

## **POLICY ISSUE**

### **Notation Vote**

August 15, 2016

SECY-16-0097

FOR: The Commissioners

FROM: Maureen E. Wylie  
Chief Financial Officer

SUBJECT: FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED  
FEE RULE

#### PURPOSE:

To obtain Commission approval of the U.S. Nuclear Regulatory Commission (NRC) staff's recommended approach in response to Staff Requirements Memorandum (SRM) SECY-15-0015, "Project Aim 2020 Report and Recommendations," recommendation III-1 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15159A234). This memorandum identifies 14 administrative changes in six categories that the staff would implement in fiscal year (FY) 2017 (Enclosure 1), requests Commission approval to further analyze four improvements as policy issues, and provides the estimated FY 2017 fee rule schedule (Enclosure 2). The schedule has accelerated publication dates for the proposed and final fee rules.

#### BACKGROUND:

In a January 30, 2015, paper to the Commission, SECY-15-0015, "Project Aim 2020 Report and Recommendations" (ADAMS Accession No. ML15012A594), the NRC staff recommended that the Office of the Chief Financial Officer (OCFO) undertake an effort to: (1) simplify how the NRC calculates its fees, (2) improve transparency, and (3) improve the timeliness of the NRC's communications about fee changes. These recommendations are similar to stakeholder comments the staff received during outreach on the NRC's fees and fee development process. In addition, the NRC Project Aim 2020 paper recommended that the OCFO assess alternative methods of allocating fees; specifically, the paper recommended that the OCFO look at whether the NRC should continue to assess flat fees to materials licensees and whether the NRC should use flat fees for other regulatory activities. The Commission approved these Project Aim 2020 recommendations in the SRM SECY-15-0015 dated June 8, 2015.

CONTACT: Renu Suri, OCFO  
(301) 415-0161

NRC fee collection is governed by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, which requires the NRC to recover approximately 90 percent of its budget authority<sup>1</sup> each year. To meet the requirements of OBRA-90, the NRC publishes a rule each year that establishes two types of fees: (1) fees for specific services under 10 CFR Part 170<sup>2</sup> to recover the cost of special benefits to identifiable applicants and licensees, and (2) annual fees under 10 CFR Part 171<sup>3</sup> to recover generic and other regulatory costs not otherwise recovered under 10 CFR Part 170.

In accordance with the SRM dated October 11, 2005, for SECY-05-0164, “Annual Fee Calculation Method,”<sup>4</sup> the staff continues to use the rebaselining method of calculating fees for FY 2017 in which the NRC’s budget is analyzed in detail and budgeted resources are allocated to fee classes and subclasses of licensees. The staff is initiating the FY 2017 fee rule cycle early by sending this paper to the Commission with recommended changes for future years and FY 2017 administrative changes.

## DISCUSSION:

### *Fee Transparency and Simplified Calculations*

OCFO published a *Federal Register* notice (FRN) on March 22, 2016 (81 FR 15352), requesting information from the public on issues related to developing the agency’s fees. During the comment period, which closed on May 6, 2016, the NRC received a number of comments from stakeholders. OCFO also held a public meeting on April 13, 2016, to gather information on the NRC’s current fee development process and communications and to hear stakeholder views.

Some of the concerns expressed by the NRC commenters include: (1) the NRC does not recover enough fees through user fees, (2) the NRC’s allocation of annual fees is not equitable, because new reactor licensees do not pay annual fees until they start operating, (3) the NRC does not provide cost estimates on topical reports and licensing actions, (4) the NRC does not include sufficient details about activities billed as user fees and annual fees, (5) the NRC does not issue its fee rule in a timely fashion, and (6) the NRC does not provide enough details in its invoices.

To support this initiative, OCFO formed and led an interoffice steering committee with representatives from the Office of Nuclear Reactor Regulation (NRR), the Office of New Reactors (NRO), the Office of Nuclear Materials Safety and Safeguards (NMSS), the Office of Nuclear Security and Incident Response, and the Office of the General Counsel (OGC). The steering committee evaluated the current fee process to identify solutions for concerns raised by

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<sup>1</sup> The 90 percent requirement is applied to the NRC’s budget authority, not including any amounts appropriated for specific areas such as high-level waste, waste incidental to reprocessing, generic homeland security, and Inspector General Services for the Defense Nuclear Facilities Safety Board.

<sup>2</sup> “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended” is the title of 10 CFR Part 170.

<sup>3</sup> “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” is the title of 10 CFR Part 171.

<sup>4</sup> SECY-05-0164 can be found at ADAMS Accession No. ML052840249.

NRC stakeholders. In addition, steering committee members provided input from their respective offices.

Based on comments received from the public and input from steering committee members, the staff developed a list of more than 50 improvement options that address concerns with the current fee process (Enclosure 3). The steering committee categorized these potential improvements into six themes: (1) alignment of budget and fees, (2) direct billing to licensees, (3) outreach to licensees, (4) streamlining fee calculations, (5) evaluation of new basis for fees, and (6) modification of invoices. The steering committee further classified these improvements as either potential policy actions for Commission approval or process changes that the staff could implement without further Commission consideration.

Based on SRM-SECY-15-0015, the steering committee then evaluated all the potential improvements to determine how they scored, using the following criteria: (a) transparency—help stakeholders understand the NRC fee setting process, (b) timeliness—enable the NRC to publish its fee rule earlier than in previous years, and (c) equitability—calculate NRC fees based on allocating NRC costs fairly among all its licensees.

The steering committee determined that 14 improvements would be beneficial and could be acted upon in FY 2017. These process improvements would not require any policy changes, and are included as part of the administrative changes for FY 2017 listed in Enclosure 1. The steering committee classified the remaining improvements as policy and process changes planned for future consideration, or as not possible under the current statutory and regulatory environment. For each proposed future improvement, OCFO will develop a project plan for further analysis and an implementation strategy.

Using the transparency, timeliness, and equitability criteria, the steering committee determined that four long-term potential improvements are of highest priority. The staff requests Commission approval to study these potential long-term improvements. Once studies are complete, the staff will be in a position to gauge whether to recommend that the NRC's existing fee policy should be modified to incorporate the proposed improvement. If the staff decides to pursue a particular improvement and recommend a corresponding fee-policy change, the staff will submit a notation vote paper to the Commission for approval before implementation.

The four long-term potential improvements that the staff wishes to study further are listed below. Based on the steering committee's initial analysis, the staff notes a few pros and cons associated with each long-term improvement. These pros and cons will be further refined and expanded upon if the Commission approves further study.

- (1) Modify the calculation of the annual fee based on the size of the licensed facility (e.g., megawatt thermal, number of wellfields on a site). Currently, all licensees in a fee class or category are charged one annual fee, regardless of their size. The staff would explore alternative bases for calculating the annual fee.**

Pros:

- Charging a fee based on megawatt thermal for operating reactors or wellfields for uranium sites would increase the transparency of fee calculations (by clearly providing a mathematical relationship between annual fee and licensed thermal power output).

- This methodology aligns with the calculation used to determine fees for small modular reactors (i.e. the annual fee is calculated as a function of licensed thermal power rating).
- Smaller facilities with simpler designs may result in decreased regulatory expenditures, thus the fee structure could be more fair and equitable.

Cons:

- Some licensees may not view charging baseline fees based on size as fair because the size of the facility may not always correspond to its economic earnings.
- Per OBRA-90, the annual fees should—to the maximum extent practicable—have a reasonable relationship to the cost of providing regulatory services. In some cases, facility size may not be indicative of the cost of providing regulatory services. Thus, this method may not work in all circumstances

Timeline: The staff would need to evaluate the resources required to revise the fee structure to account for the new fee process. If approved for further analysis, in addition to the baseline data already available, an additional year would be necessary for stakeholder outreach and market analysis to change the NRC's fee structure. The staff estimates that this item could be implemented for the FY 2019 fee rule.

Resources: Use existing budgeted resources of 1.0 full-time equivalent (FTE) for stakeholder outreach, market analysis, and changes to the NRC's time reporting and fee structure data in 2018.

- (2) **Charge operating reactors a combined 10 CFR Part 170 and 10 CFR Part 171 fee, instead of hourly fees-for-services in addition to an annual fee. The combined fee would cover all project manager time plus technical reviewer time for a baseline number of licensing actions. This combined fee would also cover all hours associated with the baseline inspection program including the resident inspector's time plus the time of the other inspectors needed to complete the baseline inspection activities. The NRC would use historical data to generate the baseline number of licensing actions and inspection-activity hours used to calculate the combined fee.**

Pros:

- Charging a combined fee to include the annual fee and the hourly fees for baseline hours of licensing actions would increase the predictability for stakeholders and would simplify the fee structure.
- Variations among licensees and variations across years would be smoothed out by assessing a combined annual fee.

