

February 18, 2020

*** * * 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
2020

The U.S. Nuclear Regulatory Commission (NRC) published a Notice of Proposed Rulemaking in the Federal Register for public comment on February 18, 2020, (85 FR 9328). 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 2020, the following appropriated amounts are excluded from the fee-recovery requirement: the development of a regulatory infrastructure for advanced nuclear reactor technologies; international activities; generic homeland security activities; Waste Incidental to Reprocessing; and Inspector General services for the Defense Nuclear Facilities Safety Board.

The FY 2020 proposed fee rule is based on Public Law (Pub. L.) 116-93—Further Consolidated Appropriations Act, 2020 (the enacted budget). The total budget enacted for the NRC in FY 2020 is \$855.6 million, which is a decrease of \$55.4 million from FY 2019. As explained previously, certain portions of the NRC's total budget are excluded from OBRA-90's fee-recovery requirement. Based on the FY 2020 enacted budget, these exclusions total \$46.6 million, consisting of \$15.5 million for the development of a regulatory infrastructure for advanced nuclear reactor technologies; \$14.5 million for international activities; \$14.1 million for generic homeland security activities; \$1.3 million for Waste Incidental to Reprocessing activities; and \$1.2 million for Inspector General 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 need not be 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 recover approximately \$728.5 million in fees in FY 2020. Of this amount, the NRC estimates that \$230.6 million will be recovered through 10 CFR Part 170 service fees and approximately \$497.9 million will be recovered through 10 CFR Part 171 annual fees.

Pub. L. 116-93—Further Consolidated Appropriations Act, 2020, also includes direction for the NRC to use \$40.0 million in prior year unobligated carryover funds. The use of carryover funds allows the NRC to accomplish the work needed without additional costs to licensees because, consistent with the requirements of OBRA–90, fees are calculated based on the budget authority enacted for the current fiscal year and not carryover funds.

Listed below are the most significant changes to 10 CFR Parts 170 and 171 in the FY 2020 proposed fee rule.

FY 2020—Policy Changes

The NRC proposes two policy changes:

1) Remove the fee exceptions in § 170.21, footnote 1 and § 170.31, footnote 2

The NRC proposes to eliminate the fee exceptions set forth in footnote 1 to § 170.21 “Schedule of Fees for Production and Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections, and Import and Export Licenses,” and footnote 2 to § 170.31, “Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses.” These footnotes contain parallel language stating that the NRC “will not charge fees under 10 CFR Part 170 for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 or for amendments resulting specifically from the requirements of these orders.”

Currently, the language in footnote 1 to § 170.21 and footnote 2 to § 170.31 is an exception to the general rule that the NRC recovers review and inspection costs through fees assessed to individuals under 10 CFR Part 170. The current language excludes the following activities from 10 CFR Part 170 fees if an order relates to a civil penalty or other sanction: (1) subsequent NRC inspection or review work to ensure compliance with the terms of the order, and (2) subsequent NRC review costs if the order requires the licensee to seek a license amendment. The current language also states, however, that where an order is “unrelated to civil penalties or other civil sanctions,” the NRC will follow its normal practice of assessing fees under 10 CFR Part 170.

The language in these footnotes comes from the NRC’s FY 2005 fee rule (70 FR 30526; May 26, 2005). Before 2005, the NRC excluded work in connection with *all* orders from 10 CFR Part 170 fees. In the FY 2005 fee rule, the NRC amended the footnotes to narrow the exceptions to just those orders that “relate” to civil penalties or civil sanctions. The NRC made this change because, after September 11, 2001, it had imposed additional security requirements on multiple licensees through orders. As a result of these orders, the NRC performed extensive follow-up activities that, because of the preexisting broad exceptions in footnotes 1 and 2, were exempt from 10 CFR Part 170 fees. Because the NRC’s activities were exempt from 10 CFR Part 170 fees, the NRC recovered the associated costs through annual fees under 10 CFR Part 171, even though the work benefited specific licensees (70 FR 30528-30535; May 26, 2005).

Through the FY 2005 fee rule, the NRC attempted to more fairly allocate costs by ensuring that the beneficiaries of its review and inspection services associated with orders of the type issued after September 11, 2001, paid for those services through 10 CFR Part 170 fees. At the same time, the NRC retained an exception for orders that relate to a civil penalty or civil sanction. The NRC also explained in the FY 2005 fee rule that it was maintaining its longstanding policy of not charging 10 CFR Part 170 fees for the *preparation* of any order. The costs associated with preparing an order would continue to be recovered through annual fees under 10 CFR Part 171.

