

February 23, 2022

*** * * 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
2022

The U.S. Nuclear Regulatory Commission (NRC) published a notice of proposed rulemaking for the fiscal year (FY) 2022 proposed fee rule in the *Federal Register* for public comment on February 23, 2022 (87 FR 10081). The instructions for accessing the proposed rule 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 Nuclear Energy Innovation and Modernization Act (NEIMA).

Under NEIMA, the NRC must recover, to the maximum extent practicable, approximately 100 percent of its annual budget, less the budget authority for activities excluded from the fee recovery requirement. Under Section 102(b)(1)(B) of NEIMA, "excluded activities" include any fee-relief activity as identified by the Commission, generic homeland security activities, waste incidental to reprocessing activities, Nuclear Waste Fund activities, advanced reactor regulatory infrastructure activities, Inspector General services for the Defense Nuclear Facilities Safety Board, research and development at universities in areas relevant to the NRC's mission, and a nuclear science and engineering grant program. In fiscal year (FY) 2022, the fee-relief activities identified by the Commission are consistent with prior fee rules and include Agreement State oversight, regulatory support to Agreement States, medical isotope production infrastructure, fee exemptions for non-profit educational institutions, costs not recovered from small entities under 10 CFR 171.16(c), generic decommissioning/reclamation activities, the NRC's uranium recovery program and unregistered general licenses, potential U.S. Department of Defense Program Memorandum of Understanding activities (Military Radium-226), and non-military radium sites. In addition, the resources for import and export licensing are identified as a fee-relief activity to be excluded from the fee-recovery requirement.

The FY 2022 proposed fee rule is based on the FY 2022 budget request as further described in the NRC's FY 2022 Congressional Budget Justification (CBJ) because a full-year appropriation has not yet been enacted for FY 2022. The amount of total budget authority in this proposed rule is \$887.7 million, an increase of \$43.3 million when compared to FY 2021. After accounting for the exclusions from the fee-recovery requirement and net billing adjustments (i.e., for

FY 2022 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2022 for prior year invoices), the NRC must recover approximately \$752.2 million in fees in FY 2022. Of this amount, the NRC estimates that \$188.9 million will be recovered through 10 CFR Part 170 service fees and approximately \$563.3 million will be recovered through 10 CFR Part 171 annual fees.

In FY 2021, the explanatory statement associated with the Consolidated Appropriations Act, 2021, included direction for the NRC to use \$35.0 million in prior-year unobligated carryover funds, including \$16.0 million for the University Nuclear Leadership Program. Since a full-year appropriation has not yet been enacted, the FY 2022 proposed fee rule is based on the FY 2022 budget request. Therefore, this proposed fee rule does not account for the utilization of carryover funds.

Listed below are the proposed changes to 10 CFR Parts 170 and 171 that are included in the FY 2022 proposed fee rule.

- **Increase to the Professional Hourly Rate:** The NRC uses a professional hourly rate to assess fees under 10 CFR Part 170 for specific services it provides. For FY 2022, the NRC is proposing to increase the professional hourly rate from \$288 to \$291 as described in the FY 2022 proposed fee rule.
- **Changes to 10 CFR Part 171 annual fees:** In FY 2022, the NRC is proposing to decrease annual fees for fuel facilities and the non-DOE uranium recovery licensee. The NRC is proposing to increase annual fees for operating power reactors, spent fuel storage/reactor decommissioning activities, non-power production or utilization facilities, for the DOE Uranium Mill Tailings Radiation Control Act Program, for DOE transportation activities, and for 44 materials users fee categories.
- **Policy Changes:** The NRC is not proposing any policy changes in FY 2022.
- **Administrative Changes:** The NRC is proposing to five administrative changes in FY 2022 as described below.
 1. Amend 10 CFR 170.3, "Definitions," by deleting the definition for the phrase *review is completed* and incorporating language from the definition into 10 CFR 170.12(b)(3). The NRC proposes to amend 10 CFR 170.3 by eliminating the definition for the phrase *review is completed* and incorporating language from the definition into 10 CFR 170.12(b)(3). The definition is unnecessary in 10 CFR Part 170 because this phrase is only referenced one time. This proposed amendment would not impact the NRC's assessment of 10 CFR Part 170 service fees.
 2. Amend 10 CFR 170.11, "Exemptions," by clarifying exemption requirements. The NRC proposes to amend paragraph (a)(1)(i) by replacing the word "that" with "where the request/report," for consistency with the use of the latter phrase in the introductory text of paragraph (a)(1). In addition, the NRC proposes to amend paragraph (c) by replacing the word "work" with "request/report" for consistency with paragraph (a)(1) and to avoid any potential ambiguity about what is considered the "work" for purposes of the 90-day period in which the fee exemption must be submitted to the NRC's Chief Financial Officer.

The NRC also proposes to amend 10 CFR 170.11(a)(1)(ii) by retaining the “generic regulatory improvements” clause in paragraph (a)(1)(ii) and moving “Office Director level or above,” to a new paragraph (a)(1)(iii). These changes would clarify that the Chief Financial Officer may grant an exemption when the review of a request/report, at the time it is submitted, would “assist the NRC in generic regulatory improvements or efforts,” even if there is no “request from the Office Director level or above” to resolve “an identified safety, safeguards, or environmental issue.”

