

*Ronn Norris 9D3A
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changes*

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH37

Revision of Fee Schedules; Fee Recovery for FY 2004

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amend^{ing} the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 92 percent of its budget authority in fiscal year (FY) 2004, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2004 is approximately \$545.3 million.

EFFECTIVE DATE: (Insert date 60 days after publication).

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic

Currently we alternate between "OBRA-90" + "OBRA-90, as amended" - if we move this we can just use "OBRA-90" throughout without the need to add "as amended"

NO!

- II. Response to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- II. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Analysis
- IX. Backfit Analysis
- X. Small Business Regulatory Enforcement Fairness Act

I. Background

ins. cite 42 U.S.C. § 2214

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 budgeted costs that do not provide a direct benefit to the licensee, the FY 2001 Energy and Water Development Appropriations Act, ^{*ins. cite: Pub. L. 106-377*} 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 92 percent of its FY 2004 budget authority, less the amounts appropriated from the NWF, through fees. The Energy and Water Development Appropriation ^S Act, 2004 (Pub. L. 108-137), was adjusted by the Consolidated Appropriations Act, 2004 (P.L. 108-199), Division H, Section 168(b) to authorize a 0.59 percent across [^] the [^] board rescission of NRC's net budget authority. The amount

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appropriated to the NRC for FY 2004 is \$625.6 million. This sum includes \$32.9 million appropriated from the NWF. The total amount NRC is required to recover in fees for FY 2004 is approximately \$545.3 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 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 2004 proposed fee rule on February 2, 2004 (69 FR 4865) to solicit public comment on its proposed revisions to 10 CFR Parts 170 and 171. The NRC received 11 comments dated on or before the close of the comment period (March 3, 2004) and two additional comments thereafter, for a total of 13 comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Legal Issues.

Information Provided by NRC in Support of Proposed Rule.

Comment. Several commenters urged the NRC to provide licensees and the public with a more detailed explanation of the activities and associated costs that form the basis for NRC's fees. These commenters stated that the NRC should inform stakeholders of the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment on the proposed fee rules. The commenters stated that the NRC should provide an itemized accounting of the major elements that comprise the annual fee, including detailed information on the outstanding major contracts, their purpose, and their costs.

These commenters further stated that industry's ability to evaluate the agency's application of resources and priorities is impeded because the agency allocated 74 percent of its recoverable budget to the generic assessment under part 171, while only 26 percent is recovered under the discrete fee provisions of part 170. Similarly, another commenter stated that it is inaccurate to assume that a large majority of budget increases are not directly related to licensees and should therefore only be recovered through general annual fees. This commenter stated these costs should instead be allocated to individual licensees. ✓

Response. Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 92 percent of the NRC's FY 2004 budget authority, less the amounts appropriated from the NWF, from applicants and the various classes of NRC licensees. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those

With regard to the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, the NRC notes that it assesses part 170 fees under the IOAA, and consistent with Office of Management and Budget (OMB) Circular A-25, to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Further, the NRC notes that, as required by OBRA-90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. The NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171, as statute controls fee allocation. Generic costs that do not provide special benefits to identifiable recipients cannot be recovered under part 170. The NRC clearly sets forth in its workpapers the components of these generic costs and how those costs are recovered through annual fees. Additionally, the NRC notes that it has taken action to ^{modernize} increase the amount recovered under part 170, consistent with existing Federal law and policy. For example, in FY 1998 the agency began charging part 170 fees for resident inspectors and in FY 1999 the agency started charging part 170 fees for project manager activities associated with oversight of the assigned license or plant. In FY 2003 the NRC also amended its regulations to allow the agency to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and utilization of mixed oxide fuel.

Thus, rather than assuming that a large majority of budget increases are not directly related to licensees and should therefore only be recovered through general appropriations, the NRC seeks, whenever possible, consistent with applicable law, to sign its fee billing with the identifiable recipient of the benefit provided.

