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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: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The 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.

EFFECTIVE DATE: (Insert 60 days after publication in the Federal Register).

ADDRESSES: The comments received and the agency work papers that support these final changes to 10 CFR Parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, or 301-415-4737, or by email to pdr@nrc.gov. Comments received may also be viewed via the NRC's interactive rulemaking website (http.//ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; e-mail CAG@nrc.gov.

For a period of 90 days after the effective date of this final rule, the work papers may also be examined at the NRC Public Document Room, Room O-1F22, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2736.nl.gov).

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; Telephone 301-415-6057.

SUPPLEMENTARY INFORMATION:

I. Background

II. Responses to Comments

II Final Action

and the associated budgeted resources allocated to the various classes of licensees. The work papers show, by strategic arena, the allocation of budgeted costs for each planned accomplishment within each program of each strategic arena. In addition to the detailed budget information contained in the work papers, the NRC has made available in the Public Document Room NUREG-1100, Volume 16, "Budget Estimates and Performance Plan, Fiscal Year 2001 (February 2000)," which discusses the NRC's budget for FY 2001, including the activities to be performed in each strategic arena. The extensive information available to the public meets all legal requirements and the NRC believes it provides the public with sufficient information on which to base their comments on the proposed fee rule.

The NRC's budgets and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The purpose of this rulemaking is to establish the fees necessary to recover approximately 98 percent of the NRC's FY 2001 budget authority as required by OBRA-90, as amended. Therefore commenter's suggestions concerning public comments on NRC's regulatory activities and fiscal responsibilities are not addressed in this final rule.

C. Specific Part 170 Issues.

1. Hourly Rates.

COMMENT. Some commenters opposed the $144 proposed hourly rate for the materials program. Similar to comments from the uranium recovery industry on the issue in previous rulemakings, the commenters stated that the hourly rate is excessive, is more than the

professional hourly rates charged by national consulting firms, and should be substantially reduced.

— *RESPONSE.* The NRC's hourly rates are based on budgeted costs and must be established at the revised levels to meet the fee recovery requirements. The professional FTE rates include not only average salaries and benefits for professional employees, but also a prorated share of overhead costs, such as supervisory and secretarial support, and information technology overhead costs, as well as general and administrative costs, such as rent, heat, supplies, and payroll and human resources staffs.

The proposed hourly rate of $144 for the materials program is a very slight increase over the $143 hourly rate for FY 2000. As stated in the proposed rule, the increase is primarily due to Government-wide pay increase in FY 2001. The revised hourly rates, coupled with the direct contract costs, recover through Part 170 fees the full cost to the NRC of providing special services to specifically identifiable beneficiaries as provided by the IOAA, and the revised hourly rates plus direct contract costs recover through Part 171 annual fees the required amount of NRC's budgeted costs for activities not recovered through Part 170 fees, as required by OBRA-90, as amended. The NRC is establishing in this final rule the revised hourly rates necessary to accomplish the fee recovery requirements. The professional hourly rate for the reactor program is $150, and the professional hourly rate for the materials program is $144. For Part 170 activities, the rates will be assessed for professional staff time expended on or after the effective date of this final rule.

2. Project Manager Billing Issues.

Comment. Four comments were received opposing NRC's assessment of Part 170 fees to uranium recovery licensees to recover the costs for Project Managers (PM) assigned to their licenses. Commenters indicated that the PM charges have become an additional expense for the industry. These commenters raised several specific concerns with this fee recovery policy: the PM costs represent administrative charges that may or may not be directly related to the licensee's operations; the PM charges include generic efforts, such as rulemaking activites; licensees have no way to control these costs because the charges are allocated evenly among the licensees to which that PM is assigned; and the problem is exacerbated when a PM is assigned to only one, or in some cases only a few, licensee(s) who must pay all of the overhead costs associated with that PM. Several commenters supported the re-designation of PMs assigned to uranium recovery licenses as points of contact, particularly for those licensees who are not currently operating. One commenter stated that to the extent the NRC is required to recover these costs, it should do so through the annual fee to spread the costs more equitably across a range of licensees. One commenter asserts that the billing policy is an unjustified and *ultra vires* (beyond NRC's legitimate powers) implementation of its OBRA responsibilities, and that it cannot be defended, particularly as a shift of costs from Part 171 fees to Part 170 fees because there has not been a decrease in the Part 171 fees commensurate with the increase in Part 170 fees. Referring to an NRC guidance document for staff hour reporting and coding of activities for fee billable purposes, the same commenter charges that there is virtually no activity a PM performs that is excluded from fee recovery. The commenter claims that licensees are billed for generic efforts, despite statements to the contrary in the final FY 1999 fee rule, giving as an example "rulemaking oversight" which is assigned a code in RITS. The same commenter stated that nothing in the statements of consideration for the FY 1999 final rule, which provided

examples of PM activities that would be included in Part 170 fees, indicated that licensees would be charged for PM activities for work on the NRC's accounting system or work for another branch/office.

