Rules and Regulations

Federal Register
Vol. 67, No. 201
Thursday, October 17, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG61

Industry Codes and Standards; Amended Requirements: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: On September 26, 2002 (67 FR 60520), the U.S. Nuclear Regulatory Commission (NRC) published a final rule amending its regulations to incorporate by reference a later edition and addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) to provide updated rules for construction, inservice inspection (ISI), and inservice testing (IST) of components in light-water cooled nuclear power plants. This action corrects two erroneous references to the NRC's regulations made in the supplementary information accompanying the final rule.

EFFECTIVE DATE: October 28, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen Tingen, Division of Engineering, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Alternatively, you may contact Mr. Tingen at (301) 415–1280, or via e-mail at: *sgt@nrc.gov.*

SUPPLEMENTARY INFORMATION: In the final rule, published on September 26, 2002 (67 FR 60520), on page 60521, in the third column, in the third full paragraph, the first and second sentences are corrected to read as follows:

In responding to this clarification, several commenters indicated that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii). The NRC does not agree that the 10-year IWE and 5-year IWL examination intervals must coincide with the 120-month interval update in § 50.55a(g)(4)(ii).

Dated at Rockville, Maryland, this 9th day of October, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 02–26342 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150–AH03

Cost Recovery for Contested Hearings Involving U.S. Government National Security Initiatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow the agency to recover its costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through licensing fees assessed to the affected applicant or licensee. This final rule is a special exception to the Commission's longstanding policy of not charging this type of fee for contested hearings. In this case, the Commission will charge its contested hearing costs directly to the involved licensee or applicant rather than recovering its costs through the annual fees assessed to all licensees within the affected class.

EFFECTIVE DATE: November 18, 2002.

ADDRESSES: The comments received are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by email to *pdr@nrc.gov.* If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, please contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking website (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Carlson, telephone 301–415–8165, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

The NRC has a longstanding policy of charging the affected applicant part 170 licensing fees to recover the agency's costs for any uncontested hearings that the NRC holds on applications to construct a power reactor or enrichment facility. These hearings are mandated by statute. However, the NRC's costs for all contested hearings [1] have been recovered through part 171 annual fees assessed to the members of the particular class of licensee to which the applicant belongs.

The NRC published the final rule establishing the part 170 and part 171 fees for FY 2002 on June 24, 2002, (67 FR 42612) after considering a comment

[1] A contested proceeding is defined in 10 CFR 2.4 as (1) a proceeding in which there is a controversy between the staff of the Commission and the applicant for a license concerning the issuance of the license or any of the terms or conditions thereof or (2) a proceeding in which a petition for leave to intervene in opposition to an application for a license has been granted or is pending before the Commission.

from a nuclear industry group concerning the assessment of annual fees to the fuel facility class of licensees for recovery of the costs involving a contested hearing related to the application for a mixed oxide (MOX) fuel fabrication facility. The industry group commented that assessing the MOX contested hearing costs to the fuel facility fee class was unfair, and that it was a violation of the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, to charge licensees for an agency activity or program from which the licensees receive no benefit. The commenter asserted that fuel facility licensees should not be responsible for bearing the costs of contested hearings associated with MOX fabrication because this process has no relation to the NRC's regulatory services from which fuel facility licensees obtain a benefit.[2] The commenter added that the beneficiaries of the MOX program are the Federal government and the Nation's citizenry because it will aid in the reduction of weapons-grade plutonium. The commenter contended that commercial fuel facility licensees should not have to subsidize the Federal government's efforts to ensure national security, and that such costs should be appropriated through the General Fund and removed from the NRC fee base.

The NRC responded that it must recover its hearing costs through either part 170 fees for services or through part 171 annual fees in order to recover most of its budgeted costs (less the amounts appropriated from the Nuclear Waste Fund) through fees as required by OBRA–90, as amended. The Commission's longstanding policy of recovering contested hearing costs through part 171 annual fees assessed to the affected class of licensee was confirmed repeatedly in the course of many past fee rulemakings, in court pleadings, and in an NRC report to Congress on fees.

