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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 150, 170 and 171

RIN: 3150-AG73

Revision of Fee Schedules; Fee Recovery for FY 2001

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires that the NRC recover approximately 98 percent of its budget authority in fiscal year (FY) 2001, less the amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2001 is approximately \$453.3 million.

DATES: The comment period expires (Insert date 30 days after publication). Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA-90

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 98 percent of its FY 2001 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. The NRC's total budget authority for FY 2001 is \$487.4 million, of which \$21.6 million has been appropriated from the NWF. In addition, \$3.2 million has been appropriated from the General Fund for activities related to regulatory reviews and assistance provided to other Federal agencies and States. Based on the 98 percent fee recovery requirement, the NRC must collect approximately \$453.3 million in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts. The total amount to be recovered through fees and other offsetting receipts for FY 2001 is \$6.3 million more than the amount estimated for recovery in FY 2000; however, the FY 2001 fee recovery amount is further reduced by a \$3.1 million carryover from additional collections in FY 2000 that were unanticipated at the time the final FY 2000 fee rule was published. This leaves approximately \$450.2 to be recovered in FY 2001 through Part 170 licensing and inspection fees, Part 171 annual fees, and other offsetting receipts.

The NRC estimates that approximately \$112.1 million will be recovered in FY 2001 from Part 170 fees and other offsetting receipts. The NRC also estimates a net adjustment for FY 2001 of approximately \$0.4 million for payments received in FY 2001 for FY 2000 invoices. The remaining \$337.7 million would be recovered through the Part 171 annual fees, compared to \$341.0 million for FY 2000.

Table I summarizes the budget and fee recovery amounts for FY 2001.

date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule would be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule would be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2001 final rule or future final rules to licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301-415-7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in late May or early June of 2001. In addition to publication in the Federal Register, the final rule will be available on the Internet at <http://ruleforum.llnl.gov>.

The NRC is proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

A. Amendments to 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.

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the 10 CFR Part 170 fees based on the revised hourly rates and the results of the NRC's biennial review of fees required by the Chief Financial Officer (CFO) Act of 1990 (Pub. L. 101-578, Nov. 15, 1990, 104 Stat 2838) (CFO Act). Additionally, the NRC is proposing to eliminate the fees currently assessed to Agreement State licensees who file revisions to the information submitted on their initial filing of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," and include the costs for these revisions in the application fees assessed for the initial Form 241. The NRC is also proposing to establish an annual registration fee of \$450 to be assessed for Part 31 general licensees required to register certain types of generally licensed devices. These proposed revisions are further discussed below.

The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in §170.20. These proposed rates would be based on the number of FY 2001 direct program full time equivalents (FTEs) and the FY 2001 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The proposed hourly rate for the reactor program is \$150 per hour (\$266,997 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The proposed hourly rate for the nuclear materials and nuclear waste program is \$144 per hour (\$255,562 per direct FTE). This rate would be applicable to all activities for which fees are assessed under §170.31 of the fee

A conforming revision to 10 CFR 150.20(b)(2) would also be made to reflect this proposed change.

4. Fees for General License Registrations

The NRC published a proposed rule in the Federal Register on July 26, 1999 (64 FR 40295), stating its intent to amend current regulations governing the use of byproduct material in certain measuring, gauging, or controlling devices. The proposed amendments included adding explicit requirements for initiating a registration process under 10 CFR 31.5 for certain generally licensed devices; establishing a registration fee; modifying reporting, record-keeping, and labeling requirements; and clarifying which provisions of the regulations apply to all general licenses for byproduct material. The NRC stated in the proposed rule that the registration fee would recover the costs for obtaining and maintaining information associated with the devices subject to the registration requirement, processing and reviewing the registrations, and for inspections and follow-up efforts expected to be made as a result of the registration process identifying noncompliance with existing regulations. The fee would be based on the average cost of the program for each of the licensees registering devices. Some of the general licensees, such as non-profit educational institutions, would be exempt from the fee under §170.11. Costs not recovered from this small segment of the general licensees registering devices would continue to be recovered from annual fees paid by current holders of specific licenses. The NRC also stated in the proposed rule that the requirement for the registration fee would be effective after the initial registration requests are sent for response under §31.5(c). In this manner, the first round of registrations will be complete before the requirement for the registration fee goes into effect.

The NRC published a final rule on December 18, 2000 (65 FR 79162), amending 10 CFR Parts 30, 31, and 32 to require that certain general licensees register their generally licensed devices with the NRC each year and pay the appropriate registration fee. Therein the NRC stated that the final fee, estimated at approximately \$440 to \$450, would be established in the FY 2001 fee rulemaking based on that year's budgeted costs for the program, the new FTE rate, and the estimated number of general licensees required to register. ✓

The NRC currently estimates that approximately 4300 general licensees will be required to register their generally licensed devices. Based on the estimated number of registrants, current resource estimates, and the FY 2001 FTE rate, the proposed registration fee is \$450. The registration fee would be imposed beginning with the first re-registration of devices currently in use. The registration fee would be required for each annual re-registration of the devices, and for all new registrations of devices acquired after the registration program is fully implemented. >

Because this is a "flat" fee based on average cost, it will be reviewed biennially as required by the CFO Act. The registration fee established in the FY 2001 final fee rule will not change until the next biennial review of fees in FY 2003.

5. Fee Waivers

In the recent past, several requests for Part 170 fee exemptions have been filed by licensees and various organizations who submit topical reports or other documents to the NRC for review. Part 170 currently provides that fees will not be assessed for requests or reports submitted to the NRC in response to an NRC inquiry to resolve an identified safety, safeguards,

Application\$2,500

N. Licenses that authorize services for other licensees, except:

- (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and
- (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:

Application\$2,600

O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:

Application\$4,200

P. All other specific byproduct material licenses, except those in Categories 4A through 9D:

Application\$1,300

Q. Registration of a device(s) generally licensed under Part 31:

Application\$450

4. Waste disposal and processing: