



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

March 16, 2001

MEMORANDUM TO: Diane B. Dandois, Chief
License Fee and Accounts Receivable Branch
Division of Accounting and Finance
Office of the Chief Financial Officer

FROM: *Michael T. Lesar*
Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

SUBJECT: OFFICE CONCURRENCE ON THE PROPOSED FY 2001 FEE RULE

The Office of Administration concurs, subject to the comments provided, on the proposed rule that would establish the licensing, inspection, and annual fees necessary to recover approximately 98 percent of the NRC's operating budget for FY 2001. We have attached a marked copy of the package that presents additional comments.

If you have any questions concerning this matter, please contact Michael T. Lesar, Chief, Rules and Directives Branch, ADM, at 415-7163 (MTL) or Victoria Voytko, ADM, at 415-6075 (VNV).

Attachment: As stated

requires that NRC collect the FY 2001 fees by September 30, 2001, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301-415-1678).

Comments may also be submitted 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. Comments received may ^{insert space} also be viewed and downloaded electronically via this interactive rulemaking Website.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/NRC/ADAMS/index.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.

In addition to being available in ADAMS, the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 17.1 may also be examined during the 30-day

date of the FY 2001 rule. Those materials licensees whose license anniversary date during FY 2001 falls before the effective date of the final FY 2001 rule would be billed for the annual fee during the anniversary month of the license at the FY 2000 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2001 rule would be billed for the annual fee at the FY 2001 annual fee rate during the anniversary month of the license, and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rules to all licensees, although, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final rule to all licensees as a cost-saving measure. Accordingly, the NRC does not plan to routinely mail the FY 2001 final rule or future final rules to licensees. However, the NRC will send the final rule to any licensee or other person upon 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. It is our intent to publish the final rule in late May or early June of 2001. In addition to publication in the Federal Register, the final rule will be available on the Internet at [#]<http://ruleforum.llnl.gov>.

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The NRC is proposing to make changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below.

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A. Amendments to 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~~.

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FTEs (292.7) results in a rate of \$255,562 per FTE for FY 2001. The Direct FTE Hourly Rate for the materials program would be \$144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE (\$255,562) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is proposing to adjust the current Part 170 fees in §§170.21 and 170.31 to reflect both the changes in the revised hourly rates and the results of the biennial review of Part 170 fees required by the CFO Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials licensees whose fees are based on the average cost method, or "flat" fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete materials licensing actions should be increased in some categories and decreased in others, as described below, ^{close}to more accurately reflect current _{space} costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated in FY 1999 (64 FR 31448; June 10, 1999). Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1999.

In summary, the proposed licensing fees reflect an increase in average time for new license applications for seven of 33 materials fee categories included in the biennial review, a

decrease in average time for five fee categories, and the same average time for the remaining 21 fee categories. Similarly, the average time for applications for new export and import licenses and for amendments to export and import licenses remained the same for eight fee categories in §§170.21 and 170.31, and decreased for two other fee categories.

The proposed licensing fees are based on the revised average professional staff hours needed to process the licensing actions multiplied by the proposed professional hourly rate for FY 2001. The amounts of the materials licensing "flat" fees are rounded as follows: fees under \$1,000 are rounded to the nearest \$10, fees that are greater than \$1,000 but less than \$100,000 are rounded to the nearest \$100, and fees that are greater than \$100,000 are rounded to the nearest \$1,000.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of §170.21, and fee categories 1^C, 1^D, 2^B, 2^C, 3^A through 3^P, 4^B through 9^D, 10^B, 15^A through 15^E, and 16 of §170.³¹16. An additional proposed change to Category 16 is discussed in item 3. below. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

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3. Fees for Revisions to Initial Reciprocity Applications

The NRC has taken several actions in the past few years to streamline and stabilize fees assessed to materials user licensees subject to "flat" fees. These actions included elimination of the inspection, renewal, and amendment fees from Part 170, and inclusion of the costs for these

or environmental issue; or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin; or as a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts. Many of the fee exemption requests have been denied because the submittals have not met the intent of the waiver provision. For example, several fee waiver requests were based on the industry's future use of the reports, rather than NRC's use of these reports for generic regulatory improvements.