Cons:

- The annual amount could be perceived by licensees as unfair. Some licensees would pay for more licensing and inspection hours that were actually used in a given year,

while other licensees might receive additional licensing and inspection services for the same combined fee.

- The staff would need to evaluate the resources required to revise the accounting system to track inspection and licensing hours so the baseline number could be periodically reevaluated.

Timeline: If approved for further analysis, in addition to the baseline data already available for reactors, an additional year would be necessary for stakeholder outreach, collection, and evaluation of data for materials licensees and to make changes to the NRC's time reporting and fee structure. The staff estimates that this item could be implemented in the FY 2018 fee rule for reactors.

Resources: Use existing budgeted resources of 0.5 FTE for stakeholder outreach, evaluation of the data, and changes to the NRC's time reporting and fee structure for reactors. Additional evaluation and implementation time would be necessary for materials licensees. In addition, approximately 1.0 FTE of existing resources would be needed for implementation in FY 2018.

- (3) Charge a flat fee for each license amendment review and other similar routine activity for materials program licensees (e.g. fuel facilities and uranium recovery facilities). The staff would evaluate whether more materials program licensees could be charged flat fees. The staff would also explore charging several flat fees for license amendments and other reviews, with different charges classified in tiers, based on the expected complexity of the review.**

Pros:

- Charging flat fees would increase the predictability for stakeholders by simplifying the fee structure.
- The fees for various license products would be known in advance and would not vary, regardless of the number of hours spent by the staff reviewing the application.

Cons:

- The determination of a fee that is fair and equitable may be challenging, due to large variations among different types of licensing actions. In addition, large variations exist among similar types of licensing actions.
- Since similar types of licensing actions for the same types of licensees are all currently charged to the same cost activity code, assumptions will be needed for time spent on each action that would require significant staff resources.
- The staff would need to evaluate the resources required to revise the accounting system to invoice flat fees for various types of licensing actions.

Timeline: If approved for further analysis, the staff would evaluate three years of future data, once appropriate cost activity codes are established for each type of licensing action, to ensure

the accuracy of the costs for various licensing reviews and ensure a representative sample of the various tasks completed by the agency. An additional year would be necessary to evaluate the data and make changes to the NRC's time reporting and fee structure. The staff estimates that this item would be implemented in the FY 2020 fee rule.

Resources: Use existing budgeted resources of 0.5 FTE in FY 2019 to evaluate the data for the previous three years.

- (4) Charge hourly fees for all contested hearings. Currently, the costs for uncontested (i.e., "mandatory") hearings and contested hearings involving national security initiatives are directly billed under 10 CFR Part 170. The costs for other contested hearings are recovered through generic annual charges. The staff would explore the ramifications of directly billing all hearings to licensees or applicants.**

Pros:

- Charging hourly fees for contested hearings that are part of an established licensing or certification process would contribute to the transparency and equitability of the fee-setting process, because it would help ensure that the specific entities responsible for the NRC's work are paying for that work.
- Further, contested hearings are inextricably tied to NRC licensing actions. Thus, fairness dictates that the applicant who initiated the licensing process should pay the full cost of the associated hearing.
- The cost of contested hearings could be recovered by a flat fee, if appropriate.

Cons:

- Hearing costs may not always be predictable, based on the variety of issues that may arise specific to a given license or application review.
- The staff has less control of the litigation process than over other parts of the licensing or certification process. Thus, it may prove difficult to estimate costs for contested hearings and to apply controls to contain costs.
- Hearing litigants may strategize to increase fees charged to industry entities. Further, stakeholders have consistently argued that contested hearings are outside the applicant's control and that recovering those costs through user fees could encourage litigants to abuse the hearing process to increase the expense of licensing.
- An additional charge for hearings may increase the cost of getting a license.

Timeline: If approved for further analysis, the staff will conduct research and develop a proposal during FY 2017. Further, the Office of the General Counsel (OGC) will determine if the Independent Office Appropriations Act (31 U.S.C. § 9701) authorizes the NRC to collect fees for contested hearings. The staff estimates that any changes would be implemented in the FY 2018 fee rule.

