

URANIUM RECOVERY FLAT FEE PILOT INITIATIVE

**A Report for the Senate Committee on Environment and Public Works
and the House Committee on Energy and Commerce**



By the U.S. Nuclear Regulatory Commission

Enclosure

INTRODUCTION

The U.S. Nuclear Regulatory Commission (NRC) developed this report in accordance with Section 202 of the Nuclear Energy Innovation and Modernization Act (NEIMA), which requires the NRC to “(1) complete a voluntary pilot initiative to determine the feasibility of the establishment of a flat fee structure for routine licensing matters relating to uranium recovery; and (2) provide to the appropriate congressional committees a report describing the results of the pilot initiative under paragraph (1).”

BACKGROUND

In accordance with Section 6101 of the Omnibus Budget and Reconciliation Act of 1990 (OBRA-90), as amended, the NRC is currently required to collect approximately 90 percent of its budget authority less specifically excluded amounts, through fees,¹ as well as designated fee relief amounts in the budget limited to 10 percent. The NRC accomplishes this in two ways: (1) by collecting fees for services rendered to licensees and applicants in accordance with the Independent Offices Appropriations Act, 1952, and Office of Management and Budget’s Circular No. A-25, “User Charges,” pursuant to the NRC’s regulations in 10 CFR Part 170; and (2) by collecting the remainder through annual fees pursuant to the NRC’s regulations in 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.” However, in fiscal year (FY) 2021, NEIMA will replace Section 6101 of OBRA-90 with a revised fee-recovery framework.

The NRC established a flat fee for materials licenses to streamline the license fee process and provide more predictability for the approximately 2,600 materials licensees. For new applicants for materials licenses, a one-time 10 CFR Part 170 flat fee is assessed upon the submittal of an application to the NRC. This flat fee is based on the average direct hours needed for the NRC to process the application, multiplied by the professional hourly rate established annually in the agency’s fee rule. The NRC staff determines the average processing time for applications through a biennial review of actual hours expended. The remaining 10 CFR Part 170 charges for materials licensees, such as licensing actions and inspection activities, are merged into the calculation for the 10 CFR Part 171 annual fees. For other licensees, the NRC bills fees for services at a full cost hourly rate and services are billed under 10 CFR Part 170 as they are incurred (e.g., the review of licensing action, amendment, inspection).

On October 19, 2016, the Commission directed the NRC staff to explore, as a voluntary pilot, the feasibility of establishing a flat fee structure for routine licensing matters in the area of uranium recovery. In January 2019, NEIMA was enacted into law, also requiring a uranium recovery flat fee voluntary pilot initiative and a report to Congress on the results.

EVALUATION OF THE PILOT INITIATIVE

As part of this pilot initiative, the NRC staff evaluated routine licensing and inspection activities to determine whether establishing a flat fee would be feasible. A flat fee is considered feasible if historical data shows that the time required to complete the activity does not fluctuate drastically from year to year, enabling the NRC to fairly and equitably establish the flat fee in accordance with applicable statutory requirements and the established fee regulations. This assessment

¹ Consistent with Section 6101 of OBRA-90, 10 percent of the remaining budget authority is not recovered through fees; the NRC refers to the activities included in this 10 percent as “fee-relief activities.”

was facilitated by the new data recording structure, implemented in FY 2018, that provides more detailed data to allow the staff to determine whether a fair and equitable flat fee could be established. The NRC staff was able to record and analyze the hours spent on specific work products and evaluate the resources required for various uranium recovery activities completed over the past several years.

The staff's feasibility evaluation focused on actions for which the scope of the NRC's activity was consistent, well defined, and routine. Additionally, the NRC staff concentrated on activities for which data from multiple similar actions were available and the level of resources needed could be captured to ensure a representative sample size. After gathering the necessary data, the NRC staff began to analyze six licensing and inspection activities as potential candidates for flat fees: (1) new facility application reviews, (2) license renewal reviews, (3) reviews of facility expansions with an increase in production area, (4) reviews of facility expansions with no increase in production area, (5) financial assurance reviews, and (6) routine inspections. Table 1, "Summary of Actual Effort for Activities Considered for the Uranium Recovery Flat Fee Pilot Initiative," of this enclosure, presents NRC staff hours and contractor costs for the activities considered for the uranium recovery flat fee pilot and shows the range of NRC staff hours and respective contractor costs for each of these activities.

