

May 26, 2009

MEMORANDUM TO: Chairman Jaczko
Commissioner Klein
Commissioner Lyons
Commissioner Svinicki

FROM: J. E. Dyer */RA/*
Chief Financial Officer

SUBJECT: COMMISSION NOTIFICATION OF A FINAL RULE SIGNED BY
THE CHIEF FINANCIAL OFFICER

On May 26, 2009, I approved the enclosed final rule that amends 10 CFR Parts 170 and 171. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended, which requires the U.S. Nuclear Regulatory Commission (NRC) to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2009 (not including amounts appropriated from the Nuclear Waste Fund, amounts appropriated for Waste Incidental to Reprocessing, and generic homeland security activities). The NRC's required fee recovery amount for the FY 2009 budget is approximately \$870.6 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately \$866.5 million.

Ten comments were received on the proposed rule. A summary of these comments were provided to the Commissioners' Assistants on April 21, 2009 (ADAMS accession number ML091110404). Most of the comments are associated with the higher FY 2009 budget and subsequent increase in fees. Commenters from the fuel facility and uranium recovery industries expressed concern about the high rates of increase in their respective annual fees. One commenter requested that NRC rescind the proposed revision to the description of fee category 17, Master Materials Licenses, which added non-Federal multi-site entities to this fee category. Our evaluation of the comments resulted in one change in the final rule. In light of the concerns expressed by the commenter, the description of fee category 17 is not changed in the final fee rule. Although NRC gave legally sufficient notice under the Administrative Procedure Act, staff believes it is necessary to perform additional studies of the best way to equitably recover the cost of providing regulatory oversight for large non-Federal multi-site licenses. The agency's responses to the comments are found on pages 5 through 17 of the final fee rule.

Compared to FY 2008, the FY 2009 annual fees increased for the power reactor, non-power reactor, and fuel facility fee classes, and decreased for the spent fuel storage/reactor decommissioning fee class. The annual fee remains the same for the transportation fee class. Within the materials users and uranium recovery fee classes, annual fees for most licensees increased, while annual fees for some licensees decreased. The significant factors affecting the

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increases to Part 171 annual fee amounts are: (a) increases in budgeted resources for reactor licensing renewal activities, and licensing activities for both new uranium enrichment and recovery facilities; and (b) lower than expected revenue estimates for fee collections under Part 170 activities. The enclosed chart compares the FY 2009 annual fees to the FY 2008 and FY 2007 annual fees. This chart also includes the FY 2009 proposed rule annual fee amounts.

The rule also includes the following changes:

- **Hourly Rate.** The NRC's professional hourly rate to recover the cost of activities under 10 CFR Part 170 is \$257. The FY 2009 hourly rate is higher than the FY 2008 rate of \$238, primarily due to a higher FY 2009 budget. There was no change to the hourly rate between the final rule and the proposed rule.
- **10 CFR Part 170 Flat Fees.** The NRC is revising the flat license application fees in 10 CFR 170.21 and 170.31 to reflect the new hourly rate.
- **Small Entity Fees Reduced.** The NRC is reducing the annual fees to \$1,900 and \$400 for licensees that qualify as small entities. This is a decrease of approximately 17 percent from the FY 2008 fee amounts of \$2,300 and \$500, respectively.

The agency added six updates to the FY 2009 fee calculations since the proposed rule. A summary of these updates are found on page 19 of the final rule. The impact of these updates on the FY 2009 fees is minimal.

In accordance with Management Directive 9.20, "Organization and Functions, Office of the Chief Financial Officer," this notice informs the Commission that I have signed this final rule and I am forwarding it to the Office of the Federal Register for publication.

Enclosures:

1. FY 2009 Final Fee Rule
2. Comparison of 10 CFR 171
Annual Fees (Per License)

cc: OGC
S. McKelvin, SECY

increases to Part 171 annual fee amounts are: (a) increases in budgeted resources for reactor licensing renewal activities, and licensing activities for both new uranium enrichment and recovery facilities; and (b) lower than expected revenue estimates for fee collections under Part 170 activities. The enclosed chart compares the FY 2009 annual fees to the FY 2008 and FY 2007 annual fees. This chart also includes the FY 2009 proposed rule annual fee amounts.

The rule also includes the following changes:

- **Hourly Rate.** The NRC’s professional hourly rate to recover the cost of activities under 10 CFR Part 170 is \$257. The FY 2009 hourly rate is higher than the FY 2008 rate of \$238, primarily due to a higher FY 2009 budget. There was no change to the hourly rate between the final rule and the proposed rule.
- **10 CFR Part 170 Flat Fees.** The NRC is revising the flat license application fees in 10 CFR 170.21 and 170.31 to reflect the new hourly rate.
- **Small Entity Fees Reduced.** The NRC is reducing the annual fees to \$1,900 and \$400 for licensees that qualify as small entities. This is a decrease of approximately 17 percent from the FY 2008 fee amounts of \$2,300 and \$500, respectively.

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In accordance with Management Directive 9.20, “Organization and Functions, Office of the Chief Financial Officer,” this notice informs the Commission that I have signed this final rule and I am forwarding it to the Office of the Federal Register for publication.

Enclosures:

1. FY 2009 Final Fee Rule
2. Comparison of 10 CFR 171 Annual Fees (Per License)

cc: OGC
S. McKelvin, SECY

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