Resources: Use existing budgeted resources of 0.5 to 1.0 FTE during FY 2017 to conduct research on hearing-related costs, analyze various approaches to changing the fee structure, solicit additional stakeholder input, and develop recommendations. Implementing it may also require 0.25 FTE in FY 2018.

### *Governance*

The steering committee noted above was disbanded having fulfilled its mission of developing improvements to the fee setting process. To support the fee transformation initiative, OCFO has established a new Fees Transformation Steering Committee (Steering Committee). The Steering Committee will direct the implementation of the fee setting transformation activities and ensure this effort is carried out in a thorough and effective manner. The NRC Budget Director will serve as the Chair. In addition to OCFO staff, its membership will include a representative from Office of International Programs, Office of Executive Director for Operations, NRO, NMSS, and NRR, with OGC and Office of Administration (ADM) staff serving in an advisory capacity. The Steering Committee will meet periodically to monitor progress of the implementation activities and based on the results of analyses, will develop recommendations for the annual fee rule paper to the Commission.

### *Update on Proration of Annual Fees*

On February 17, 2016, the Commission issued SRM SECY-15-0165, "Fiscal Year 2016 Proposed Fee Rule" (ADAMS Accession No. ML16048A485), disapproving the staff recommendation to "revise language regarding downgraded and terminated materials licenses to indicate that proration of annual fees will be based on the date NRC approves the completion of specific licensee activities related to a downgraded or terminated license." The Commission directed the staff to develop a more complete case for the adjustment including well-documented information on the amount of time it takes the NRC to review a request to terminate or downgrade a materials license. Once the evaluation has been completed, the Commission directed the staff to provide a notation vote paper outside of the fee rule process. The evaluation is currently underway.

### *2017 Fee Calculations*

Currently, the agency does not have a full-year appropriation for FY 2017 and expects to operate under a continuing resolution (CR). Because the budget allocation and fee calculation process takes several months to complete, the staff must begin developing the proposed fee rule to ensure adequate time to publish the proposed rule and the final rule in the *Federal Register*. Also, in response to licensee comments on the timeliness of the fee rule, the staff is accelerating publication of the FY 2017 proposed and final fee rules. Therefore, in absence of a full-year appropriation or CR, the proposed fees will be based on the FY 2017 NRC Congressional Budget Justification (CBJ), adjusted to reflect re-baselining reductions per SRM-SECY-16-0009 (ADAMS Accession No. ML16104A158). Subsequently, if the NRC receives a long-term CR or an appropriation different from the adjusted CBJ request, the staff will reflect those amounts in the final rule.

*Administrative Changes*

Enclosure 1 contains administrative changes for FY 2017. Additional administrative and conforming changes may be necessary as the proposed rule is developed.

RECOMMENDATION:

Commission approve the four long-term improvements for additional analysis.

SCHEDULE:

Enclosure 2 contains the estimated schedule for the FY 2017 fee rule.

COORDINATION:

OGC has reviewed this paper and has no legal objection. The Executive Director for Operations has concurred on this paper.

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Maureen E. Wylie  
Chief Financial Officer

Enclosures:

1. Administrative Changes in the Fiscal Year 2017
2. Estimated Schedule – Fiscal Year 2017 Fee Rule
3. Fee Transformation List

cc: SECY  
OGC  
OCA  
OPA  
EDO  
OIG



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\*via email

OFFICE	OCFO/DPB	OCFO/DPB	OCFO/DPB	OCFO/DPB	OCFO/DPB	OCFO/DOC
NAME	RSuri	CGalster*	MKaplan	JGreen	BFicks	GPeterson*
DATE	08/05/16	7/26/16	7/28/16	7/21/16	7/21/16	7/25/16
OFFICE	RES	ADM	NSIR	OIP	OGC	NRR
NAME	MWeber*	Carpenter*	BHolian*	NMamish*	MDoane*	WDean*
DATE	7/14/16	7/22/16	7/21/16	7/26/16	8/4/16	7/25/16
OFFICE	NRO	NMSS	D/CFO	EDO	CFO	QTE8*
NAME	JUhle*	SMoore*	MCMuessle	VMcCree	MEWylie	
DATE	7/22/16	7/22/16	8/5/16	8/12/16	8/15/16	08/01/16

## Administrative Changes in the Fiscal Year 2017

### 1. Alignment of Budget and Fees

The Office of the Chief Financial Officer (OCFO) will implement two process improvements in fiscal year (FY) 2017 based on stakeholder comments that the Nuclear Regulatory Commission's (NRC's) Congressional Budget Justification (CBJ) should provide more information on how fees relate to the budget. (1) Beginning with the FY 2018 CBJ currently scheduled to be published in early calendar year 2017, the document will include additional content to help licensees understand how the planned workload included in the budget affects fees. (2) In addition, the staff will include information about the planned rulemaking included in the budget and its impact on fees.

