

(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, 5 U.S.C. 601 et seq.)

Dated at Rockville, Maryland, this _____ day of _____, 2003.

For the Nuclear Regulatory Commission.

Jesse L. Funches,
Chief Financial Officer.

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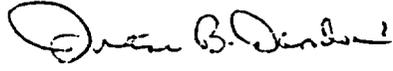
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 19, 2003

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: PROPOSED NOTICE OF RULEMAKING -- 10 CFR PARTS 170
AND 171 -- 94 PERCENT FEE RECOVERY FOR FY 2003

Attached for your concurrence is a proposed rule for the FY 2003 fees to be assessed to recover 94 percent of the NRC's FY 2003 budget authority. In order to meet the statutory requirement to assess and collect the fees by September 30, 2003, this proposed rule must be published by March 13, 2003.

Please note that in order to meet the expedited schedule for the FY 2003 rule, we are providing each addressee a separate concurrence copy. Please provide your concurrence as quickly as possible, but no later than noon Friday, February 21, 2003.

If you have any questions, please contact Robert Carlson on 415-8165, or Glenda Jackson on 415-6057. Thank you for your assistance in this matter.

Attachment: As stated

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

bcc: J. Funches, CFO
P. Rabideau, DCFO

Charlotte -
Resission not incorporated.
Still undecided on how to
handle but we had to get this
out for concurrence. The Resission
may not affect fee ~~of~~ amounts
(hopefully)

Addressees - Memorandum dated February 19, 2003

SUBJECT: PROPOSED NOTICE OF RULEMAKING – 10 CFR PARTS 170
AND 171 – 94 PERCENT FEE RECOVERY FOR FY 2003

Mail Stop:

William D. Travers, Executive Director for Operations
Janice D. Lee, Director, Office of International Programs
Michael T. Lesar, Office of Administration
Trip Rothschild, Deputy Assistant General Counsel/
Legislative Counsel, Office of the General Counsel

O-16 E15
O-4 E5
T-6 D59
O-15 D21

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NAME	Robertson/GC Jackson	S	DBDandois	
DATE	2/19/03		2/19/03	

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 \$526.5 million.

*and
GP
see pg 8+*

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

comment period at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738.

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301-415-8165; or Ann Norris, telephone 301-415-7807; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Action
- III. Plain Language
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis

I. Background

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

←
see
pg
8

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 proposed total budget authority for FY 2003 is \$585.0 million, of which approximately \$24.9 million has been appropriated from the NWF. Based on the 94 percent fee recovery requirement, the NRC must collect approximately \$526.5 million in FY 2003 through part 170 licensing and inspection fees, part 171 annual fees, and other offsetting receipts. The amount to be recovered for FY 2003 includes \$29.3 million for homeland security. Consistent with the President's budget request, the NRC requested that the agency's homeland security expenses be excluded from the fee base. However, because both of the Congressional appropriations committees directed that these expenses be included in the fee base, the proposed fee schedules include those sums allocated for homeland security. The total amount to be recovered through fees and other offsetting receipts for FY 2003 is \$47.0 million more than the amount estimated for recovery in FY 2002.

*Answer:
New Fee*

The NRC estimates that approximately \$124.7 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 \$400.2 million would be recovered through the part 171 annual fees, compared to \$345.6 million for FY 2002.

*124.7
1.9
400.2
\$526.6*

Doesn't add

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	\$585.0
Less NWF	<u>- 24.9</u>
Balance	\$560.1
Fee Recovery Rate for FY 2003	<u>x 94.0%</u>
Total Amount to be Recovered For FY 2003	\$526.5
Less Carryover from FY 2002	<u>- 0</u>
Amount to be Recovered Through Fees and Other Receipts	\$526.5
Less Estimated Part 170 Fees and Other Receipts	<u>- 124.7</u>
Part 171 Fee Collections Required	\$401.8
Part 171 Billing Adjustments	
Unpaid FY 2002 Invoices (estimated)	2.4
Less Payments Received in FY 2002 for Prior Year Invoices (estimated)	<u>- 4.3</u>
Subtotal	<u>- 1.9</u>
Adjusted Part 171 Collections Required	\$399.9

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

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

establish
The NRC is proposing to ~~revise~~ the two professional hourly rates for NRC staff time *determined* established in §170.20. 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 ~~and the General Fund~~. 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.

not consistent w/ pg 1 +

Material went up \$6/hr and reactors stayed the same 7/15

The proposed increase to the materials program (nuclear materials and nuclear waste programs) 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 in the budgeted direct resources from FY 2002 for the Site Decommissioning Management Plan program and for generic decommissioning and

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 estimated number of registrants, current resource estimates, and the FY 2003 materials program FTE rate. This increase to the ~~current fee of \$450~~ ^{proposed fee of \$620} is primarily due to a decrease in the expected number of 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 4300 registrations. The number of registrations is now expected to be 3000. 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.

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. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

The NRC is also proposing to expand fee Category 15.A. of §170.31 to include all categories of radioactive waste import license applications, and to modify Category 15.B. of §170.31 to exclude these types of import license applications. This change is being proposed because all applications for the import of radioactive waste must be reviewed by the Executive Branch and require the involvement of all states and compacts as well as extensive coordination within the NRC. Therefore, the NRC efforts for the waste import license applications are more closely aligned with the efforts for the other types of export and import licenses currently covered by Category 15.A.

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

1. ^{Establish} Revise the materials and reactor program FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency;
3. Revise Category 15.A. of §170.31 to include radioactive waste import licenses, and exclude these types of applications from Category 15.B.

?
The reactor fee stays the same @ 15k

be recovered through part 170 fees and the amounts appropriated from the NWF. The total amount to be recovered through annual fees for FY 2003 is \$400.2 million, compared to \$345.6 million for FY 2002.

and GF :

Within the fee classes, the proposed FY 2003 annual fees would increase for most categories of licenses, decrease for some, and for one category remain the same from the previous year. The two largest categories of materials licensees (which together include nearly 3,500 of NRC's approximately 4,900 materials user licenses) show fee decreases compared to FY 2002 of 7.4 percent and 9.8 percent respectively. The increases in annual fees range from approximately 1.0 percent for materials licenses authorizing receipt of radioactive waste for packaging and transfer to others for disposal to approximately 175 percent for rare earth facilities. The decreases in annual fees range from approximately 1.0 percent for DOE's transportation activities to approximately 53 percent for materials licenses authorizing possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies (other than field flooding). The fees remain the same for materials licenses authorizing possession and use of byproduct material in sealed sources for irradiation of materials where the source is not removed from its shield.

Factors affecting the changes to the annual fee amounts include adjustments in budgeted costs for the different classes of licenses (including the addition of homeland security costs), the reduction in the fee recovery rate from 96 percent for FY 2002 to 94 percent for FY 2003, the estimated part 170 collections for the various classes of licenses, the increased hourly rate for the materials and waste program, and decreases in the numbers of licensees for certain categories of licenses. In addition, there is no carryover from FY 2002 to reduce the FY 2003 fees. The FY 2002 fees were reduced by a \$1.7 million carryover from FY 2001.

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. 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.

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 available), licensees are grouped into five categories according to their licensed activities (i.e.,

hasn't been capitalized before this?

nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

The methodology is adaptable to changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (e.g., decommissioning or license termination) that results in them not being subject to Part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components would be spread among the remaining fuel facility licensees/certificate holders, resulting in higher fees for those affected licensees. Cap

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully utilize a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Next, the category and license/certificate information are used to determine where the licensee/certificate

To equitably and fairly allocate the \$23.9 million in FY 2003 budgeted costs to be recovered in annual fees assessed to the approximately 5,000 diverse materials users and registrants, the NRC has continued to use the FY 1999 methodology to establish baseline annual fees for this class. The annual fees are based on the part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. The fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses. The annual fee for these categories of licenses is developed as follows:

Annual fee = Constant x [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier x (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately \$17.8 million in general costs and is 1.18 for FY 2003. The inspection multiplier is the multiple necessary to recover approximately \$4.5 million in inspection costs for FY 2003, and is 0.9 for FY 2003. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2003, approximately \$65,300 in budgeted costs for the implementation of revised Part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

cap