Reciprocity Fees

Comment. One commenter noted that Washington State licensees will experience a \$200 fee increase (from \$1,400 to \$1,600) when seeking reciprocity from the NRC. The commenter also noted that the proposed fee increases are warranted and appropriate.

commenter to increase as to any increase in this fee. The

Response. The NRC acknowledges the commenter's support of the agency's establishment of fees. The NRC does note, however, that the reciprocity fee for Agreement State licensees who conduct activities under the reciprocity provisions of §150.20 ^{remains} is \$1,500 in FY 2004, the same as ^{it was in} FY 2003, ^{as set forth in} The reciprocity fee did not change between the FY 2004 proposed fee rule and this final rule. This fee is listed in the Schedule of Materials Fees at §170.31, category 16.

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C. Specific Part 171 Issues.

1. Annual Fees for Materials Users, Including Small Entities

Comment. One commenter, who is an operator of a small radiology and nuclear medicine outpatient laboratory, expressed concerns regarding fee increases for medical facilities. The commenter stated that there are many cost pressures on these facilities, and it is becoming more difficult for these facilities to operate profitably. The commenter expressed concern that increasing fees could result in decreasing the availability of quality healthcare in many areas of the country due to these types of medical facilities having to close.

Response. The NRC ^{recognizes} acknowledges the concerns raised by the commenter regarding cost pressures on the healthcare industry. ^{In fact,} Regarding FY 2004 fees for medical licenses in only one instance did their annual fees increase from FY 2003 (for category 7B, annual fees went from

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\$24,700 to \$25,000 under §171.16). In three instances, these fees decreased for medical licenses (category 7A under both §§170.31 and 171.16 and category 7C under §171.16), and in two instances, they remained the same (category 7B and 7C under §170.3). The NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the NRC's annual fees for each class of license reflect the NRC's budgeted cost of its regulatory services to the class. The NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned accomplishment in each of the agency's major program areas. Furthermore, a reduction in the fees assessed to one class of licensees would require a corresponding increase in the fees assessed to other classes. Accordingly, the NRC has not based its annual fees on licensees' economic status, market conditions, or the inability of licensees to pass through the costs to its customers. Instead, the NRC has only considered the impacts that it is required to address by law.

actually slightly ✓
Abb changed

The NRC does note that if a medical (or any other type) facility meets the criteria for being a small entity, as established in 10 CFR Part 2.810, it qualifies for reduced annual fees. The NRC provides these reduced annual fees based on the provisions of the Regulatory Flexibility Act (RFA). The agency last re-examined its small entity fees in its FY 2003 final fee rule (68 FR 36714; June 18, 2003), in which the NRC determined that the current small entity fees of \$500 and \$2,300 continued to meet the objective of providing relief to many small entities while

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recovering from them some of the NRC costs associated with regulatory activities that benefit these licensees.

2. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received two comments regarding annual fees for uranium recovery licensees. These comments supported the continuation of the 2002 determination that the Department of Energy must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. The two commenters also supported the proposed fee structure for annual fees for Title II specific licensees as a fair and equitable arrangement for the uranium recovery industry in the United States. The commenters indicated that this fee structure will relieve a substantial burden on the remaining existing uranium mills in the United States as they await higher uranium prices that would allow them to resume full operation.

Response. The NRC appreciates the support it received regarding uranium recovery license fees. This final rule reflects the same methodology for calculating annual fees for uranium recovery licensees as was set forth in the proposed rule. This methodology is described in more detail in Section III.B.1.b. below. This methodology has resulted in FY 2004 annual fees of \$14,500 for Class I licensees (conventional mills), \$12,900 for Class II (solution mining) and 11e.(2) disposal incidental to existing tailings sites licensees, and \$12,800 for 11e.(2) disposal licensees. Some of these fees are ~~the~~ slightly lower than those set forth in the FY 2004 proposed fee rule because fewer budgeted resources were allocated to these categories in light of the 0.59 percent across the board rescission of NRC's net budget authority enacted under the Consolidated Appropriations Act, 2004.