The authority for assessing the 10 CFR Part 171 fees comes from the same statute that provides the authority for the NRC's 10 CFR Part 170 fee schedule. That statute—the Independent Offices Appropriation Act, 1952 (IOAA)—requires that the NRC assess fees fairly and equitably, and it authorizes the NRC to collect fees whenever the agency provides “a service or thing of value” to a recipient. In addition, OBRA-90 and Office of Management (OMB) Circular A-25, “User Charges,” require that the NRC recover fees from persons who derive a special benefit from the agency's services.

Even if an order related to a civil penalty or civil sanction has some public benefit, the services the NRC provides in connection with the order, such as inspections and document-review activities, primarily benefit the licensee. These services primarily benefit the licensee because they enable the licensee to maintain its NRC license in good standing and continue operating its facility. Furthermore, regardless of whether the NRC issues an order in a safety, security, or enforcement context, the NRC's follow-up services related to the order—inspections, document review and analysis, and other services—benefit the licensee by contributing to public confidence in the safe operation of the licensee's facility. Charging 10 CFR Part 170 fees for services related to all orders is therefore most consistent with the NRC's obligations under the IOAA, OBRA-90, and OMB Circular A-25. Transferring the cost of these services to other members of a licensee's fee class, on the other hand, could therefore be viewed as unfair and inconsistent with the IOAA, OBRA-90, and Circular A-25.

Removing the exceptions will promote fairness and equity in the NRC's fees rules, consistent with the IOAA; and it will help ensure that licensees who receive special benefits in the form of NRC services pay for those services, consistent with OMB Circular A-25. Removing the exceptions will also simplify the NRC's fee rules. If there are circumstances in which charging 10 CFR Part 170 fees for follow-up activities related to an order would be unfair, the NRC retains the ability under § 170.11 to grant a fee exemption for those services, either on its own initiative or upon request. Removing the fee exceptions will not, however, change the NRC's longstanding policy regarding the recovery of costs associated with preparing an order. Consistent with this policy, such costs will continue to be recovered through annual fees under 10 CFR Part 171.

2) Amending § 171.15 regarding the assessment of Annual Fees for 10 CFR Part 52 combined license holders and future 10 CFR Part 50 power reactor licensees

Based on its review of petition for rulemaking (PRM)-171-1 and the public comments, the NRC is proposing to amend § 171.15(a) so that the assessment of annual fees for 10 CFR Part 52 combined license (COL) holders commences upon successful completion of power ascension testing, rather than after the Commission makes a finding under § 52.103(g). The NRC is also proposing to apply this approach to future 10 CFR Part 50 power reactor licensees.

Currently, § 171.15 requires a 10 CFR Part 52 COL holder to begin paying the annual fee once the Commission finds under § 52.103(g) that all acceptance criteria in the COL are met. Similarly, 10 CFR Part 50 licensees begin paying annual fees upon issuance of an operating license. The timing of annual fees reflects the NRC's historical position that a nuclear power reactor licensee receives the benefits of its license, and thus should begin paying annual fees, when the NRC authorizes the licensee to use nuclear materials (i.e., begin operating the reactor).

As stated in its fee rules, the NRC is firmly committed to the application of fairness and equity in the assessment of fees to licensees. The NRC recognizes that, subsequent to the § 52.103(g) finding for 10 CFR Part 52 COL holders, and issuance of the operating license for 10 CFR Part 50 power reactor licensees, fuel must be loaded, and power ascension testing must be completed to provide assurance that the facility is fully operational. As part of this process, 10 CFR Part 52 COL holders must provide written notification to the NRC that successful power ascension testing is completed. This notification is the trigger that enables operation at a steady-state reactor core power level equal to 100 percent of reactor thermal power as defined in the facility's final safety analysis report.

As a result, the NRC recognizes that it would be fairer and more equitable to change the timing of when annual fees commence for 10 CFR Part 52 licensees from when the Commission issues a § 52.103(g) finding to a time that aligns more closely with the licensee's facility becoming fully operational. For that reason, the NRC is proposing to defer charging annual fees until after the licensee's start-up and initial-testing phase. The NRC proposes to begin charging annual fees only after the licensee has notified the NRC in writing that it has successfully completed power ascension testing. For similar reasons, the NRC also proposes to apply this change to 10 CFR Part 50 power reactor licensees.