In the statement of considerations for the FY 1994 fee rule (59 FR 36895; July 20, 1994) which incorporated this fee waiver provision, the NRC stated that it believed the costs for some requests or reports filed with the NRC are more appropriately captured in the Part 171 annual fees rather than assessing specific fees under Part 170. The statement of considerations continued that these reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations and resolution of safety issues applicable to a class of licensee. To clarify the intent of the fee waiver provision, the NRC is modifying the current criterion 3. of Footnote 4 to §170.21 and criterion (c) of Footnote 5 to §170.31 to specifically state that the reports must support NRC's generic regulatory improvements or efforts. In addition, criteria 1., 2., and 3. of Footnote 4 to §170.21 would be redesignated as criteria (a), (b), and (c).

In summary, the NRC is proposing to amend 10 CFR Part 170 to[#]

1. Revise the material and reactor program FTE hourly rates;

1. Annual Fees

The NRC is proposing to establish new baseline annual fees for FY 2001. The Commission's policy commitment, made in the statement of considerations accompanying the FY 1995 fee rule (60 FR 32225; June 20, 1995) and further explained in the statement of considerations accompanying the FY 1999 fee rule (64 FR 31448; June 10, 1999), establishes that base annual fees will be reestablished (rebaselined) at least every third year, and more frequently if there is a substantial change in the total NRC budget or in the magnitude of the budget allocated to a specific class of licensees. The fees were last rebaselined in FY 1999. After carefully considering all factors, including the changes to the amount of the budget allocated to classes of licensees, and weighing the complex issues related to both fairness and stability of fees, the Commission has determined that it is appropriate to rebaseline its Part 171 annual fees this year. Rebaselining fees would result in reduced annual fees for a majority of the categories of licenses and increased annual fees for other categories, as described in more detail below.

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Although the NRC is sensitive to the effects the rebaselined fees will have on those licensees with fee increases, establishing new baseline annual fees this year would result in a more precise relationship between annual fees and NRC costs of providing services. It thus would constitute one means to fairly and equitably allocate costs among the NRC's licensees.

The annual fees in §§171.15 and 171.16 would be revised for FY 2001 to recover approximately 98 percent of the NRC's FY 2001 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. The total amount to

higher annual fees for the affected fee categories, assuming all else remains the same (e.g., no loss of licensees).

The increase in annual fees for transportation quality assurance approvals authorizing use only, which would have the largest percentage increase, is due in part to the budgeted costs for the enhanced participatory Part 71 rulemaking and the Office of Nuclear Material Safety and Safeguards' risk study activities. In addition, there has been a decrease in the budgeted costs for Part 71 vendor inspections while the budgeted costs for quality assurance reviews remained about the same. The ratio of the budgeted costs for these activities is currently used to allocate the total annual fee amount for the transportation class, less the amount allocated to DOE for its certificates of compliance, between the quality assurance approvals authorizing use only and those that authorize use and fabrication/design. As a result of the decrease in budgeted costs for Part 71 vendor inspections, ^{the} a ~~larger~~ percentage of the total annual fee amount for the transportation class ~~would be~~ ^{will be larger} allocated to quality assurance approvals authorizing use only than in the past. ^{close space}

Table III below shows the proposed rebaselined annual fees for FY 2001 for representative categories of licensees.

TABLE III - Rebaselined Annual Fees for FY 2001

PROPOSED FY 2001	
<u>CLASS OF LICENSEES</u>	<u>ANNUAL FEE</u>
Power Reactors (including Spent Fuel Storage/	\$2,805,000

falls on or after the effective date of the FY 2001 final rule would be billed for the annual fee at the FY 2001 rate during the anniversary month of the license, and payment would be due on the date of the invoice.