3. Annual Fees for Power Reactor Licensees

Comment. One commenter stated that NRC fees represent a nontrivial percentage of a nuclear station's annual operating budget. This commenter stated that NRC fees place an even heavier burden, as a percentage of total plant operating and maintenance costs, on plants with comparatively smaller electrical output. The commenter suggested that NRC revisit its current annual fee assessment scheme for reactors, possibly basing a plant's annual fee on its licensed thermal power fraction of the total licensed thermal power of all 103 reactors with operating licenses.

Response. The NRC's part 171 operating power reactor annual fees include the costs for generic activities related to power reactors such as research, rulemakings and guidance development, as well as costs for other activities for the class not recovered through part 170 fees (e.g., allegations, most contested hearings, special projects for which fee waivers are granted, orders issued under 10 CFR 2.202 or responses to such orders). The annual fees for each class also include a share of the total surcharge costs. The surcharge is established to recover the costs for NRC activities that are not attributable to an existing NRC licensee or class of licensees, such as activities that are exempt from part 170 fees by law or Commission policy. The surcharge is required in order for NRC to meet its statutory fee recovery requirements. To address fairness and equity concerns related to charging NRC license holders for these expenses that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005. This decrease of eight percent in FY 2004 is applied to help offset the surcharge amount.

By statute, the NRC's annual fees must bear a "reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees." 42 U.S.C. 2214(c)(3).

The annual fee per operating power reactor is derived by dividing the costs allocated to that class by the number of operating power reactors. Hence, each operating power reactor is assessed an equivalent portion of the generic costs allocated to that class of licensee. Prior to FY 1995, the NRC did not assess uniform annual fees to reactors, but rather determined a reactor's annual fee based on a detailed analysis of vendor group, location, and other factors, such as type of containment. However, the NRC streamlined its fee program in FY 1995 (60 FR 14670; June 20, 1995) by establishing a uniform annual fee for operating power reactors, based on the fact that the difference in fees resulting from this more detailed analysis was small relative to the size of the annual fee. The agency continues to believe that this uniform fee is a fair and equitable way to recover the generic costs allocated to the operating power reactor class and that any difference in generic costs attributable to one power reactor as compared to another power reactor is not significant. Hence, the NRC does not believe that a change to its power reactor annual fee calculation methodology is justified.

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'per reactor'

clarify - do you mean each ind. fee or the total fee for reactors?

Costs do not vary significantly

licensed thermal power reactors
Yess.
NO!

annual reactor - cost

D. Other Issues.

1. Recovery of Security Costs

Comment. Several commenters strongly objected to the NRC collecting security-related costs from licensees. These commenters stated that homeland security issues related to nuclear power plants are part of the U.S. government's overall responsibility to protect its critical infrastructure, and hence these costs should be excluded from the fee structure and funded through the general treasury. These commenters noted that the nuclear industry has already incurred significant security costs, and that these costs have not been reimbursed by the Federal

government, unlike what has occurred for other industries. While the commenters stated that they recognized the public benefit of enhancing the already strong security at nuclear facilities, they thought it fundamentally unfair to require licensees to pay for the agency's additional security-related oversight.

Some commenters noted that power reactor licensees would face an increase in annual fees in FY 2004, mostly due to homeland security. These commenters noted that even while the NRC has received relief under the FY 2001 Energy and Water Development Appropriations Act to address concerns regarding the recovery of costs not directly attributable to a class of licensees, the practical effect of the inclusion of the costs of homeland security activities negates the fee relief provided. Some commenters also stated that they believed the resources allocated to security, particularly in terms of FTE, were too large and did not maximize agency efficiency and effectiveness. Some commenters also stated that they believed NRC's needed security resources should decrease once activities related to the April 2003 orders were concluded.

In light of concerns raised regarding homeland security activities and their cost recovery, these comments urged the NRC to continue to engage the Department of Homeland Security and congressional leaders to achieve a more equitable outcome for NRC licensees.

