



Department of Energy
Washington, DC 20585

April 21, 2015

Sent via email: Rulemaking.Comments@nrc.gov
Secretary, U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, DC 20555-0001

Subject: DOE Comments on the Proposed Rule for Title 10 *Code of Federal Regulations*
CFR Parts 170 and 171, "Revision of Fee Schedules; Fee Recovery for Fiscal
Year 2015," published in the *Federal Register* on March 23, 2015

Reference: Docket ID NRC-2014-0200

To Whom It May Concern:

The U.S. Department of Energy (DOE) has reviewed the subject Proposed Rule and hereby submits the following comment:

DOE requests that the U.S. Nuclear Regulatory Commission clarify the rationale for the allocation percentages for DOE and other uranium recovery licensees and the generic/other uranium recovery costs in future proposed rules and work papers. This will help DOE establish the basis for DOE's estimate of annual uranium licensee fees in its budget request to Congress.

Please call me at (202) 586-1782 or email me at thomas.pauling@hq.doe.gov if you have any questions. Please address any correspondence to:

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Sincerely,

Thomas C. Pauling

Thomas C. Pauling
Director of Site Operations
Office of Legacy Management

Digitally signed by Thomas C. Pauling
DN: c=us, o=U.S. Government, ou=Department of Energy,
ou=Energy IT Services, ou=DOE Common Operating
Environment, ou=People, cn=Thomas C. Pauling
Date: 2015.04.21 16:53:49 -04'00'

Enclosure

cc w/enclosure:
R. Bush, DOE-LM (e)
A. Gil, DOE-LM (e)
File: ADM 0030.10 (rc grand junction)



**Review of 10 CFR Parts 170 and 171, Revision of Fee Schedules;
Fee Recovery for Fiscal Year 2015:
March 23, 2015, Proposed Rule**

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Introduction

Every year, the U.S. Nuclear Regulatory Commission (NRC) amends the licensing, inspection, and annual fees charged to applicants and licensees; these amendments are codified annually in 10 CFR Parts 170 and 171. NRC regulates the U.S. Department of Energy (DOE) Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). This memorandum summarizes NRC's proposed fee schedule revisions for fiscal year (FY) 2015[†], as they apply to the DOE Office of Legacy Management LM program. Comments on the proposed rule for FY 2015 must be submitted to NRC by April 22, 2015.

Analysis of Proposed Rule

To support this discussion, four exhibits are provided following the text. Table 1 provides a line item summary of NRC fee schedules for FY 2008 through FY 2014 (based on Final Rules) and, as proposed, for FY 2015. Based on the information in Table 1, Figure 1 plots the annual fees historically assigned to DOE under this rulemaking. Figures 2 and 3 are scanned excerpts of the most relevant portions of the proposed rule and supporting NRC work papers. Evaluation of the proposed rule for FY 2015 in light of previous fee determinations indicates the following:

- NRC is proposing to decrease the current hourly rate by about 1 percent; from \$279 to \$277. This decrease is attributed to an expected increase in hours worked per direct FTE, from 1375 to 1420.
- Based on NRC work papers, the number of full-time equivalents (FTEs)[‡] budgeted for the DOE UMTRCA program decreased slightly (relative to FY 2014), from 2.2 to 1.9 (Table 1, Figure 3). Therefore, DOE should anticipate about 2700 hours in dedicated NRC resources for UMTRCA sites, about the same level of support as dedicated the last three fiscal years.
- The proposed annual fee to be assessed to DOE for FY 2015 is \$653,000, a 20 percent decrease compared to the \$815,000 annual fee for FY 2014. In fact, the proposed annual fee for FY 2015 will be the lowest fee assessed to DOE since FY 2010, when the fee was \$590,000 (Table 1).
- The proposed "generic/other uranium recovery budgeted" costs in which DOE is responsible for 10 percent has varied over the past few years, but will increase considerably in FY 2015 (as proposed), from \$420,090 to \$780,760 (Table 1, line 5). This represents an increase in generic/budgeted costs of about 90 percent relative to those assigned in the past two fiscal years. However, this increase will be partially offset by a concomitant substantial change in the uranium recovery fee-relief deduction, from -\$1,448 in FY 2014 to -\$17,954 proposed for FY 2015.
- Another variation from previous years, DOE will bear 55 percent of the cost of the total uranium recovery license fees in FY 2015, the lowest portion assigned to DOE in more than 7 years. The remaining 45 percent (around \$541,000) will be borne by other uranium

[†] Source: *Federal Register* Volume 80, No. 55, pages 15476–15502: 10 CFR Parts 170 and 171, Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015; Proposed Rule. The key portion of the proposed rule that applies to DOE is found on page 15483, namely Table X (see Figure 2). The fee amendments are required by law under the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), which mandates that NRC recover through fees approximately 90 percent of its budget authority.

