

AUDIT REPORT

Audit of NRC's Process for Calculating License Fees

OIG-13-A-02 October 24, 2012



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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

**OFFICE OF THE
INSPECTOR GENERAL**

October 24, 2012

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

J.E. Dyer
Chief Financial Officer

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S PROCESS FOR CALCULATING
LICENSE FEES (OIG-13-A-02)

Attached is the Office of the Inspector General's report titled, *Audit of NRC's Process for Calculating License Fees*.

The report presents the results of the subject audit. The agency had no comments during the October 16, 2012, exit conference.

Please provide information on actions taken or planned on the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Kathleen Stetson, Team Leader, at 415-8175.

Attachment: As stated

cc: N. Mamish, OEDO
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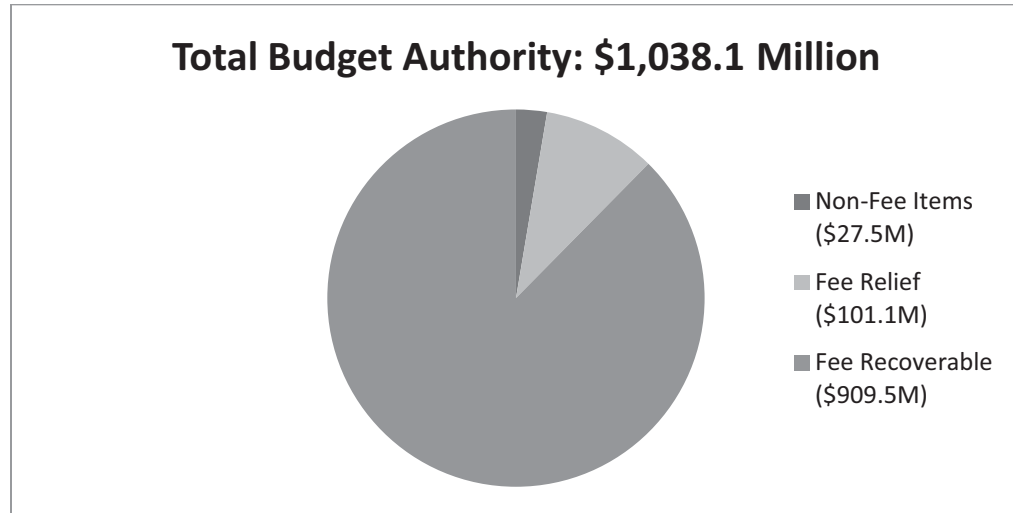
EXECUTIVE SUMMARY

BACKGROUND

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires that the U.S. Nuclear Regulatory Commission (NRC) recover, through fees assessed to its applicants and licensees, approximately 90 percent of its budget authority [less amounts appropriated for waste incidental to reprocessing activities and amounts appropriated for generic homeland security activities (“non-fee items”)].

NRC assesses two types of fees to meet the requirements of OBRA-90 – user fees and annual fees. First, user fees, presented in Title 10, Code of Federal Regulations (10 CFR), Part 170, under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), recover NRC’s costs of providing special benefits to identifiable applicants and licensees. In FY 2012, the estimated 10 CFR Part 170 fees totaled \$345.2 million. Second, annual fees, presented in 10 CFR Part 171 under the authority of OBRA-90, as amended, recover generic regulatory costs not recovered through 10 CFR Part 170 fees. In FY 2012, the 10 CFR Part 171 fee collections required totaled \$555.8 million.

As noted in 10 CFR Part 170, in FY 2012 NRC’s budget authority was \$1,038.1 million and non-fee items were \$27.5 million. The total amount of fees to recover in FY 2012 was \$909.5 million (this includes the Part 170 and 171 fees as well as the Part 171 billing adjustments).



On an annual basis, NRC amends the licensing, inspection, and annual fees. The NRC publishes the annual Fee Rule in the *Federal Register*.

OBJECTIVE

The audit objective was to determine if NRC has established and implemented management controls to ensure that the license fee calculation process produces timely and accurate fees in accordance with applicable requirements.

RESULTS IN BRIEF

The agency has established and implemented management controls to ensure that the license fee calculation process produces timely and accurate fees in accordance with applicable requirements. However, we have identified the following opportunities to further improve the license fee calculation process:

- Prepare and document an annual Fee Rule validation (budget vs. cost analysis) and make adjustments as needed to the fee calculation process.
- Document all steps performed in calculating the Fee Rule in the desk procedures (Fee Handbook) to enable a new preparer to re-perform or complete the calculation.
- Prepare and complete detailed quality control license fee calculation checklists and document supervisory review and approval on the checklists.

