

Glenda--  
Please see comments  
Bel

February 11, 2003

Completed  
2/18/03  
APC

NOTE TO: Trip Rothchild, OGC 0-14Db  
Mike Lesar, ADM

FROM: Bob Carlson, OCFO Bel

SUBJECT: REVIEW OF PRELIMINARY DRAFT FY 2003 PROPOSED FEE RULE

Please find the attached subject document for your review and comment. We will incorporate your comments on this preliminary draft prior to sending the document out for official concurrence.

In order to incorporate your revisions into the official concurrence review, please provide me your mark-up no later than COB Thursday, Feb. 13th.

Attachment: As stated

cc: Brenda Shelton, CIO

Xerox

*This is what  
the House and Senate  
approved last night.*

108th CONGRESS  
1ST SESSION

## H.J. RES. 2

### CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the joint resolution (H. J. Res. 2), "making further continuing appropriations for the fiscal year 2003, and for other purposes", having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

#### SECTION 1. SHORT TITLE.

*This joint resolution may be cited as the "Consolidated Appropriations Resolution, 2003".*

#### SEC. 2. TABLE OF CONTENTS.

*The table of contents for this joint resolution is as follows:*

- Sec. 1. Short title.*
- Sec. 2. Table of contents.*
- Sec. 3. References.*

GPO: set  
all ital  
through  
Page P-8

**DRAFT**

2/11/03

[7590-01-P]

2/18/03

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.

Bob,  
I haven't  
bothered to  
mark all the  
places where  
numbers will  
need to be  
revised - I  
know you're  
already working  
on that.  
Cathy

**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.

**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

expenses 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, and other offsetting receipts.

In the absence of an enacted appropriation bill by the time this proposed fee rule was signed, the FY 2003 proposed fees are based on the recommended appropriation level approved by both the House and Senate appropriation committees (\$585.0 million). If the final budget authorization varies from this amount, the fees set forth in the final fee rule could differ from these proposed fees.

Consistent with the President's budget request, the NRC staff also 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 fees include homeland security costs. [OGC - Trip; need something

here about current status of 2003 budget approval] The total amount to be recovered in fees and other offsetting receipts for FY 2003 is approximately \$526.5 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

In The Consolidated Appropriations Resolution, 2003, Congress appropriated \$ 4 million to the NRC for FY 2003. The President had requested that the expenses associated with homeland security be excluded from the fee base but Congress did not agree to that. Therefore, the NRC will be required to include those expenses in the fee it receives.

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 rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2003 final 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. It is our intent to publish the final 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.

Why limited to 90 days?  
How about including other refs like  
the Fed Register website?

Glenda (?)

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 increases reflect the Government-wide pay increase in FY 2003. In~~  
addition, 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 the materials classes of licensees. 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

~~In the absence of an enacted appropriation bill by the time this proposed fee rule was signed, the FY 2003 proposed fees are based on the recommended appropriation level approved by both the House and Senate appropriation committees (\$585.0 million). If the final budget authorization varies from this amount, the fees set forth in the final fee rule could differ from these proposed fees. Consistent with the President's budget request, the NRC staff also 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 fees include homeland security costs.~~

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 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.

~~The proposed FY 2003 annual fees would increase for most categories of licenses, decrease for others, and for two categories remain the same from the previous year. The increases in annual fees range from approximately 1.5 percent for materials licenses authorizing possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials, to approximately 175 percent for rare earth facilities. The decreases in annual fees range from approximately 2.2 percent for material licenses of broad scope for possession and use of byproduct material for processing or manufacturing items containing byproduct material for commercial distribution, 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~~

Did not delete

Fuel Facilities	8	0.2	6.7	1.4	1.7
Materials Users	18	0.5	3.7	0.8	1.3
Transportation	---	---	2.2	0.5	0.5
Rare Earth Facilities	---	---	0.2	0.0	0.0
Uranium Recovery	---	---	<u>0.7</u>	<u>0.1</u>	<u>0.1</u>
TOTAL SURCHARGE	100	2.7	100.0	21.5	24.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Public Electronic Reading Room on the Internet at Website address <http://www.gov/reading-rm/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.

Because the FY 2003 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 upon publication of the FY 2003 final rule to reactors and major fuel cycle facilities. 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 FY 2003 final rule would be billed for the

*Answer  
as  
p. 9  
Don't  
need to  
repeat*



annual fee during the anniversary month of the license, and continue to pay annual fees at the FY 2002 rate in FY 2003. However, those materials licensees whose license anniversary date falls on or after the effective date of the FY 2003 final rule would be billed for the annual fee at the FY 2003 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

#### 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. For example, these homeland security activities include the issuance of orders directing the fuel facility licensees to take interim compensatory measures to increase security. Moreover, the NRC is conducting a series of risk-informed vulnerability assessments (VAs) for fuel facility licensees. 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 \$27.1 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;

situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

<sup>2</sup> Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by §170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in §170.20.

<sup>3</sup> Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

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 18 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.

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 with a population of less than 20,000, small manufacturing entities that have less than 35