

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 170 and 171**

RIN 3150-AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995**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, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately \$503.6 million.

EFFECTIVE DATE: July 20, 1995.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6213.

SUPPLEMENTARY INFORMATION:

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I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority

of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On March 20, 1995 (60 FR 14670), the NRC published its proposed rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

Several changes were proposed by the NRC to the fees to be assessed for FY 1995. These changes were summarized in the proposed rule (60 FR 14671; March 20, 1995) and are as follows:

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately \$56 million would be allocated to all NRC licensees based on the budgeted dollars for each class of licensees.
2. Eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These actions would streamline the license fee process and result in more predictable fees.
3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates were proposed instead of a single rate.
4. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees to improve the relationship between annual fees and the cost of providing regulatory services to the classes and subclasses of licensees, and to improve NRC efficiency.
5. Implement the newly promulgated NRC small entity size standards and establish a new lower-tier size standard for annual fee purposes.

The Commission held a public meeting on March 15, 1995, at which the NRC staff briefed the Commission on the proposed changes for FY 1995. A transcript of the Commission meeting is available and has been placed in the Public Document Room.

The American Mining Congress¹ filed a Petition for Rulemaking which requested among other things that (1) annual fees not be assessed for mills in a standby status; and (2) a licensee review board to oversee NRC fees be established. The Commission denied the request on April 28, 1995 (60 FR 20918) noting that (1) the NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the applicant or licensee and (2) petitioner's request that the Department of Energy be assessed fees for Uranium Mill Tailings Radiation Control Act (UMTRCA) actions was implemented in the final fee rule for FY 1994.

II. Responses to Comments

The NRC received twenty-two comments on the proposed rule. Although the comment period ended on April 19, 1995, the NRC has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1995 fee rule.**1. Change the Method for Allocating Those Budgeted Costs (About \$56 Million) That Cause Fairness and Equity Concerns**

Comment. The commenters agreed that the proposed method for allocating approximately \$56 million in budgeted costs for NRC activities which are not directly related to the cost of regulating licensees represented a more equitable method for distributing the costs. Many commenters indicated that, pending legislative relief by Congress to remedy this inequitable situation, they supported the proposal to treat these costs similar to overhead and distribute these costs based on the percentage of the budget directly attributable to a class of licensees. However, the commenters also believed that these costs should not be paid by any licensee and recommended that the NRC should continue to urge Congress to modify OBRA-90 to remove these costs from the fee base. For example, one commenter stated that the proposed 89% allocation of these costs to power reactors results in a charge of \$511,000

¹ The American Mining Congress merged with the National Coal Association on February 13, 1995, and is now the National Mining Association.