

January 31, 2019

*** * * 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
2019

The U.S. Nuclear Regulatory Commission (NRC) published a Notice of Proposed Rulemaking in the Federal Register for public comment on January 31, 2019, (84 FR 578). 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 Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended" and 10 CFR Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC." These proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90), which requires the NRC to recover approximately 90 percent of its annual budget through fees; in FY 2019, amounts appropriated for the development of regulatory infrastructure for advanced reactor technologies, international activities, Waste Incidental to Reprocessing (WIR), generic homeland security activities, and Inspector General (IG) services for the Defense Nuclear Facilities Safety Board are excluded from this fee-recovery requirement.

The FY 2019 proposed fee rule is based on Public Law 155-244— Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019. The total budget enacted for the NRC in FY 2019 is approximately \$911.0 million which represents a decrease of approximately \$11.0 million from FY 2018. As explained previously, certain portions of the NRC's total budget are excluded from OBRA-90's fee-recovery requirement. Based on the FY 2019 enacted appropriation, these exclusions total to \$43.4 million, consisting of \$16.1 million for international activities, \$10.3 million for advanced reactor technologies regulatory infrastructure, \$1.3 million for WIR activities, \$14.6 million for generic homeland security activities, and \$1.1 million for IG services for the Defense Nuclear Facilities Safety Board. Additionally, OBRA-90 requires the NRC to recover only approximately 90 percent of the remaining budget authority for the fiscal year—10 percent of the remaining budget authority is not recovered through fees. The NRC refers to the activities included in this 10 percent as "fee-relief" activities. After accounting for the fee-recovery exclusions, the fee-relief activities, and net billing adjustments (i.e., the sum of unpaid current year invoices (estimated) minus payments for prior year invoices), the NRC must bill approximately \$781.9 million in fees in FY 2019. Of this amount, the NRC estimates that \$246.7 million will be recovered through 10 CFR Part 170 fees for service; that leaves approximately \$535.2 million to

be recovered through 10 CFR Part 171 annual fees. By law, the NRC is required to collect all fees by September 30, 2019.

The NRC is also requesting comment on issues raised in a petition for rulemaking.

Listed below are the most significant changes to 10 CFR Parts 170 and 171 in the FY 2019 proposed fee rule.

FY 2019 — Policy Changes

The NRC proposes two policy changes:

1) Changes to a Small Materials Users Fee Category for Locations of Use

The NRC proposes to add one new fee subcategory 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 staff 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. Previously—in the FY 2015 final fee rule—the NRC therefore added three fee subcategories under one fee category, 3.L. (research and development broad scope). And in the FY 2018 final fee rule, the NRC added seven fee subcategories under, 3.A., 3.B., 3.C., 3.O., 3.P., 7.A. and 7.B. for licenses with six or more locations of use. For the FY 2019 fee rule, the staff determined that there is one more category of licenses that is affected. Accordingly, the NRC proposes to add subcategories to this fee category:

- Medical licenses under fee category 7.C.

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

2) Eliminate a Fee Category

In response to comments received on the FY 2018 proposed fee rule, the NRC proposes to eliminate a fee category in 10 CFR 170.31 and 10 CFR 171.16. The fee category is 2.A.(5)—Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water.

Under current NRC regulations, an entity that removes uranium from drinking water at community water systems is viewed as a “2.A.(5) fee category” licensee for fee purposes.

Although the licensee recovers sufficient quantities of uranium to require an NRC license (or a license from an Agreement State), its licensed material is not sold for profit; rather, the licensed material is a waste product from its water treatment process. These types of “uranium recovery” licensees are distinguishable from those licensees that profit from

concentrating uranium as source material. The staff has determined that full cost recovery is not warranted for licensees that do not profit from concentrating uranium. The current licensee under this category will be re-classified to 2.F.—All other source material licenses.

Once the current licensee is reclassified, there will be no more licensees under 2.A.(5) fee category. The NRC therefore proposes to eliminate this fee category from 10 CFR 170.31 and 10 CFR 171.16.

FY 2019 — Administrative Change

The NRC also proposes an administrative change:

Change Small Entity Fees

The staff conducted a biennial review in FY 2019 of small entity fees to determine whether the NRC should change those fees. The staff used the fee methodology, developed in FY 2009, which applies a fixed percentage of 39 percent to the prior 2-year weighted average of materials users' fees when performing its biennial review. The staff determined the new small entity fees for FY 2019 should be \$4,500 for upper-tier small entities and \$900 for lower-tier small entities. As a result of the staff's FY 2019 biennial review using the same methodology, the upper tier small entity fee would increase from \$4,100 to \$4,500 and the lower-tier fee would increase from \$850 to \$900. This would constitute a 13 percent and 6 percent increase, respectively. The staff is now proposing to amend the upper-tier small entity fee to \$4,500 and amend the lower-tier small entity fee to \$900 for FY 2019. 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.

Update to the Fees Transformation Initiative

The Staff Requirements Memorandum, dated October 19, 2016, for SECY-16-0097, "Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule," directed staff to explore, as a voluntary pilot, whether a flat fee structure could be established for routine licensing matters in the area uranium recovery, and to accelerate the fees setting process improvements including the transition to an electronic billing system. With respect to the voluntary flat fees pilot, the staff has developed a project plan and is on target to complete this activity by September 2020. With respect to the fees setting process improvements, all 7 of the activities scheduled for FY 2018 and an additional 10 scheduled for FY 2019 were completed by the end of FY 2018. These improvements included discontinuing the Project Manager/Resident inspector 6 percent overhead charge, enhancing the information included on the 10 CFR Part 170 invoices, improving the fee rule work papers, and enhancing the financial management systems. For more information, please see our fees transformation accomplishments schedule, located on our license fees Web site at: <https://www.nrc.gov/about-nrc/regulatory/licensing/fees-transformation-accomplishments.html>.

The comment period for the proposed rule expires 30 days after the publication date in the *Federal Register*. Please include Docket ID **NRC-2017-0032** 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-2017-0032**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; 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 31, 2019

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