RECOMMENDATIONS

This report makes recommendations to improve the agency's controls over the license fee calculation process. A consolidated list of these recommendations appears in Section IV of this report.

AGENCY COMMENTS

OIG held an exit conference with the agency on October 16, 2012. Agency management stated their agreement with the report findings and recommendations, and opted not to provide formal comments.

ABBREVIATIONS AND ACRONYMS

CFR	Code of Federal Regulations
CLA	CliftonLarsonAllen LLP
FY	Fiscal Year
IOAA	Independent Offices Appropriations Act of 1952
NRC	Nuclear Regulatory Commission
OCFO	Office of the Chief Financial Officer
OBRA-90	Omnibus Budget Reconciliation Act of 1990, as amended
OMB	Office of Management and Budget

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I. BACKGROUND

Under 10 CFR Part 170 and 10 CFR Part 171 (as published in the *Federal Register*) NRC assesses user fees and annual fees to licensees to meet the requirements of OBRA-90. OBRA-90, as amended, requires that NRC recover, through fees assessed to its applicants and licensees, approximately 90 percent of its budget authority [less amounts appropriated for Waste Incidental to Reprocessing activities and amounts appropriated for generic homeland security activities (“non-fee items”)].

User fees, presented in 10 CFR Part 170 under the authority of the IOAA, recover NRC's costs of providing special benefits to identifiable applicants and licensees. NRC assesses these fees, for example, to cover the costs of inspections, applications for new licenses and license renewals, and requests for license amendments. NRC develops an hourly rate to charge licensees for its services. In FY 2012, the estimated 10 CFR Part 170 fees totaled \$345.2 million.

Annual fees which are implemented through 10 CFR Part 171 recover generic regulatory costs not otherwise recovered through 10 CFR Part 170. In FY 2012, the 10 CFR Part 171 fee collections totaled \$555.8 million.

NRC determines the amount of fees to recover for the current fiscal year by subtracting the non-fee items (amounts appropriated for waste incidental to reprocessing and amounts appropriated for generic homeland security activities) from the total budget authority for the current fiscal year. The amount of Part 171 fee collections required to be collected is determined based on the total amount to recover less billing adjustments and estimated Part 170 fees. The estimated Part 170 fees to collect for the current fiscal year are determined using the latest billing data available for each license fee class.

In our review of the license fee calculation process, we noted that the license fee calculation performed by the Office of the Chief Financial Officer (OCFO) Accountant includes four main spreadsheets: the Budget Allocation File; the Proposed Fee Rule Calculation; the Part 170 Estimates for the Final Fee Rule; and the Final Fee Rule Calculation. These spreadsheets gather data and calculate the hourly rate, Part 171 annual fees, materials Part 170 application fees, and average inspection costs. The spreadsheet preparation began in FY 2011 (prior to the beginning of the fiscal year) in order to issue the fee rule in 2012. The FY 2012 proposed Fee Rule was published in March of 2012 with comments due back in April of 2012. The FY 2012 final Fee Rule was published in June of 2012 with the rule becoming effective on August 14, 2012.

CliftonLarsonAllen (CLA) reviewed the various calculations and data that are part of the Fee Rule calculation to identify the potential risks related to the calculation. CLA noted there is an inherent risk in the calculation in the fact that NRC must use budgeted costs instead of actual costs (as actual costs would not be available until after the entire year is complete). Another risk CLA identified is that the amount of fees to recover for each fee class is based on the budget allocations from the program offices. The following offices allocate their direct budgeted resources to the different fee classes and fee-relief activities:

- Office of the Advisory Committee on Reactor Safeguards
- Office of Administration
- Atomic Safety and Licensing Board Panel
- Office of Federal and State Materials and Environmental Management Programs
- Office of Nuclear Material Safety and Safeguards
- Office of New Reactors
- Office of Nuclear Reactor Regulation
- Office of Nuclear Security and Incident Response
- Office of Enforcement
- Office of the General Counsel
- Office of Investigations
- Office of International Programs
- Office of Nuclear Regulatory Research

If these allocations are not accurate (improperly spread), a fee class may end up with over or under charged fees. The final risk CLA identified was in the calculation of the annual fees. In certain fee classes (fuel facility, materials and uranium recovery), the annual fees are different for the different categories of licensees. For example, the annual fees in the fuel facility class are broken out between the fee categories based on level of effort associated with regulating each of the fee categories as determined by the program office. These factors are determined by the office and as a result require more analysis and judgment. CLA identified these risks as a way to identify areas of the fee calculation that would require more review.

