COMMISSION  
10 CFR Parts 170 and 171  
RIN: 3150-AG95

Please provide  
Comments to  
CCFO/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.

OGC  
Comments  
5/20  
Trip

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).

**DRAFT**

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 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 <sup>program office</sup> staff prior to requesting a fee waiver. *from the NRC's 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 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 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

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 additional 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.

C. Specific Part 171 Issues.

1. Annual Fees for Materials Users, Including Small Entities

*Comment.* Two nuclear density gauge users and one manufacturer commented on their fees being too high, and creating a significant financial burden on small business owners. One 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 unfair disparity in the industry. Another commenter indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that it was essential to maintain this 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 \$350,000 to \$5,000,000 in gross annual receipts tends to advantage 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

*whose facilities are*

are excessive and represent a tremendous burden to the uranium recovery industry, which is already experiencing a severe economic downturn because of the depressed uranium market. The commenters all believe there is excessive regulatory oversight by the NRC of the uranium recovery industry, especially in light of the NRC's performance-based licensing approach, which they contend should result in a reduced regulatory effort. Thus, the commenters assert that the NRC should consider a more balanced approach to uranium recovery regulation, resulting in less regulatory oversight and lower costs. Additionally, the commenters state that the NRC has failed to adequately deal with the issue of decreasing numbers of uranium recovery licensees, or charging annual fees to licensees in standby, <sup>states</sup> Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. As such, the commenters argue that there is a lack of reasonable relationship between annual fees and regulatory services rendered by the NRC. One commenter indicated that the NRC's policy of charging annual fees to licensees in standby, <sup>states</sup> who require minimal oversight, is not commensurate with the benefit of holding a license, and unfairly penalizes those licensees who are waiting for market conditions to improve before they become operational again.

*Response.* The NRC has responded to these issues presented by the commenters in several previous fee rulemakings. Moreover, the NRC acknowledges that the uranium recovery industry is experiencing an economic downturn in the market for uranium. However, since FY 1991, when the 100 percent fee recovery requirement was enacted under OBRA-90, the Commission has consistently taken the position that it will not consider economic factors when establishing fees, except for reduced fees provided for small entities based on the provisions of the RFA. To 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 staff determined that 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



*multi-unit*

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~~ *multi-unit modular reactors*. However, the NRC intends to assess fees for multi-unit modular reactors on the same basis as other standard reactors. Specifically, if multiple licenses are issued for the multi-unit facilities, the NRC will assess multiple annual fees. If a single license is issued for multi-unit modules, a single annual fee will be assessed. 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.

*Do we really want to say this. We thought we would leave open PDR fee issue.*

*OK*

The agency workpapers supporting both the proposed and final fee rules show the budgeted costs for each activity at the NRC's planned accomplishment level, and the classes of licenses to which these costs are allocated. Furthermore, the workpapers show by class the total costs allocated, and the estimated Part 170 collections. The annual fees are established to recover the difference between the NRC's total recoverable budgeted costs (less the Nuclear Waste Fund and General Fund) and the estimated Part 170 collections, in accordance with OBRA-90, as amended. The Part 171 annual fees are established to recover the costs for generic activities such as rulemakings and guidance development, as well as costs for other activities 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.).

(c) An exemption for operating reactors under this provision may be granted by the Commission taking into consideration each of the following factors:

- (1) Age of the reactor;
- (2) Size of the reactor;
- (3) Number of customers in rate base;
- (4) Net increase in KWh cost for each customer directly related to the annual fee assessed under this part; and
- (5) Any other relevant matter which the licensee believes justifies the reduction of the annual fee.

*Section 171.15 is added to read as follows  
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Anyone who complains about their fee  
will still pay a  
5% surcharge.*

11. Section 171.15 is revised to read as follows:

§171.15 Annual Fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person licensed to operate a power, test, or research reactor; each person holding a part 50 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel on-site; and each person holding a part 72 license who does not hold a part 50 license shall pay the annual fee for each license held at any time during the Federal FY in which the fee is due. This paragraph does not apply to test and research reactors exempted under §171.11(a).

(b)(1) The FY 2002 annual fee for each operating power reactor is \$2,869,000.

(2) The FY 2002 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2002 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of