Response. The NRC appreciates the concerns raised by commenters with regard to homeland security costs being funded through licensee fees. However, the agency's required fee recovery is set by statute and therefore is outside the scope of this rulemaking. The Energy and Water Development Appropriations Act, 2004, as amended by the Consolidated Appropriations Act, 2004, appropriated to the NRC \$625.6 million for FY 2004. This sum includes \$32.9 million appropriated from the NWF. OBRA-90, as amended by the FY 2001

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Energy and Water Development Appropriations Act, requires the NRC to recover 92 percent of its budget, less the NWF. As such, the total amount NRC is required to recover in fees for FY 2004 is approximately \$545.3 million.

The NRC has supported previous legislative efforts to remove homeland security costs from the fee base, and continues to do so. In the 2003 Congressional session, an Energy Policy Bill (H.R.6) was introduced that would amend OBRA-90 to remove many homeland security costs from the fee base (namely, all homeland security costs except those associated with fingerprinting, background checks, and security inspections). In its August 29, 2003, letter to the House Committee on Energy and Commerce, the Commission supported the fee recovery provisions of the Energy Policy Bill. The House has approved the Energy Policy Bill produced by the conference committee and the Senate started debate on the conference committee report. ✓

However, as of the date of this rule, no further action has been taken by the Senate or House on this bill. *Handwritten: A new bill H.R. 426, S 2095 introduced with a threat to strip the Congress, which did remove many homeland security costs, and urges the nuclear industry to do the same (OGC-is-that last phrase OK to put-in rule?)*

Handwritten: The NRC will continue to support legislative efforts to remove homeland security costs from the fee base.

In response to the comments that expressed concern regarding how the NRC is expending homeland security funds, as stated previously, the NRC's budget and manner in which the agency carries out its activities are not within the scope of this rulemaking. The NRC does note that its FY 2005 budget request for homeland security direct resources is \$41.9 million, which is down from the FY 2004 budget of \$51.1 million. This decrease reflects the completion of work on vulnerability assessments and mitigating strategies and the completion of the reviews of nuclear power plant security plans that include the revised design-based threat. ✓

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NRC's budget is submitted to the Office of Management and Budget and to Congress for review and approval. The Congressional budget process affords stakeholders and the public opportunities to comment, including oversight meetings, testimony, press briefings, etc. The Congressionally-approved budget resulting from this process reflects the resources deemed necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget. However, the NRC notes that it will continue efforts to ensure that the agency carries out its statutory obligations in an efficient manner. ✓

3. Fee Rule Communication and Timing

Comment. Several commenters raised concerns that the timing of issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles, while recognizing that, for FY 2004, the NRC published its proposed fee rule about two months earlier than last year. To address this issue, commenters suggested that the NRC publish an estimate of fees for the following year, coincident with promulgation of the proposed fee rule each year. The commenters recognized that while it would likely be impossible for the NRC to offer exact projections, the Commission nevertheless should be able to develop reasonable estimates of the next year's fees.

Response. The NRC acknowledges the concerns raised by these commenters. However, because the NRC does not know in advance what its future budgets will be (i.e., proposed budgets must be submitted to the Office of Management and Budget for its review before the President submits the budget to Congress for enactment), the agency believes it is not practicable to project fees based on future estimated budgets. The NRC will continue to strive to

Adjusted Part 171 Collections Required \$389.9

is



The FY 2004 final fee rule will be a "major rule" as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fee schedules for FY 2004 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 2004 final rule. For these licensees, payment will be due on the effective date of the FY 2004 rule. Those materials licensees whose license anniversary date during FY 2004 falls before the effective date of the final FY 2004 rule will be billed for the annual fee during the anniversary month of the license at the FY 2003 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2004 rule will be billed for the annual fee at the FY 2004 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, as a cost saving measure, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees. Accordingly, the NRC does not plan to routinely mail the FY 2004 final fee 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 Team, Division of Financial Management, Office of the Chief Financial Officer, at 301-415-7554, or e-mail fees@nrc.gov. ~~The NRC plans to publish the final fee rule in May 2004.~~



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per direct FTE). This rate is applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2003 final fee rule, the reactor and materials program rates were \$156 and \$158, respectively.

The primary reason for the increase to the reactor rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the materials program, the increase is offset by a reduction in overhead costs and allocated agency management and support costs under this program.