Because only current 10 CFR Part 52 COLs contain a standard license condition that requires written notification be submitted to the NRC upon successful completion of power ascension testing, the NRC will consider adding a similar license condition to future 10 CFR Part 50 operating licenses and 10 CFR Part 52 COLs to ensure that they promptly notify the NRC of successful completion of power ascension testing. Upon successful completion of testing and the required notification to the NRC, the power reactor would be fully operational. The annual fee assessment for 10 CFR Part 50 power reactor licensees and 10 CFR Part 52 COL holders would therefore begin on the date of the licensee's written notification of successful completion of power ascension testing.

Accordingly, the NRC proposes to amend § 171.15(a) so that annual fees commence not upon issuance of the operating license for 10 CFR Part 50 power reactors and issuance of the § 52.103(g) finding for 10 CFR Part 52 COL holders, but upon written notification to the NRC of successful completion of power ascension testing. The NRC finds that this proposal would be a reasonable, fair, and equitable revision of the NRC's fee rule. The public comments the NRC received on PRM-171-1 were supportive of this type of proposed change. Among the commenters were NEI, which represents numerous members of the class of licensees that would be directly impacted by this change. Because of this proposed policy change, the NRC also proposes to make conforming changes to revise § 171.3, "Scope," and § 171.17, "Proration." Finally, the NRC will consider expanding the scope of this approach to apply to other 10 CFR Part 50 licensees in a future rulemaking.

FY 2019—Administrative Change

The NRC also proposes one administrative change:

1) Add a footnote to the table in § 171.16(d) for additional clarity

The NRC is proposing to add a footnote to the table in § 171.16(d) to clarify that licensees that are subject to annual fees under fee categories 4.A., 4.B. or 4.C. are not subject to fees under 3.N. for waste disposal services authorized on the same license.

Update to the Fees Transformation Initiative

In the Staff Requirements Memorandum, dated October 19, 2016, (ADAMS Accession No. ML16293A902) for SECY-16-0097, “Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule,” (ADAMS Accession No. ML16194A365), the Commission directed staff to explore, as a voluntary pilot, whether the NRC could establish a flat fee structure for routine licensing matters in the area of uranium recovery, and to accelerate the process improvements for setting fees, including the transition to an electronic billing system. In addition, the Commission also directed the staff to begin the fees transformation activities listed in SECY-16-0097 as “Process Changes Recommended for Future Consideration—FY 2018 and Beyond,” which includes one remaining item to complete regarding the rulemaking to update the NRC’s small business size standards in 10 CFR 2.810, “NRC Size Standards.”

With respect to the uranium recovery flat fee pilot initiative, the NRC explored the feasibility of establishing a flat fee structure for routine licensing matters and inspection activities. The NRC provided a report to Congress on January 9, 2020, describing the results of the pilot initiative and the decision to maintain the current NRC fee billing structure for 10 CFR Part 170 fees for service for uranium recovery licensing matters. For more information, the report to Congress can be found at ADAMS Accession No. ML20010D684.

With respect to the NRC’s transition to an electronic billing system (eBilling), eBilling went live with a phased implementation on October 1, 2019, for nine licensees with 65 dockets. Other licensees will be phased in throughout the year. The NRC is targeting October 2020 as the month when full implementation will take place.

Finally, in order to obtain sufficient information to update the NRC’s small business size standard in 10 CFR 2.810, the NRC is conducting a financial survey of materials licensees to determine whether changes to the size standards are needed. The NRC published a notice in the *Federal Register* (85 FR 6225; February 4, 2020) announcing the survey, with a requested due date of April 30, 2020, to complete the survey in order to achieve a high response rate. Licensees may submit a response to the survey electronically through the internet. This survey can be accessed, and responses entered, on the NRC public web site at www.NRC.gov. At the bottom of the first screen under the section titled, ABOUT US, click on LICENSE FEES. Next screen, click in the box titled RELATED INFORMATION, click on the item Small Entity Classification Survey. Proceed to complete the survey. In addition, licensees were mailed a paper survey with an NRC-addressed, business reply return envelop included in the mailing, which can be submitted through the U.S. mail in lieu of responding to the survey electronically. The survey results will be used to acquire the data needed to determine if changes are needed, and the impact of changing the current nuclear industry-specific standards.

For more information, please see our fees transformation accomplishments schedule, located on our license fees website 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-2017-0228** 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 website:** Go to <https://www.regulations.gov> and search for documents filed under Docket ID **NRC-2017-0228**. 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 Budget, License Fee Policy Team, Office of the Chief Financial Officer, on 301-415-7341 in addition to publication in the *Federal Register*, the rule will be available online in the NRC's Library at <https://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/

Jason E. Shay, Budget Director
Division of 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 2020, DATED February 18, 2020

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