

January 25, 2018

*** * * 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
2018

The U.S. Nuclear Regulatory Commission (NRC) published a Notice of Proposed Rulemaking in the Federal Register for public comment on January 25, 2018, (83 FR 3407). 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, Nuclear Waste Fund, Generic Homeland Security activities, and Inspector General Services for the Defense Nuclear Facilities Safety Board.

The fiscal year (FY) 2018 proposed fee rule is based on the FY 2018 Congressional Budget Justification (CBJ): FY 2018 (NUREG-1100, Volume 33, ADAMS Accession No. ML17137A246), as adjusted, to reflect the lack of full-year appropriations for FY 2018 and an anticipated \$15.0 million for the NRC's Integrated University Program, in the amount of \$967.0 million. This is an increase of \$49.9 million from the FY 2017 appropriation of \$917.1 million. For FY 2018, the NRC's required fee recovery amount is approximately \$827.5 million. After accounting for billing and collection adjustments, the total amount to be billed as fees is approximately \$826.7 million. The NRC estimates that approximately \$289.4 million will be billed for services assessed under 10 CFR Part 170, and \$537.3 million will be billed under 10 CFR Part 171 as annual fees. The NRC has taken the most conservative approach to estimating the FY 2018 fee collections to allow for maximum flexibility in planning for licensees. If the NRC receives an appropriation that is different from the adjusted CBJ request, those amounts will be reflected in the final rule.

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

FY 2018 — Policy Change

The NRC proposes one policy change for FY 2018:

Changes to Small Materials Users Fee Categories for Locations of Use

The NRC proposes to add seven new fee subcategories under 10 CFR 170.31, “Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,” and 10 CFR 171.16, “Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC.” Generally speaking, 10 CFR 170.31 assigns the same fee to each licensee in the fee category, regardless of the amount of locations that the licensee is authorized to use. Yet for some of these fee categories, the NRC staff recently determined that it spends a disproportionate amount of time on licensees with six or more locations compared to licensees in the same fee category with fewer than six locations. Therefore, the NRC is proposing to revise its fee categories so that these fees better align with the actual costs of providing regulatory services.

Previously—in the FY 2015 final fee rule—the NRC added three fee subcategories under one fee category, 3.L. (research and development broad scope) for licenses with six or more locations of use. Although there are 14 additional fee categories that could be modified, the NRC determined that most affected licenses are covered under only 7 of the 14 fee categories. Accordingly, the NRC is proposing to add subcategories to these seven fee categories:

- Manufacturing broad scope licenses under fee category 3.A.
- Other manufacturing licenses under fee category 3.B.
- Medical product distribution licenses under fee category 3.C.
- Industrial radiography licenses under fee category 3.O.
- Other byproduct licenses (e.g., portable and fixed gauges, measuring systems) under fee category 3.P.
- Medical licenses under fee categories 7.A. and 7.B.

To more accurately reflect the cost of services provided by the NRC, this change would result in each fee category having subcategories for 1-5, 6-20, and more than 20 locations of use.

FY 2018 — Administrative Changes

The NRC also proposes eleven administrative changes:

1. Revise the methodology of charging licensees for overhead time for project managers (PMs) and resident inspectors (RIs).

The NRC proposes to revise the methodology of charging licensees for overhead time for PMs and RIs. Currently, the NRC includes an overhead cost of 6 percent of direct billable costs to all licensees’ invoices. The overhead charge is intended to recover the full cost for PM and RI activities that provide a direct benefit to the assigned licensee or site.

In FY 2015 to FY 2017, this 6-percent value was based on the analysis of 4 years of billing data (FY 2011 to FY 2014) for overhead activities recorded in the time and labor system by a PM or RI and billed to the dockets to which the PM or the RI were officially assigned. The NRC has reviewed the process and, as a process enhancement, created docket-related fee-billable cost activity codes. Once the FY 2018 final fee rule is effective, the licensee invoices will no longer

include the 6-percent overhead allocation. Instead, the licensee invoices will include the actual hours for activities that support and directly benefit the assigned licensee or site.

2. Add definitions for inputs in the professional hourly rate calculation in 10 CFR part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended.”

In response to the recommendations in the U.S. Government Accountability Office (GAO) report titled “Nuclear Regulatory Commission: Regulatory Fee-Setting Calculations Need Greater Transparency” (GAO-17-232), dated February 2, 2017, the NRC committed to adding definitions for the professional hourly rate components in 10 CFR part 170 during the FY 2018 fee rulemaking. The NRC therefore proposes to add definitions for “agency support (corporate support and the IG),” “mission-direct program salaries and benefits,” and “mission-indirect program support” to 10 CFR 170.3, “Definitions.”

3. Delete the definition of “overhead and general and administrative costs” from 10 CFR 170.3 and 10 CFR 171.5.

The term “overhead and general and administrative costs” is currently defined in 10 CFR 170.3 and 10 CFR 171.5, but it is not used in 10 CFR parts 170 and 171. Nor do the subordinate elements of the definition—“Government benefits,” “travel costs,” “overhead,” “administrative support costs,” and “indirect costs”—appear elsewhere in parts 170 and 171. The NRC therefore proposes to delete these definitions for clarity purposes.

4. Amend language under 10 CFR 170.11, “Exemptions,” to add a new paragraph to include the timeframe in which a request for a fee exemption must be submitted to the Chief Financial Officer (CFO) under 10 CFR part 170.

The NRC proposes to revise language to provide that a request for a fee exemption under 10 CFR 170.11(a)(1) must be submitted to the CFO within 90 days of the date of the NRC’s receipt of the work.