^{a.}
A. Fuel Facilities

The FY 2001 budgeted costs to be recovered in annual fees assessed to the fuel facility class of licensees is approximately \$17.6 million. This amount includes the LLW and other surcharges allocated to the fuel facility class. The costs are allocated to the individual fuel facility licensees based on the fuel facility matrix established in the FY 1999 final fee rule (64 FR 31448; June 10, 1999). In this matrix, licensees are grouped into five categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new and current licensees, licensees in unique license situations, and certificate holders.

The methodology allows for changes in the number of licensees or certificate holders, licensed-certified material/activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, this fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees and certificate holders. For example, if a fuel facility licensee amended its license/certificate in such a way that it resulted in the licensee not being subject to Part 171 fees applicable to fuel facilities, the budget for the safety and/or safeguards component would be

Applying these factors to the \$861,000 in budgeted costs to be recovered results in the following proposed annual fees.

TABLE IX - Annual Fees for Uranium Recovery Licenses

<u>Facility type</u>	<u>Proposed FY 2001 Annual Fee</u>
Class I (conventional mills)	\$94,000
Class II (in-situ mills)	78,700
11e(2) disposal	58,000
11e(2) disposal incidental to existing tailings sites	9,200

The proposed FY 2001 annual fees for Class I and Class II facilities (conventional mills and in-situ mills), would drop below the \$100,000 threshold currently established in §171.19 for quarterly billing, and therefore, under the current requirements, these licensees would be subject to annual fee billing based on the anniversary date of their license for FY 2001. In FY 1999 the reverse situation occurred for these licensees; i.e., in FY 1998 the annual fees were below the \$100,000 quarterly billing threshold and the licensees were billed on the license anniversary date, but beginning in FY 1999 the licensees became subject to quarterly billing for the annual fees because the fees were over the \$100,000 threshold. Because the annual fees for these licensees have been close to the \$100,000 threshold, small changes to the annual fee amounts have resulted in frequent changes to their annual fee billing schedule. To provide stability in the

billing schedule, the NRC is proposing to revise §171.19 to establish a quarterly billing schedule for the Class I and Class II licensees, regardless of the annual fee amount. This would provide these licensees with a consistent, predictable schedule for paying their annual fees. As provided in §171.19(b), if the amounts collected in the first three quarters of FY 2001 exceed the amount of the revised annual fee, the overpayment will be refunded.

c. Power Reactors

The approximately \$263.1 million in budgeted costs to be recovered through FY 2001 annual fees assessed to operating power reactors would be divided equally among the 104 operating power reactors. This results in a proposed FY 2001 annual fee of \$2,530,000 per reactor. Additionally, each operating reactor would be assessed the proposed spent fuel storage/reactor decommissioning annual fee, which for FY 2001 is \$275,000. This would result in a total FY 2001 annual fee of \$2,805,000 for each operating power reactor.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2001, budgeted costs of approximately \$33.3 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to Part 50 power reactors, except those reactors in decommissioning ^{that} who do not have spent fuel on site, and to Part 72 licensees who do not hold a Part 50 license. The costs would be divided equally among the 121 licensees, resulting in a proposed FY 2001 annual fee of \$275,000 per licensee. ✓

e. Non-power Reactors

Compliance that it holds. Of the remaining \$2.8 million, approximately 26 percent would be allocated to the 83 quality assurance plans authorizing use only and the 36 quality assurance plans authorizing use and design/fabrication. The remaining 74 percent would be allocated ~~only~~ ^e to the 36 quality assurance plans authorizing use and design/fabrication. This results in a proposed annual fee of \$6,100 for each of the holders of quality assurance plans that authorize use only, and a proposed annual fee of \$62,400 for each of the holders of quality assurance plans that authorize use and design/fabrication. ✓

3. Small Entity Annual Fees

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees and does not believe that a change to the small entity fees is warranted for FY 2001. The NRC revised the small entity fees in FY 2000, for the first time since they were introduced in FY 1991 and FY 1992, based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and on changes that had occurred in the fee structure for materials licensees over time (65 FR 36956, 36957). The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other materials licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering

from those licensees some of the NRC's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of \$500 and \$2,300 provide considerable relief to many small entities.