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). All program costs, except contract support, are included in the hourly rate for each program by allocating them uniformly by the total number of direct FTEs for the program. 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 recovered through part 170 fees.

b. All non-program direct costs for management and support and the Office of the Inspector General, are allocated to each program based on that program's costs.

This method results in the following costs which are included in the hourly rates. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II. - FY 2004 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor	Materials
	<u>program</u>	<u>program</u>
Direct Program Salaries & Benefits	\$145.6M	\$35.4M
Overhead Salaries & Benefits,		
Program Travel and Other Support	69.9M	16.7M
Allocated Agency Management and Support	<u>120.3M</u>	<u>29.1M</u>
Subtotal	\$335.8M	\$81.1M
Less Offsetting Receipts	<u>-0.1M</u>	<u>-0.00M</u>
Total Budget Included in Hourly Rate	\$335.7M	\$81.1M
Program Direct FTEs	1203.4	293.4
Rate per Direct FTE	\$278,957	\$276,598
Professional Hourly Rate (Rate per direct		
FTE divided by 1,776 hours)	\$157	\$156

As shown in Table II, dividing the \$335.7 million budgeted amount (rounded) included in the hourly rate for the reactor program by the reactor program direct FTEs (1203.4) results in a rate for the reactor program of \$278,957 per FTE for FY 2004. The Direct FTE Hourly Rate for the reactor program will be \$157 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$278,957) by the number of productive hours in

one year (1,776 hours) as set forth in the revised OMB Circular A-76, "Performance of Commercial Activities." Similarly, dividing the \$81.1 million budgeted amount (rounded) included in the hourly rate for the materials program by the program direct FTEs (293.4) results in a rate of \$276,598 per FTE for FY 2004. The Direct FTE Hourly Rate for the materials program will be \$156 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$276,598) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is adjusting the current part 170 fees in §§170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§170.21 and 170.31 are based on the revised professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule will be assessed at the FY 2004 hourly rates.

The fees in §§170.21 and 170.31 that are based on the average time to review an application ("flat" fees) have been adjusted to reflect the change in the materials program professional hourly rate from FY 2003. The amounts of the materials licensing "flat" fees were rounded so that the amounts will be "de minimis" and the resulting flat fee will be convenient to the user. 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.

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right word?
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The licensing "flat" fees are applicable for fee categories K.1 through K.5 of §170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of §170.31. Applications filed on or after the effective date of the final rule will be subject to the revised fees in this final rule.

The NRC is expanding category 10 of §170.31 to include category 10.C for evaluation of security plans, route approvals and surveys, and transportation security devices, including immobilization devices. There has been an increase in the number of transportation security activities that the NRC oversees and an increase in the number and types of licensees covered by the transportation security requirements. Therefore, category 10 is being updated to clarify that licensees will be assessed full-cost fees for security-related activities as stated above.

Additionally, the NRC is modifying §170.21 category K. and §170.31 category 15 to clarify the import and export license language. This clarification is being made to reflect the current work being performed under these categories and to ensure consistency with 10 CFR

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3. Administrative Amendments

The NRC is modifying category 13 of §170.31, to include licensing and inspection fees under category 13.A and delete category 13.C. This change is being made so that §170.31 corresponds with the categorization used in §171.16(d).

Additionally, the NRC is modifying §170.12(f) to replace License Fee and Accounts Receivable Branch⁾⁾ with "Accounts Receivable Team."⁾⁾ This change is being made so that the regulation reflects the current Office of the Chief Financial Officer organizational structure.

The NRC is also revising §170.31 footnote 1(c) to remove information related to amendment fees associated with licenses other than export and import licenses. The NRC eliminated Part 170 "flat" amendment fees for materials licenses in FY 1999 (64 FR 31448; June 10, 1999). The amendment costs are now recovered through Part 171 annual fees assessed to materials licensees.

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

1. Revise the materials and reactor programs FTE hourly rates;
2. Revise the licensing fees to be assessed to reflect the reactor and materials program hourly rates;
3. Revise §170.31 to add category 10.C to clarify transportation security activities;
4. Modify §170.21 category K. and §170.31 category 15 to ensure consistency with 10 CFR Part 110;
5. Make an administrative change to fee category 13 of §170.31 to be consistent with category 13 of §171.16(d).

