ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 195

[FRL-5276-3]

RIN 2060-AF40

User Fees for Radon Proficiency Programs

AGENCY: Environmental Protection Agency (EPA). **ACTION:** Technical amendment.

SUMMARY: This technical amendment to the Radon Proficiency Program's User Fee establishes fees for the calendar year 1995. The User Fee Rule requires that individuals and organizations applying to or participating in the National Radon Measurement Proficiency (RMP) or the National Radon Contractor Proficiency (RCP) Programs pay annual fees. This amendment establishes the fee schedule for the calendar year 1995.

In 1994 the Agency began an aggressive effort to streamline operation of the proficiency programs as a way of reducing costs. Because of these streamlining efforts, the cost to operate the proficiency programs in 1994 was reduced by about 34% from 1993. Thus, the 1995 user fees will generally be lower than the 1994 user fees in some areas while the fees for other areas of the program will go up slightly from the 1994 user fees. The Agency remains committed to recovering all of its operating costs over a period of five years. Consistent with the schedule established in the 1994 User Fee Rule, the Agency has increased the level of anticipated cost recovery from 30% in 1994 to 47.5% in 1995.

Upon receipt of an invoice from EPA following the effective date of this technical amendment, organizations offering primary measurement services must pay an annual fee of \$390 per device entered or listed in the RMP program. Organizations offering secondary measurement services must pay an annual fee of \$50 for each business location listed in the program. Participants in the individual proficiency component of the RMP program must pay an annual fee of \$105. Participants in the RCP program must pay an annual fee of \$210. As before, State and local governments are exempted from these fees under section 305(e)(2) of the Indoor Radon Abatement Act of 1988, 15 U.S.C. 2665(e)(2).

EFFECTIVE DATE: September 13, 1995. FOR FURTHER INFORMATION CONTACT: James W. Long, (202) 233-9433, U.S. EPA, Office of Radiation and Indoor Air, 401 M St. S.W., (6604J), Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 305 of the Indoor Radon Abatement Act (IRAA) of 1988, 15 U.S.C. 2661 et seq., authorizes the Administrator of EPA to assess fees to defray the costs associated with operating its radon proficiency programs. The User Fees for Radon Proficiency Programs Final Rule, Federal Register, 59 FR 13166, established fees for two proficiency programs: the National Radon Measurement Proficiency Program and the National Radon Contractor Proficiency Program. The funds received by EPA have been authorized to be deposited into a special account in the United States Treasury with amounts in the account to be appropriated for administering the radon proficiency programs. State and local governments, including educational entities, are exempt from paying a fee to participate in the radon proficiency programs.

The final rule is cross-referenced to Title 40 of the Code of Federal Regulations (CFR) chapter I, subchapter R, Part 700 that lists regulations promulgated under the Toxic Substances Control Act (TSCA). Although the IRAA was enacted as Title III of TSCA, the Final User Fee Rule itself is listed under subchapter F of the CFR (40 CFR 195.20 et seq.) because it deals solely with a radiation program.

II. Background

On March 18, 1994, EPA issued a final rule in the Federal Register, 59 FR 13166, that established an initial fee schedule of \$375 per device entered or listed in the RMP program for organizations offering primary measurement services, \$75 per business location for organizations offering secondary measurement services, \$150 for participants in the individual proficiency component of the RMP program, and \$200 for participants in the RCP program.

The fees that the Agency established in the 1994 final rule were set to recover 30% of the total costs of administering the proficiency programs. As stated in the 1994 rule, the Agency intends to adjust its fees annually to recover ever increasing percentages of its program costs according to the following schedule: 1994 (30%), 1995 (47.5%), 1996 (65%), 1997 (82.5%) and 1998 (100%). For Fiscal Year (FY) 1994, total Agency costs to operate the radon proficiency programs were \$1.7 million.

EPA expects similar costs for fiscal year 1995. Based on a projected cost recovery percentage of 47.5%, the Agency expects to collect approximately \$750,000 from user fees during 1995. EPA shall continue to review and adjust the fees over the next three years (as necessary) to recover ultimately the full annual costs of the proficiency programs. Fees may also be adjusted to account for other factors such as inflation and changes in programs costs. As it adjusts fees in the future, EPA will assess the potential effects of its fee adjustments on the radon industry and the regional impacts.

The Agency has determined that the Paperwork Reduction Act of 1980 (PRA) requirements do not apply to this technical amendment. This action was not classified by the Agency as a significant regulatory action, however, the Office of Management and Budget did request to review this action. The technical amendment cleared review on May 4, 1995 with no comments from OMB.

III. Provisions of the Amendment

A. National Radon Measurement Proficiency Program

EPA's total costs for the organizational component of the RMP Program for Fiscal Year 1994 were about \$960,000 (a more detailed description of costs and how they were calculated is presented in the Technical Support Document for the 1995 User Fee Calculation in Support of the Radon Proficiency Program User Fee Final Rule, U.S. EPA/Office of Radiation and Indoor Air, January 24, 1995.). As of October 1, 1994, EPA had approximately 985 primary devices and approximately 1,485 secondary organizations listed or seeking to be listed in the program. If the RMP Program fees had been set at a full cost recovery level (100%) the annual fee for 1995 for a primary device would be about \$825 per application or listing, and a fee of \$100 would be assessed for each secondary firm applying to or listed in the RMP program. The difference between the fees for primary devices and secondary firms reflects differences in EPA's costs to process and maintain each type of applicant or participant in the organizational component of the RMP Program.

In this technical amendment to the 1994 Final Rule we have clarified the text in Section 195.20(a)(2) to reflect the fact that organizations listed or seeking to be listed for secondary measurement services in the RMP Program must pay an annual fee of \$50 for each business location. Since the inception of the RMP