In the future the NRC plans to re-examine small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The annual fees for materials users now include the cost of amendments, renewals, and inspections. However, ~~at a~~^{at least} ~~maximum~~^{and} annual fees are rebaselined every three years, but may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur. ✓

4. Other Amendments

The NRC currently sends an NRC Form 526, "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171," with each annual fee invoice issued to materials licensees. Although the instructions on the form state that it is to be filed only by those licensees who qualify as a small entity under NRC's size standards, the NRC has received many improperly filed forms. When contacted, many of these licensees have indicated they completed the form because it was enclosed with the annual fee invoice. In an effort to minimize the number of improperly filed forms, the NRC is proposing to discontinue mailing the form with

each annual fee invoice. Instead, licensees would be able to access NRC Form 526 on the NRC's external web site at <http://www.nrc.gov>. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 would be able to complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 could be obtained either through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice, by calling the NRC's fee staff at 301-415-7554, or by e-mailing the fee staff at fees@nrc.gov.

In summary, the NRC is proposing to --

1. Establish new rebaselined annual fees for FY 2001;
2. Revise §171.16(c)(2) to eliminate the mailing of NRC Form 526 with the annual fee invoice to individual materials licensees;
3. Revise §171.19 to establish a quarterly annual fee billing schedule for Class I and Class II uranium recovery licensees; and
4. Re-examine the small entity fees every two years, on the same schedule as the biennial review of fees required by the CFO⁹ Act. ✓

III. Plain Language

§150.20 Recognition of Agreement State licenses.

(b) * * *

(b)(2) Shall file an amended NRC Form 241 or letter with the Regional Administrator to request approval for changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241.

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

is revised

3. The authority citation for Part 170 ~~continues~~^{is revised} to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

4. Section 170.2 is amended by adding a ^{new} paragraph (s) to read as follows:

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2001.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

¹⁵⁰
10 CFR Part ~~50~~ -- Criminal penalties, Hazardous materials transportation,

Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

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.

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Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. As used in this part, special projects does not include requests/reports submitted to the NRC --

(1) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(2) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(3) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts.

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6. In Section 170.12, paragraph (a) is revised to read as follows:

§170.12 Payment of Fees ○



(a) *Application and registration fees.* Each application or registration for which a fee is prescribed must be accompanied by a remittance for the full amount of the fee. The NRC will not issue a new license or an amendment increasing the scope of an existing license to a higher fee category before receiving the prescribed application fee. The application or registration fee(s) is charged whether the Commission approves the application or not. The application or registration fee(s) is also charged if the applicant withdraws the application or registration.

Application\$8,700


- D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). 

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Application\$2,400

- E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):

Application\$1,700

- F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. 

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Application\$3,400

- G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in

which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes ✓

Application\$8,000

- H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application\$2,300

- I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:

Application\$3,400

- J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed

Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite. ✓ :

- A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries. ✓ (:

Application - new license	\$9,400
Amendment	\$9,400

- B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country. ✓ (:

Application - new license	\$5,500
Amendment	\$5,500

- C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act ✓:

Application - new license \$1,700
Amendment \$1,700

- D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures ✓:

Application - new license \$1,200
Amendment \$1,200

- E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments ✓:

Amendment \$220

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20 ✓ :

Application (initial filing of Form 241 & any revisions) \$1,400

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, 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.

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting the NRC's generic regulatory improvements or efforts.

10. Section 170.41 is revised to read as follows:

§170.41 *J* Failure by applicant or licensee to pay prescribed fees. ✓

If the Commission determines that an applicant or a licensee has failed to pay a prescribed fee required in this part, the Commission will not process any application and may suspend or revoke any license or approval issued to the applicant or licensee. The Commission may issue an order with respect to licensed activities that the Commission determines to be appropriate or necessary to carry out the provisions of this part, Parts 30, 31, 32 through 35, 40, 50, 61, 70, 71, 72, 73, and 76 of this chapter, and of the act.

PART 171 -- ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

11. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

licenses, except those in Categories 4A
through 9D.....\$2,400

Q. Registration of devices generally licensed
under
~~pursuant to~~ Part 31.....N/A¹³



4. Waste disposal and processing:

A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material.....N/A⁵

B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging

⁹ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

¹⁰ This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

¹¹ See 10 CFR 171.15(c).

¹² See 10 CFR 171.15(c).

¹³ No annual fee is charged for this category because the cost of the general license registration program will be recovered through 10 CFR Part 170 fees.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or class(es) of licensees; (e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; Site Decommissioning Management Plan (SDMP) activities); and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy (e.g., reviews and inspections of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act).

appropriations from the Nuclear Waste Fund, by assessing license and annual fees. The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount for FY 2001 to 98 percent of the NRC's budget. Certain NRC costs related to reviews and assistance provided to other Federal agencies and States were excluded from the fee recovery requirement for FY 2001 by the Energy and Water Development Appropriations Act. The amount to be recovered for FY 2001 is approximately \$453.3 million.

OBRA-90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to be recovered from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since 1991, the NRC has complied with OBRA-90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

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In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there were a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

II. Impact on small entities.

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,400 licensees for FY 2000) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities.

Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

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licensees in the upper tier continued to pay an annual fee of \$1,800 while those in the lower tier paid an annual fee of \$400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991 as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from \$1,800 to \$2,300 in FY 2000. By increasing the maximum annual fee for small entities from \$1,800 to \$2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.




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While reducing the impact on many small entities, the NRC determined that the maximum annual fee of \$2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee

by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from \$400 to \$500 in FY 2000.

In the FY 2000 fee rule (65 FR 36946; June 12, 2000), the NRC stated that it would re-examine small entity fees each year that annual fees are rebaselined. Accordingly, the NRC has re-examined the small entity fees, and does not believe that a change to the small entity fees is warranted for FY 2001. The revision to the small entity fees in FY 2000 was the first change to the fees since they were introduced in FY 1991 and FY 1992. The revised fees were based on the 25 percent increase in average total fees assessed to other materials licensees since the small entity fees were first established and changes that had occurred in the fee structure for materials licensees over time. The NRC does not consider the approximately 13 percent decrease in the average FY 2001 fees for other licensees to be significant enough to warrant another change to the small entity fees this year.

Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover the agency costs associated with particular licensees. Rather, they are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from those licensees some of the agency's costs for activities that benefit them. The costs not recovered from small entities must be recovered from other licensees. The current small entity fees of \$500 and \$2,300 provide considerable relief to many small entities.

 In the future  the NRC plans to re-examine the small entity fees every two years,  in the same years in which it conducts the biennial review of fees as required by the CFO Act, instead of each year that annual fees are rebaselined as indicated in the FY 2000 fee rule. The

This re-examination will occur ✓

annual fees for materials users now include the cost of amendments, renewals, and inspections. However, ^{at least} ~~at a maximum~~ annual fees are rebaselined ^{and} every three years, ~~but~~ may be rebaselined earlier if warranted. Therefore, reviewing the small entity fees only when the annual fees are rebaselined results in a variable schedule for the re-examinations and any potential changes to the fees. Re-examining the small entity annual fees every two years, on the same schedule as the biennial review under the CFO Act, provides a routine, predictable schedule and allows licensees to anticipate when potential changes to these fees might occur. Therefore, the NRC plans to re-examine the small entity fees in FY 2003. ✓

IV Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 98 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of \$2,300 for small entities and a lower-tier small entity annual fee of \$500 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. Therefore, the analysis and conclusions established in the FY 2000 fee rule remain valid for FY 2001.