Finally, the NRC proposes to move paragraph (a)(13) on CFO communications to a new paragraph (d) because this is not an exemption category but rather a separate requirement applicable to all fee exemption requests under 10 CFR Part 170.

These proposed amendments to 10 CFR 170.11 would not change the NRC’s fee exemption policy.

3. Amend 10 CFR 170.12(f), “Method of payment,” by clarifying the types of payments, updating the contact information for payments, and clarifying the payment method.
The NRC proposes to amend paragraph (f) by replacing “all license fees” with “all fee payments under 10 CFR part 170,” for additional clarity. Currently, paragraph (f) states, in part, that all license fee payments are to be payable to the U.S. Nuclear Regulatory Commission. Since paragraph (f) applies to all fees and not only licensing fees, this proposed amendment would provide additional clarity for fee payments under 10 CFR Part 170. In addition, the NRC proposes to further amend paragraph (f) by replacing “License Fee and Accounts Receivable Branch” with the “Office of the Chief Financial Officer” to remove reference to a specific branch because the Office of the Chief Financial Officer collects fees for the NRC. This proposed amendment would eliminate the need to revise the branch information after reorganizations or branch name changes. Finally, the NRC is proposing to revise paragraph (f) to clarify that fee payments can be made electronically using www.Pay.gov or manually using NRC Form 629, “Authorization for Payment by Credit Card,” which will align with the terms and conditions that are currently being updated to clarify the methods of payment.
4. Add footnote 6 to the table in 10 CFR 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 12 to the table in 10 CFR 170.31, “Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.”
The NRC proposes to add footnote 6 to the table in 10 CFR 170.21 and footnote 12 to the table in 10 CFR 170.31. In accordance with NEIMA, in FY 2022, the NRC identified international activities, including the resources for import and export licensing activities, as a fee-relief activity to be excluded from the fee-recoverable budget. Therefore, the NRC is not proposing to charge fees for import and export licensing actions.
5. Add footnote 13 to the table in 10 CFR 170.31 for clarity.
The NRC proposes to add footnote 13 to the table in 10 CFR 170.31 to clarify, with respect to 10 CFR Part 170 fees, that licensees paying fees under 4.A., 4.B. or 4.C. in the table are not subject to paying fees under 3.N. The proposed footnote would be identical to footnote 21 to the table in 10 CFR 171.16(d).

Update on the Fees Transformation Initiative

In the Staff Requirements Memorandum, dated October 19, 2016, for SECY-16-0097, “Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule,” the Commission directed the staff to accelerate its process improvements for setting fees. In addition, the Commission 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.” The NRC has completed 39 of the 40 fees transformation activities.

The one fees transformation activity yet to be completed is the rulemaking to update the NRC’s small business size standards in 10 CFR 2.810, “NRC size standards.” The NRC published a proposed rule on July 26, 2021 (86 FR 39980) and provided a 30-day comment period, which closed August 25, 2021. The NRC proposed to increase the upper and lower tiers for its receipts-based small entity size standards for small businesses and small not-for-profit organizations. This change would allow the NRC’s standards to remain consistent with the inflation adjustments made by the Small Business Administration size standard for nonmanufacturing concerns. In addition, in accordance with the Small Business Runway Extension Act of 2018, the NRC proposed changing the calculation of annual average receipts for the receipts-based NRC size standard for small businesses that provide a service or for small businesses not engaged in manufacturing from a 3-year averaging period to a 5-year averaging period. The NRC did not receive public comments on the proposed rule and is in the process of publishing the final rule. The NRC will include updates on this rulemaking activity in the FY 2022 final fee rule to ensure that affected licensees are adequately informed. The public can track all NRC rulemaking activities, including the rulemaking on the NRC’s size standards, on the NRC’s Rulemaking Tracking and Reporting system at <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleIndex.html>, or by Docket ID NRC-2014-0264 at <http://www.regulations.gov>.

For more information, see the fees transformation accomplishments schedule, located on the NRC’s license fees website: <https://www.nrc.gov/about-nrc/regulatory/licensing/fees-transformation-accomplishments.html>.

Public Comment Period

The comment period for the proposed rule expires 30 days after the publication date in the *Federal Register*. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration for comments received before this date. Because NEIMA requires the NRC to collect fees for FY 2022 by September 30, 2022, the NRC must finalize any revisions to its fee schedules promptly, and thus is unable to grant any extension request of the comment period. Stakeholders may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

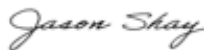
- **Federal rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0031**. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of the proposed rule.
- **Email comments to:** Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.
- **Mail comments to:** Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff

Please include Docket ID **NRC-2020-0031** in your comment. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment. The NRC will post all comments at <https://www.regulations.gov> as well as enter the comments into ADAMS. The NRC does not routinely edit comments to remove identifying or contact information.

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, at 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,



Signed by Shay, Jason
on 02/23/22

Jason E. Shay, Budget Director
Division of Budget
Office of the Chief Financial Officer

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INSPECTION, SPECIAL PROJECT AND ANNUAL FEES FOR FISCAL YEAR 2022, DATED
February 23, 2022

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