Response. The NRC's assesses Part 170 fees for PM activities under the authority of the IOAA. In the FY 1999 fee rule the NRC stated that expanding the scope of Part 170 to include, for example, full cost recovery for PMs, is consistent with Title V of the IOAA, interpretations of that legislation by the Federal courts, and Commission guidance. These guidelines provide that Part 170 fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. Because PM activities are services which the NRC provides to specific, identifiable recipients, it is more appropriate that the costs be recovered through Part 170 fees assessed to the recipient of that service than through annual fees assessed to the licensees in the class subject to annual fees.

Contrary to the commenter's claim, generic activities conducted by PMs are not recovered through Part 170 fees. Generic activities are those NRC activities that broadly benefit classes or subclasses of licensees. Examples of generic activities, as stated in the FY 1999 final rule and reiterated in the FY 2000 final rule (l64 FR 31451; June 10, 1999, and 65 FR 36947; June 12, 2000, respectively), include rulemaking and development of generic guidance documents. General activities such as training, general correspondence, attending staff meetings, coordination with and support to other offices, and processing documents into the Agencywide Document Access and Management System (ADAMS) are not generic activities. In responding to uranium recovery industry comments in the FY 2000 final rule, the NRC listed

these examples of the types of PM activities that are recovered through PM Part 170 fees. The examples provided by the NRC in the FY 1999 and FY 2000 fee rules of PM activities to be billed under Part 170 and those excluded from Part 170 billing were not intended to be complete lists. For example, in addition to the listed activities excluded from Part 170 PM fees, the NRC also excludes from Part 170 fees for PM activities related to activities for which Part 170 are otherwise not assessed, such as contested hearings, responses to petitions, and responding to allegations.

The PM activities charged under Part 170 are general activities and activities specifically related to the site, such as licensing reviews. As the commenter indicted, the general activities billed under Part 170 include time that a PM spends in reporting to the NRC's accounting system. General activities are part of the costs to the agency of providing the PM services, and the NRC continues to believe that the costs are most appropriately recovered from the licensees benefitting from the PM services.

The concept that the assessment of Part 170 fees for PM activities increases the costs to the uranium recovery class is incorrect. PM charges might result in an increase for a particular licensee at a particular point in time; however, billing for PM time under Part 170 does not cause an increase, or a decrease, in the total fees assessed to the class. Based on the OBRA-90 fee recovery requirements, all budgeted costs allocated to a class that are not recovered through Part 170 fees paid by the class are recovered through annual fees assessed to those licensees in the class subject to the annual fees. Thus, all budgeted costs allocated to a class are paid by the class, either through Part 170 fees or Part 171 fees.

the waiver provisions have been applied by the NRC, and is not inconsistent with the NRC's strategic goals.

4. Invoice Information.

Comment. Several commenters assert that NRC's invoices lack adequate explanations of the work done and the dates the work was performed. These commenters urged the NRC to continue its efforts to provide invoices that contain more detailed information on the specific costs. While recognizing that this would require major revisions to NRC's billing system, commenters contend that the change would serve the NRC, its licensees, and the public well.

Response. As the NRC has stated in response to similar comments on previous rules, the NRC believes that sufficient information is provided on the invoices for licensees and applicants to base payment of the costs assessed under Part 170. For NRC staff effort, specific policies and procedures are in place for NRC staff to follow in recording time in the NRC's Regulatory Information Tracking System (RITS), which is the NRC's current system for tracking staff hours expended. The system contains specific codes for the various types of licensing reviews, leave, training, general administration effort, etc. From RITS, the fee billing system captures the staff hours for activities billable under Part 170 as well as the work effort code descriptions for those billable hours. For these activities, the staff hours, work effort codes, the name of the staff member performing the work, and the date the work was completed, if applicable, are printed on the enclosure to the Part 170 invoices. Currently, the work effort codes are the only available data describing the work performed, and they are the lowest level of detail available in RITS. However, the NRC believes that the summary work descriptions shown

guidance and rules applicable to the uranium recovery class of licensees and therefore should continue to pay annual fees.

Although the comments indicate that annual fees are assessed to certain licensees because of a failure on NRC's part to approve their reclamation plans, this is not the case. The NRC waives the annual fee for those licensees who have relinquished their authority to operate and have permanently ceased operations, as long as the notifications of such actions are filed by the dates provided in the fee regulations. The reclamation plans do not have to be approved by the NRC for the fee waiver to apply.

4. Quarterly Billing Schedule For Class I And Class II Licenses.

Comment. Two commenters supported the NRC's proposal to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees, regardless of the annual fee amounts.

Response. The NRC is modifying §171.19 in this final rule to establish a quarterly annual fee billing schedule for uranium mill licensees (Class I) and solution mining licensees (Class II). Because the annual fees for these licensees have been close to the $100,000 threshold for quarterly billing, slight changes in the annual fees have resulted in frequent changes in their billing schedules. This change will provide these licensees with a consistent, predictable schedule for paying their annual fees.

5. Annual Fees for Power Reactors in Decommissioning.

concerning NRC's budget and use of NRC resources. The NRC's budgets are submitted to the Office of Management and Budget and then to Congress for review and approval. The Congressionally-approved budget resulting from this process reflects the resources necessary for NRC to carry out its statutory obligations. In compliance with OBRA-90, the fees are established to recover the required percentage of the approved budget.

III. Final Action

The NRC is amending 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 $487.3 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. In the proposed rule, the total budget was shown as $487.4 million; however, a recission reduced the total budget authority by approximately $75.0 thousand. However, the recission did not affect the fee recovery portion of the budget, and therefore, the fee recovery amounts have not changed from the proposed rule. 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 million 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 is to 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.

TABLE I - Budget and Fee Recovery Amounts for FY 2001

[Dollars in Millions]

Total Budget Authority	$487.3
Less NWF	- 21.6
Less General Fund	- 3.2
Balance	$462.5
Fee Recovery Rate for FY 2001	x 98.0%
Total Amount to be Recovered For FY 2001	$453.3
Less Carryover from FY 2000	- 3.1
Amount to be Recovered Through Fees and Other Receipts	$450.2
Less Estimated Part 170 Fees and Other Receipts	-112.1
Part 171 Fee Collections Required	$338.1

Part 171 Billing Adjustments	
Unpaid FY 2001 Invoices (estimated)	3.2
Less Payments Received in FY 2001 for Prior Year Invoices (estimated)	- 3.6
Subtotal	- 0.4
Adjusted Part 171 Collections Required	$337.7

The final FY 2001 fee rule is a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2001 will become effective 60 days after publication of the final rule in the Federal Register. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2001 final rule. For these licensees, payment will be due on the effective 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 will 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 will be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

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

As shown in Table IV, the total surcharge cost allocated to the various classes of licensees for FY 2001 is $48.3 million. The NRC has continued to allocate the surcharge costs, except Low-Level Waste (LLW) surcharge costs, to each class of licensees based on the percent of budget for that class. The NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposed of by certain classes of licensees. The surcharge costs allocated to each class are included in the annual fee assessed to each licensee. The FY 2001 surcharge costs allocated to each class of licensees are shown in Table V.

TABLE V - Allocation of Surcharge

	LLW Surcharge		Non-LLW Surcharge		Total Surcharge
	Percent	$,M	Percent	$,M	$,M
Operating Power Reactors	74	1.3	79.1	36.9	38.2
Spent Fuel Storage/ Reactor Decomm.	---	---	9.2	4.3	4.3
Nonpower Reactors	---	---	0.1	0.0	0.0
Fuel Facilities	8	0.1	5.3	2.5	2.6
Materials Users	18	0.3	3.9	1.8	2.1
Transportation	---		---	1.2	0.5
Rare Earth Facilities	---		---	0.2	0.1
Uranium Recovery	---		---	1.0	0.4
TOTAL SURCHARGE		1.7		46.6	48.3

0.5
0.1
0.4

Application $2,600

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

~~Registration~~ 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~~ Registration $450

4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

Licensing and inspection ..... Full Cost

B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country.

Application - new license	$5,500
Amendment	$5,500

C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act.

Application - new license	$1.700
Amendment	$1,700

D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.

Application - new license	$1,200

not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The total FY 2001 surcharge allocated to the operating power reactor class of licensees is $38.2 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2001 operating power reactor surcharge to be assessed to each operating power reactor is approximately $367,000. This amount is calculated by dividing the total operating power reactor surcharge ($38.2 million) by the number of operating power reactors (104).

(3) The FY 2001 surcharge allocated to the spent fuel storage/reactor decommissioning class of licensees is $4.3 million. The FY 2001 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is approximately $35,600. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel on site, and Part 72 licensees who do not hold a Part 50 license.

(e) The FY 2001 annual fees for licensees authorized to operate a non-power (test and research) reactor licensed under Part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor	$74,000

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees in complying with the FY 2001 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2001 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. Effective with the final FY 2001 fee rule, the NRC will phase out sending NRC Form 526 with each materials license annual fee invoice. This form can be accessed on the NRC's external web site at http://www.nrc.gov. The form can then be accessed by selecting "Planning & Financial Management" and then selecting "NRC License Fee Program" and under "Forms" selecting NRC Form 526. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be

that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2A(2) Other Facilities, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

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Dated at Rockville, Maryland, this ___ day of _____, 2001.

For the Nuclear Regulatory Commission.

_____
Jesse L. Funches,
Chief Financial Officer.

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