[‡] The NRC FTE of 1420 hours excludes all non-mission direct hours, such as training, general administration, and leave.

recovery licensees. This allocation is in contrast to previous years, when the annual fee assigned to DOE was about 70 percent of the total uranium recovery license fee.

Discussion

The bulk of NRC's budgeted costs for the UMTRCA program is explained by the level of effort (FTEs) NRC designates annually. In general, this allocation has been commensurate with the support provided by NRC for site-specific work under the UMTRCA program. DOE licensing actions in FY 2015–FY 2016 are expected to be similar to those in FY 2014, so the proposed level of NRC support for FY 2015 (about 2 FTEs) is probably appropriate.

Although NRC does not provide any rationale for the proposed significant decrease in the portion of total fees assessed to DOE this year (\$653,000 vs. \$815,000 in FY 2014), the agency does acknowledge that an increase in mining applications and tribal consultations has shifted staff resources (see highlighted portion of Figure 2).

NRC's hourly rates, ranging from \$273 to \$279 in the last few years (\$277 proposed for FY 2015), have been a longstanding issue for most licensees. However, DOE understands that these are fully burdened costs and that by law, under OBRA-90, NRC must maintain these rates to meet its required fee recovery.

As mentioned in previous evaluations, even after detailed reviews of historical 10 CFR 170-171 fee schedules and corresponding work papers, the basis for NRC's determination of generic/other uranium recovery costs and other line items affecting the DOE annual fee amount is still not clear. Given NRC's ambiguous responses to DOE formal comments issued in 2009, 2011, and again in 2014, this lack of detail is not likely to change. Ultimately, NRC's official response is that the agency must recover the difference between the total recoverable budgeted costs and the estimated Part 170 collections. The ambiguous line items appear to be an accounting mechanism allowing NRC to collect the required fee amount.

Stoller Newport News Nuclear proposes that the following comment be submitted to NRC on the proposed rule:

DOE requests that NRC clarify the rationale for the allocation percentages for DOE and other uranium recovery licensees and the generic/other uranium recovery costs in future proposed rules and work papers. This will help DOE establish the basis for DOE's estimate of annual uranium licensee fees for its budget request to Congress.

Table 1. Summary of Line Items Affecting DOE Annual Fee Amounts: FY 2008–FY 2014 and FY 2015 (Proposed)

Line No.	Fee Category/Endpoint	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (Proposed)
1	Hourly Rate	\$238	\$257	\$259	\$273	\$274	\$272	\$279	\$277
2	Full-Time Equivalents (FTEs) allocated for DOE UMTRCA (hours per direct FTE)	1.10 (1371)	0.70 (1371)	1.18 (1371)	2.25 (1371)	2.0 (1371)	2.0 (1351)	2.2 (1375)	1.9 (1420)
3	FTE Annual Rate (= hourly rate × hours per direct FTE)	\$326,298	\$352,347	\$355,089	\$374,283	\$375,654	\$367,472	\$383,625	\$393,458
4	UMTRCA Title I (and Title II) Budgeted Costs less 10 CFR Part 170 Receipts	\$359,471	\$246,563	\$419,769	\$745,889	\$751,298	\$666,626	\$774,185	\$593,233
5	Generic/other uranium recovery budgeted costs ^a	\$125,110	\$289,786	\$434,143	\$313,320	\$385,090	\$404,870	\$420,090	\$780,760
6	Total assessed percentage of generic costs	40%	35%	35%	10%	10%	10%	10%	10%
7	Generic/other uranium recovery budgeted costs assessed to DOE (= line 5 * line 6)	\$50,044	\$101,425	\$151,950	\$31,312	\$38,509	\$40,487	\$42,009	\$78,076
8	Uranium recovery fee-relief adjustment ^a	–\$11,585	–\$9,400	+\$18,519	–\$4,992	–\$10,464	–\$7,084	–\$1,554	–17,954
9	Total Annual Fee Assessed to DOE Sum of UMTRCA budgeted costs (line 3) and adjustments in lines 6 and 7; values rounded	\$398,000 DOE portion = 62.5% (37.5% to EM)	\$339,000 DOE portion = 62.5%	\$590,000 DOE portion = 62.5%	\$772,000 DOE portion = 75%	\$779,000 DOE portion = 75%	\$700,000 DOE portion = 100%	\$815,000 DOE portion = 100%	\$653,000 DOE portion = 100%
10	Total Annual Fee Amount for other Uranium Recovery Licenses	\$57,688	\$170,904	\$316,586	\$236,887	\$252,401	\$300,621	\$364,096	\$541,098
11	Total Fees Assessed, all Uranium Recovery Facilities	\$455,688	\$509,904	\$906,586	\$1,008,887	\$1,031,401	\$1,000,621	\$1,179,096	\$1,194,098
12	Percentage borne by DOE	87%	66%	65%	77%	76%	70%	69%	55%