However, in this case the Commission stated in the FY 2002 final fee rule that it found merit in the commenter's concern about the assessment of annual fees targeted to the fuel facility class for the MOX contested hearing costs because the NRC licensing action, which is the subject of the hearing, involves a U.S. Government national security initiative to dispose of plutonium stockpiles. Accordingly, the final fee rule provided that FY 2002 budgeted costs for the MOX contested hearing should be recovered through part 171 annual fees assessed to all classes of licensees. The final fee rule also stated it was the Commission's intent to issue a proposed rule for public comment that would recover the costs for contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee, beginning in FY 2003.

The Commission published its proposed rule for comment on July 31, 2002, in the **Federal Register** (67 FR 49623). The comment period for this rule ended August 30, 2002. After considering all comments received during the public comment period, the Commission has now adopted its proposal as a final rule.

This final rule is a special exception to the Commission's policy of not recovering contested hearing costs through part 170 fees assessed to the affected applicant or licensee. This exception only applies to contested hearings on licensing actions directly associated with U.S. Government national security initiatives, such as Presidentially-directed national security programs. The affected applicant or licensee will be responsible for the payment of the part 170 fees assessed for these types of contested hearings. However, because part 170 fees will only be assessed for contested hearings on licensing actions directly involving U.S. Government national security initiatives, the Commission generally expects that the costs will ultimately be borne by the Federal government, rather than the applicant.

In addition to the contested hearing on the MOX fuel fabrication facility application, any contested hearing on the Tennessee Valley Authority (TVA) license amendments to produce tritium at the Watts Bar and Sequoyah reactors for the Nation's nuclear weapons program would be another example of a contested hearing on a licensing action directly involving a U.S. Government national security initiative for which part 170 fees would be assessed under this final rule.

Examples of contested hearings on licensing actions that do not involve a U.S. Government national security initiative include the contested hearing on the application for a uranium recovery license filed by Hydro Resources Inc., and the contested hearing on the independent spent fuel storage installation application filed by Private Fuel Storage L.L.C. Furthermore, this final rule leaves intact the existing policy of not assessing part 170 fees for contested hearings associated with applications or licenses that are used to provide routine services to U.S. Government agencies.

It should be noted that the Independent Offices Appropriation Act (IOAA) prohibits the NRC from assessing part 170 fees to Federal agencies, except in limited circumstances, such as licensing and inspection of TVA power reactors. Therefore, in most cases, this final rule would not apply to contested hearings on licensing actions involving U.S. Government national security initiatives where a Federal agency is the applicant or licensee.

II. Response to Comments

On July 31, 2002 (67 FR 49623), the NRC published for public comment a proposed rule to recover the agency's costs for contested hearings on licensing actions directly involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee. The NRC received two comments by the close of the public comment period on August 30, 2002.

The comments and the NRC's responses, grouped according to the issues raised, are as follows:

1. *Comment.* One commenter indicated that the NRC has not provided a specific definition of what a ''U.S. Government national security initiative'' is, and that the agency's definition should be clarified so as to eliminate confusion or potential misapplication of this exception to policy. Specifically, the commenter further explained that a ''national security initiative'' should exclude proceedings and licensing actions related to individual plant security modifications.

Response. The proposed rule presented a revised definition of Special Projects in § 170.3 Definitions to include contested hearings on licensing actions directly involving U.S. Government national security initiatives. The statement of considerations for the proposed rule provided examples of contested hearings on licensing actions that would and would not be considered as these types of proceedings. The NRC also proposed to add a part 170 fee exemption provision in § 170.11(a)(2) for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. The NRC cannot predict the types of future licensing actions that

[2] The MOX program is a Federal government initiative to ensure national security through the disposition of plutonium from dismantled nuclear weapons.

will involve U.S. Government national security initiatives. Consequently, the NRC will evaluate such actions on a case-by-case basis, and no further definition is being provided in this final rule. However, the Commission agrees with the commenter that licensing actions related to individual plant security modifications, including those required by Federal regulation, do not constitute a national security initiative for the purposes of part 170 fees. Accordingly, in this final rule the Special Projects definition under § 170.3 has been modified to specifically exclude contested hearings involving individual plant security modifications, including those required by Federal regulation. Similarly, the proposed language in § 170.11(a)(2) has been revised to specifically grant an exemption from the part 170 fees for contested hearings related to these individual plant security modifications.