II. **OBJECTIVE**

The audit objective was to determine if NRC has established and implemented management controls to ensure that the license fee calculation process produces timely and accurate fees in accordance with applicable requirements.

III. FINDINGS

The agency has established and implemented management controls to ensure that the license fee calculation process produces timely and accurate fees in accordance with applicable requirements. However, we have identified the following opportunities to further improve the license fee calculation process:

- Prepare and document an annual Fee Rule validation (budget vs. cost analysis) and make adjustments as needed to the fee calculation process.
- Document all steps performed in calculating the Fee Rule in the desk procedures (Fee Handbook) to enable a new preparer to re-perform or complete the calculation.
- Prepare and complete detailed quality control license fee calculation checklists and document supervisory review and approval on the checklists.

A. PREPARE AND DOCUMENT AN ANNUAL FEE RULE VALIDATION (BUDGET VS. COST ANALYSIS)

NRC prepared and published the final Fee Rule for FY 2012 approximately nine months into the fiscal year. Because the Fee Rule is prepared prior to the end of the fiscal year, budget data must be used in the Fee Rule calculation (i.e., in hourly rate calculation and allocations to fee classes) as opposed to actual data for the year.

The hourly rate calculation (Table II in the FY 2012 Fee Rule) is prepared using budgeted cost data for the current year. In the past, after the fiscal year was complete, NRC recalculated the hourly rate using actual cost data. NRC then compared the hourly rate using actual cost data to the hourly rate published in the Fee Rule to determine the reasonableness of the hourly rate published in the annual Fee Rule. CLA requested the validation for the prior year and found that the validation had not been performed for the FY 2010 or FY 2011 fee rule (last performed for FY 2009). Per discussion with NRC staff, this was due to the implementation of the new accounting system in FY 2011 and the applicable cost reports not being available to perform the validation. CLA reviewed the FY 2009 validation and noted that the difference between the budget and actual hourly rate was within NRC's reasonableness range.

Furthermore, the offices (identified in the Background section above) estimate the allocations between the fee classes (i.e., reactor, materials, etc.) in the Fee Rule and there is a possibility that actual breakouts between fee classes could be different from the estimates. NRC should perform validation procedures to identify the accuracy of the allocations between the fee classes.

Because the hourly rate calculation is dependent upon budgeted amounts and allocations to fee classes are estimated, NRC should ensure that this validation is prepared each year and that cost reports are available to complete the validation. This validation provides useful monitoring to NRC management of the accuracy of the Fee Rule as well as their calculation procedures. NRC should perform monitoring procedures in accordance with Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Internal Controls*, which states:

Monitoring the effectiveness of internal control should occur in the normal course of business. In addition, periodic reviews, reconciliations or comparisons of data should be included as part of the regular assigned duties of personnel. Periodic assessments should be integrated as part of management's continuous monitoring of internal control, which should be ingrained in the agency's operations.

Monitoring the actual costs vs. budgeted costs provides insight into the accuracy of the budget allocation process. If a significant variance was noted, NRC could then review the budget allocation process to identify any adjustments that could be made to their fee calculation process.

Recommendations

We recommend that the Chief Financial Officer:

1. Prepare and document an annual Fee Rule validation (budget vs. cost analysis) and make adjustments as needed to the fee calculation process.

B. DOCUMENT ALL STEPS PERFORMED IN CALCULATING THE FEE RULE IN THE DESK PROCEDURES (FEE HANDBOOK)

NRC has prepared a Handbook for License Fee Policy and Procedures (Fee Handbook). This document serves as guidance to OCFO staff in developing and establishing the NRC fees required to be collected each year as well as guidance in the preparation of the *Federal Register* rulemaking document. CLA reviewed the Handbook, issued as of 9/1/11, and found that NRC was still in the process of updating it in FY 2012. The Handbook included steps related to preparing the budget allocation file and the fee calculation file; however, it did not include procedures in preparing the Part 170 estimates for the final Fee Rule spreadsheet. In accordance with OMB Circular A-123, "Management's Responsibility for Internal Controls," NRC should ensure that control activities including policies and procedures are in place to help ensure that agency objectives are met (e.g., Appropriate documentation). Because the fee calculation is complex and NRC has only one person who prepares the calculations, thoroughly documented procedures of each step necessary to prepare the fee calculation are critical to ensure that a new preparer without any prior knowledge of the calculation would be able to complete the fee calculation.

