

*** * * IMPORTANT * * ***

NRC'S PROPOSED FY 2007 FEE RULE

Please read the enclosed document carefully. It may substantially impact the fees you are assessed by the NRC. Please submit any comments on the proposed fee rule changes within the 30-day comment period. To ensure that comments are received within the 30-day comment period, you may fax your comments to 301-415-1101 in addition to mailing them. The proposed changes are summarized in the cover memorandum.

January 25, 2007

IMPORTANT NOTICE

TO: ALL PARTS 30, 40, 50, 52, 61, 70, 71, 72, 73, 76 AND 110 LICENSEES,
APPLICANTS, REACTOR VENDORS, AND OWNERS' GROUPS

SUBJECT: PROPOSED REVISIONS TO 10 CFR PARTS 170 AND 171 ON LICENSE,
INSPECTION, AND ANNUAL FEES FOR FY 2007

Shortly after the date of this letter, the U.S. Nuclear Regulatory Commission (NRC) will publish the enclosed Notice of Proposed Rulemaking in the Federal Register for public comment. This notice proposes revisions to the fee requirements of 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses, . . ." and Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, . . .". These proposed revisions would implement the Omnibus Budget Reconciliation Act of 1990, as amended, which mandates that the NRC recover approximately 90 percent of its budget authority (less the appropriations from the Nuclear Waste Fund, and for Waste Incidental to Reprocessing and generic homeland security activities), in Fiscal Year (FY) 2007.

Although the NRC has not received a new appropriation for FY 2007, and is currently operating under a continuing resolution based on the agency's FY 2006 budget, the NRC must proceed with its FY 2007 fee rule because it must collect the required fee amounts by September 30, 2007. Therefore, the NRC's FY 2007 proposed fee rule is based on the Energy and Water Development Appropriations Act, 2007 (H.R. 5427), which has been approved by the full House of Representatives. If Congress enacts a different version of the NRC's budget than that included in H.R. 5427, the fees in the NRC's FY 2007 final fee rule will be adjusted to reflect the enacted budget.

Based on H.R. 5427, the required fee recovery amount for the NRC's FY 2007 budget is approximately \$663.7 million, which is increased by \$1.2 million to account for carryover and billing adjustments, resulting in a total of approximately \$664.9 million that must be recovered through fees in FY 2007. Of that total, the NRC estimates that approximately \$193.4 million will be recovered from fees for services assessed under 10 CFR Part 170, and \$471.5 million will be recovered through 10 CFR Part 171 annual fees.

The most significant proposed changes to Part 170 are:

1. **Hourly Rates.** The NRC would establish one professional hourly rate of \$256 to recover the cost of activities under Part 170. This would replace the two existing hourly rates of \$217 for the Nuclear Reactor Safety Program and \$214 for the Nuclear

Materials and Waste Safety Program. The NRC is proposing to use one hourly rate because the two existing rates have been similar for years, and because of the administrative burden associated with calculating and billing two hourly rates.

The proposed hourly rate increases in FY 2007 primarily because of a revised estimate of direct staff hours per full time equivalent (FTE) in the hourly rate calculations. Because the NRC's hourly rates are calculated by dividing the total annual costs of a direct FTE by average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculations, the higher the hourly rates. In FYs 2005 and 2006, the NRC used 1,446 hours per direct FTE to calculate the hourly rates, while the new hourly rate uses 1,287 hours per direct FTE.

The NRC is updating its estimate of direct hours per FTE in order to reflect the latest, most detailed information from the agency's time and labor system. The NRC's estimate of direct hours per FTE is based on hours charged to mission direct activities, and excludes time for paid leave (federal holidays, annual leave, and sick leave) and training and administrative activities, referred to as indirect hours. Because the intended purpose of the NRC's hourly rates is to estimate a cost per hour of mission direct time, it is appropriate to exclude indirect time from its estimate of hours per FTE.

The NRC believes the new proposed hourly rate of \$256 more accurately reflects the resources the NRC expends providing licensee-specific services, and is consistent with guidance provided by the Office of Management and Budget in Circular A-25, "User Charges," on recovering the full cost of services provided to identifiable beneficiaries.

Note the new hourly rate would not change the NRC's overall fee recovery, since costs not recovered through Part 170 fees are recovered through Part 171 annual fees. Once implemented, the new hourly rate would increase the agency's Part 170 revenue, but decrease total annual fees by the same amount. This shift in fee recovery from Part 170 to Part 171 supports industry comments that consistently recommend that the NRC collect more of its budget through Part 170 fees-for-services vs. Part 171 annual fees.

2. **Part 170 Flat Fees.** The "flat" license application fees at §§170.21 and 170.31 would be revised to reflect the new hourly rate and to comply with the requirement under the Chief Financial Officers Act of 1990 (Pub. L. 101-578) that fees be reviewed biennially and revised as necessary to reflect the cost to the agency. Additionally, new flat fees are proposed for import and export license exemption requests, and flat application fees for facilities in §170.21 would be eliminated.
3. **Clarify that All Licensee-Specific Activities Are Subject to Part 170 Fees.** The FY 2007 fee rule proposes to revise 170.12 to clarify that unless otherwise specifically exempted, all licensee-specific activities are subject to full cost recovery under Part 170.

