

From: aonray@prodigy.net
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Subject: [External_Sender] Questions/Comments of Docket NRC-2018-0292
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Questions/Comments of Docket NRC-2018-0292
Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021
Questions: Dawn.Forder@nrc.gov
Comments: Submit by: March 24, 2021; Email:Rulemaking.comments@nrc.gov
NRC Proposed revisions to 10 CFR parts 15, 170 and 171:

1. Changes to 171.11(c) Exemptions

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10474 Column 3 states:
Amend § 171.11(c), “Exemptions” The NRC proposes to revise § 171.11(c) to change the “or” in the section to “and.” This proposed change would accurately reflect that even when an exemption is “in the public interest,” the NRC cannot grant the exemption unless it is “authorized by law.” This proposed change would also harmonize § 171.11(c) with § 170.11(b), which uses “and.” This proposed change would not alter the NRC’s fee exemption policy.”

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10473 Column 3 footnote at bottom states:
“to conform to other definitions in 10 CFR chapter I. The NRC is not proposing to change the definition of Research reactor in the specific exemption for federally-owned and State-owned research reactors in § 170.11(a)(9) or § 171.11(b)(2). The current definition in § 171.11(b)(2) is based on the language of OBRA-90. Further, a substantively similar definition of research reactor was included in the provisions of NEIMA that relate to the NRC’s fee recovery structure. Changing the definition of research reactor in § 171.11(b)(2) would therefore be inconsistent with NEIMA.. “
- 10 CFR 170.11 states:
“Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor tha (i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) at a thermal power level of 10 megawatts or less; and (ii) If so licensed at a thermal power level of more than 1 megawatt, does not contain A) A circulating loop through the core in which the licensee conducts fuel experiments; (B) A liquid fuel loading; or (C) An experimental facility in the core in excess of 16 square inches in cross-section.
- 10 CFR 171.11 states:
“(2) Federally-owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that (i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and (ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain (A) A circulating loop through the core in which the licensee conducts fuel experiments (B) A liquid fuel loading; or (C) An experimental facility in the core in excess of 16 square inches in cross-section.

- NEIMA States:

(D) EXEMPTION.— (i) DEFINITION OF RESEARCH REACTOR.—In this subparagraph, the term “research reactor” means a nuclear reactor that— (I) is licensed by the Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of not more than 10 megawatts; and (II) if licensed under subclause (I) for operation at a thermal power level of more than 1 megawatt, does not contain — (aa) a circulating loop through the core in which the licensee conducts fuel experiments; (bb) a liquid fuel loading; or (cc) an experimental facility in the core in excess of 16 square inches in cross-section. (ii) EXEMPTION.—Subparagraph (A) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

106. ENCOURAGING PRIVATE INVESTMENT IN RESEARCH AND TEST REACTORS. (a) PURPOSE.—
The purpose of this section is to encourage private investment in research and test reactors.

RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) is amended— (1) in the first sentence, by striking “and which are not facilities of the type specified in subsection 104 b.” and inserting a period; and (2) by adding at the end the following: “The Commission is authorized to issue licenses under this section for utilization facilities useful in the conduct of research and development activities of the types specified in section 31 in which the licensee sells research and testing services and energy to others, subject to the condition that the licensee shall recover not more than 75 percent of the annual costs to the licensee of owning and operating the facility through sales of nonenergy services, energy, or both, other than research and development or education and training, of which not more than 50 percent may be through sales of energy.”.

- Questions/Comments:

NEIMA’s exemption of a research reactor is a reactor licensed under section 104 c of the Atomic Energy Act of 1954. It does not mention that it needs to be “Federal-owned and State-Owned research reactors used primarily for educational purposes.” So any Research Reactor licensed under 104 c of the Atomic Energy Act of 1954 and meets the requirement of operations list should be exempt from fees. 10 CFR 170.11 and 10 CFR 171.11 need to be changed to reflect NEIMA definition of exempt. Having research and test reactors exempt from both annual and performance fees would encourage private investment as NEIMA was trying to do.