6. Revise §170.12(f) to replace "License Fee and Accounts Receivable Branch" with "Accounts Receivable Team."

7. Revise §170.31 footnote 1(c) to remove information related to amendment fees associated with licenses other than export and import licenses.

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 is revising the annual fees for FY 2004 as follows.

1. Annual Fees

The NRC is establishing rebaselined annual fees for FY 2004. 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), determined 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 2003. Based on the substantial change in the total budget from FY 2003 to FY 2004 and the magnitude of the budget allocated to certain classes of licensees, the Commission has determined that it is appropriate to rebaseline the annual fees again this year. Rebaselining fees results in increased annual fees compared to FY 2003 for three classes of licenses (power reactors, rare earth mills, and

transportation), and decreased annual fees for three classes (spent fuel storage/reactor decommissioning, non-power reactors, and fuel facilities). For the uranium recovery and small materials classes, some of the categories (sub-classes) of licenses will have decreased annual fees and others will have increased annual fees.

The annual fees in §§171.15 and 171.16 will be revised for FY 2004 to recover approximately 92 percent of the NRC's FY 2004 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 2004 is \$389.9 million, compared to \$396.8 million for FY 2003.

Within the nine fee classes of licensees, the FY 2004 annual fees will decrease for many categories of licenses, increase for other categories, and for five categories remain the same from the previous year. Of the five categories that remain the same, category 3P comprises the largest number of materials licensees. The increases in annual fees range from approximately .8 percent for licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 for research and development that do not authorize commercial distribution to approximately 108.1 percent for the uranium recovery disposal incidental to operations category. The decreases in annual fees range from approximately .9 percent for the category of commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material (i.e., nuclear laundry category) to approximately 77.2 percent for ^{the} conventional mills category.

Factors affecting the changes to the annual fee amounts include: adjustments in budgeted costs for the different classes of licenses; the reduction in the fee recovery rate from 94 percent

for FY 2003 to 92 percent for FY 2004; the estimated part 170 collections for the various classes of licenses; the decrease in the number of licensees for certain categories of licenses; and the \$3.5 million carryover from additional collections in FY 2003 that were unanticipated at the time the final FY 2003 final rule was published (i.e., there was no carryover from FY 2002 to reduce the FY 2003 fees).

Table III below shows the rebaselined annual fees for FY 2004 for a representative list of categories of licenses.

TABLE III. - REBASELINED ANNUAL FEES FOR FY 2004

<u>Class/category of licenses</u>	<u>FY 2004 Annual fee</u>
Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee)	\$3,283,000
Spent Fuel Storage/Reactor Decommissioning	203,000
Nonpower Reactors	62,500
High Enriched Uranium Fuel Facility	4,573,000
Low Enriched Uranium Fuel Facility	1,533,000
UF ₆ Conversion Facility	657,000
Conventional Mills	14,500
Transportation:	
Users/Fabricators	91,300
Users Only	7,400

Typical Materials Users:

Radiographers	11,900
Well Loggers	4,600
Gauge Users (Category 3P)	2,500
Broad Scope Medical	25,000

The annual fees assessed to each class of licenses include a surcharge to recover those NRC budgeted costs that are not directly or solely attributable to the classes of licenses, but must be recovered from licensees to comply with the requirements of OBRA-90, as amended. Based on the FY 2001 Energy and Water Development Appropriations Act which 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, the total surcharge costs for FY 2004 will be reduced by approximately \$47.4 million. The total FY 2004 budgeted costs for these activities and the reduction to the total surcharge amount for fee recovery purposes are shown in Table IV. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE IV. - SURCHARGE COSTS

[Dollars in millions]

<u>Category of costs</u>	<u>FY 2004 budgeted costs</u>
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	\$10.8
b. Agreement State oversight	10.5

annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 50 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 50 percent of the surcharge and generic/other costs are assessed to the NRC Title II program licensees that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown below. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