The most significant proposals under Part 171 are:

1. **Revised Annual Fees.** Revised annual fees would be established in §§171.15 and 171.16, using the "rebaselining" fee calculation method. This would result in increased annual fees compared to FY 2006 for two classes of licenses (power reactors and non-

power reactors), and decreased annual fees for five classes of licenses (spent fuel storage/reactor decommissioning, fuel facilities, uranium recovery, rare earth, and transportation). Within the materials users fee class, annual fees for most of the categories (sub-classes) of licenses would decrease, while annual fees for some would increase or remain the same.

The most significant factors affecting the changes to the annual fee amounts are the increase in budgeted resources for new reactor activities, and the removal of generic homeland security resources from the fee base in accordance with the Energy Policy Act of 2005 (discussed further below). Other factors include changes in budgeted costs and estimated Part 170 collections for the different classes of licenses.

2. **Generic Homeland Security Budget Off Fee Base.** In accordance with Section 637 of the Energy Policy Act of 2005, the budgeted resources associated with generic homeland security activities are excluded from the NRC's fees each year, beginning with this FY 2007 fee rule. (Generic activities are those that support many licensees or types of licensees, such as rulemakings, guidance development, and vulnerability assessments.) This results in the removal of approximately \$35.3 million from the fee base in FY 2007. The NRC will continue to bill Part 170 fees for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.
3. **Use "Excess Fee Relief" to Reduce All Licensees' Annual Fees.** The NRC applies the 10 percent of its budget that it receives in appropriations ("fee relief") to offset the costs of activities for which it does not charge fees or charges reduced fees. The costs of these "surcharge" activities are totaled, and then reduced by the amount of the NRC's fee relief. In prior years, any remaining surcharge costs were then allocated to all licensees' annual fees, based on their percent of the budget (i.e., over 80 percent was allocated to power reactors each year). In FY 2007, the NRC's 10 percent fee relief exceeds the total surcharge costs by approximately \$9.6 million. Therefore, the NRC is proposing to use its "excess" fee relief to reduce all licensees' annual fees, based on their percent of the budget.
4. **Revise Proration Provisions for Materials Annual Fees Over \$100,000.** The rule proposes to revise the annual fee proration provisions in §171.17, for certain new materials licenses, license terminations, and downgrades. This change would require annual fees of \$100,000 or more for a single materials fee category to be prorated based on the number of days the license was in effect. This would enhance fee fairness because it would result in these materials licensees being subject to the same annual fee proration requirements as reactor and Part 72 licensees.
5. **Policy on Timing of the Assessment of Annual Fees.** The NRC is codifying its existing policy on when the assessment of annual fees begins. The fee rule explains that for licensees subject to regulations that require a specific NRC authorization to operate subsequent to the NRC issuing the license, annual fees are not assessed until

NRC grants the authorization. At the present time, this clarification affects only uranium enrichment licensees. (The NRC's regulations already provide that Part 52 combined operating license holders are not subject to annual fees until the Commission authorizes fuel load and operation of the reactor.)

6. **Revise Surcharge Categories.** The FY 2007 proposed fee rule (A) eliminates the 'Federal agency' surcharge category, because Federal agencies became subject to Part 170 fees as of August 2006; (B) eliminates the 'unlicensed sites' surcharge category, because these sites became subject to Part 170 fees as of August 2006; and (C) added the costs of the in-situ leach rulemaking to the surcharge, in accordance with the Commission Staff Requirements Memorandum COMJSM-06-001, "Regulation of Groundwater Protection at In Situ Leach Uranium Extraction Facilities," dated March 23, 2006 (ML060820503).
7. **Small Entity Fees Unchanged.** The NRC is proposing to retain the annual fees of \$2,300 and \$500 for licensees that qualify as small entities.

All parties desiring to submit written comments for consideration on this proposed fee rule should send them to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff, within 30 days from publication in the Federal Register. To ensure that comments are received on time, comments may also be faxed to 301-415-1101. Comments may also be hand delivered to: 11555 Rockville Pike, Rockville, MD 20852, Monday through Friday between the hours of 7:30 a.m. and 4:15 p.m. (Telephone: 301-415-1966). Comments may be sent via e-mail to SECY@nrc.gov. Additionally, comments may be submitted via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). For information about the NRC's interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; or e-mail cag@nrc.gov.

Please note that the NRC does not plan to routinely mail the final rule to licensees. However, copies will be sent upon specific request. To request a copy, contact the License Fee Team at 301-415-7554, or e-mail fees@nrc.gov. In addition to publication in the Federal Register, the final rule will be available electronically on the Internet at <http://ruleforum.llnl.gov>.

Sincerely,

/RA/

Mary S. Givvines, Director
Division of Financial Management
Office of the Chief Financial Officer

Enclosure:
Proposed Revision to 10 CFR Parts 170 and 171

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Enclosure:
Proposed Revision to 10 CFR Parts 170 and 171

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NAME	TCroote*		MSGivvines*
DATE	01/ 03/07		01/ 08/07