Licensing Actions: New Uranium Recovery Facilities, Expansions, and Renewals

As part of the analysis, the NRC staff reviewed actual cost data from FY 2008 through the end of FY 2018 for new applications for licenses for uranium recovery facilities, license renewals, and license amendments for facility expansions. As shown in Table 1, the number of NRC staff hours and contractor costs vary for each of these licensing actions. For example, the resources for an expansion review for an existing facility with an increase in production area ranged from 954 hours to 12,335 hours. Similarly, the NRC contractor costs ranged from \$0 to \$994,741. For all three of these licensing activities, the NRC staff hours and contractor costs varied based on the size of the facility, complexity of the review, and extent of Tribal consultation activities.

Financial Assurance

License conditions require licensees to update their financial assurance estimates annually. These submittals formed the basis for the NRC staff's financial assurance reviews. The NRC staff analyzed cost data from financial assurance reviews from FY 2010 through FY 2018 and identified 27 completed financial assurance reviews. Before FY 2010, the staff completed only a limited number of financial assurance reviews annually. When performing these reviews, the NRC staff focuses its efforts on examining the licensee's cost estimate to confirm that sufficient funding is available to complete decommissioning and cleanup of the facility. While the scope of the staff's responsibilities for conducting financial assurance reviews is well defined, the actual number of hours needed to complete a review can vary based on the magnitude of the change, the quality of the licensee's documentation, and the overall size of the facility. Based on the staff's analysis of the 27 completed financial assurance reviews, the number of NRC staff hours ranges from 15 hours to 187 hours, with an average of 64 hours (see Table 1).

Routine Inspections

Inspections of uranium recovery facilities licensed by the NRC ensure that the facilities conduct their operations in compliance with applicable regulatory requirements. In general, inspection frequencies at uranium recovery facilities range from several times per year to once every 3 years. The inspection frequency for any given facility is based on the radiological hazard

posed by the licensee's activities. If an in situ recovery site is in standby, with the potential to operate again and continue to use its process to extract uranium, the inspection frequency would generally be once per year. For routine inspections, the NRC staff reviewed cost data from FY 2016 through FY 2018. The staff identified 14 routine inspections during this timeframe. Before FY 2016, the number of routine inspections performed annually was limited as several licensees remained in the initial phases of operations. While the scope of staff activities during inspections is well defined, the time needed to complete the inspection can vary based on the activities at a facility, the amount of time since the previous NRC inspection, and the quality of the licensee's documentation. Based on the NRC staff's analysis of the 14 routine inspections that were conducted, the number of NRC staff hours ranges from 87 hours to 252 hours, with an average of 161 hours (see Table 1).

Analysis

After analyzing the data samples for licensing actions for new uranium recovery facilities, license renewals, and amendments for facility expansion (with and without changes in the uranium recovery production area), the NRC staff determined that these actions showed too wide a variance in resources required and, therefore, the establishment of flat fees for them would skew too high or low and not represent the actual work delivered. However, financial assurance reviews and routine inspections were relatively more consistent in the level of resources required. The NRC staff generally conducts these two types of activities on an annual basis, and they have shown a relatively consistent number of hours that typically have not fluctuated drastically from year to year. This relative consistency could mitigate the potential of establishing a flat fee that skews either high or low. For these reasons, the NRC staff concluded that establishing a flat fee for financial assurance reviews and routine inspections for the uranium recovery fee class would be feasible.

RECENT CHANGES WITHIN THE URANIUM RECOVERY FEE CLASS

Since the pilot initiative began, important and relevant changes within the uranium recovery fee class have occurred. In September 2018, the NRC entered into an agreement with the State of Wyoming, transferring fourteen uranium recovery licenses to Wyoming's jurisdiction. With Wyoming's transition to Agreement State status, the NRC retained regulatory oversight responsibilities for only the three licensed uranium recovery facilities not located in Wyoming.

Under the NRC's fee policy, the one operating licensed uranium recovery facility (Crow Butte Resources, Inc.'s Crow Butte facility, located in Chadron, Nebraska) pays hourly fees for service in accordance with 10 CFR Part 170 and an annual fee in accordance with 10 CFR Part 171. The other two licensed, but not constructed, in situ recovery sites (Powertech Uranium Corporation's Dewey-Burdock facility, located in Fall River and Custer Counties, South Dakota, and NuFuels, Inc.'s Crownpoint facility, located in Crownpoint, New Mexico) are not yet operating and thus only pay hourly fees for service in accordance with 10 CFR Part 170.