5. Amend language under 10 CFR 170.31, “Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,” and 10 CFR 171.16, “Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC,” to enhance clarity.

When a materials license (or part of a materials license) changes from operational to decommissioning status, it transitions to fee category 14.A. There are two aspects of the fee treatment that follows transition to fee category 14.A. First, the materials license (or part of a materials license) that transitions to fee category 14.A is assessed full cost fees under 10 CFR part 170, even if, before the transition to this fee category, the licensee was assessed flat fees under 10 CFR part 170. Second, the materials license (or part of a materials license) that transitions to fee category 14.A is not assessed annual fees under 10 CFR part 171. If only part of a materials license is transitioned to fee category 14.A, the licensee may be charged annual fees (and any applicable 10 CFR part 170 fees) for other activities authorized under the license that are not in decommissioning status. The NRC is proposing to add a new footnote to the table in 10 CFR 170.31 and to the table in 10 CFR 171.16 to emphasize the fee treatment that follows a transition to fee category 14.A.

The NRC also proposes to add new language to the description of fee category 14.A. in both 10 CFR 170.31 and 171.16 in order to enhance clarity regarding when a materials license (or part of a materials license) transitions to fee category 14.A. Specifically, this transition occurs when

a licensee has permanently ceased principal activities. For guidance on what constitutes “permanently ceasing principal activities,” please see Regulatory Issue Summary 2015-19 (Sept. 27, 2016) (ADAMS Accession No. ML16008A242).

6. Amend language under 10 CFR 171.3 and 10 CFR 171.16(a) to clarify when the assessment of annual fees begins for uranium recovery and fuel facility licensees.

Both uranium recovery and fuel facilities licenses include a condition that the NRC must complete a post-construction, pre-operational inspection to authorize a licensee to possess and use source material. In the FY 2007 final fee rule, the NRC added language to 10 CFR 171.3 and 10 CFR 171.16(a) to codify its policy that annual fees for uranium enrichment facilities will be assessed after the NRC verifies through inspection that the facility has been constructed in accordance with the requirements of the license. The NRC proposes to amend those sections to codify the policy that the assessment of annual fees for uranium recovery or fuel facility licensees, including uranium enrichment facility licensees, begins after the NRC inspection verifies that the facility has been constructed in accordance with the requirements of the license.

7. Amend footnote 9 to the table in 10 CFR 171.16(d) for clarity.

The NRC proposes to revise footnote 9 to clarify that nuclear medicine licensees under fee category 7.A. would not be assessed a separate annual fee for pacemaker licenses.

8. Delete footnote 15 to the table in 10 CFR 171.16(d).

The NRC proposes to delete footnote 15 because footnote 16 is more comprehensive and already includes the relevant information from footnote 15. The current footnote 16 would be renumbered as footnote 15, and the footnotes that follow current footnote 16 would be renumbered. All references to these footnotes in fee categories will be adjusted accordingly.

9. Amend footnote 16 to the table in 10 CFR 171.16(d) for clarity.

The NRC proposes to renumber footnote 16 as footnote 15, as indicated, and revise it to clarify that licensees paying fees under fee category 17 are not be subject to additional fees listed in the table.

10. Add a new footnote to the table in 10 CFR 171.16(d) for clarity.

The NRC proposes to add a new footnote (as footnote 20) to clarify when licensees are exempt from paying annual fees under a specific fee category when they are licensed under multiple fee categories. The NRC currently follows this guidance and would add references to the new footnote 20 to fee categories 2.B., 3.N., and 3.P. to enhance clarity.

11. Amend language under 10 CFR 171.17, “Proration,” to add a new sentence on the proration of fees.

The NRC proposes to revise language regarding 1) reactors, 2) licensees under 10 CFR part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,” who do not hold 10 CFR part 50, “Domestic Licensing of Production and Utilization Facilities,” licenses and 3) materials licensees with annual fees of \$100,000 or greater for a single fee category. The NRC proposes to base the proration of annual fees for terminated and downgraded licensees on the fee rule in effect at the time the termination or downgrade action is official. The NRC will base the determinations on the proration requirements under 10 CFR 171.17(a)(2) and (3).

Under the current regulations, proration is based on the fee rule for the current fiscal year. This prevents the NRC from accurately billing the licensee at the time the termination or downgrade action is official based on the proration requirements under 10 CFR 171.17(a)(2) and (3). The NRC has to wait until the current year's fee rule is effective (typically during the fourth quarter of a fiscal year) to either bill additional amounts or process refunds to the licensee based on the new fee rule amount.

This amendment would allow the NRC to prorate annual fees based on the fee rule in effect at the time the termination or downgrade action is official based on the proration requirements under 10 CFR 171.17(a)(2) and (3), thereby allowing the licensees to know that their fee amounts would not have to be adjusted in the fourth quarter of the fiscal year. This change would support the fair and equitable assessment of fees because it ties annual fee proration to when the license actually becomes downgraded or terminated.

The comment period for the proposed rule expires 30 days after the publication date in the *Federal Register*. Please include Docket ID NRC-2017-0026 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-2017-0026**. 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/

Stephanie M. Coffin, Director
Division of Planning and Budget
Office of the Chief Financial Officer

SUBJECT: PROPOSED REVISIONS TO 10 CFR PARTS 170 AND 171 ON LICENSE, INSPECTION, SPECIAL PROJECT AND ANNUAL FEES FOR FISCAL YEAR 2018, DATED January 25, 2018

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