DOE Annual Fee Amount (UMTRCA Title I and Title II general licenses):

UMTRCA Title I budgeted costs	\$ 359,578
50 percent of generic/other uranium recovery budgeted costs	55,025
50 percent of uranium recovery surcharge	<u>38,121</u>
Total Annual Fee Amount for DOE	452,723

Annual Fee Amount for UMTRCA Title II Specific Licenses:

50 percent of generic/other uranium recovery budgeted costs	55,025
50 percent of uranium recovery surcharge	<u>38,121</u>
Total Annual Fee Amount for Title II Specific Licenses	93,145

The matrix used to allocate the costs of various categories of Title II specific licensees has been updated to reflect NRC's increased efforts related to facility closure compared to facility operations *the matrix also* and revises the weighting factors to reflect the effort levels per category.  However, consistent with the methodology established in the FY 1995 fee rule (60 FR 32218; June 20, 1995), the approach for establishing part 171 annual fees for Title II uranium recovery licensees has not changed, and is as follows:

fee amount. Therefore, as provided in §171.19(b), if the amounts collected in the first three quarters of FY 2004 exceed the amount of the revised annual fee, the overpayment will be refunded; if the amounts collected in the first three quarters are less than the final revised annual fee, the remainder will be billed after the FY 2004 final fee rule is published. The remaining categories of 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 \$320.3 million in budgeted costs to be recovered through FY 2004 annual fees assessed to the power reactor class, including budgeted costs for homeland security activities related to power reactors, is divided equally among the 104 power reactors licensed to operate. This results in a FY 2004 annual fee of \$3,080,000 per reactor. Additionally, each power reactor licensed to operate will be assessed the FY 2004 spent fuel storage/reactor decommissioning annual fee of \$203,000. This results in a total FY 2004 annual fee of \$3,283,000 for each power reactor licensed to operate.

✓
which is discussed in paragraph d. below

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2004, budgeted costs of approximately \$24.6 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 are divided equally among the 121 licensees, resulting in a FY 2004 annual fee of \$203,000 per licensee.

appropriate. The NRC will continue to conduct evaluations of the VA's performance and conduct independent inspections of a sample of VA medical facilities.

As a result of the issuance of the master materials license to the VA, 116 medical facilities that were previously licensed by the NRC for various uses of radioactive materials for the diagnosis and treatment of diseases are now included in the master materials license.

NO!

Thus, the number of licenses in the master materials category has increased from two to three, while the number of licenses for certain other categories has decreased because the

medical facility licenses have been consolidated into one license. [We also need a sentence explaining how this affects the fees of the NRC + Licenses in other categories]

4. Administrative Amendment

The NRC is modifying category 10 of §171.16(d) to add category 10.C for the evaluation of security plans, route approvals, route surveys, and transportation security devices, including immobilization devices. This is an administrative change that is being made only to ensure consistency with fee category 10.C of §170.31 as described above. The NRC is not proposing an annual fee for category 10.C.

Additionally, the NRC is modifying §171.19(a) to replace On-Line Payment and Collection System (OPAC's) with Intragovernmental Payment and Collection System (IPAC). This change is being made so that the regulation reflects the current payment process.

In summary, the NRC has --

1. Established rebaselined annual fees for FY 2004;

2. Adjusted the annual fees to reflect the changes in agreement state activities and the master materials licenses;
3. Made an administrative change to add fee category 10.C to §171.16(d) to ensure consistency with the addition of category 10.C to §170.31.
4. Revised §171.19(a) to replace "On-Line Payment and Collection System (OPAC's)" with "Intragovernmental Payment and Collection System (IPAC)." ✓
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✓

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC ^{is} ~~will~~ amend ^{ing} ~~the~~ licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 92 percent of its budget authority in FY 2004 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements. ✓

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature,

denied, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in Allied Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 92 percent of its FY 2004 budget authority through the assessment of user fees. This act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule will ^{es} establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2004. The final rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule. ✓

The Small Business Regulatory Enforcement Fairness Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2004.