

March 22, 2016

*** * * IMPORTANT NOTICE * * ***

Please read this notice 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: ALL 12 CFR PARTS 9, 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, SPECIAL PROJECT AND ANNUAL FEES FOR FISCAL YEAR
2016 AND 10 CFR PART 9, PUBLIC RECORDS

Shortly after the date of this letter, the U.S. Nuclear Regulatory Commission (NRC) will publish a Notice of Proposed Rulemaking in the *Federal Register* for public comment. The instructions for accessing the notice on the Internet are provided at the end of this notice.

The notice proposes revisions to the fee requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 170, "Fees for Facilities, Materials, Import and Export Licenses," and 10 CFR part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses." The 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 (not including amounts appropriated for Waste Incidental to Reprocessing, Generic Homeland Security activities, Nuclear Waste Fund and for Inspector General Services for the Defense Nuclear Facilities Safety Board in fiscal year (FY) 2016. Additionally, the NRC proposes a revision to 10 CFR Part 170 and 10 CFR Part 9, "Public Records," to authorize the collection of Touhy fees under 10 CFR Part 170.

The FY 2016 proposed fee rule is based on the Consolidated Appropriations Act, 2016 (Public Law 114-113), giving the NRC a total appropriation of \$1,002.1 million, a decrease of \$13.2 million from the FY 2015 appropriation of \$1,015.3 million. For FY 2016, the NRC's required fee recovery amount is approximately \$882.9 million. After accounting for billing and collection adjustments, the total amount to be billed as fees is approximately \$883.9 million. The NRC estimates that approximately \$325.8 million will be billed for services assessed under 10 CFR Part 170, and \$558.1 million will be billed under 10 CFR Part 171 as annual fees.

The most significant proposed changes to 10 CFR parts 9, 170 and 171 are:

10 CFR Part 9

Policy Change

Touhy Fees. The NRC proposes to amend 10 CFR Part 9 to authorize the collection of Touhy fees through 10 CFR part 170.

10 CFR Part 170

Policy Change

Touhy Fees. The NRC proposes to recover its costs when it responds to third-party demands for information in litigation where the NRC or United States is not a party (“Touhy requests”) under 10 CFR Part 170. Currently, the NRC fee regulations prevent the NRC from recouping these costs under 10 CFR Part 170 users fees; therefore, these costs are recouped under 10 CFR Part 171. The proposed language seeks to assess fees for NRC manpower hours spent on Touhy requests exceeding 50 hours. Requestors of this information also retain the ability to request this information under the Freedom of Information Act, or under 10 CFR Part 170.11 apply for an exemption to have the fees waived if it would be “in the public interest.”

Administrative Changes

1. **Hourly Rate.** The NRC would establish a professional hourly rate of \$266 to recover the cost of activities. The FY 2016 hourly rate is lower than the FY 2015 rate of \$268, due to a reduced budget and an increase in the estimated direct hours worked per mission direct full time equivalent (FTE) during the year.
2. **10 CFR Part 170 Flat Fees.** The NRC would revise the flat license application fees in 10 CFR 170.21 and 170.31 to reflect the new lower hourly rate for FY 2016.
3. **Fee Exemptions.** The NRC proposes to amend the language under 10 CFR 170.11 to clarify when stakeholders can receive a fee exemption after submitting a report to the NRC for review.

10 CFR Part 171

Policy Change – None

Administrative Changes

1. **Revised Annual Fees.** The NRC would revise its annual fees in 10 CFR 171.15 and 171.16 using the rebaselined fee calculation method. This would result in decreased annual fees for most licensees compared to FY 2015. The FY 2016 rebaselined fees would decrease for operating reactors, fuel facilities, research and test reactors, spent fuel storage/reactor decommissioning licensees, some materials users, and DOE transportation activities, and increase for most uranium recovery licensees.
2. **Application of Fee Relief.** In FY 2016, the total budgeted resources for fee-relief activities are \$1.5 million less than the NRC’s prescribed 10-percent fee relief. The NRC would distribute the \$1.5 million credit by decreasing all licensees’ annual fees based on their percent of the budget.
3. **Small Entity Fees Change.** The NRC staff is proposing to amend the upper-tier small entity fee to \$3,400 and amend the lower-tier small entity fee to \$700 for FY 2016. Because of a technical oversight, the change was not included in the FY 2015 final fee rule. These fees would represent a 21-percent average percentage increase based on two prior biennial reviews of small entity fees. The staff believes these fees are reasonable and provide

relief to small entities while at the same time recovering from those licensees some of the NRC's costs for activities that benefit them.

Other Administrative Changes:

- Direct Hours per Full-Time Equivalent (FTE). The NRC staff is proposing to increase the direct hours per FTE in the hourly rate calculation from 1,420 in FY 2015 to 1,440 in FY 2016. The staff determined that this number better represents the increased productivity captured in the NRC's time and labor data system.

The comment period for the proposed rule expires 30 days after the publication date in the *Federal Register*. Please include Docket ID NRC-2015-0223 in the subject line of your comments. Comments submitted in writing or in electronic form will be made publicly available. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. You may submit comments by one of the following methods:

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID **NRC-2015-0223**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail Carol.Gallagher@nrc.gov.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.
- **E-mail comments to:** Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677.
- **Hand deliver comments to:** 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays.
- **Fax comments to:** Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

Also, please note that the NRC does not routinely mail the proposed or the final rule to licensees. However, the NRC will send a copy of the proposed or final rule to any licensee or other person upon specific request. To request a copy, contact the Division of Planning and Budget, License Fee Policy Team, Office of the Chief Financial Officer, on 301-415-5256 in addition to publication in the *Federal Register*, the rule will be available online in the NRC's Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

Sincerely,

/RA/

L. Ben Ficks, Director
Division of Planning and Budget
Office of the Chief Financial Officer

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L. Ben Ficks, Director
Division of Planning and Budget
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