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, is considered a "major" rule under SBREFA. Therefore, in compliance with the law, this compliance guide has been prepared to assist NRC material licensees ^{in complying} with the FY 2001 fee rule. ✓

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2001 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's external web site at <http://www.nrc.gov>. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301-415-7554, or by e-mailing the fee staff at [#]fees@nrc.gov. The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the

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invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. *Small business*--a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last 3 completed fiscal years;

2. *Manufacturing industry*--a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. *Small organizations*^g--a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less; ✓

4. *Small governmental jurisdiction*--a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. *Small educational institutional institution*--an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or few^{er} employees.¹ ✓

To further assist licensees in determining if they qualify as a small entity, we are providing the following guidelines, which are based on the Small Business Administration regulations.

1. A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.
2. The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).
3. Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).
4. A licensee who is a subsidiary of a large entity does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The fees are as follows:

<u>Small Business^{es} Not Engaged</u>	<u>Maximum Annual Fee</u>
<u>in Manufacturing and Small</u>	<u>Per Licensed</u>
<u>Not-For Profit Organizations</u>	<u>Category</u>
<u>(Gross Annual Receipts)</u>	

Less than 35 employees

\$500

To pay a reduced annual fee, a licensee must use NRC Form 526. The NRC is proposing to eliminate mailing NRC Form 526 with the annual fee invoice. Instead, licensees can access this form on the NRC's external web site at <http://www.nrc.gov>. Those licensees that qualify as a "small entity" under the NRC size standards at 10 CFR Part 2.810 would be able to complete the form in accordance with the instructions provided, and submit the completed form and the appropriate payment to the address provided on the invoice. For licensees who cannot access the NRC's external web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR-0238, which is enclosed with each annual fee invoice. Alternatively, licensees may obtain the form by calling the fee staff at 301-415-7544, or by e-mailing us at fees@nrc.gov.

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Instructions for Completing NRC Small Entity Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.
2. Complete all items on NRC Form 526 as follows:
 - a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.
 - b. The Standard Industrial Classification (SIC) Code must be entered if known.
 - c. The licensee's name and address must be entered as they appear on the invoice.
Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526, or on the invoice does not constitute a request to amend the license. Any request to amend a

license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard for which the licensee qualifies as a small entity. Check only one box. Note the following:

- (1) A licensee who is a subsidiary of a large entity does not qualify as a small entity.
- (2) The size standards apply to the licensee, including all parent companies and affiliates[#] -- not the individual authorized users listed in the license or the particular segment of the organization that uses licensed material. ✓
- (3) Gross annual receipts means all revenue in whatever form received or accrued from whatever sources[#] -- not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104⁽¹⁾. These are: the term receipts excludes net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income; proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS); and amounts collected for another entity by a travel agent, real estate agent, advertising agent, or conference management service provider. ✓
✓
- (4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification. ✓

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC

Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either \$2,300 or \$500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year, and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year, pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice, but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either \$1150 or \$250 for each fee category billed, instead of the full small entity annual fee of \$2,300 or \$500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form 526 must be completed and returned in order for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please call the license fee staff at 301-415-7554, e-mail the fee staff at ~~fees@nrc.gov~~ [#]fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer. ✓

From: Victoria Voytko
To: Glenda Jackson
Date: 5/18/01 11:18AM
Subject: ADAMS No. of RDB Concurrence Memo on Proposed Fee Rule

I understand from Doris Mendiola that you will be creating a regulatory history in ADAMS for the proposed fee rule published 3/24.

The ADAMS accession number of RDB's 3/16 office concurrence memo is ML011290123.

Let me know if RDB needs to contact the Document Processing Center separately to have our concurrence memo declared an official agency record prior to creation of the ADAMS regulatory history package.

Victoria Voytko, TWFN 6, D-16
Rules and Directives Branch
301-415-6075