^a Both generic/other uranium recovery budgeted costs^a and the uranium recovery fee-relief adjustments have varied greatly over the years; their basis is not clear.

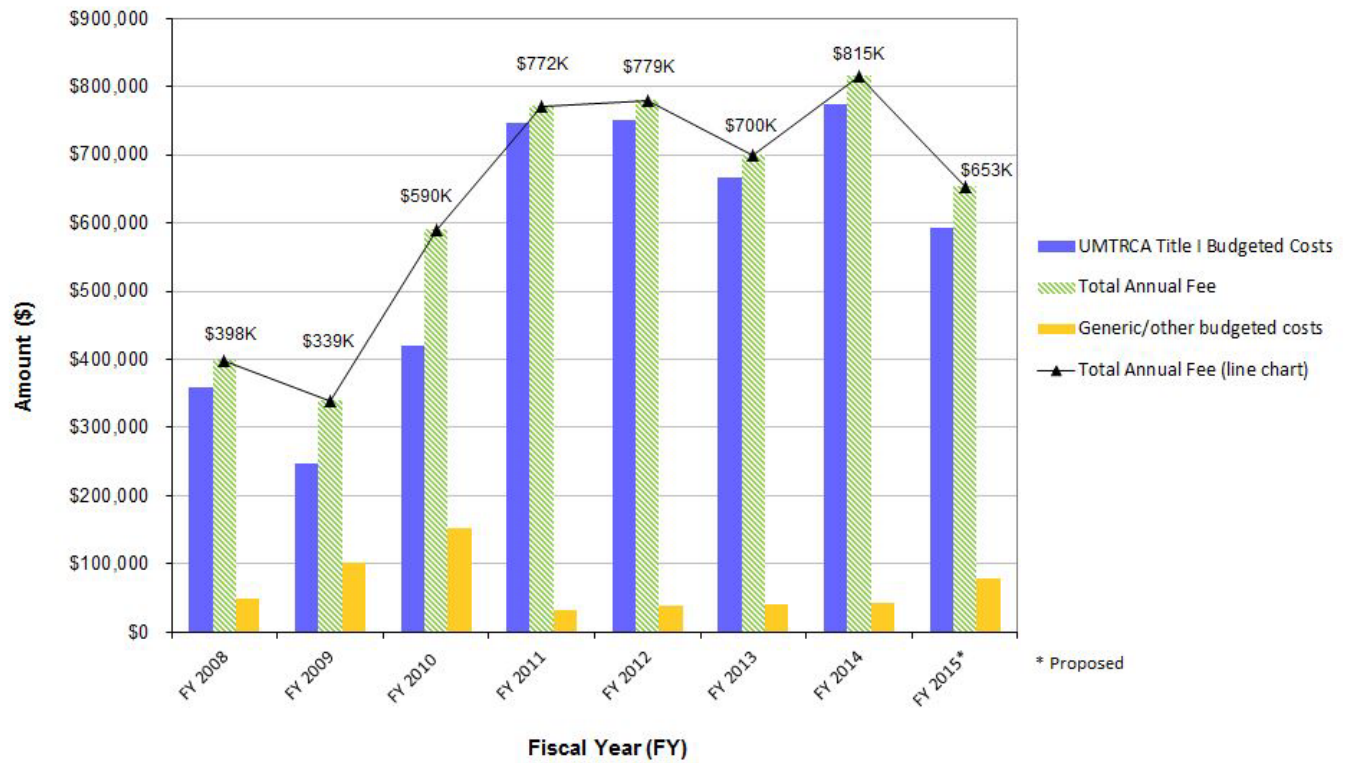


Figure 1. 10 CFR Parts 170–171: NRC Annual Fees and Budgeted Costs Assessed to DOE Since FY 2008

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES
[Dollars in millions]

Summary fee calculations	FY 2014 Final	FY 2015 Proposed
Total budgeted resources	\$10.9	\$11.6
Less estimated 10 CFR part 170 receipts	– 9.5	– 10.1
Net 10 CFR part 171 resources	1.3	1.5
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	– 0.0	– 0.2
Billing adjustments	– 0.1	– 0.1
Total required annual fee recovery	1.2	1.2

In comparison to FY 2014, the proposed FY 2015 budgetary resources for uranium recovery licensees increased due to greater resources required for environmental reviews of uranium mining applications and tribal consultations with uranium recovery licensing actions. Specifically, staff worked to expedite environmental reviews for uranium mining applications by improving the National Historic Preservation Act Section 106 Tribal Consultation process to accelerate NRC consideration of uranium mining applications.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating

the total annual fee amount for this fee class between the DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II, under UMTRCA to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program, which is directed toward

uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2015, the annual fee assessed to DOE includes recovery of the costs specifically budgeted for the NRC's UMTRCA Title I and II activities, plus 10 percent of the remaining annual fee amount, including generic/other costs (minus 10 percent of the fee-relief adjustment), for the uranium recovery class. The NRC assesses the remaining 90 percent generic/other costs minus 90 percent of the fee-relief adjustment, to the other NRC licensees in this fee class that are subject to annual fees.

