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[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH14


Revision of Fee Schedules; Fee Recovery for FY 2003


AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately \$526.3 million.

DATES: The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90

budgeted costs 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 94 percent of its FY 2003 budget authority, less the amounts appropriated from the NWF, through fees. 

 In the Energy and Water Development Appropriation Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), Congress appropriated \$584.6 million to the NRC for FY 2003. ~~The President had requested that the NRC's budget for homeland security activities be excluded from the fee base, but Congress did not agree with this proposition. Therefore, the NRC is required to recover its FY 2003 budget for homeland security activities through fees.~~ The total amount NRC is required to recover for FY 2003 is approximately \$526.3 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. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 94 percent of its FY 2003 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. The NRC's total budget authority for FY 2003 is \$584.6 million, of which approximately \$24.7 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must recover approximately \$526.3 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. *FY 2003*

Whereas the FY 2002 funding for homeland security was
2003 includes \$29.3 million for homeland security activities. The President's budget requested that NRC's *funding* budget for homeland security activities *continued to be* excluded from the fee base. However, the *included* Congress in the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), directed that the NRC's budget for homeland security activities *be included* in the fee base. Therefore, the proposed *FY 2003*

fees include the \$29.3 million budgeted for NRC's homeland security activities. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is \$46.8 million more than the amount estimated for recovery in FY 2002. *Excludes from fees. While*

The NRC estimates that approximately \$124.6 million will be recovered in FY 2003 from part 170 fees and other offsetting receipts. For FY 2003, the NRC also estimates a net adjustment of approximately \$1.9 million for FY 2003 invoices that the NRC estimates will not be paid during the fiscal year, and for payments received in FY 2003 for FY 2002 invoices. The remaining \$399.8 million would be recovered through the part 171 annual fees, compared to \$345.6 million for FY 2002.

A primary reason for the increase in total fees, as well as the annual fee amount, for FY 2003 compared to FY 2002 is that

Table I summarizes the budget and fee recovery amounts for FY 2003. 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 2003

[Dollars in Millions]

Total Budget Authority	\$584.6
Less NWF	<u>- 24.7</u>
Balance	\$559.9
Fee Recovery Rate for FY 2003	<u>x 94.0%</u>
Total Amount to be Recovered For FY 2003	\$526.3
Less Carryover from FY 2002	<u>- 0</u>
Amount to be Recovered Through Fees and Other Receipts	\$526.3
Less Estimated Part 170 Fees and Other Receipts	<u>- 124.6</u>
Part 171 Fee Collections Required	\$401.7
Part 171 Billing Adjustments	
Unpaid FY 2003 Invoices (estimated)	2.4
Less Payments Received in FY 2003 for Prior Year Invoices (estimated)	<u>- 4.3</u>
Subtotal	<u>- 1.9</u>
Adjusted Part 171 Collections Required	\$399.8

The FY 2003 final fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2003 would 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 2003 final rule. For these licensees, payment would be due on the effective date of the FY 2003 rule. Those materials licensees whose license anniversary date during FY 2003 falls before the effective date of the final FY 2003 rule would be billed for the annual fee during the anniversary month of the license at the FY 2002 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2003 rule would be billed for the annual fee at the FY 2003 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final fee 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. The NRC plans to publish the final fee rule in June 2003. 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 proposing to make changes to 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 proposing to establish the hourly rates used to calculate fees and to adjust the part 170 fees based on the proposed hourly rates and the results of the agency's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, November 15, 1990, 104 Stat. 2838). Additionally, the NRC is proposing to revise fee category 15.A. of §170.31 to cover all categories of radioactive waste import license applications and to revise category 15.B. to remove the radioactive waste import license applications.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to establish in §170.20 the two professional hourly rates for NRC staff time. These proposed rates would be based on the number of FY 2003 direct program full time equivalents (FTEs) and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The proposed rate for the reactor program is \$156 per hour (\$276,661 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed rate for the materials program (nuclear materials and nuclear waste programs) is \$158 per hour (\$280,876 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were \$156 and \$152, respectively.

The proposed increase to the materials program rate reflects a shifting of certain direct resources away from activities that are covered by the surcharge to activities directly benefitting classes of licensees in the materials program. For example, in FY 2003 there is a reduction

*Not clear why an increase if the
direct FTE also increases hourly rate*

As a result of the biennial review, the proposed licensing fees that are based on the average professional staff hours reflect an increase in average time for new license applications for six of the 33 materials program fee categories, a decrease in average time for eight fee categories, and the same average time for the remaining 19 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§170.21 and 170.31, and decreased for two other fee categories.

The proposed licensing fees for 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 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed materials program professional hourly rate for FY 2003.

The biennial review also included the "flat" fee for the general license registrations covered by fee Category 3.Q. As a result of this review, the proposed fee per registration is \$620, compared to the current fee of \$450. The proposed fee is based on the ^{current} estimated number of registrants, ^{annual for this program} current resource estimates, and the FY 2003 materials program FTE rate.