2. *Comment.* One commenter asserted that this rulemaking should be implemented as an interim measure, and that the NRC should actively pursue whatever legislative changes are necessary, including amending the IOAA, to ensure licensees are not required to fund actions unrelated to their licensed activities.

Response. The agency is presently bound by existing legislation to recover most of its budgeted costs, including costs related to contested hearings, from NRC applicants and licensees through fees. The NRC's current policy is to recover its contested hearing costs from part 171 annual fees assessed to licensees in the affected fee class. This rulemaking modifies the existing policy such that the NRC's contested hearing costs associated with licensing actions specifically related to U.S. Government national security initiatives will be assessed directly to the affected licensee or applicant as part 170 fees. As noted in the proposed rule, the Commission generally expects that these costs would ultimately be borne by the Federal government rather than the applicant or licensee. This belief is based on the premise that U.S. Government national security-related initiatives will be sponsored by the Federal government; therefore, the sponsoring agency would reimburse the applicant or licensee for any associated costs, including NRC's costs for contested proceedings directly related to these initiatives.

Congress has taken action to remove from the fee base some of the costs for activities that raise fairness and equity concerns. However, unlike the activities that raise fairness and equity concerns related to NRC licensees having to pay the costs of activities for which they derive no benefit—the agency's activities related to contested hearings on licensing actions involving a U.S. Government national security initiative are directly related to regulating the affected applicant or licensee. Therefore, assessing the affected applicant or licensee for the NRC's costs of such contested hearings does not raise fairness and equity concerns, and as such, the Commission does not plan to pursue legislation to remove these costs from the fee base.

3. *Comment.* A commenter stated that the NRC should provide a more specific explanation of additional exceptions it plans to make to permit allocation of fees assessed for costs associated with national security-related programs to individual applicants or licensees (*e.g.*, with respect to petitions filed pursuant to 10 CFR 2.206 or allegations related to national security related programs in an NRC licensing context).

Response. As stated in the proposed rule, the Commission plans to consider recovering its costs for future activities involving U.S. Government national security-related programs, including allegations and 10 CFR 2.206 petitions, through part 170 fees assessed to the applicant or licensee in a manner consistent with this final rule. Any determination in this regard that could result in changes to the NRC's existing fee recovery policies would be published in the **Federal Register** for public comment.

4. *Comment.* Both commenters indicated the need for the NRC to clarify the intent of this rulemaking regarding the cost implications of these types of contested proceedings to petitioners. One of the commenters believed that this rule would require petitioners to pay all of the NRC's costs for contested proceedings involving U.S. Government national security initiatives.

Response. This rulemaking will not require petitioners/interveners to pay the NRC's costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives. The rule will result in the assessment of fees to the affected applicant or licensee to recover the NRC's costs for these types of contested proceedings. Moreover, the NRC has no plans to propose any further revision that would result in charging petitioners for the NRC's contested hearing costs.

5. *Comment.* One commenter inquired about the applicability of this rulemaking to the Yucca Mountain project.

Response. This rulemaking does not apply to the Yucca Mountain project because the agency's costs for this program are recovered by the NRC through appropriations from the Nuclear Waste Fund, and thus are excluded from fee recovery. Therefore, the rule will not result in the NRC assessing fees to recover the agency's costs for the Yucca Mountain proceeding.

6. *Comment.* One commenter asked who was responsible for making the ''national security'' determination.

Response. The NRC will make the final determination of whether a particular licensing action is directly related to a U.S. Government national security initiative. This decision will be made on a case-by-case basis. In those instances where the NRC decides a licensing action is related to a U.S. Government national security initiative, and the licensing process involves a contested hearing, the licensee or applicant will be assessed part 170 fees to recover the agency's costs associated with the contested proceeding.

7. *Comment.* A commenter questioned whether this rule would affect the licensing process based on a determination of a national security initiative.

Response. This rulemaking will not affect the NRC's licensing process, nor will it change how the agency executes its regulatory oversight mission. This final rule concerns an exception to the NRC's existing fee policy, and narrowly focuses on cost recovery associated with contested hearings involving U.S. Government national security initiatives.

III. Final Action

The NRC is amending 10 CFR part 170 to establish a provision for assessing part 170 fees to the affected applicant or licensee to recover the NRC's full costs of contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC. To implement this special exception to the Commission's longstanding policy of not assessing part 170 fees for contested hearing costs, the NRC is adding a fee exemption to § 170.11 for contested hearings. This provision will codify the Commission's past policy of not charging applicants or licensees for the costs of contested hearings, with one limited exception. Applicants or licensees involved in contested hearings that the NRC determines involve a U.S. Government national security-related initiative will be charged fees for the cost of such proceedings. A conforming revision is being made to § 170.11(a) to add the term special project fees to the existing list of fee types that will not be assessed under the exemption provision. The NRC is also revising the

definition of *Special Projects* in § 170.3 to include contested hearings on licensing actions related to U.S. Government national security initiatives, and is making corresponding changes to the section related to the payment of special project fees, to fee category J. of § 170.21, and to fee category 12. of § 170.31. Only those contested hearings on licensing actions directly associated with a U.S. Government national security initiative, such as those specifically related to Presidentially-directed national security programs, will be subject to cost recovery under part 170. The NRC will continue to recover its costs for those contested hearings that are exempted from part 170 fees through part 171 annual fees assessed to the affected class of licensees.

The final rule will not be a ''major'' final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the final rule will become effective 30 days after publication in the **Federal Register**.

As stated in the proposed rule, the NRC does not plan to mail this final rule to all licensees; however, a copy of this final rule will be mailed to any licensee or other person upon specific request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at *fees@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending part 170 to recover costs from applicants or licensees in contested hearings involving Commission-specified U.S. Government national security-related initiatives. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Supreme Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), *cert. denied,* 444 U.S. 1102 (1980).

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule will impose a fee on a very limited number of applicants or licensees to recover the costs of contested hearings involving Commission-specified, U.S. Government national security-related initiatives, and it is unlikely that these few organizations would fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

IX. Backfit Analysis

The NRC has determined that its backfit rules do not apply to this final rule and therefore, that a backfit analysis is not required for this final rule, because these final amendments do not impose any provisions that would impose backfits as defined in 10 CFR Chapter 1.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, of the Office of Management and Budget.

List of Subjects in 10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 170.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902).

2. Section 170.3 is amended by revising the definition of *Special Projects* to read as follows:

§ 170.3 Definitions.

* * * * *

Special Projects means those requests submitted to the Commission for review

for which fees are not otherwise specified in this chapter and contested hearings on licensing actions directly related to U.S. Government national security initiatives, as determined by the NRC. Examples of special projects include, but are not limited to, contested hearings on licensing actions directly related to Presidentially-directed national security programs, topical report reviews, early site reviews, waste solidification facilities, route approvals for shipment of radioactive materials, services provided to certify licensee, vendor, or other private industry personnel as instructors for part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. Special Projects does not include those contested hearings for which a fee exemption is granted in § 170.11(a)(2), including those related to individual plant security modifications.

* * * * *

3. In § 170.11, the introductory text of paragraph (a) is revised and paragraph (a)(2) is added to read as follows:

§ 170.11 Exemptions.