The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

Summary of costs	FY 2015 Proposed annual fee
DOE Annual Fee Amount (UMTRCA Title I and Title II) General Licensees:	\$593,233
UMTRCA Title I and Title II budgeted costs less 10 CFR part 170 receipts	
10 percent of generic/other uranium recovery budgeted costs	78,076
10 percent of uranium recovery fee-relief adjustment	– 17,954
Total Annual Fee Amount for DOE (rounded)	653,000
Annual Fee Amount for Other Uranium Recovery Licensees:	702,680
90 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I and Title II activities	
90 percent of uranium recovery fee-relief adjustment	– 161,582
Total Annual Fee Amount for Other Uranium Recovery Licensees	541,098

Figure 2. Excerpt from March 23, 2015 Proposed Rule Applicable to DOE Fee Assignment

Text or line items most relevant to this evaluation are highlighted above. The total required annual fee recovery listed in Table IX above—\$1.2 million—represents 0.2 percent of the total 10 CFR Part 171 fee collections required by NRC (\$601.9 million, from Table I of the proposed rule).

Uranium Recovery Annual Fees FY 2015

	Total
Total Annual Fee Amount (exc. fee-relief adjustment):	\$1,373,988
Total Fee-Relief Adjustment:	-179,535
Total:	\$1,194,453

Group 1 Calculation of DOE Annual Fee

Fee Category	Contract \$	FTE	FTE Rate	Less: Part 170 Receipts	Total Fee
18.B DOE UMTRCA Budgeted Costs:	\$0	1.9	\$393,458	-\$154,338	\$593,233
10% × (Total Annual Fee Amount [excl. Fee-Relief] less UMTRCA)					\$78,078
10% of Fee-Relief Activities					-\$17,954
				Total:	\$653,358
				DOE's Annual Fee Rounded:	\$653,000

*Figure 3. DOE Annual Fee Derivation
(Adapted from FY 2015 NRC Proposed Fee Rule Work Papers)*

As has been the case historically, NRC provides little documentation supporting their derivation of budgeted costs. This adapted excerpt from the work papers demonstrates the level (or lack) of detail; essentially, the work papers provide no additional information beyond that already cited in Table X of the proposed rule.