

5/21/03

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. Response to Comments

The NRC published the FY 2003 proposed fee rule on April 3, 2003 (68 FR 16374) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 27 comments dated on or before the close of the comment period (May 5, 2003) and one additional comment by May 16, 2003, for a total of ^{28?} 27 comments that were considered in this fee rulemaking. As such, these comments have been grouped according to similar issues, and are addressed in a collective response.

The comments and NRC's responses are as follows:

A. Legal Issues.

1. Information Provided by NRC in Support of Proposed Rule.

difficult to develop a rationale for waiving the fees for one class of licensees while denying similar requests from other NRC licensees which may also be experiencing economic downturns.

6. Annual Fees for Spent Fuel Storage/Reactor Decommissioning

Comment. One commenter stated that the proposed 29.3 percent increase in annual fees for spent fuel storage/reactor decommissioning licensees is not equitable and places an undue burden on this particular class of licensees, which do not generate revenue through the sale of electricity and do not have a guarantee of recovering additional costs by petitioning local public utility commissions. The commenter further stated that rapidly rising annual fee increases for spent fuel storage/reactor decommissioning licensees places undue budget constraints that could affect the resources available for performing plant decommissioning activities.

Response. The NRC has responded to similar comments in previous rulemakings. Annual fees for the classes of licensees are based on the budgeted costs for the classes, as well as a surcharge to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensee, activities that are exempt from part 170 fees based on law or Commission policy, and those activities that support NRC operating licensees and others. Since budgeted costs for one class of licensees may rise or fall at different rates than for other classes of licensees, so will annual fees. The increase in annual fees for the spent fuel storage/reactor decommissioning class of licensees reflects an increase in budgeted costs allocated to this class since FY 2002. Recovering the costs associated with spent fuel storage and reactor

independent spent fuel storage

power

or possession only status

decommissioning from operating power reactors, ^{power} reactors in decommissioning ^{or possession only status} if they have fuel on site, and those ~~part 72 spent fuel storage~~ licensees who do not hold a part 50 license, is consistent with the intent of OBRA-90 ^{to assess annual fees} that NRC's resources be allocated among licensees or classes or licensees, ^{commensurate with} so that the licensees who require the greatest expenditure of the NRC's resources ~~will pay the greatest annual fee~~. Further, as stated above, the Commission believes it would be inequitable to grant fee relief to one class of licensees (except to address small entity issues in accordance with the RFA) on the basis of economic considerations, since this class would then need to be subsidized by other classes of licensees.

D. Other Issues.

1. Security Costs

Comment. The majority of comments did not support the NRC collecting security-related costs from licensees. These commenters noted that the FY 2003 NRC budget includes \$29.3 million for homeland security activities, and stated that these activities should be funded through the General Treasury as part of the nation's protection of critical infrastructure. Some of these commenters also stated that significant security costs are being incurred for nuclear vulnerability assessments without due consideration of the evaluated threats or rigor of the methodology for conducting these assessments, which is not the best way to allocate the nation's resources in defending against terrorist attacks. Other commenters noted their belief that there is overlap and duplication of functions in Nuclear Security and Incident Response with those of other Federal agencies, particularly the Department of Homeland Security. One comment suggested

early in the process as is practicable in order to give as much time as possible for licensees to plan for changes in fees.

III. Final Action

The NRC is amending 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. 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.

\$127.5
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The NRC estimates that approximately ~~\$127.6~~ 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 \$396.8 million will 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 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

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Less Estimated Part 170 Fees and Other Receipts	
Part 171 Fee Collections Required	\$398.8
Part 171 Billing Adjustments	
Unpaid FY 2003 Invoices (estimated)	2.4
Less Payments Received in FY 2003 for Prior Year Invoices (estimated)	- 4.3
Subtotal	- 1.9
Adjusted Part 171 Collections Required	\$396.8

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

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