(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for:

* * * * *

(2) A contested hearing conducted by the NRC on a specific application or the authorizations and conditions of a specific NRC license, certificate, or other authorization, including those involving individual plant security modifications. This exemption does not apply to a contested hearing on a licensing action that the NRC determines directly involves a U.S. Government national security-related initiative, including those specifically associated with Presidentially-directed national security programs.

* * * * *

4. In § 170.12, paragraph (d) is revised to read as follows:

§ 170.12 Payment of fees.

* * * * *

(d) *Special Project Fees.* (1) Fees for special projects are based on the full cost of the review or contested hearing. Special projects include activities such as—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the review or contested hearing is completed. Each bill will identify the documents submitted for review or the specific contested hearing and the costs related to each. The fees are payable upon notification by the Commission.

* * * * *

5. In § 170.21, the introductory text is presented for the convenience of the user and Category J is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, re-qualification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
J. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections [3]	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

6. In § 170.31, the introductory text is presented for the convenience of the user and Category 12. is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services, and holders of materials licenses or import and export licenses shall pay fees for the following categories of services. The following schedule includes fees for health and safety and safeguards inspections where applicable:

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
* * * * * * *	
12. Special projects:	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
Contested hearings on licensing actions directly related to U.S. Government national security initiatives	Full Cost.
* * * * * * *	

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, generally licensed device registrations, and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for pre-application consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

Dated at Rockville, Maryland, this 8th day of October, 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–26446 Filed 10–16–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–40–AD; Amendment 39–12911; AD 2002–21–05]

RIN 2120–AA64

Airworthiness Directives; REVO, Incorporated Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain REVO, Incorporated (REVO) Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes. This AD requires you to inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent, replace any cracked wing spar doubler or angle, and report the results of the inspection to the Federal Aviation Administration (FAA). The kit modification consists of installing a doubler kit to give the spar an adequate fatigue life. This AD is the result of an incident of a crack found at the most outboard wing attachment fitting hole on one of the affected airplanes with the modification incorporated. The actions specified by this AD are intended to prevent wing spar failure caused by cracks in the wing spar doublers or angles, which could result in the wing separating from the airplane with consequent loss of control.

DATES: This AD becomes effective on October 23, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before November 1, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE–7-Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–40–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get information related to this AD from FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–40–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard B. Noll, Aerospace Engineer, FAA, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (781) 238–7160; facsimile: (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received a report of a crack at the most outboard wing attachment fitting bolt hole on a REVO Model Lake LA–4–200 airplane. This airplane had incorporated the modification from AD 2000–10–22, Amendment 39–11746 (65 FR 34065, May 26, 2000), which requires the following on REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes:

—Inspection of the left and right wing upper and lower spar doublers for cracks;

—Replacement of any cracked parts; and

—Incorporation of the B–79 Modification Kit or FAA-approved equivalent.

This modification consists of installing a doubler kit to give the spar an adequate fatigue life. The repetitive inspections are no longer required after incorporation of this modification.

AD 2000–10–12 was the result of reports of a fatigue crack found at the second most inboard wing attachment bolt hole on one of the affected airplanes and similar fatigue cracking on seven more of the affected airplanes.

The most recent accident airplane had accumulated about 50 hours time-in-service (TIS) since incorporating the modification required by AD 2000–10–22.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in wing spar failure and the wing separating from the airplane with consequent loss of control.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other REVO Models Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, and Lake Model 250 airplanes of the same type design;

—The affected airplanes that incorporate the modification required by AD 2000–10–22 should have the wing spar doublers and angles inspected for cracks and have any cracked parts replaced; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to accomplish the following:

—Inspect the upper and lower wing spar doublers and angles for cracks at a certain time after the incorporation of Modification Kit B–79 or FAA-approved equivalent as required by AD 2000–10–22;

—Replace any cracked wing spar doubler or angle; and

—Report the results of the inspection to FAA.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We have included, in the rulemaking docket, a discussion of information that may have influenced this action.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in the wing separating from the airplane with consequent loss of control, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.