### 2. Direct Billing to Licensees

The staff will implement one new process improvement for direct billing to licensees. During FY 2017, the OCFO will create Web-based training slides that enhance project manager and staff procedures for charging time to billable projects. In addition, the Cost Activity Management Program will provide new cost activity coding structure for fee billable activities.

### 3. Outreach to Licensees

The OCFO will implement five process improvements to improve outreach to licensees. Beginning with FY 2017, (1) the staff will provide data on the cost of various licensing actions to the licensees for both Reactors and Materials Programs. During the acceptance review process, the project manager will develop a schedule and anticipated level of effort based on the licensing action being requested. Indicators will be monitored to verify timeliness and resources. Once the acceptance review is completed and a schedule is established, the project manager will contact the licensee or applicant to provide an estimate of the schedule and cost, as well as major drivers that may result in schedule or cost revisions. (2) For international assistance related activities that are included in fee-relief activities, the staff will add more content to the Fee-Relief Activities Table in the fee rule and provide further explanations in the work papers. (3) The staff has added "plain language" fee-related frequently asked questions to the public Web site and will refresh them as new initiatives are implemented. (4) In addition, the staff will publish a blog post in response to stakeholder comments received as a result of the Request for Information published in the Federal Register on March 22, 2016. (5) The staff plans to develop estimation of costs based on level of effort for similar actions in the past. The staff will publically communicate generic estimates or ranges of fees for new types of work.

### 4. Streamlining Fee Calculations

The OCFO will implement four process improvements to streamline fee calculations. (1) In absence of an appropriation, the staff will develop a process by which the OCFO will decide which version of the budget (e.g. CBJ, continuing resolution, or the current congressional markups) to use to develop the proposed fee rule. The final fee rule amounts will always be based on the Commission approved Implementation Plan. (2) To increase the accuracy of the

estimates used for fee calculations in 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended," OCFO will develop a 10 CFR Part 170 fee-estimate report containing information about the correct docket, region, and office to assist the program offices in asking the right staff for their workload estimates. (3) The OCFO will also post fee-related spreadsheets in electronic format on the public Web site. (4) To facilitate publishing the FY 2017 proposed and final fee rule earlier as requested by stakeholders, the staff will modify calculation of the 10 CFR Part 170 estimates. This will be accomplished by relying more on prior year billing data for calculating the estimates since the current year billing data will not be available early enough to support this change.

#### 5. Evaluation of New Basis for Fees

One process improvement will be made for the evaluating of a new basis for fees. The FY 2017 fee rule will include a section discussing the new fee class for small modular reactors (SMRs). The NRC has already published a *Federal Register* notice describing fees to be charged for any future SMRs (80 FR 68268).

#### 6. Modification of Invoices

In FY 2017, OCFO will implement one process improvement by enhancing the notification process to staff to heighten awareness of the importance of validating their fee-billable charges in the time and labor system. This will help maintain the accuracy of the invoices mailed to the licensees.

### Estimated Schedule - Fiscal Year 2017 Fee Rule

<u>Action</u>	<u>Date</u>
SECY Information paper sent to Program Offices for comment	July 11, 2016
Program office comments provided to OCFO	July 22, 2016
SECY paper transmitted to the Commission	August 15, 2016
EDO concurrence on proposed rule	January 11, 2017
Proposed rule sent to the Commission	January 19, 2017
Proposed rule to <i>Federal Register</i>	January 27, 2017
Publish proposed rule	January 30, 2017
30-day public comment period ends	March 1, 2017
EDO concurrence on final rule due	May 9, 2017
Final rule to be sent to the Commission	May 12, 2017
Final rule to the <i>Federal Register</i>	May 19, 2017
Publish final rule	May 30, 2017
Final rule effective (60 days after publication)	July 29, 2017

#### NOTES:

This is an estimated schedule and is subject to changes in the FY 2017 budget.

This schedule assumes that all proposed revisions to the FY 2017 fee rule will be finalized as proposed and no Commission paper seeking a notation vote will accompany the final fee rule.