

Glenda,
see my notes
in red throughout.
Bor

Glenda's 2/4/03
Please return to
Glenda [7590-01-P]

NUCLEAR REGULATORY COMMISSION
10 CFR Parts 170 and 171
RIN: 3150-AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

Bor:
This is
a great
& dirty!

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.

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. The total amount to be recovered in fees and other offsetting receipts for FY 2003 is approximately \$526.5 million.

need to include something like what you have on pg 14 here (and also keep it on pg 14)

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.

Need something about this OGC to provide 2003 budget approval

II. Proposed Action

(a similar)

This something like: Assumed program rule that House and Senate will ultimately be approved by the President. (Have you passed the budget??)

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 and the General Fund. The NRC's 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

Proposed

not true - we do not have a budget yet need to explain status of Budget -> This will be done above by OGC

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 ~~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 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.

The NRC estimates that approximately \$124.4 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 \$348.9 million for FY 2002.

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
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1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time 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 hourly rate for the reactor program is \$156 per hour (\$276,652 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 hourly rate for the materials program (nuclear materials and nuclear waste programs) is \$158 per hour (\$280,582) 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 increases ~~are~~ ^{of the materials program rate is} primarily due to ~~the~~ ^{same}

~~Government-wide pay increase in FY 2003. ADDITIONAL INFORMATION FORTHCOMING~~

In addition, the materials rate reflects a shift of resources from activities that are covered by the surcharge to activities benefitting the materials classes of licensees. This shift causes an increase in the

The method used to determine the two professional hourly rates is as follows:

Because the overhead costs for each activity are proportional to the direct FTE for the reactor and materials programs (and secondary)

Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

Overhead cost allocated to the materials program

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.

some categories and decreased in others, as described below, to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 2001 (66 FR 32452; June 14, 2001). Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since FY 2001.

In summary, the proposed ^{changes} licensing fees reflect an increase in average time for new license applications for six of 33 materials fee categories included in the biennial review, 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 are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2003. 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.

The proposed licensing “flat” fees are applicable to 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. 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. 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.

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, ~~to amend part 174 to~~
~~specifically cover combined licenses issued under part 52, to clarify the annual fee exemption~~
~~provision for reactors, and to modify the methodology for allocating the uranium recovery annual~~
~~fee amount among the types of uranium recovery licenses.~~ The proposed amendments are 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), establishes 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 for XX classes of licenses, except for the XXXXXXXX classes, which would have annual fee decreases.

In the absence of an enacted appropriation bill by the time this proposed fee rule was published, ^{signed}
~~the NRC staff established its FY 2003 fee schedule~~ based on the recommended appropriation
level approved by both the House and Senate appropriation committees (\$584.9 million). As a
~~result of this continuing resolution~~, the fees set forth in the final fee rule could differ from these
proposed fees.

which
continuing resolution?

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 fee schedule include these sums allocated for homeland security.

costs, ✓
The
Commission will continue to work with Congress on this issue in hopes of removing homeland security related costs from the fee base in the approved appropriations legislation before promulgation of the final fee rule. (Based on mtg w/ Gene 2/4)

~~Commission will continue to work with Congress on this issue in hopes of removing homeland security related costs from the fee base in the approved appropriations legislation before promulgation of the final fee rule.~~

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 and the General Fund. The total amount to be recovered through annual fees for FY 2003 is \$400.2 million, compared to \$348.9 million for FY 2002.

The proposed FY 2003 annual fees would increase for most categories of licenses and decrease for others from the previous year. The increases in annual fees range from approximately 51 percent for materials licenses authorizing the receipt of waste byproduct materials and packaging/repackaging of the material (Waste Receipt/Packaging), to approximately 129 percent for rare earth facilities. The decreases in annual fees range from approximately 3.6 percent for non-power reactors, to approximately 18 percent for the Title II uranium recovery specific licenses.

Factors affecting the changes to the annual fee amounts include changes in budgeted costs for the different classes of licenses, ^{including the 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 rates, 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.*

Table IV below shows the proposed rebaselined annual fees for FY 2003 for representative categories of licenses.

TABLE IV - REBASELINED ANNUAL FEES FOR FY 2003

<u>Class/Category of Licenses</u>	<u>Proposed FY 2003 Annual Fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,217,000
Spent Fuel Storage/Reactor Decommissioning	264,000
Nonpower Reactors	54,900
High Enriched Uranium Fuel Facility	5,687,000
Low Enriched Uranium Fuel Facility	3,378,000
UF ₆ Conversion Facility	2,365,000
Uranium Mills	88,200
Transportation:	
Users/Fabricators	154,000
Users Only	14,400
Typical Materials Users:	
Radiographers	12,100
Well Loggers	4,600

<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 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

This entire section revised based on FCSS going back to using original FY 1991 effort/fee
The proposed fees for the fuel facility class reflect increased budget.
The NRC is proposing to use a revised matrix in the determination of annual fees for fuel facility licensees. As part of the rebaselining efforts, the NRC is proposing to use a revised matrix depicting the categorization of fuel facility licenses by authorized material and use/activity and the relative programmatic effort associated with each category. Specifically, the NRC is *also* *costs for activities that we are not subject to cost money under Part including general homeland security activities*

proposing to use a revised fuel facility matrix based on the commensurate level of regulatory effort related to the various fuel facility categories from both safety and safeguards perspectives. The revised matrix results in the annual fees more accurately reflecting the NRC's current costs of providing generic and other regulatory services to each fuel facility type.

The FY 2003 budgeted costs of approximately \$XXX million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the revised matrix. ~~The revisions to the matrix take into account changes in process operations at certain fuel facilities.~~ Additionally, the revised matrix includes the increased regulatory effort associated with fuel facility safeguards as a result of new security objectives. For example, the fuel cycle licensees have been issued (or will be issued) Orders which direct them to take interim compensatory measures to increase security. Moreover, the NRC is conducting a series of risk-informed vulnerability assessments (VAs) for fuel cycle and materials 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 and materials licensees, from which the NRC can make decisions about protective strategies for each type of facility.

In the revised 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.

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.

~~As in the past~~ →

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 holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders

Title II facilities are subject to billing based on the anniversary date of the license as provided in §171.19(c).

C. Power Reactors

The approximately \$307.1 million in budgeted costs to be recovered through FY 2003 annual fees assessed to the power reactor class, ^{which includes Homeland Security costs,} would be divided equally among the 104 power reactors licensed to operate. This results in a proposed FY 2003 annual fee of \$2,953,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the proposed FY 2003 spent fuel storage/reactor decommissioning annual fee of \$264,000. This would result in a total FY 2003 annual fee of \$3,217,000 for each power reactor licensed to operate.

D. Spent Fuel Storage/Reactor Decommissioning

For FY 2003, budgeted costs of approximately \$31.9 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2003 annual fee of \$264,000 per licensee.

E. Non-power Reactors

Approximately \$219,500 in budgeted costs is to be recovered through annual fees assessed to the non-power reactor class of licenses for FY 2003. This amount would be divided

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 1.17 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, of the unique costs attributable to medical licensees for the medical development program, approximately \$65,200 would be allocated to NRC medical licensees.

The annual fee assessed to each licensee also includes a share of the \$1.3 million in surcharge costs allocated to the materials user class of licenses and, for certain categories of these licenses, a share of the approximately \$500,000 in LLW surcharge costs allocated to the class. The proposed annual fee for each fee category is shown in §171.16(d).

H. Transportation

Of the approximately \$10.2 million in FY 2003 budgeted costs to be recovered through annual fees assessed to the transportation class of licenses, approximately \$2.8 million would be

*add permit's
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