2. Accurate Invoicing

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10461 Column 2 items 2 states:

“Second, as stated in Section 102(d)(2) of NEIMA, the NRC must “develop and implement processes to audit invoices [for 10 CFR part 170 service fees] to ensure accuracy, transparency, and fairness.”

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10461 Column 3states:

“Using this data structure enabled the NRC’s licensees and other persons assessed service fees to identify how many hours are being expended on each of the various activities within a project”

- Questions/Comments: What are the policies for fairness? We’ve disputed invoices in the pasted because the NRC had already completed a task, we had been shut down for years and there was no need for the NRC to restudy, investigate or review the issue. Yet, we were told that the charges were valid because the employee did indeed work the hours they said on the project. Is it fair for us to have to pay for the same work twice? We don’t think so and the public would not think so.

We can’t tell from our recent billings what activity within a project. For example, an inspector or auditor comes out and visits. Then they go back and write their report and ask RAI, etc. We only get total hours worked on the project, not how much time it took them to write the report, how much time did the work on specific items they are reporting on. That would be useful information to us the licensee.

3. Process for Disputing Errors in Invoices for Service Fees

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10472 Column 2 states:

“The proposed process is illustrated in the process map, “NRC Form 529, Processing Dispute of FeesFor-Service Charges” (ADAMS Accession No. ML20311A159). This proposed process follows the established method for licensees and applicants to submit requests for the review of fees assessed under 10 CFR part 170 (ADAMS Accession No. ML20104C055).”

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10476 Column 3 states:

“A debtor may submit a dispute of debt within 45 days from the date of the initial demand letter. The debtor shall explain why the debt is incorrect in fact or in law and may support the explanation by affidavit, cancelled checks, or other relevant evidence.”

- Federal Register Vol: 86 No: 33 Date: Monday, February 22.2021 Page 10477 Column 1 states:

“Dispute review. The NRC will consider the facts involved in the dispute and, if it considers it necessary, arrange for a conference during which the debtor may present evidence and any arguments in support of the debtor’s position. If the debtor’s dispute potentially raises an error, the NRC may extend the interest waiver period as

described in § 15.37(j) pending a final determination of the existence or amount of the debt.”

- Questions/Comments: NRC Form 529 on page 2 has a list 7 pre-conditions that you must certify that you have done. One of them is I Certify that the NRC Form 527 “Request for Information Related to Fees-for-Service” was submitted and a response was received by my organization. Who fills out the response? Do they know the details of the work the person in dispute was performing? We’ve used NRC Form 527 in the past. NRC Response did not answer the questions we had in the additional disputed details. They just confirmed the information we already knew. The confirmed that the employee did work on the project, but did not detail what work they were doing.”

We’ve disputed bills in the past, the process only confirmed that the employee spent the hours working on the project so the charges are correct. The CFO refused to take into account the benefit to the licensee and/or fairness of the charge to the licensee.

45 days from initial demand letter (invoice) is not enough time in some cases to determine if the invoice was correct, provided the licensee with a benefit, or was fair for the licensee to be charged. It should be 90 days from when the error became apparent for the licensee to dispute the charge. For example, If you don’t like the dispute resolution, what is the process for future review or appeals outside of the NRC CFO office?

4. Small Business

- Federal Register Vol: 86 No: 33 Date: Monday, February 22,2021 Page 10441 Column 2 states:

“1. Change Small Entity Fees the NRC determined that the maximum small entity fee should be adjusted biennially using a fixed percentage of 39 percent applied to the prior 2-year weighted average of materials users’ fees for all fee categories which have small entity licensees”

Questions/Comments: What does all categories mean? Does all only apply to material class / category of licenses or does it apply to all classes / categories of licenses as long as the licensee meets the published small business requirements? We are non-power production or utilization facility the meets both the small business administration and NRC small business criteria, but have been denied the small business fee by the NRC CFO office.