Recommendation

We recommend that the Chief Financial Officer:

2. Document all steps performed in calculating the Fee Rule in the desk procedures (Fee Handbook) to enable a new preparer to re-perform or complete the calculation.

C. PREPARE AND COMPLETE DETAILED QUALITY CONTROL FEE CALCULATION CHECKLISTS

The OCFO Accountant uses various spreadsheets to prepare the License Fee calculation. The Accountant uses these spreadsheets to collect the data received from the program offices as well as to calculate the license fees published in the proposed and final Fee Rule. The main spreadsheets are the Budget Allocation File, the Proposed Fee Rule Calculation, the Part 170 estimate for the Final Fee Rule, and the Final Fee Rule Calculation. These spreadsheets involve complex and detailed calculations. As a result, NRC would benefit from creating quality control checklists and having the Accountant complete the checklists as they prepare each spreadsheet. This would help to ensure that all the steps necessary to complete the fee calculation are completed each year and would ensure consistency from year to year. In accordance with OMB Circular A-123, "Management's Responsibility for Internal Controls," NRC should ensure that control activities including policies and procedures are in place to help ensure that agency objectives are met. Although a supervisor signs off on the Fee Rule, a supervisor does not sign off on the detailed calculations/spreadsheets. Because the calculations are so complex, the quality control checklists should also be used by the supervisor who is reviewing the detailed calculations/spreadsheets to ensure that the supervisor as the reviewer performs a thorough review of the calculations. The supervisor should then sign the checklist to document his or her review and approval. This type of procedure would help ensure that the calculations are accurate and document the supervisor's approval of the calculations.

Recommendation

We recommend that the Chief Financial Officer:

3. Develop quality control checklists to use during the preparation of the license fee calculation spreadsheets.
4. Ensure a supervisor reviews the completed checklists and documents the review and approval on the quality control checklists.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

We recommend that the Chief Financial Officer:

1. Prepare and document an annual Fee Rule validation (budget vs. cost analysis) and make adjustments as needed to the fee calculation process.
2. Document all steps performed in calculating the Fee Rule in the desk procedures (Fee Handbook) to enable a new preparer to re-perform or complete the calculation.
3. Develop quality control checklists to use during the preparation of the license fee calculation spreadsheets.
4. Ensure a supervisor reviews the completed checklists and documents the review and approval on the quality control checklists.

V. AGENCY COMMENTS

OIG held an exit conference with the agency on October 16, 2012. Agency management stated their agreement with the report findings and recommendations, and opted not to provide formal comments.

OBJECTIVE, SCOPE, AND METHODOLOGY**OBJECTIVE**

The audit objective was to determine if NRC has established and implemented management controls to ensure that the license fee calculation process produces timely and accurate fees in accordance with applicable requirements.

SCOPE

The audit focused on reviewing the management controls surrounding the licensee fee calculation process to ensure the license fee calculation produces timely and accurate fees. CLA reviewed Federal guidance pertaining to monitoring of internal controls, including OMB Circular A-123, *Management's Responsibility for Internal Controls*. We conducted this audit at NRC headquarters (Rockville, MD) from April 2012 through July 2012. We reviewed the license fee calculation spreadsheets and met with the OCFO personnel who prepare the calculation. Throughout the audit, auditors were aware of the possibility or existence of fraud, waste, or abuse in the program.

METHODOLOGY

CLA reviewed the laws governing NRC's fees including:

- Independent Offices Appropriation Act of 1952 (IOAA).
- Omnibus Budget Reconciliation Act of 1990, as amended (OBRA-90).
- 10 CFR Parts 170 and 171 Revision of Fees Schedule; Fee Recovery for Fiscal Year 2012.

CLA met with the OCFO Accountant who prepares the license fee calculation. The OCFO Accountant walked us through the fee calculation spreadsheets and how they are prepared. We then performed testing of the different spreadsheets including reviewing the mathematical accuracy of the calculations, reviewing the methodology for reasonableness, and agreeing the calculations to the budget appropriation and actual billings, as appropriate. We reviewed the following spreadsheets:

- Budget Allocation.
- Proposed Fee Rule Calculation.
- Part 170 Estimates for Final Fee Rule.
- Final Fee Rule Calculation.

We also met with an NRC program office (Office of Federal and State Materials and Environmental Management Programs) to discuss its involvement in the preparation of the budget allocation spreadsheet.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.