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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

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.

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 the amount to be recovered for FY 2003 includes \$29.3 million for homeland security activities, whereas the FY 2002 funding for homeland security was excluded from fees. While the President's FY 2003 budget requested that NRC's funding for homeland security activities continue to be excluded from the fee base, the Energy and Water Development Appropriations Act, 2003, contained in the Consolidated Appropriations Resolution, 2003 (Public Law 108-7), included NRC's budget for homeland security activities 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.

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 \$399.7 million would be recovered through the part 171 annual fees, compared to \$345.6 million for FY 2002.

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.

A major reason for 4 percent <sup>is the increase in income</sup>  
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~~  
~~wide pay raise. While the salary and benefits also increase~~  
~~classes of licensees in the materials program. For example, in FY 2003 there is a reduction~~  
for the reactor program, this increase is offset as a  
result of the increase in direct F.T.E to which ~~the~~ overhead  
is allocated.

~~from FY 2002 in the budgeted direct resources for the Site Decommissioning Management Plan program and for generic decommissioning and reclamation activities, and an increase in budgeted direct resources for the fuel facility and rare earth classes of licenses. This shift of direct resources causes a commensurate increase in the overhead costs allocated to the materials program because the overhead costs are allocated in proportion to the direct FTE costs.~~

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.

c. All other program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and for the Office of the Inspector General, are allocated to each program based on that program's direct costs. This method results in the following costs which

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 a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

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., 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.