

DOCKET NUMBER
PROPOSED RULES 170-171
(70 FR 08678)



March 24, 2005

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

DOCKETED
USNRC
March 25, 2005 (4:00pm)
OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Proposed Revision of Fee Schedules -- FY 2005

Dear Sir:

The National Mining Association (NMA) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2005. 70 Fed. Reg. 8677 (February 22, 2005). Due to a rebaselining this year, uranium recovery licensees will pay higher annual fees for FY 2005. As discussed below, NMA continues to have concerns about the fees.

NMA represents producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are NRC licensees and who are adversely affected by the NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

NMA has commented extensively in the past on NRC's fee allocation system. NMA acknowledges that the 1999 amendments (NRC Fairness in Funding Act) to the Omnibus Budget Reconciliation Act of 1990 (OBRA) addressed some of NMA's fairness and equity concerns regarding charging licensees for activities that provide licensees no direct benefit. Yet NMA remains concerned about fee calculation methodologies as the amendments will not guarantee a reasonable relationship between costs and benefits.

Annual Fees

Under the proposed rule, the new annual fee for uranium recovery licensees would increase: the Class I fee would increase from \$14,600 in FY 2004 to \$27,700 and the Class II fee would increase from \$12,900 in FY 2004 to \$27,700. The increase in annual fees is a result of an increase in budgeted resources for uranium recovery as well as fewer licensees (due to the State of Utah becoming an Agreement State).

NMA's still has concerns about the annual fee, mainly, that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory

oversight program and the benefit derived from such services. While the NRC Fairness in Funding Act alleviates some of NMA's equity concerns, it does not ensure a reasonable relationship between costs and benefits. NRC needs to continue to look for ways to ensure such a relationship is established.

This problem of the lack of reasonable relationship between annual fees and services rendered by NRC is exacerbated as more states become Agreement States and more sites are decommissioned, leaving fewer NRC licensees to bear an even greater share of the burden. NRC needs to continue to search for an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program. This scenario unfortunately appears to be playing out in the uranium recovery area with the State of Utah achieving Agreement State status, leaving only three producing ISL facilities and one conventional mills licensed by NRC. This is a serious situation that needs to be carefully reviewed and addressed.

As noted in the final FY 2002 rule, "a decreasing licensee base . . . presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates." 67 Fed. Reg. 42617. Some of the possible solutions that were discussed in the FY 2002 rule were establishing arbitrary fee caps or thresholds for certain classes of licensees or combining fee categories. NRC rejected such options citing fairness and equity concerns since these solutions would result in increased fees for other licensees. The FY 2002 rule also correctly noted that NMA had rejected a NRC proposal that would have capped fees in FY 1999. If the uranium recovery licensee base continues to decrease, NRC and NMA may have to revisit the fee cap issue or the other potential solutions discussed in the FY 2002 rule. In the meantime, NMA supports and urges NRC to continue its efforts to seek cost efficiencies through its annual reviews conducted as part of the budget process. In addition, NMA continues to support the continued implementation of NRC's determination that the Department of Energy (DOE) must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program.

Hourly Fees

Under the proposal, the new hourly rate applicable to the uranium recovery category of licensees would increase significantly from \$156 in FY 2004 to \$198. This 27% increase in the hourly rate is due to a government wide pay raise as well as a change in the assumed number of hours NRC employees spend on activities directly associated with the programmatic mission of the NRC. NRC needs to investigate ways to reduce hourly fees including streamlining of the regulatory process. For example, completion of Memorandums of Understanding (MOUs) between NRC and non-agreement states such as Wyoming or Nebraska regarding regulation of in-situ wellfields would help substantially to reduce costs to licensees. Expansion of performance based licensing and the use of Safety and Environmental Review Panels (SERPs) would also help in reducing hourly charges. Expansion of such concepts is justified due to the very low risks posed by uranium recovery licensees due to the relatively low activities of the materials that they handle.

NMA appreciates this opportunity to provide comments. If you have any questions, please contact me at 202/463-2627.

Sincerely,

A handwritten signature in black ink that reads "Katie Sweeney". The signature is written in a cursive, flowing style.

Katie Sweeney
Associate General Counsel

From: "Sweeney,Katie" <KSweeney@nma.org>
To: <SECY@nrc.gov>
Date: Fri, Mar 25, 2005 10:16 AM
Subject: RIN 3150-AH61; National Mining Association comments on FY 2005 fees

Attached are the comments of the National Mining Association on the proposed NRC fees for FY2005. If you have any questions or problems opening the comments, please contact me at 202/463-2627.

Katie Sweeney
Associate General Counsel
National Mining Association
202/463-2627
<<final fy2005 comments.pdf>>

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Subject: RIN 3150-AH61; National Mining Association comments on FY 2005 fees
Creation Date: Fri, Mar 25, 2005 10:16 AM
From: "Sweeney,Katie" <KSweeney@nma.org>
Created By: KSweeney@nma.org

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