Following the change in Wyoming's status, the NRC staff met with Cameco about the uranium recovery flat fee pilot initiative. Cameco owns the Crow Butte facility operating in Nebraska and is the one current licensee that would be affected by a change to flat fees. Cameco stated that it supported the uranium recovery flat fee pilot initiative and understood the NRC's rationale for focusing on flat fees for financial assurance reviews and routine inspections. During a follow-up interaction with Cameco, the NRC staff provided a status of the uranium recovery flat fee pilot. Cameco expressed that predictability in the amount and timing of fees that a flat fee could bring

is important, but it also values the transparency provided by the current detailed fee billing process.

The NRC staff also contacted Agreement States with uranium recovery licensees to understand their fee schedule development processes and to determine whether the Agreement States use the NRC's fee structure in the assessment of fees to their licensees. From this outreach with regulators in the states of Texas, Colorado, Utah, Washington, and Wyoming, the NRC staff determined that these Agreement States do not base their fee structures on fees charged by the NRC. Therefore, if the NRC established a uranium recovery flat fee structure for its licensees, it would not necessarily affect the fee structures of these Agreement States.

CONCLUSION

The NRC has decided to maintain the current NRC fee billing structure for 10 CFR Part 170 fees for service for uranium recovery licensing matters. While the NRC staff determined that it could fairly and equitably establish flat fees for financial reviews and routine inspections for the uranium recovery fee class, the changes within this fee class and discussions with the sole remaining NRC licensee led to the decision to maintain the current approach to fees. Although a flat fee will not be established at this time, the NRC staff will continue its communication with licensees and applicants and provide an estimated range of NRC staff hours and contract costs (if applicable) that are anticipated for uranium recovery activities. In addition, the NRC staff has posted cost estimates for uranium recovery activities on the NRC's public web site to give a general sense of what can be expected. The NRC most recently updated these cost estimates in May 2019 and is committed to biennial updates. The NRC will continue efforts to ensure that fees are fair, equitable, timely, and transparent for NRC licensees, applicants, and stakeholders.

Table 1
Summary of Actual Effort for Activities Considered for the Uranium Recovery Flat Fee Pilot Initiative

Activity	Number of NRC Direct Staff Hours: Low Level of Effort	Number of NRC Direct Staff Hours: High Level of Effort	Number of NRC Direct Staff Hours: Average Level of Effort	Contractor Costs: Low Level of Effort	Contractor Costs: High Level of Effort	Contractor Costs: Average Level of Effort
New Facility Review ¹	7,410	9,607	8,352	\$236,858	\$1,706,097	\$759,561
License Renewal Review ¹	2,396	10,498	6,331	\$0	\$182,343	\$92,951
Expansion Review for Existing Facility with an Increase in Production Area ²	954	12,335	6,068	\$0	\$994,741	\$451,250
Expansion Review for an Existing Facility with No Increase in Production Area ³	123	396	260	\$0	\$0	\$0
Financial Assurance Reviews ⁴	15	187	64	\$0	\$0	\$0
Routine Inspections ⁵	87	252	161	\$0	\$0	\$0

1. The NRC staff hours can vary depending on the scope, size, and location of the facility, as well as the quality of the licensee's submittal and the extent of Tribal consultations.

2. This category is for expansions that add to the license new production areas that were not considered in the initial evaluation. Examples include the addition of new wellfields and satellite facilities adjacent to the existing licensed facility and expansion to recover uranium from a different aquifer. The NRC staff hours for this category of action can vary depending on the size of the area being added to the license and the complexity of the proposed addition.

3. This category is for expansions that do not change the production area, but involve an increase in capacity. Examples include adding or modifying the capacity of a dryer or increasing the allowable flow rate of the processing plant. The NRC staff hours can vary for this category of action depending on the nature and complexity of the expansion.

4. The NRC staff hours for this type of review can vary depending on the magnitude of the change in the financial assurance amount, the quality of the supporting information included in the submittal, and the overall size of the facility. These factors can influence the time needed for the NRC staff to complete its review.

5. The NRC staff hours for inspections can vary depending on the activities being conducted by the licensee, the size of the facility, the time that has passed since the previous inspection, and the performance of the licensee.