This increase to the current fee of \$450 is ^{based on experience to date with} primarily due to a decrease in the expected number of ~~the registrations to date~~ ^{which indicates that the} registrations. When the current \$450 registration fee was established in the FY 2001 final fee ~~rule (66 FR 32461, June 14, 2001), the NRC estimated that there would be 4,300 registrations.~~

~~The number of registrations is now expected to be 3,000.~~ ^{than originally estimated} The next biennial review of the registration fee will be included in the FY 2005 fee rule; however, the registration fee may change in the FY 2004 fee rule if there is a change to the materials program FTE rate for FY 2004.

Note: change was made because Part 170 fees should not be a function of the # of licenses.

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 proposes to revise the annual fees for FY 2003 as follows.

1. Annual Fees

The NRC is proposing to establish rebaselined annual fees for FY 2003. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995), and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), determined that base annual fees will be re-established (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licenses. The fees were last rebaselined in FY 2002. Based on the change in the magnitude of the budget to be recovered through fees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees would result in increased annual fees compared to FY 2002 for four classes of licenses (power reactors, spent fuel storage/reactor decommissioning, fuel facilities, and rare earth facilities) ^{and} decreased annual fees for two classes (non-power reactors and uranium recovery). ^{For the small class 5,} ~~and in two classes,~~ materials users and transportation, some categories of licenses would have increased annual fees and others would have decreased annual fees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2003 to recover approximately 94 percent of the NRC's FY 2003 budget authority, less the estimated amount to

NRC's Electronic Reading Room on the Internet at Website address <http://www.gov/reading-room/adams.html>. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738.

A. Fuel Facilities

The proposed annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance of orders directing the fuel facility licensees to take interim compensatory measures to increase security. ^{and} ~~Also included is a~~ series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

~~Vulnerabilities of structures, process and protective systems, security operations and physical protection systems, information systems, material control and accountability systems, and access control systems vulnerabilities will be assessed, as applicable. The results of individual assessments then will be integrated into one comprehensive risk-informed assessment for fuel cycle, from which the NRC can make decisions about protective strategies for each type of facility.~~

Too detailed

The FY 2003 budgeted costs of approximately \$27.0 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly

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In recognizing that the uranium recovery class is comprised of two types of licensees falling under either the NRC's Title I or Title II program, the Commission determined in FY 2002 that it was appropriate to divide the generic and other costs included in the uranium recovery annual fee evenly among the two programs. Furthermore, DOE stands to gain from NRC's generic regulatory efforts because DOE eventually will also accept the Title II specifically licensed sites under a general license from the NRC for long term surveillance and care. ~~This~~

Consistent with the

change in methodology was adopted in the FY 2002 final fee rule (67 FR 42612; June 24, 2002).

As a result of the change adopted in the FY 2002 final fee rule, the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated equally between Title I and Title II licensees. This would result in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge, for the uranium recovery class. The remaining surcharge, generic, and other costs would be assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):

UMTRCA Title I budgeted costs	\$ 393,227
50% of generic/other uranium recovery budgeted costs	495,513
50% of uranium recovery surcharge	<u>70,829</u>
Total Annual Fee Amount for DOE	\$ 959,569

2. Small Entity Annual Fees

The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2003. The revision to the small entity fees in FY 2000 (65 FR 36946; June 12, 2000) was based on the 25 percent increase in average total fees assessed to other materials licensees in selected categories since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time.

Accordingly, the NRC has re-examined the small entity fees for FY 2003, and does not believe that a change to the small entity fees is warranted this year. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. While there is a 17 percent decrease in the average fees assessed to other materials licensees since FY 2002, and a 21 percent decrease since FY 2000, the NRC has determined that the current small entity fees of \$500 and \$2,300 continue to provide considerable relief to many small entities. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees.

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structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

The NRC examined the small entity fees again in FY 2001 (66 FR 32452; June 14, 2001), and determined that ~~the 13 percent decrease in the average FY 2001 fees for other licenses was not significant enough to warrant~~ ^{Was not Warranted} a change to the small entity fees established in FY 2000. The NRC stated in the Regulatory Flexibility Analysis for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act.

Accordingly, the NRC has re-examined the small entity fees for FY 2003, and does not believe that a change to the small entity fees is warranted this year. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering

from them some of the agency's costs for activities that benefit them. *Given the reduction in annual fees and the relative low inflation rates.* While there is a 17 percent decrease in the average fees assessed to other materials licensees since FY 2002, and a 21 percent decrease since FY 2000, the NRC, has determined that the current small entity fees of \$500 and \$2,300 continue to provide *met the objective of* considerable relief to many small entities. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. *while recovering from them some of the cost that benefit them.*

Therefore, the NRC is proposing to retain the \$2,300 small entity annual fee and the \$500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 94 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions