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Ann,

I made the changes I marked to the final fee rule.

Thanks
Tony

Jarmey

DRAFT

Please provide comments to Ann Norris, LFT/OCFO by COB Wednesday, May 21, 2003. Thank you!

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150-AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

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 94 percent of its budget authority in fiscal year (FY) 2003, less the amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 2003 is approximately $526.3 million.

EFFECTIVE DATE: (Insert date 60 days after publication).

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/reading-rm/adams.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. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

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 20852-2738.

Keep?

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301-415-8165; or Ann Norris, telephone 301-415-7807; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Background

II. Response to Comments

III. Final Action

Response. Consistent with the requirements of OBRA-90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 94 percent of the NRC's FY 2003 budget authority, less the amounts appropriated from the NWF and the General Fund, from the various classes of licensees. The efficiencies of NRC's regulatory activities and the manner in which NRC carries out its fiscal responsibilities are not addressed in this final rule since the NRC's budget and the manner in which the NRC carries out its activities are outside the scope of this rulemaking. The proposed rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171.

In addition to the information the proposed rule provided, as described above, the proposed rule also announced that the work papers supporting the proposed rule were available for public examination in the NRC's Agencywide Documents Access and Management System (ADAMS) and, during the 30-day comment period, in the NRC Public Document Room at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted FTE and contract costs at the planned accomplishment level for each agency activity. The work papers also include extensive information detailing the allocation of the budgeted costs for each planned accomplishment within each program of each strategic arena to the various classes of licenses, as well as information on categories of costs included in the hourly rate.

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The NRC also has made available in the Public Document Room NUREG-1100, Volume 18, "Budget Estimates and Performance Plan, Fiscal Year 2003" (February 2002), which discusses the NRC's budget for FY 2003, including the activities to be performed in each strategic arena. In addition, the NRC has made this document available on its public web site at

A major reason for the four percent increase in the hourly rate for the materials program is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE. The 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. 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. 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 Billings Issues

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Comment. Several commenters expressed concern with the increase in charges for Project Manager (PM) time to uranium recovery licensees and other materials licensees. Some of these commenters thought that the proposed rule should have explained the status of the NMSS policy change that was implemented in July 2001, which states that a PM's costs are not billed to the licensee as part 170 fees if that PM spends less than 75 percent of his/her time in any two-week period on duties to support that licensee. Other commenters suggested that part 170 charges for PM duties to uranium recovery licensees had increased even though duties related to the sites had not changed, and stated that PM's time should not be charged to part 170 fees whenever possible. Some commenters thought the Commission should reduce the impact of the hourly rate increase on uranium recovery licensees by doing everything possible to reduce the amount of time spent by staff working on licensing issues related to uranium recovery

rulemaking is for the NRC to establish fees recover the required percentage of the approved budget in accordance with OBRA-90, as amended.

3. Fee Exemptions for Special Projects

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Comment. One commenter raised a number of concerns with NRC's fee waiver policy. This commenter stated that this policy is flawed, unworkable, and counterproductive to regulatory efficiency and effectiveness. In particular, this commenter stated that OCFO ~~fee~~ waiver policy is not consistent with the definitions of part 170 and part 171 fees as described in the FY 2003 proposed fee rule. The commenter stated that OCFO had been charging part 170 fees for documents that did not fall under the description, in the FY 2003 proposed fee rule, of documents for which part 170 fees should be assessed. This commenter discussed various flawed reasons that OCFO had previously given to deny fee waivers in the past. The commenter discussed the advantages of cooperative efforts between NRC and industry, and expressed concern that OCFO positions blocked this cooperation. The commenter went on to suggest that NRC's fee waiver policy be changed to eliminate disincentives for industry to be proactive in addressing generic regulatory issues.

Response. The NRC did not propose to revise its existing fee waiver policy in this rulemaking. The NRC clarified its fee waiver policy in the FY 2002 final fee rule (67 FR 42612; June 24, 2002), and responded extensively to comments very similar to the ones summarized above in the response to comments section of that final rule. In summary, those responses to comments stated that the NRC has consistently applied its policy of waiving the part 170 fees for special projects submitted to the NRC for the purpose of supporting NRC's generic regulatory improvements, and assessing part 170 fees for the review of special projects that are submitted

Comment. One commenter stated that it prefers annual fees to hourly fees, since it is easier to plan and allocate resources related to annual fees, while hourly fees are more unpredictable and more difficult to incorporate into a licensee's financial plan.

Response. While the NRC appreciates the concerns raised by this commenter, the agency notes that its collection of part 170 fees is consistent with Federal law and policy. The NRC assesses part 170 fees under the ~~Independent Offices Appropriations Act of 1952~~ (IOAA)~~,~~ which allows Federal agencies to assess fees to recover costs incurred in providing special benefits to identifiable recipients. In addition, the Conference Report of OBRA-90 specifically states that the Conference Committee "... expects the NRC to continue to assess fees under the [IOAA] to the end that each licensee or applicant pays the full cost to the NRC of all identifiable regulatory services such licensee or applicant receives." The NRC has received additional direction on this issue in the Office of Management and Budget (OMB) Circular A-25, in which OMB states it is Federal policy that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. The NRC abides by this direction by charging part 170 fees to recover the costs of providing special benefits to identifiable recipients. Further, the NRC notes that, as required by OBRA-90, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections.

2. <u>Annual Fees for Materials Users, Including Small Entities</u>

Comment. Two nuclear density gauge users commented that their fees are too high, and create a significant financial burden on small business owners. One of these users indicated only a small fraction of the company's revenues was generated from NRC licensed activities, but that these activities are essential to support projects it designs and monitors. With respect to

the NRC's upper fee level for small entities, this commenter stated that the broad revenue range encompassing $350,000 to $5,000,000 in gross annual receipts tends to favor larger firms while burdening smaller businesses. Thus, the NRC should consider adding more tiers for small businesses to reduce the license fee burden on smaller entities. The other commenter stated that license fees make it difficult for small projects to recover expenses, and requested a smaller fee structure.

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Response. The NRC stated in the FY 2001 fee rule (66 FR 32452; June 14, 2001), that it would re-examine the small entity fee every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act. Accordingly, as discussed in the FY 2003 proposed fee rule, this year the NRC re-examined the small entity fees, and does not believe that a change to the small entity fee is warranted for FY 2003. The NRC last revised its small entity fees in FY 2000 (65 FR 36936; June 12, 2000), when it increased the small entity annual fee and the lower tier small entity fee by 25 percent. For FY 2003, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

The NRC has responded to similar comments from small entities in previous fee rulemakings, both from materials users and other licensees, regarding the impact of fees on industry. In summary, the NRC has stated since FY 1991, when the 100 percent fee recovery requirement was first implemented, that it recognizes the assessment of fees to recover the agency's costs may result in a substantial financial hardship for some licensees. However, consistent with the OBRA-90 requirement that annual fees must have, to the maximum extent practicable, a reasonable relationship to the cost of providing regulatory services, the annual

The NRC believes that the two tiers of reduced annual fees currently in place provide substantial fee relief for small entities, including those with relatively low annual gross revenues. As noted previously, reductions in fees for small entities must be paid by other NRC licensees in order to comply with the OBRA-90 requirement to recover most of the agency's budget authority through fees. While establishing additional tiers would provide further fee relief to some small entities, it would result in an increase of the small entity subsidy paid by other licensees. The NRC must maintain a reasonable balance between the provisions of OBRA-90 and the RFA requirement for the agency to examine ways to minimize significant impacts that its rules may have on a substantial number of small entities. Therefore, the NRC is not providing any modification to its small entity fee structure, nor any further reduction in annual fees beyond that already provided for small entities. The NRC plans to re-examine the small entity fees again in FY 2005.

3. Annual Fees for Uranium Recovery Licensees

Comment. The NRC received several comments regarding annual fees for uranium recovery licensees. These comments supported the reduction in annual fees for these facilities that resulted from the decision to rebaseline annual fees, and therefore also supported the decision to rebaseline for FY 2003. One commenter also supported the continued implementation of last year's determination that the ~~Department of Energy (DOE)~~ must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. However, despite the proposed reductions, these commenters still expressed concerns about these fees and stated that there continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from such services. These commenters believe there

(already spelled out

The NRC is revising the professional hourly rates for NRC staff time established in §170.20. These rates are based on the number of FY 2003 direct program ~~full-time equivalents (FTEs)~~ and the FY 2003 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF. These rates are used to determine the part 170 fees. The rate for the reactor program is $156 per hour ($276,661 per direct FTE). This rate is applicable to all activities for which fees are assessed under §170.21 of the fee regulations. The rate for the materials program (nuclear materials and nuclear waste programs) is $158 per hour ($280,876 per direct FTE). This rate is applicable to all activities for which fees are assessed under §170.31 of the fee regulations. In the FY 2002 final fee rule, the reactor and materials program rates were $156 and $152, respectively.

A major reason for the 4 percent increase to the materials program rate is the salary and benefits increase that results primarily from the Government-wide pay raise. While salary and benefits also increase for the reactor program, the increase is offset by a reduction in the average overhead cost per direct FTE.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the materials program (nuclear materials and nuclear waste programs).

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

Rare Earth Facilities	---	---	0.2	0.0	0.0
Uranium Recovery	---	---	0.7	0.1	0.1
TOTAL SURCHARGE	100	2.7	100.0	21.5	24.2

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in A. through H. below. The workpapers which support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The workpapers are available electronically at the NRC's Electronic Reading Room on the Internet at Website address http://www.gov/reading-rm/adams.html. During the 30-day public comment period, the workpapers may also be examined at the NRC Public Document Room located at One White Flint North, Room O-1F22, 11555 Rockville Pike, Rockville, MD 20852-2738. remove?

A. Fuel Facilities

The revised annual fees for the fuel facility class reflect increased budgeted costs for activities that are not subject to cost recovery under part 170, primarily homeland security activities related to fuel facilities. Such activities include the issuance and follow-up of orders directing the fuel facility licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments the NRC is conducting on fuel facilities.

The FY 2003 budgeted costs of approximately $27.0 million to be recovered in annual fees assessed to the fuel facility class is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In the matrix (which is included in the NRC workpapers that are publicly

NOTE: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS FINAL RULE --

FINAL ~~DRAFT~~ REGULATORY FLEXIBILITY ANALYSIS FOR THE AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND 10 CFR PART 171 (ANNUAL FEES)

I. Background.

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 et seq.) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established on the basis of the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in §171.16(c) of this final rule are based on the NRC's size standards.

From FY 1991 through FY 2000, the Omnibus Budget Reconciliation Act (OBRA-90), as amended, required that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY

the reduction in annual fees and the relative low inflation rates, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

Therefore, the NRC is ~~proposing to~~ retain the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2003. The NRC plans to re-examine the small entity fees again in FY 2005.

IV. Summary.

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 94 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2003.